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

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1201

**RIN 3095–AA77**

### Debt Collection

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

**ACTION:** Interim final rule.

**SUMMARY:** The National Archives and Records Administration (NARA) is issuing regulations governing the collection of debts owed to it and other Federal agencies. Federal agencies are required to try to collect debts owed to the Federal government. These regulations describe actions that NARA may take to collect debts, and apply, with certain exceptions, to any person or entity. These regulations also provide that NARA may enter into a cross-servicing agreement with the U.S. Department of the Treasury (Treasury) under which the Treasury will take authorized action to collect amounts owed to NARA.

**DATES:** This rule is effective on: August 5, 2002. Comments are due by September 3, 2002.

**ADDRESSES:** Comments must be sent to Regulation Comments 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:** Kim Richardson at telephone number 301–837–2902, or fax number 301–837–0319.

**SUPPLEMENTARY INFORMATION:** Under these regulations, NARA may collect debts owed to it through a number of actions, including the following:

- Making offsets against amounts, including salary payments, owed to the debtor by NARA or other Federal agencies;
- Referring the debt to a private collection contractor; and
- Referring the matter to the U.S. Department of Justice (DOJ) for initiation of a judicial proceeding against the debtor.

In addition, these regulations describe the actions necessary for NARA to take collection actions on behalf of another Federal agency. These actions could include making offsets against the salary of a NARA employee or any other amounts owed by NARA to the debtor. These regulations also provide that NARA may enter into a cross-servicing agreement with the Department of the Treasury (Treasury) to take all of the above-listed actions to collect debts for NARA, or refer debts to a private debt collection agency.

These regulations implement the requirements of the Federal Claims Collection Act of 1966 (Pub. L. 89–508, 80 Stat. 308) as amended by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749) and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321). These regulations are issued in conformity with the Federal Claims Collection Standards issued by DOJ and the Treasury (31 CFR Chapter IX, parts 900–904, 65 FR 70390 (11/22/2000)). The regulations in this part are also issued in conformity with the regulations of the Office of Personnel Management (OPM) on offsets against Federal employee salaries (5 CFR part 550, subpart K), and the Treasury regulations on Administrative Wage Garnishment (31 CFR 285.11).

NARA has determined that these interim regulations pertain to agency practice and procedure and are interpretative in nature. The procedures contained in these regulations for salary, tax refund, and administrative offsets are mandated by law and by regulations promulgated by OPM, the Financial Management Service, and jointly by the DOJ and the Treasury. Therefore, under 5 U.S.C. 553(b)–(d), these regulations are not subject to the Administrative Procedures Act (APA) and the requirements of the APA for a notice and comment period and a delayed effective date. Nonetheless, NARA is delaying the effective date until 30 days following publication of these interim regulations, and will modify the regulations, if appropriate, in response to comments received within the comment period.

This interim rule is a significant regulatory action for the purpose 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 these regulations will not have a significant economic impact on a substantial number of small entities. This rule has no federalism implications. This rule is not a major rule.

Please submit Internet comments within the body of your email message or as an attachment. Please also include ''Attn: 3095–AA76'' 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 301–713–7360, ext. 240.

**List of Subjects in 36 CFR Part 1201**

Administrative practice and procedures; Claims; Debts; Government employees; Wages.

For the reasons set forth in the preamble, NARA is adding part 1201 to subchapter A of chapter XII, title 36, Code of Federal Regulations, as follows:

## PART 1201—COLLECTION OF CLAIMS

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1201.51 How will NARA request that my debt to NARA be collected by offset against some payment that another Federal agency owes me?
1201.52 What procedures will NARA use to collect amounts I owe to a Federal agency by offsetting a payment that NARA would otherwise make to me?
1201.53 When may NARA make an offset in an expedited manner?
1201.54 Can a judgment I have obtained against the United States be used to satisfy a debt that I owe to NARA?

**Subpart F—Administrative Wage Garnishment**

1201.55 How will NARA collect debts through Administrative Wage Garnishment?

**Authority:** 5 U.S.C. 5514; 31 U.S.C. 3701–3720A, 3720D; 44 U.S.C. 2104(a).

## Subpart A—Introduction

### § 1201.1 Why is NARA issuing these regulations?

(a) NARA is issuing these regulations to inform the public of procedures that may be used by NARA for the collection of debt.

(b) These regulations provide that NARA will attempt to collect debts owed to it or other Government agencies either directly, or by other means including salary, administrative, tax refund offsets, or administrative wage garnishment.

(c) These regulations also provide that NARA may enter a cross-servicing agreement with the U.S. Department of the Treasury (Treasury) under which the Treasury will take authorized action to collect amounts owed to NARA.

### § 1201.2 Under what authority does NARA issue these regulations?

(a) NARA is issuing the regulations in this part under the authority of 31 U.S.C. Chapter 37, 3701–3720A and 3720D. These sections implement the requirements of the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.

(b) NARA is also issuing the regulations in this part to conform to the Federal Claims Collection Standards (FCCS), which prescribe standards for handling the Federal Government's claims for money or property. The FCCS are issued by the Department of Justice (DOJ) and the Treasury at 31 CFR Chapter IX, Parts 900–904. NARA adopts those standards without change. The regulations in this part supplement the FCCS by prescribing procedures necessary and appropriate for NARA operations.

(c) NARA is also issuing the regulations in this part to conform to the standards for handling Administrative Wage Garnishment processing by the Federal Government. The standards are issued by the Treasury at 31 CFR 285.11. NARA adopts those standards without change. The regulations in this part supplement the standards by prescribing procedures necessary and appropriate for NARA operations.

(d) NARA is further issuing the regulations in this part under the authority of 5 U.S.C. 5514, and the salary offset regulations published by the Office of Personnel and Management at 5 CFR part 550, subpart K.

(e) All of these claims collection regulations are issued under NARA's authority under 44 U.S.C. 2104(a).

### § 1201.3 What definitions apply to the regulations in this part?

As used in this part:

*Administrative offset* means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

*Administrative Wage Garnishment* means a process whereby a Federal agency may, without first obtaining a court order, order an employer to withhold up to 15 percent of your wages for payment to the Federal agency to satisfy a delinquent non-tax debt.

*Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.

*Archivist* means the Archivist of the United States, or his or her designee.

*Certification* means a written statement received by a paying agency or disbursing official from a creditor agency that requests the paying agency or disbursing official to offset the salary of an employee and specifies that required procedural protections have been afforded the employee.

*Claim* (*see* definition of debt in this section).

*Compromise* means the settlement or forgiveness of a debt.

*Creditor agency* means the agency to which the debt is owed, including a debt collection center when acting on behalf of the creditor agency.

*Day* means calendar day. To count days, include the last day of the period unless it is a Saturday, a Sunday, or a Federal legal holiday.

*Debt collection center* means the Treasury or any other agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies.

*Debt* and *claim* are deemed synonymous and interchangeable. These terms mean an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency. For the purpose of administrative offset under 31 U.S.C. 3716 and subpart E of these regulations, the terms, ''debt'' and ''claim'' also include money, funds or property owed by a person to a State (including past-due support being

enforced by a State); the District of Columbia; American Samoa; Guam; the United States Virgin Islands; the Commonwealth of the Northern Marina Islands; or the Commonwealth of Puerto Rico.

*Debtor* means a person, organization, or entity, except another Federal agency, who owes a debt. Use of the terms ''I,'' ''you,'' ''me,'' and similar references to the reader of the regulations in this part are meant to apply to debtors as defined in this paragraph.

*Delinquent debt* means a debt that has not been paid by the date specified in NARA's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

*Disposable pay* means the part of an employee's pay that remains after deductions that are required to be withheld by law have been made.

*Employee* means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

*Federal Claims Collection Standards (FCCS)* means the standards currently published by DOJ and the Treasury at 31 CFR parts 900–904.

*NARA* means the National Archives and Records Administration.

*Paying agency* means any agency that is making payments of any kind to a debtor. In some cases, NARA may be both the creditor agency and the paying agency.

*Payroll office* means the office that is primarily responsible for payroll records and the coordination of pay matters with the appropriate personnel office.

*Person* includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, state or local government, or other entity that is capable of owing a debt to the United States; however, agencies of the United States are excluded.

*Private collection contractor* means a private debt collector under contract with an agency to collect a non-tax debt owed to the United States.

*Salary offset* means a payroll procedure to collect a debt under 5 U.S.C. 5514 and 31 U.S.C. 3716 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

*Tax refund offset* means the reduction of a tax refund by the amount of a past-due legally enforceable debt owed to NARA or any other Federal agency.

*Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt.

*Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body.

### § 1201.4 What types of claims are excluded from these regulations?

The following types of claims are excluded:

(a) Debts or claims arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*) or the tariff laws of the United States, or the Social Security Act (42 U.S.C. 301 *et seq.*); except as provided under sec. 204(f) and 1631 (42 U.S.C. 404(f) and 1383(b)(4)(A)).

(b) Any case to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies;

(c) Any case where collection of a debt is explicitly provided for or provided by another statute, *e.g.*, travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108, or, as provided for by title 11 of the United States Code, when the claims involve bankruptcy;

(d) Any debt based in whole or in part on conduct in violation of the antitrust laws or involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, as described in the FCCS, unless DOJ authorizes NARA to handle the collection;

(e) Claims between Federal agencies;

(f) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be initiated more than 10 years after the Government's right to collect the debt first accrued. (Exception: The 10-year limit does not apply if facts material to the Federal Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.) The 10-year limitation also does not apply to debts reduced to a judgement; and

(g) Unless otherwise stated, claims which have been transferred to Treasury or referred to the Department of Justice will be collected in accordance with the procedures of those agencies.

### § 1201.5 If a claim is not excluded from these regulations, may it be compromised, suspended, terminated, or waived?

Nothing in this part precludes:

(a) The compromise, suspension, or termination of collection actions, where appropriate under the FCCS, or the use of alternative dispute resolution methods if they are consistent with applicable law and regulations.

(b) An employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or from questioning the amount or validity of a debt, in the manner set forth in this part.

### § 1201.6 What is a claim or debt?

A claim or debt is an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency (*see* § 1201.3).

### § 1201.7 Why does NARA have to collect debts?

Federal agencies are required to try to collect claims of the Federal Government for money, funds, or property arising out of the agency's activities.

### § 1201.8 What action might NARA take to collect debts?

(a) There are a number of actions that NARA is permitted to take when attempting to collect debts. These actions include:

(1) Salary, tax refund or administrative offset, or administrative wage garnishment (*see* subparts C, D, E, and F of this part respectively); or

(2) Using the services of private collection contractors.

(b) In certain instances, usually after collection efforts have proven unsuccessful, NARA transfers debts to the Treasury for collection or refers them to the DOJ for litigation (*see* §§ 1201.10 and 1201.11).

### § 1201.9 What rights do I have as a debtor?

As a debtor you have several basic rights. You have a right to:

(a) Notice as set forth in these regulations (*see* § 1201.14);

(b) Inspect the records that NARA has used to determine that you owe a debt (*see* § 1201.14);

(c) Request review of the debt and possible payment options (*see* § 1201.17);

(d) Propose a voluntary repayment agreement (*see* § 1201.19); and/or

(e) Question if the debt is excluded from these regulations (*see* § 1201.5(b)).

## Subpart B—General Provisions.

### § 1201.10 Will NARA use a cross-servicing agreement with the Department of the Treasury to collect its claims?

(a) NARA may enter into a cross-servicing agreement that authorizes the

Treasury to take the collection actions described in this part on behalf of NARA. This agreement will describe procedures that the Treasury uses to collect debts. The debt collection procedures that the Treasury uses are based on 31 U.S.C. chapter 37.

(b) NARA must transfer to the Treasury any debt that has been delinquent for a period of 180 days or more so that the Secretary of the Treasury may take appropriate action to collect the debt or terminate collection action. NARA may also transfer to the Treasury any debt that is less than 180 days delinquent.

(c) Paragraph (b) of this section will not apply to any debt or claim that:

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sales program;

(3) Has been referred to a private collection contractor for collection for a period of time acceptable to the Secretary of the Treasury;

(4) Is at a debt collection center for a period of time acceptable to the Secretary of the Treasury;

(5) Will be collected under internal offset procedures within 3 years after the date the debt or claim is first delinquent; or

(6) Is exempt from this requirement based on a determination by the Secretary of the Treasury.

### § 1201.11 Will NARA refer claims to the Department of Justice?

NARA will refer to DOJ for litigation claims on which aggressive collection actions have been taken, but which could not be collected, compromised, suspended, or terminated. Referrals will be made as early as possible, consistent with aggressive NARA collection action, and within the period for bringing a timely suit against the debtor.

### § 1201.12 Will NARA provide information to credit reporting agencies?

(a) NARA will report certain delinquent debts to appropriate consumer credit reporting agencies by providing the following information:

(1) A statement that the debt is valid and overdue;

(2) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the debtor;

(3) The amount, status, and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information to a credit reporting agency, NARA:

(1) Takes reasonable action to locate the debtor if a current address is not available;

(2) Provides the notice required under § 1201.14 if a current address is available; and

(3) Obtains satisfactory assurances from the credit reporting agency that it complies with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) and other Federal laws governing the provision of credit information.

(c) At the time debt information is submitted to a credit reporting agency, NARA provides a written statement to the reporting agency that all required actions have been taken. In addition, NARA thereafter ensures that the credit reporting agency is promptly informed of any substantive change in the conditions or amount of the debt, and promptly verifies or corrects information relevant to the debt.

(d) If a debtor disputes the validity of the debt, the credit reporting agency refers the matter to the appropriate NARA official. The credit reporting agency excludes the debt from its reports until NARA certifies in writing that the debt is valid.

(e) NARA may disclose to a commercial credit bureau information concerning a commercial debt, including the following:

(1) Information necessary to establish the name, address, and employer identification number of the commercial debtor;

(2) The amount, status, and history of the debt; and

(3) The program or pertinent activity under which the debt arose.

### § 1201.13 How will NARA contract for collection services?

NARA uses the services of a private collection contractor where it determines that such use is in NARA's best interest. When NARA determines that there is a need to contract for collection services, NARA:

(a) Retains sole authority to:

(1) Resolve any dispute with the debtor regarding the validity of the debt;

(2) Compromise the debt;

(3) Suspend or terminate collection action;

(4) Refer the debt to the DOJ for litigation; and

(5) Take any other action under this part;

(b) Requires the contractor to comply with the:

(1) Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m);

(2) Fair Debt Collection Practices Act (15 U.S.C. 1692–1692o); and

(3) Other applicable Federal and State laws pertaining to debt collection practices and applicable regulations of NARA in this part;

(c) Requires the contractor to account accurately and fully for all amounts collected; and

(d) Requires the contractor to provide to NARA, upon request, all data and reports contained in its files related to its collection actions on a debt.

### § 1201.14 What should I expect to receive from NARA if I owe a debt to NARA?

(a) NARA will send you a written notice when we determine that you owe a debt to NARA. The notice will be hand-delivered or sent to you at the most current address known to NARA. The notice will inform you of the following:

(1) The amount, nature, and basis of the debt;

(2) That a designated NARA official has reviewed the claim and determined that it is valid;

(3) That payment of the debt is due as of the date of the notice, and that the debt will be considered delinquent if you do not pay it within 30 days of the date of the notice;

(4) NARA's policy concerning interest, penalty charges, and administrative costs (*see* § 1201.18), including a statement that such assessments must be made against you unless excused in accordance with the FCCS and this part;

(5) That you have the right to inspect and copy disclosable NARA records pertaining to your debt, or to receive copies of those records if personal inspection is impractical;

(6) That you have the opportunity to enter into an agreement, in writing and signed by both you and the designated NARA official, for voluntary repayment of the debt (*see* § 1201.19);

(7) The address, telephone number, and name of the NARA official available to discuss the debt;

(8) Possible collection actions that might be taken if the debt is not paid within 60 days of the notice, or arrangements to pay the debt are not made within 60 days of the notice (*see* § 1201.15 for a fuller description of possible actions);

(9) That NARA may suspend or revoke any licenses, permits, or other privileges for failure to pay a debt; and

(10) Information on your opportunity to obtain a review of the debt (*see* § 1201.16).

(b) NARA will respond promptly to communications from you.

(c) Exception to entitlement to notice, hearing, written responses, and final decisions. With respect to the regulations covering internal salary offset collections (*see* § 1230.32), NARA excepts from the provisions of paragraph (a) of this section—

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

**§ 1201.15 What will the notice tell me regarding collection actions that might be taken if the debt is not paid within 60 days of the notice, or arrangements to pay the debt are not made within 60 days of the notice?**

The notice provided under § 1201.14 will advise you that within 60 days of the date of the notice, your debt (including any interest, penalty charges, and administrative costs) must be paid or you must enter into a voluntary repayment agreement. If you do not pay the debt or enter into the agreement within that deadline, NARA may enforce collection of the debt by any or all of the following methods:

(a) By referral to a credit reporting agency (*see* § 1201.12), private collection contractor (*see* § 1201.13), or the DOJ (*see* § 1201.11).

(b) By transferring any debt to the Treasury for collection, including under a cross-servicing agreement with the Treasury (*see* § 1201.10).

(c) If you are a NARA employee, by deducting money from your disposable pay account until the debt (and all accumulated interest, penalty charges, and administrative costs) is paid in full (*see* subpart C of this part). NARA will specify the amount, frequency, approximate beginning date, and duration of the deduction. 5 U.S.C. 5514 and 31 U.S.C. 3716 govern such proceedings;

(d) If you are an employee of a Federal agency other than NARA, by initiating certification procedures to implement a salary offset by that Federal agency (*see* subpart C of this part). 5 U.S.C. 5514 governs such proceedings;

(e) By referring the debt to the Treasury for offset against any refund of overpayment of tax (*see* subpart D of this part);

(f) By administrative offset (*see* subpart E of this part);

(g) By administrative wage garnishment (*see* subpart F of this part); or

(h) By liquidation of security or collateral. NARA has the right to hold security or collateral, liquidate it, and apply the proceeds to your debt through the exercise of a power of sale in the security instrument or a foreclosure. NARA will not follow the procedures in this paragraph (h) if the cost of disposing the collateral will be disproportionate to its value.

**§ 1201.16 What will the notice tell me about my opportunity for review of my debt?**

The notice provided by NARA under §§ 1201.14 and 1201.15 will also advise you of the opportunity to obtain a review within NARA concerning the existence or amount of the debt or the proposed schedule for offset of Federal employee salary payments. The notice will also advise you of the following:

(a) The name, address, and telephone number of a NARA official whom you may contact concerning procedures for requesting a review;

(b) The method and time period for requesting a review;

(c) That the filing of a request for a review on or before the 60th day following the date of the notice will stay the commencement of collection proceedings;

(d) The name and address of the NARA official to whom you should send the request for a review;

(e) That a final decision on the review (if one is requested) will be issued in writing at the earliest practical date, but not later than 60 days after the receipt of the request for a review, unless you request, and the review official grants, a delay in the proceedings;

(f) That any knowingly false or frivolous statements, representations, or evidence may subject you to:

(1) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR part 752, or any other applicable statute or regulations;

(2) Penalties under the False Claims Act (31 U.S.C. 3729–3733) or any other applicable statutory authority; and

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority;

(g) Any other rights available to you to dispute the validity of the debt or to have recovery of the debt waived, or remedies available to you under statutes or regulations governing the program for which the collection is being made; and

(h) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt that are later waived or found not owed will be promptly refunded to you.

**§ 1201.17 What must I do to obtain a review of my debt, and how will the review process work?**

(a) *Request for review.* (1) You have the right to request a review by NARA of the existence or amount of your debt, the proposed schedule for offset of Federal employee salary payments, or whether the debt is past due or legally enforceable. If you want a review, you must send a written request to the NARA official designated in the notice (*see* § 1201.16(d)).

(2) You must sign your request for review and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses that support your position. Your request for review should be accompanied by available evidence to support your contentions.

(3) Your request for review must be received by the designated officer or employee of NARA on or before the 60th calendar day following the date of the notice. Timely filing will stay the commencement of collection procedures. NARA may consider requests filed after the 60-day period provided for in this section if you:

(i) Can show that the delay was the result of circumstances beyond your control; or

(ii) Did not receive notice of the filing deadline (unless you had actual notice of the filing deadline).

(b) *Inspection of NARA records related to the debt.* (1) If you want to inspect or copy NARA records related to the debt (*see* § 1201.14(a)(5)), you must send a letter to the NARA official designated in the notice. Your letter must be received within 30 days of the date of the notice.

(2) In response to the timely request described in paragraph (b)(1) of this section, the designated NARA official will notify you of the location and time when you may inspect and copy records related to the debt.

(3) If personal inspection of NARA records related to the debt is impractical, reasonable arrangements will be made to send you copies of those records.

(c) *Review official.* (1) When required by Federal law or regulation, such as in a salary offset situation, NARA will request an administrative law judge, or hearing official from another agency who is not under the supervision or

control of the Archivist, to conduct the review. In these cases, the hearing official will, following the review, submit the review decision to the Archivist for the issuance of NARA's final decision (*see* paragraph (f) of this section for content of the review decision).

(2) When Federal law or regulation does not require NARA to have the review conducted by an administrative law judge, or by a hearing official from another agency who is not under the supervision or control of the Archivist, NARA has the right to appoint a hearing official to conduct the review. In these cases, the hearing official will, following the review, submit the review decision to the Archivist for the issuance of NARA's final decision (*see* paragraph (f) of this section for the content of the review decision).

(d) *Review procedure.* If you request a review, the review official will notify you of the form of the review to be provided. The review official will determine whether an oral hearing is required, or if a review of the written record is sufficient, in accordance with the FCCS. Although you may request an oral hearing, such a hearing is required only when a review of the documentary evidence cannot determine the question of indebtedness, such as when the validity of the debt turns on an issue of credibility or truthfulness. In either case, the review official will conduct the review in accordance with the FCCS. If the review will include an oral hearing, the notice sent to you by the review official will set forth the date, time, and location of the hearing.

(e) *Date of decision.* (1) The review official will issue a written decision, based upon either the written record or documentary evidence and information developed at an oral hearing. This decision will be issued as soon as practical, but not later than 60 days after the date on which NARA received your request for a review, unless you request, and the review official grants, a delay in the proceedings.

(2) If NARA is unable to issue a decision within 60 days after the receipt of the request for a hearing:

(i) NARA may not issue a withholding order or take other action until the hearing (in whatever form) is held and a decision is rendered; and

(ii) If NARA previously issued a withholding order to the debtor's employer, NARA must suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing (in whatever form) is held and a decision is rendered.

(f) *Content of review decision.* The review official will prepare a written decision that includes:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The review official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedule, if applicable.

(g) *Interest, penalty charge, and administrative cost accrual during review period.* Interest, penalty charges, and administrative costs authorized by law will continue to accrue during the review period.

### § 1201.18 What interest, penalty charges, and administrative costs will I have to pay on a debt owed to NARA?

(a) *Interest.* (1) NARA will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(2) Interest begins to accrue on all debts from the date that the debt becomes delinquent. NARA will not recover interest if you pay the debt within 30 days of the date on which interest begins to accrue. NARA will assess interest at the rate established annually by the Secretary of the Treasury under 31 U.S.C. 3717, unless a different rate is either necessary to protect the interests of NARA or established by a contract, repayment agreement, or statute. NARA will notify you of the basis for its finding when a different rate is necessary to protect the interests of NARA.

(3) The Archivist may extend the 30-day period for payment without interest where he or she determines that such action is in the best interest of NARA. A decision to extend or not to extend the payment period is final and is not subject to further review.

(b) *Penalty.* NARA will assess a penalty charge of 6 percent a year on any portion of a debt that is delinquent for more than 90 days.

(c) *Administrative costs.* NARA will assess charges to cover administrative costs incurred as a result of your failure to pay a debt before it becomes delinquent. Administrative costs include the additional costs incurred in processing and handling the debt because it became delinquent, such as costs incurred in obtaining a credit report or in using a private collection contractor, or service fees charged by a Federal agency for collection activities undertaken on behalf of NARA.

(d) *Allocation of payments.* A partial or installment payment by a debtor will be applied first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

(e) *Additional authority.* NARA may assess interest, penalty charges, and administrative costs on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory authority.

(f) *Waiver.* (1) The Archivist may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty charges, or administrative costs, if he or she determines that collection of these charges would be against equity and good conscience or not in the best interest of NARA.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, and unless otherwise stated in these regulations, where these charges have been collected before the waiver decision, they will not be refunded. The Archivist's decision to waive or not waive collection of these charges is final and is not subject to further review.

### § 1201.19 How can I resolve my debt through voluntary repayment?

(a) In response to a notice of debt, you may propose to NARA that you be allowed to repay the debt through a voluntary repayment agreement in lieu of NARA taking other collection actions under this part.

(b) Your request to enter into a voluntary repayment agreement must:

(1) Be in writing;

(2) Admit the existence of the debt; and

(3) Either propose payment of the debt (together with interest, penalty charges, and administrative costs) in a lump sum, or set forth a proposed repayment schedule.

(c) NARA will collect claims in one lump sum whenever feasible. However, if you are unable to pay your debt in one lump sum, NARA may accept payment in regular installments that bear a reasonable relationship to the size of the debt and your ability to pay.

(d) NARA will consider a request to enter into a voluntary repayment agreement in accordance with the FCCS. The Archivist may request additional information from you, including financial statements if you request to make payments in installments, in order to determine whether to accept a voluntary repayment agreement. It is within the Archivist's discretion to accept a repayment agreement instead of proceeding with other collection actions under this part, and to set the necessary terms of any voluntary repayment agreement. No repayment agreement

will be binding on NARA unless it is in writing and signed by both you and the Archivist. At NARA's option, you may be required to provide security as part of the agreement to make payments in installments. Notwithstanding the provisions of this section, 31 U.S.C. 3711 will govern any reduction or compromise of a claim.

**§ 1201.20 What is the extent of the Archivist's authority to compromise debts owed to NARA, or to suspend or terminate collection action on such debts?**

(a) The Archivist may compromise, suspend, or terminate collection action on those debts owed to NARA that do not exceed $100,000 excluding interest, in conformity with the Federal Claims Collection Act of 1966, as amended. NARA will follow the policies in § 902.2 of the FCCS.

(b) The uncollected portion of a debt owed to NARA that is not recovered as the result of a compromise will be reported to the Internal Revenue Service (IRS) as income to the debtor in accordance with IRS procedures if the debt is at least $600.00.

**§ 1201.21 May NARA's failure to comply with these regulations be used as a defense to a debt?**

No, the failure of NARA to comply with any standard in the FCCS or these regulations will not be available to any debtor as a defense.

## Subpart C—Salary Offset

**§ 1201.30 What debts are included or excluded from coverage of these regulations on salary offset?**

(a) The regulations in this subpart provide NARA procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed to NARA or to other Federal agencies.

(b) The regulations in this subpart do not apply to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the Federal Claims Collection Act of 1966, as amended, or the FCCS.

(d) A levy imposed under the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d).

**§ 1201.31 May I ask NARA to waive an overpayment that otherwise would be collected by offsetting my salary as a Federal employee?**

Yes, the regulations in this subpart do not preclude you from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory provisions pertaining to the particular debts being collected.

**§ 1201.32 What are NARA's procedures for salary offset?**

(a) NARA will coordinate salary deductions under this subpart as appropriate.

(b) If you are a NARA employee who owes a debt to NARA, NARA's payroll office will determine the amount of your disposable pay and will implement the salary offset.

(c) Deductions will begin within three official pay periods following receipt by NARA's payroll office of certification of debt from the creditor agency.

(d) The Notice provisions of these regulations do not apply to certain debts arising under this section (*see* § 1201.14(c)).

(e) Types of collection. (1) *Lump-sum offset.* If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump-sum offset.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and your ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless you have agreed in writing to the deduction of a greater amount. If possible, installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(3) *Deductions from final check.* A deduction exceeding the 15 percent of disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the FCCS in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Deductions from other sources.* If an employee subject to salary offset is separated from NARA and the balance of the debt cannot be liquidated by offset of the final salary check, NARA may offset later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the FCCS.

(f) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, NARA's payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

**§ 1201.33 How will NARA coordinate salary offsets with other agencies?**

(a) *Responsibilities of NARA as the creditor agency (i.e. when the debtor owes a debt to NARA and is an employee of another agency).* Upon completion of the procedures established in this subpart and pursuant to 5 U.S.C. 5514 and 31 U.S.C. 3716, NARA must submit a claim to a paying agency or disbursing official.

(1) In its claim, NARA must certify, in writing, the following:

(i) That the employee owes the debt;

(ii) The amount and basis of the debt;

(iii) The date NARA's right to collect the debt first accrued;

(iv) That NARA's regulations in this subpart have been approved by OPM under 5 CFR part 550, subpart K; and

(v) That NARA has met the certification requirements of the paying agency.

(2) If the collection must be made in installments, NARA's claim will also advise the paying agency of the amount or percentage of disposable pay to be collected in each installment. NARA may also advise the paying agency of the number of installments to be collected and the date of the first installment, if that date is other than the next officially established pay period.

(3) NARA will also include in its claim:

(i) The employee's written consent to the salary offset;

(ii) The employee's signed statement acknowledging receipt of the procedures required by 5 U.S.C. 5514; or

(iii) Information regarding the completion of procedures required by 5 U.S.C. 5514, including the actions taken and the dates of those actions.

(4) If the employee is in the process of separating and has not received a final salary check or other final payment(s) from the paying agency, NARA must submit its claim to the paying agency or disbursing official for collection under 31 U.S.C. 3716. The paying agency will (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), certify the total amount of its collection on the debt and notify the employee and NARA. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal government sources, then (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart

K), the paying agency will provide written notice of the outstanding debt to the agency responsible for making the other payments to the debtor employee. The written notice will state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. However, NARA must submit a properly certified claim under this paragraph (a)(4) to the agency responsible for making the other payments before the collection can be made.

(5) If the employee is already separated and all payments due from his or her former paying agency have been paid, NARA may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be administratively offset to collect the debt.

(6) *Employee transfer.* When an employee transfers from one paying agency to another paying agency, NARA will not repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. NARA will submit a properly certified claim to the new paying agency and will subsequently review the debt to ensure that the collection is resumed by the new paying agency.

(b) *Responsibilities of NARA as the paying agency (i.e. when the debtor owes a debt to another agency and is an employee of NARA).* (1) Complete claim. When NARA receives a certified claim from a creditor agency (under the creditor agency's regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), deductions should be scheduled to begin within three officially established pay intervals. Before deductions can begin, NARA sends the employee a written notice containing:

(i) A statement that NARA has received a certified claim from the creditor agency;

(ii) The amount of the claim;

(iii) The date salary offset deductions will begin; and

(iv) The amount of such deductions.

(2) Incomplete claim. When NARA receives an incomplete certification of debt from a creditor agency, NARA will return the claim with a notice that the creditor agency must:

(i) Comply with the procedures required under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, and

(ii) Properly certify a claim to NARA before NARA will take action to collect from the employee's current pay account.

(3) NARA is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) Employees who transfer from NARA to another paying agency. If, after the creditor agency has submitted the claim to NARA, the employee transfers from NARA to a different paying agency before the debt is collected in full, NARA will certify the total amount collected on the debt and notify the employee and the creditor agency in writing. The notification to the creditor agency will include information on the employee's transfer.

### § 1201.34 Under what conditions will NARA make a refund of amounts collected by salary offset?

(a) If NARA is the creditor agency, it will promptly refund any amount deducted under the authority of 5 U.S.C. 5514, when:

(1) The debt is waived or all or part of the funds deducted are otherwise found not to be owed (unless expressly prohibited by statute or regulation); or

(2) An administrative or judicial order directs NARA to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section will not bear interest.

### § 1201.35 Will the collection of a claim by salary offset act as a waiver of my rights to dispute the claimed debt?

No, your involuntary payment of all or any portion of a debt under this subpart will not be construed as a waiver of any rights that you may have under 5 U.S.C. 5514 or other provisions of a law or written contract, unless there are statutory or contractual provisions to the contrary.

## Subpart D—Tax Refund Offset

### § 1201.40 Which debts can NARA refer to the Treasury for collection by offsetting tax refunds?

(a) The regulations in this subpart implement 31 U.S.C. 3720A, which authorizes the Treasury to reduce a tax refund by the amount of a past-due, legally enforceable debt owed to a Federal agency.

(b) For purposes of this section, a past-due, legally enforceable debt referrable to the Treasury for tax refund offset is a debt that is owed to NARA and:

(1) Is at least $25.00;

(2) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been delinquent more than 10 years at the time the offset is made;

(3) With respect to which NARA has:

(i) Given the debtor at least 60 days to present evidence that all or part of the debt is not past due or legally enforceable;

(ii) Considered evidence presented by the debtor; and

(iii) Determined that an amount of the debt is past due and legally enforceable;

(4) With respect to which NARA has notified or has made a reasonable attempt to notify the debtor that:

(i) The debt is past due, and

(ii) Unless repaid within 60 days of the date of the notice, the debt may be referred to the Treasury for offset against any refund of overpayment of tax; and

(5) All other requirements of 31 U.S.C. 3720A and the Treasury regulations relating to the eligibility of a debt for tax return offset (31 CFR 285.2) have been satisfied.

### § 1201.41 What are NARA's procedures for collecting debts by tax refund offset?

(a) NARA's Financial Services Division will be the point of contact with the Treasury for administrative matters regarding the offset program.

(b) NARA will ensure that the procedures prescribed by the Treasury are followed in developing information about past-due debts and submitting the debts to the Treasury.

(c) NARA will submit to the Treasury a notification of a taxpayer's liability for past-due legally enforceable debt. This notification will contain the following:

(1) The name and taxpayer identification number of the debtor;

(2) The amount of the past-due and legally enforceable debt;

(3) The date on which the original debt became past due;

(4) A statement certifying that, with respect to each debt reported, all of the requirements of § 1201.40(b) have been satisfied; and

(5) Any other information as prescribed by Treasury.

(d) For purposes of this section, notice that collection of the debt is stayed by a bankruptcy proceeding involving the debtor will bar referral of the debt to the Treasury.

(e) NARA will promptly notify the Treasury to correct data when NARA:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on the debt; or

(3) Receives notice that the person owing the debt has filed for bankruptcy under Title 11 of the United States Code and the automatic stay is in effect or has been adjudicated bankrupt and the debt has been discharged.

(f) When advising debtors of NARA's intent to refer a debt to the Treasury for offset, NARA will also advise debtors of remedial actions (*see* §§ 1201.9 and

1201.14 through 1201.16 of this part) available to defer the offset or prevent it from taking place.

## Subpart E—Administrative Offset

### § 1201.50 Under what circumstances will NARA collect amounts that I owe to NARA (or some other Federal agency) by offsetting the debt against payments that NARA (or some other Federal agency) owes me?

(a) The regulations in this subpart apply to the collection of any debts you owe to NARA, or to any request from another Federal agency that NARA collect a debt you owe by offsetting your debt against a payment NARA owes you. Administrative offset is authorized under section 5 of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3716). NARA will carry out administrative offset in accordance with the provisions of the FCCS. The regulations in this subpart are intended only to supplement the provisions of the Federal Claims Collection Standards.

(b) The Archivist, after attempting to collect a debt you owe to NARA under Section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset only after giving you:

(1) Written notice of the type and amount of the claim, the intention of the head of the agency to collect the claim by administrative offset, and an explanation of the rights of the debtor;

(2) An opportunity to inspect and copy the records of the agency related to the claim;

(3) An opportunity for a review within the agency of the decision of the agency related to the claim; and

(4) An opportunity to make a written agreement with the head of the agency to repay the amount of the claim.

(c) No collection by administrative offset will be made on any debt that has been outstanding for more than 10 years, unless facts material to NARA or a Federal agency's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting the debt.

(d) The regulations in this subpart do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly prohibited by statute; or

(2) Debts owed to NARA by Federal agencies.

### § 1201.51 How will NARA request that my debt to NARA be collected by offset against some payment that another Federal agency owes me?

The Archivist may request that funds due and payable to you by another Federal agency instead be paid to NARA to satisfy a debt you owe to NARA. NARA will refer debts to the Treasury for centralized administrative offset in accordance with the FCCS and the procedures established by the Treasury. Where centralized offset is not available or appropriate, NARA may request offset directly from the Federal agency that is holding funds for you. In requesting administrative offset, NARA will certify in writing to the Federal agency that is holding funds for you:

(a) That you owe the debt;

(b) The amount and basis of the debt; and

(c) That NARA has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations in this subpart, the applicable administrative offset regulations of the agency holding the funds, and the applicable provisions of the FCCS with respect to providing you with due process.

### § 1201.52 What procedures will NARA use to collect amounts I owe to a Federal agency by offsetting a payment that NARA would otherwise make to me?

(a) Any Federal agency may request that NARA administratively offset funds due and payable to you in order to collect a debt you owe to that agency. NARA will initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency stating:

(i) That you owe the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of the FCCS, including providing you with any required hearing or review; and

(2) A determination by the Archivist that offsetting funds payable to you by NARA in order to collect a debt owed by you would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such an offset would not otherwise be contrary to law.

(b) *Multiple debts.* In instances where two or more creditor agencies are seeking administrative offsets, or where two or more debts are owed to a single creditor agency, NARA may, in its discretion, allocate the amount it owes to you to the creditor agencies in accordance with the best interest of the United States as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

### § 1201.53 When may NARA make an offset in an expedited manner?

NARA may effect an administrative offset against a payment to be made to you before completion of the procedures required by §§ 1201.51 and 1201.52 if failure to take the offset would substantially jeopardize NARA's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. An expedited offset will be followed promptly by the completion of those procedures. Amounts recovered by offset, but later found not to be owed to the United States, will be promptly refunded.

### § 1201.54 Can a judgment I have obtained against the United States be used to satisfy a debt that I owe to NARA?

Collection by offset against a judgment obtained by a debtor against the United States will be accomplished in accordance with 31 U.S.C. 3728 and 31 U.S.C. 3716.

## Subpart F—Administrative Wage Garnishment

### § 1201.55 How will NARA collect debts through Administrative Wage Garnishment?

NARA will collect debts through Administrative Wage Garnishment in accordance with the Administrative Wage Garnishment regulations issued by the Treasury. NARA adopts, for the purposes of this subpart, the Treasury's Administrative Wage Garnishment regulations in 31 CFR 285.11.

Dated: June 27, 2002.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 02–16703 Filed 7–3–02; 8:45 am]

BILLING CODE 7515–01–P

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

## 36 CFR Part 1275

**RIN 3095–AB07**

## Nixon Presidential Materials; Reproduction

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

**ACTION:** Final rule.

**SUMMARY:** NARA is revising the regulations for obtaining copies of the Nixon White House tape recordings, which are in NARA custody. First, NARA is now allowing the public to obtain copies of all Nixon White House tape recordings after they are officially released to the public. Previously, NARA only permitted the public to

obtain selected tape recordings. Second, the ban on self-service copying of these tapes is lifted. These changes reflect modifications in the 1996 Nixon Tapes Settlement Agreement that became effective April 1, 2001. This final rule will apply to the public.

**EFFECTIVE DATE:** August 5, 2002.

**FOR FURTHER INFORMATION CONTACT:** Kim Richardson at telephone number 301–837–2902, or fax number 301–837–0319.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published in the March 15, 2002, **Federal Register** (67 FR 11632) for a 60-day comment period. NARA did not receive any comments. This rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

**List of Subjects in 36 CFR Part 1275**

Archives and records.

For the reasons set forth in the preamble, NARA amends part 1275 of title 36, Code of Federal Regulations, as follows:

## PART 1275—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

1. The authority citation for part 1275 is revised to read as follows:

**Authority:** 44 U.S.C. 2104, 2111 note.

1. Amend § 1275.64 by revising paragraph (d) to read as follows:

**§ 1275.64 Reproduction of tape recordings of Presidential conversations.**

* * * * *

(d) The reproduction for members of the public of the reference copies of the available tape recordings described in paragraph (a) of this section will be permitted as follows: Copies of tape recordings will be made available following the public release of the tape segments contemplated in § 1275.42(a). Effective as of April 20, 2001, NARA will allow members of the public to obtain copies of all tapes that have been made available to the public by that date and that subsequently become available as they are released. Such copying will be controlled by NARA or its designated contractor. The fees for the reproduction of the tape recordings under this section shall be those prescribed in the schedule set forth in part 1258 of this chapter.

* * * * *

2. Amend § 1275.66 by revising paragraph (a) to read as follows:

**§ 1275.66 Reproduction and authentication of other materials.**

(a) Copying of materials, including tape recordings described in § 1275.64, may be done by NARA, by a contractor designated by NARA, or by researchers using self-service copiers or copying equipment.

* * * * *

3. Amend Appendix A to Part 1275—Settlement Agreement, by revising the introductory paragraph to read as follows:

**Appendix A to Part 1275—Settlement Agreement**

Settlement Agreement filed April 12, 1996, in *Stanley I. Kutler and Public Citizen* v. *John W. Carlin, Archivist of the United States, and William E. Griffin and John H. Taylor, Co-executors of Richard M. Nixon's Estate, Civil Action No. 92–0662–NHJ (D.D.C.) (Johnson, J.).* By letter dated April 17, 2001, NARA and the Nixon estate agreed to waive paragraph 11 of this Settlement Agreement, such that the delay on public copying until January 1, 2003, of tapes not made publicly available before April 12, 1996, shall no longer apply. This change is reflected in 36 CFR 1275.64.

* * * * *

Dated: May 23, 2002.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 02–16663 Filed 7–3–02; 8:45 am]

BILLING CODE 7515–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[FRL–7240–5]**

**RIN 2060–AE78**

## National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

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

**ACTION:** Final rule; clarifications and correction.

**SUMMARY:** On April 5, 2002, the EPA issued a direct final rule to amend the national emission standards for hazardous air pollutants for the portland cement industry. That action, in part, amended the monitoring requirements for the industry. This action corrects the corresponding table of monitoring requirements in the final rule and clarifies two issues arising from explanatory language in the preamble to the direct final rule amendments of April 5, 2002.

Section 553 of the Administrative Procedure Act, 5 U.S. C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public comment procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this rule final without prior notice and comment procedure because it merely corrects a summary table to reflect amended monitoring requirements and clarifies preamble language from the direct final rule amendments. Both the proposed rule and direct final rule amendments (as well as the Settlement Agreement that occasioned these amendments) were subject to exhaustive notice and comment (including comment on the matters addressed in this notice). Thus, notice and comment are contrary to the public interest and unnecessary. We find that the circumstances described constitute good cause under 5 U.S.C. 553(b)(3)(B) and 553(d)(3) which authorizes an agency to make a rule immediately effective where it finds that there is good cause for doing so.

**EFFECTIVE DATE:** July 5, 2002.

**ADDRESSES:** Docket number A–92–53, containing supporting information used in the development of this notice is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW., Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Effective August 27, 2002, the Office of Air and Radiation Docket and Information Center will have a new address: 1301 Constitution Avenue NW., Room B108, Washington, DC, 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Wood, P.E., Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5446, facsimile number (919) 541–5600, electronic mail address: *wood.joe@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Docket.* The docket is an organized and complete file of all the information considered by EPA in the development of this direct final rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. The docket number for this rulemaking is A–92–53.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's Web site 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.

*Regulated Entities.* Entities potentially regulated by this action are those that manufacture portland cement. Regulated categories and entities include:

| Category | NAICS | SIC | Examples of regulated entities |
|---|---|---|---|
| Industry | 32731 | 3241 | Owners or operators of portland cement manufacturing plants. |
| State | 32731 | 3241 | Owners or operators of portland cement manufacturing plants. |
| Tribal associations | 32731 | 3241 | Owners or operators of portland cement manufacturing plants. |
| Federal agencies | None | None | None. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1340 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Background.* On June 14, 1999, we published in the **Federal Register** the final rule entitled, ''National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry'' (40 CFR part 63, subpart LLL). The American Portland Cement Alliance (APCA) petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the final rule under section 307(b)(1) of the Clean Air Act (CAA). The APCA and the EPA negotiated and agreed to the terms of a Settlement Agreement and its implementation. As agreed to under the terms of the Settlement Agreement, EPA issued direct final amendments (67 FR 16614, April 5, 2002) to improve implementation of the rule primarily in areas of applicability, emissions testing, and monitoring (there were no amendments to the emission standards themselves). After publication of the direct final rule amendments, commenters requested a correction to the rule and clarification of preamble language to better reflect provisions in the Settlement Agreement and to avoid regulatory misinterpretations. In response to these comments, we are issuing the final rule amendments.

*Kiln Production Rate Not an Operating Limit.* In the preamble to the April 5, 2002, direct final amendments, we explained why we amended § 63.1349(b) to require that performance testing be conducted under representative conditions rather than under ''the highest load or capacity reasonably expected to occur'' (67 FR 16616). We stated, ''If the kiln is operated under a condition not representative of the condition during the performance test, e.g., the kiln is operated at a production rate higher than the production rate at which it was tested, the performance test will need to be re-conducted and temperature limit(s) reestablished.'' Although we did not receive any comments on the amended regulatory text, ''* * * when the affected source is operating at the representative performance conditions in accordance with § 63.7(e)'' (67 FR 16619), we did receive comments addressing specifically the example we gave of a supposedly unrepresentative condition, which they felt conflicted with the intent of the regulatory amendment. Our intent was to make the rule more consistent with the General Provisions language that performance tests be conducted under representative conditions and to provide guidance on the representativeness of a particular operating condition. Today, we are clarifying that if a source operates at a higher production level than that at which it tested, the previous performance test *may* not have been representative of operating conditions and emissions at that higher production level. Whether the test was representative depends on how much higher actual production levels are than those that existed during the performance test and on other factors affecting the effectiveness of the pollution control equipment; the ultimate measure being whether any of these changes may adversely affect compliance with the emission standards. The production rate of a kiln is only one of many indicators (i.e., potentially relevant indicia) of representative operating conditions. In addition, the production rate may be temporarily and slightly higher than the rate at which the kiln was operating during a performance test and still be representative. A source is not automatically required to conduct a performance test if the source's operating conditions vary from those in place during the most recent prior performance test. However, the burden is on the source to demonstrate that it is able to comply with the emission limits when operating under the alternative operating conditions. That is, it is the source's ultimate burden of persuasion to demonstrate that its performance testing conditions remain representative. This is in accordance with the general principle that the party claiming an exception to an established protective rule has the burden of justifying that exception. See *Beth Israel Hospital* v. *NLRB,* 437 U.S. 482, 493, 502 (1978); see also *Hazardous Waste Treatment Council* v. *EPA,* 886 F. 2d 355, 366–67 (D.C. Cir. 1989) (permissible for agency to assign ultimate burden of persuasion).

Both commenters stated that the example we gave suggests that production limits are established by the performance test, and that this conflicts with the Settlement Agreement and our letter to the APCA (April 17, 2002), where we explicitly stated that the production rate is not an operating limit. The example in the preamble does

not, however, impose a production limit or establish the production rate as an operating limit. We are clarifying and reiterating language from the Settlement Agreement and from our letter to APCA that the production rate is not a parameter for which operating limits are established, and the production rate measured during dioxin/furan (D/F) or particulate matter (PM) performance test is not an operating limit for the source. Section 63.1344 of the rule lists all of the operating limits that kilns are subject to as part of the requirements of the NESHAP. Those operating limits relate to the D/F emission standards and include only temperature limits and limits pertaining to the use of activated carbon injection. Section 63.1344 makes no mention of a kiln's production rate as an operating limit, and indeed this was our intent in drafting the final rule. This means that if the kiln production rate exceeds the production rate during the previous performance test, it is not in violation of any operating parameter requirement. This does not mean, however, that a change in production rate (or change in any other operating practice which is not a parametric monitoring requirement established in the rule) is irrelevant in determining whether the kiln is operating in compliance with the emission limit.

One of the commenters stated that the aforementioned example in the April 5, 2002, preamble conflicts with § 63.1349(e)(1) and (2) of the newly amended rule which state that if a source plans to undertake a change in operations that may adversely affect compliance with an applicable D/F or PM standard, the source must conduct a new performance test. As such, the facility would only be required to re-conduct the performance test if it determines that an increase in the production rate may adversely affect compliance (and, of course, that this determination is correct).

We are clarifying today that a source would need to re-conduct a performance test if the current operation is not representative of the operation during the previous performance test such that the change in operation may adversely affect compliance. As discussed above, production rate levels that are only slightly higher than the production rate levels achieved during the previous performance test may not adversely affect compliance, and therefore, may still be representative. Although increased production rates would tend to increase exhaust gas stream flow rates and, therefore, potentially diminish control device effectiveness, there are other factors which may be more important in controlling emissions and determining whether compliance is adversely affected. For example, temperature of the exhaust gas plays an important role in D/F formation and for this reason, the rule requires the source to establish temperature operating limits. Regarding the PM emission limit, although the mass emission rate of PM may increase with an increase in production rate, compliance may not necessarily be adversely affected since the format of the standard is in pounds of PM per ton of dry feed, and an increase in production rate would allow for some increase in the mass emission rate of PM. However, as stated above, the burden is on the source to demonstrate that they are able to comply with the emission limits when operating under conditions which vary from those in place during the most recent prior performance test.

In summary, there is no operating limit associated with the production rate. Further, the example we gave in the April 5, 2002, preamble wasn't meant to create the presumption that an increase in production rate beyond the production rate during the previous performance test automatically means that the kiln must be retested. Production rate could be relevant in determining representativeness of the original test, but in some cases, an increase may not adversely affect emissions, and the effect of other operating factors (such as exhaust gas stream temperature) should not be discounted since they may often affect emissions more. Although the source has to show that it was tested under representative conditions, we expect that there are situations where a source can show that an increase in the production rate does not adversely affect compliance.

*Only Transfer Points Used to Convey Coal from the Mill to the Kiln are Potential Affected Sources.* This issue concerns the interface between the new source performance standards (NSPS) for coal preparation plants (40 CFR part 60, subpart Y) and the portland cement NESHAP (40 CFR part 63, subpart LLL). The direct final amendments correctly revise § 63.1356 of the final rule to clarify that the systems used to convey and transfer coal from the coal mill to the kiln at portland cement plants that are major sources of hazardous air pollutants are not subject to the NSPS for coal preparation plants. However, the industry trade association believes the April 5, 2002, preamble language confuses the issue. In response, we clearly state that the *only* subpart Y sources potentially subject to subpart LLL requirements at major sources are the transfer points used to convey coal from the mill to the kiln. Other subpart Y transfer points (such as those transferring coal from a barge to a coal pile) would continue to be subject to subpart Y requirements, as appropriate.

*Monitoring Requirements for Raw Mills and Finish Mills (Table 1 to § 63.1350).* Consistent with the Settlement Agreement, we revised the monitoring requirements for raw mills and finish mills to allow for the use of continuous monitoring systems in lieu of daily visible emission monitoring. Our direct final rule amendments correctly reflect these new options in § 63.1350(m). However, we inadvertently omitted the new options from Table 1 to § 63.1350 (Monitoring Requirements). Today's rule amendments correct Table 1 to include the continuous monitoring system options for raw mills and finish mills.

**Administrative Requirements**

Under Executive Order 12866, Regulatory Planning and Review, (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is, therefore, not subject to review by the Office of Management and Budget. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, does not apply to this action. Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). 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 EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a significant regulatory action under Executive Order 12866. This rule does not have any federalism implications under Executive Order 13132, Federalism. The Paper Reduction Act and the National Technology Transfer and Advancement Act do not apply here. 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 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 5, 2002. The 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: June 26, 2002.

**Robert Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

For the reasons stated in the preamble, title 40, chapter 1, part 63 of the Code of Federal Regulations is amended as follows:

## PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

## Subpart LLL—[AMENDED]

2. Table 1 to § 63.1350, entitled ''Monitoring Requirements,'' is amended by revising the entry for raw mills and finish mills at major sources/opacity to read as follows:

**§ 63.1350 Monitoring requirements.**

* * * * *

TABLE 1 TO § 63.1350.—MONITORING REQUIREMENTS

| Affected source/pollutant or opacity | Monitor type/operation/process | Monitoring requirements |
|---|---|---|
| * * | * * * | * * |
| Raw mills and finish mills at major sources/opacity. | Method 22 visible emissions test. (This requirement does not apply to a raw mill or finish mill equipped with a continuous opacity monitor or bag leak detection system.). | Conduct daily 6-minute Method 22 visible emissions test while mill is operating at representative performance conditions; if visible emissions are observed, initiate corrective action within 1 hour and conduct follow up Method 22 test. If visible emissions are observed, conduct 30-minute Method 9 test. |
| ..... | Continuous opacity monitor, if applicable ..... | Install, operate, and maintain in accordance with general provisions and with PS–1. A six-minute average greater than 10% opacity is a violation. |
| ..... | Bag leak detection system, if applicable ..... | Install, operate, and maintain in accordance with § 63.1350(m). Operate and maintain such that alarm is not activated and alarm condition does not exist for more than 5% of the total operating time in a 6-month period. If alarm sounds, initiate corrective action. |

[FR Doc. 02–16644 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[Docket # AK–02–003; FRL–7240–8]**

## Determination of Attainment for the Carbon Monoxide National Ambient Air Quality Standard for Fairbanks Carbon Monoxide Nonattainment Area, Alaska

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

**ACTION:** Final rule.

**SUMMARY:** EPA is determining that the Fairbanks Carbon Monoxide (CO) nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for CO by the deadline required by the Clean Air Act Amendments of 1990 (CAAA), December 31, 2001.

**EFFECTIVE DATE:** August 5, 2002.

**FOR FURTHER INFORMATION CONTACT:** Connie Robinson, EPA, Region 10, Office of Air Quality, Mail Code: OAQ–107, 1200 Sixth Avenue, Seattle Washington, 98101, (206) 553–1086.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' is used we mean EPA.

### I. Background

EPA has the responsibility for determining whether a nonattainment area has attained the CO NAAQS by the applicable attainment date. In this case the EPA was required to make a determination concerning whether the Fairbanks serious CO nonattainment area attained the NAAQS by its December 31, 2001, attainment date. Pursuant to the CAAA, the EPA is required to make an attainment determination for this area by June 30, 2002, no later than six months following the attainment date for the area. This final rule was based on all available, quality-assured data collected from the CO monitoring sites, which has been entered into the Aerometric Information

Retrieval System (AIRS). This data was reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR 50.8, and in accordance with EPA policy and guidance as stated in a memorandum from William G. Laxton, Director Technical Support Division, entitled ''Ozone and Carbon Monoxide Design Value Calculations,'' dated June 18, 1990.

On May 23, 2002 (67 FR 36135), EPA proposed to determine that the Fairbanks CO nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for CO as of December 31, 2001. A detailed discussion of EPA's proposal is contained in the May 23, 2002, proposed rule and will not be restated here. The reader is referred to the proposed rule for more details.

## II. Public Comments

We received no comments in response to EPA's proposed action to determine that the Fairbanks CO nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for carbon monoxide as of December 31, 2001.

## III. Attainment Determination

EPA has determined that the Fairbanks serious CO nonattainment area has attained the CO NAAQS by its attainment date of December 31, 2001. Consistent with CAAA section 188, the area will remain a serious CO nonattainment area with the additional planning requirements that apply to serious CO nonattainment areas. This finding of attainment should not be confused with a redesignation to attainment under CAAA section 107(d). Alaska has not submitted a maintenance plan as required under section 175A(a) of the CAAA for redesignation to attainment. The designation status in 40 CFR part 81 will remain serious nonattainment for the Fairbanks CO nonattainment area until such time as EPA finds that Alaska has met the CAAA requirements for redesignation to attainment.

## IV. Administrative Requirements

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 3, 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 81

Environmental protection, Air pollution control, Carbon monoxide, National parks, Reporting and recordkeeping requirements, Wilderness areas.

Dated: June 26, 2002.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 02–16854 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 228

**[FRL–7241–2]**

## Ocean Dumping; Site Designation

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

**ACTION:** Final rule.

**SUMMARY:** EPA today designates a new Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Wilmington, North Carolina, as an EPA-

approved ocean dumping site for the disposal of suitable dredged material. This action is necessary to provide an acceptable ocean disposal site for consideration as an option for dredged material disposal projects in the greater Cape Fear River, North Carolina vicinity. This site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

**DATES:** This final rule is effective on August 5, 2002.

**ADDRESSES:** Send comments to: Wesley B. Crum, Chief, Coastal Section, Water Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Gary W. Collins, 404/562–9395.

**SUPPLEMENTARY INFORMATION:**

## A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This designation of a new site offshore Wilmington, North Carolina, which is within Region 4, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this part 228. The existing ODMDS was designated and has been used since 1987. However, site capacity limitations and a proposed realignment of the ocean bar channel negate the utility of the existing site. The details of these issues can be found in the ''Final Environmental Impact Statement for the New Wilmington Ocean Dredged Material Disposal Site Designation.''

## B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean disposal site designations such as this (see 39 FR 16186 (May 7, 1974)).

EPA, in cooperation with the Wilmington District of the U.S. Army Corps of Engineers (COE), has prepared a Final EIS (FEIS) entitled ''Final Environmental Impact Statement for the New Wilmington Ocean Dredged Material Disposal Site Designation.'' On November 30, 2001, the Notice of Availability (NOA) of the FEIS for public review and comment was published in the **Federal Register** (66 FR 59787 (November 30, 2001)). Anyone desiring a copy of the EIS may obtain one from the address given above. The public comment period on the final EIS closed on December 31, 2001.

The proposed rule was published for public review and comment in the **Federal Register** (67 FR 15348 (April 1, 2002)). No comments were received.

This rule permanently designates the continuing use of the new ODMDS near Wilmington, North Carolina. The purpose of the action is to provide an environmentally acceptable option for the continued ocean disposal of dredged material. The need for the permanent designation of a new Wilmington ODMDS is based on a demonstrated COE need for ocean disposal of maintenance dredged material from the Federal navigation projects in the greater Cape Fear River area and the issues raised by site capacity and channel realignment. However, every disposal activity by the COE is evaluated on a case-by-case basis to determine the need for ocean disposal for that particular case. The need for ocean disposal for other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for their own actions.

For the new Wilmington ODMDS, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR parts 220 through 229) and the COE regulations (33 CFR 209.120 and 335–338). The COE then issues Marine Protection, Research, and Sanctuaries Act (MPRSA) permits after compliance with regulations is determined to private applicants for the transport of dredged material intended for ocean disposal. EPA has the right to disapprove any ocean disposal project if, in its judgment, the MPRSA environmental criteria (section 102(a)) or conditions of designation (section 102(c)) are not met.

The FEIS discusses the need for this site designation and examines ocean disposal site alternatives to the proposed action. Non-ocean disposal options have been examined and are discussed in the FEIS.

## C. Site Designation

The site is located approximately 5 nautical miles offshore Bald Head Island. The ODMDS occupies an area of about 9.4 square nautical miles (nmi$^2$). Water depths within the area range from 35–52 feet (ft.). The coordinates of the New Wilmington site are as follows:

| | |
|---|---|
| 33°46′ N | 78°02.5′ W |
| 33°46′ N | 78°01′ W |
| 33°41′ N | 78°01′ W |
| 33°41′ N | 78°04′ W. |

## D. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR 228.5, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site can be restricted or terminated by EPA. The site conforms to the five general criteria.

In addition to these general criteria in § 228.5, § 228.6 lists the 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. Application of these 11 criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the site are reviewed below in terms of these 11 criteria (the EIS may be consulted for additional information).

1. *Geographical position, depth of water, bottom topography, and distance from coast (40 CFR 228.6(a)(1)).*

The boundary of the site is given above. The northern boundary of the site is located about 5 nmi offshore of Bald Head Island, North Carolina. The site is approximatelty 9.4 nmi$^2$ in area. Water depth in the area ranges from 35–52 ft.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage*

*areas of living resources in adult or juvenile phases (40 CFR 228.6(a)(2)).*

Many of the area's species spend their adult lives in the offshore region, but are estuary-dependent because their juvenile stages use a low salinity estuarine nursery region. Specific migration routes are not known to occur within the site. The site is not known to include any major breeding or spawning area. Due to the motility of finfish, it is unlikely that disposal activities will have any significant impact on any of the species found in the area.

3. *Location in relation to beaches and other amenity areas (40 CFR 228.6(a)(3)).*

The site is located approximately 5 nautical miles from the coast. Considering the previous disposal activities of the existing ODMDS and further distance that the new disposal site is offshore of beach areas, dredged material disposal at the site is not expected to have an effect on the recreational uses of these beaches.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any (40 CFR 228.6(a)(4)).*

The type of materials to be disposed of within this site is dredged material as described in type and quantity by section 2 of the FEIS. Disposal would be by hopper dredge or dump scow. All disposals shall be in accordance with the approved Site Management and Monitoring Plan developed for this site (FEIS, appendix A).

5. *Feasibility of surveillance and monitoring (40 CFR 228.6(a)(5)).*

Due to the relative proximity of the site to shore and its depth, surveillance will not be difficult. The Site Management and Monitoring Plan (SMMP) for the New Wilmington ODMDS has been developed and was included as an appendix in the FEIS. This SMMP establishes a sequence of monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. The SMMP may be modified for cause by the responsible agency. A copy of the SMMP may be obtained at the any of the addresses given above.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area including prevailing current direction and velocity, if any (40 CFR 228.6(a)(6)).*

A detailed current study, along with fate modelling of dredged material, was conducted within the site and can be found described in the FEIS. The findings of these studies indicate that transport of disposed material should not present any adverse impacts.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects) (40 CFR 228.6(a)(7)).*

The existing ODMDS has been used to dispose of the material from the Cape Fear River project for fifteen years. Subsequent monitoring of these disposals and the long-term effects show that no adverse impacts have, or are likely to occur to the area.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean (40 CFR 228.6(a)(8)).*

The shape of the ODMDS was designed to avoid interference with commericial shipping. The location was also selected to move away from commercial fishing, particularly trawling bottoms. It is not anticipated that the site would interfere with any recreational activity. In addition, mineral extraction, fish and shellfish culture, and desalination activities do not occur in the area.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys (40 CFR 228.6(a)(9)).*

Appropriate water quality and ecological assessments have been performed at the site. Site-specific information concerning the water quality and ecology at the ODMDS is presented in the FEIS. A copy of the FEIS may be obtained at any of the addresses given above.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site (40 CFR 228.6(a)(10)).*

The disposal of dredged materials should not attract or promote the development of nuisance species. No nuisance species have been reported to occur at previously utilized disposal sites in the vicinity.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance (40 CFR 228.6(a)(11)).*

The only resource known to exist in close proximity to the site is the wreck of the Virginius. This wreck lies outside the eastern boundary of the site. Since no disposal will occur within 600 ft. of the boundary, and the wreck lies in shallower water, placement of material within the site is not expected to adversely affect it.

**E. Site Management**

Site management of the New Wilmington ODMDS is the responsibility of EPA as well as the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region 4 assumes overall responsibility for site management.

The Site Management and Monitoring Plan (SMMP) for the New Wilmington ODMDS was developed as a part of the process of completing the EIS. This plan provides procedures for both site management and for the monitoring of effects of disposal activities. This SMMP is intended to be flexible and may be modified by the responsible agency for cause.

**F. Action**

The EIS concludes that the site may appropriately be designated for use. The site is compatible with the 11 specific and 5 general criteria used for site evaluation.

The designation of the New Wilmington site as an EPA-approved ODMDS is being published as Final Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region 4.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the actual disposal if it determines that environmental concerns under MPRSA have not been met.

The New Wilmington ODMDS is not restricted to disposal use by federal projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to suitable dredged material from the greater Wilmington, North Carolina vicinity.

**G. Regulatory Assessments**

*1. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the modification will only have the effect of providing an environmentally acceptable disposal option for dredged material on a continued basis. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

*2. Executive Order 12866*

Under Executive Order 12866, EPA must determine whether the regulatory

action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*3. Executive Order 13175*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 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.'' This final rule does not have tribal implications, as specified in Executive Order 13175. As described elsewhere in this preamble, today's final rule would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13175 does not apply to this rule.

*4. Executive Order 13045*

Executive Order 13045, 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, EPA 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 EPA.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have any reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As described elsewhere in this preamble, today's final rule would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA.

*5. Executive Order 13132*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As described elsewhere in this preamble, today's final rule would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply, EPA did consult with State officials in developing this rule and no concerns were raised.

*6. Congressional Review Act*

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

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 40 CFR Part 228**

Environmental protection, Water pollution control.

Dated: June 7, 2002.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as follows.

## PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (h)(20) to read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

* * * * *

(h) * * *

(20) New Wilmington, NC; Ocean Dredged Material Disposal Site.

(i) Location:

| | |
|---|---|
| 33°46′ N | 78°02.5′ W. |
| 33°46′ N | 78°01′ W. |
| 33°41′ N | 78°01′ W. |
| 33°41′ N | 78°04′ W. |

(ii) Size: Approximately 9.4 square nautical miles.

(iii) Depth: Ranges from 35–52 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material from the greater Wilmington, North Carolina vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

* * * * *

[FR Doc. 02–16855 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

**FEDERAL MARITIME COMMISSION**

**46 CFR Part 540**

**[Docket No. 02–07]**

## Financial Responsibility Requirements for Nonperformance of Transportation—Discontinuance of Self-Insurance and the Sliding Scale, and Guarantor Limitations

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Maritime Commission (''Commission'') is amending its rules on passenger vessel financial responsibility for nonperformance of transportation, by eliminating the availability of self-insurance, limiting guarantees to those Protection and Indemnity Associations approved by the Commission, and discontinuing the existing sliding scale formula for determining the amount of coverage required.

**DATES:** This rule is effective August 5, 2002.

**FOR FURTHER INFORMATION CONTACT:** Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Room 970, Washington, DC 20573–0001, 202–523–5787, E-mail: *sandrak@fmc.gov.*

**SUPPLEMENTARY INFORMATION:** On April 23, 2002, the Commission published in the **Federal Register** a notice of proposed rulemaking, 67 FR 19730, to amend 46 CFR part 540, the implementing regulations for section 3, Pub. L. 89–777, 46 U.S.C. app. 817e, (''section 3'').[1] Section 3 requires that passenger vessel operators (''PVOs'') establish financial responsibility to indemnify passengers for nonperformance of transportation. The amendments would eliminate self-insurance as a means of evidencing required financial responsibility, limit guarantors of financial responsibility to those Protection and Indemnity Associations approved by the Commission, and eliminate the availability of a sliding scale that, for some passenger vessel operators,[2] reduced the amount of coverage required.

The Commission's implementing regulations at 46 CFR part 540, subpart A, currently require PVOs to evidence financial responsibility by means of self-insurance, guaranty, escrow arrangement, surety bond, insurance policy, or combination thereof. Financial responsibility must be established in the amount of at least 110% of the PVO's highest unearned passenger revenue (''UPR'')[3] over the most recent two-year period, subject to a $15 million maximum for those PVOs establishing financial responsibility by means other than self-insurance or escrow agreement. However, under current regulations, those PVOs not qualifying by self-insurance may elect to use a sliding scale formula to compute a reduced amount of financial responsibility required, if they can establish five years operational experience in the U.S. trades with a satisfactory explanation of any claim for nonperformance. Self-insuring PVOs currently must establish net worth equal to at least 110% of UPR.

In determining to amend its regulations, the Commission cited recent bankruptcies of several PVOs, coupled with the experience of passengers in receiving payment in satisfaction of claims, as causing the Commission to re-evaluate its rules governing PVO coverage for nonperformance. Also, the Commission referred to the lapse of time before the Commission becomes aware of substantial changes in financial and economic conditions, the greater risk to passengers posed by self-insurers under the Commission's program, the current economic uncertainty and its effect on sales of cruises, and the impending substantial increase in cruise ship capacity.

### Comments

Comments on the proposed rule were filed by American West Steamboat Company, LLC (''American West''), Carnival Corporation (''Carnival''),[4] West Travel, Inc. d/b/a Cruise West and Alaska Sightseeing Tours (''Cruise West''), Glacier Bay Park Concessions, Inc. d/b/a Glacier Bay Cruiseline (''Glacier Bay''), Goldbelt, Incorporated (''Goldbelt''), International Group of P&I Clubs (''P&I Clubs''), and the Passenger Vessel Association (''PVA''). Goldbelt is the sole shareholder of Glacier Bay. The P&I Clubs is an organization of Protection and Indemnity Associations, some of which have provided section 3 guarantees under the Commission's program. PVA is an association of U.S.-flag passenger vessels of all types, including overnight cruise vessels. The remaining commenters are PVOs that participate in the Commission's program.

American West, a U.S. flag PVO, is the only commenter to state that it fully supports the proposed changes. However, American West also supports an in-depth review by the Commission of all of its financial responsibility regulations. In particular, American West supports lifting of the current $15 million maximum coverage requirement, supports reducing the required coverage from 110% of UPR to 100%, and believes the Commission should consider the role of credit cards and third-party travel insurance in determining the amount of coverage required. None of those suggestions is within the scope of this proposed rule.

Carnival, one of the larger PVOs, states that the increase in the fleets of the larger PVOs in recent years has increased the shortfall in coverage between the current $15 million maximum coverage requirement and the actual amount of unearned passenger revenues. Carnival believes that eliminating self-insurance while maintaining the current $15 million cap does little to provide the necessary financial security to passengers. Carnival suggests that the Commission's rules should be drawn so as to be ''self-adjusting'' as cruise lines increase in size. Moreover, Carnival reiterates its comments to proposed rules in 1994 and 1996, namely that the Commission's rules should allow foreign and U.S. companies with investment grade credit ratings and strong balance sheets to qualify for self-insurance and increase the current $15 million cap. In addition, Carnival recommends that the Commission support a change in Public Law 89–777 to extend the financial responsibility requirements to voyages embarking U.S. passengers in foreign ports.

Cruise West, a U.S. flag PVO, believes the Commission should allow itself the flexibility to evaluate particular operators and determine appropriate evidence of financial responsibility as

[1] Section 3 provides, in pertinent part:

(a) No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accomodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation

[2] For the purposes of section 3, a PVO is considered to be any person in the United States that arranges, offers, advertises or provide passage on a vessel having berth or stateroom accomodations for fifty or more passengers and which embarks passengers at U.S. ports.

[3] UPR means ''passenger revenue recieved for water transportation and all other accomodations, services, and facilities relating thereto not yet performed.'' (46 CFR 540.2(i)).

[4] Carnival's comments were submitted on behalf of Carnival Cruise Lines, Holland America Line, Cunard Line, Seabourn Cruise Line, Costa Cruises and Windstar Cruises, all of which are owned by Carnival.

warranted by the particular operator's circumstances. Cruise West states that the proposed rule could jeopardize smaller U.S. operators by putting them at a competitive disadvantage with respect to larger foreign operators. Cruise West points out that, because of the current $15 million ceiling, a major cruise line with hundreds of millions of dollars in UPR would be required to cover only a small fraction of its UPR, whereas a smaller operator with a total UPR of only $15 million, would have to cover 100% of its UPR. Cruise West asserts this places smaller companies at a significant competitive disadvantage, and believes that the sliding scale was intended to partially alleviate that disadvantage. Moreover, Cruise West states that self-insurance is one of the few advantages to maintaining a U.S. based cruise line, because self-insurance is expressly tied to ownership of U.S. based assets, an important factor considered in enacting Public Law 89–777. Cruise West suggests that closer scrutiny of self-insured cruise lines, requiring additional coverage as appropriate, is better than eliminating self-insurance. Cruise West therefore believes that the Commission should retain the option to accept self-insurance and sliding scale coverage on a case-by-case basis. Lastly, Cruise West indicates that an immediate and complete transition to the new rule would have significant, potentially devastating, effects on Cruise West. Cruise West asks that sufficient time for transition to the new rules be provided, and that the Commission give itself the latitude to handle this transition on a case-by-case basis.

Glacier Bay and its owner, Goldbelt, indicate that the proposed rule would cause Glacier Bay considerable financial hardship, which could force Glacier Bay to discontinue operations. Goldbelt states that escrowing deposits is not an acceptable alternative, since Glacier Bay begins selling cruises up to nine months before its May through September operating season, and needs those deposits as working capital to prepare for the operating season. Goldbelt states that preliminary quotes from its insurance broker indicate that a bond will cost anywhere from $150,000 to $200,000. Glacier Bay indicates that its prices for next year are in the process of being set, and Goldbelt states that prices are already set for this year, with no way to recapture the additional costs that will be caused by this rule. Goldbelt asks that, should the rule be made final, it be phased in over a period of two years.

PVA claims to be the ''national voice'' of U.S. flag passenger vessels. PVA acknowledges that recent circumstances warrant review of the Commission's current rules. However, PVA states that the proposed rule (1) puts smaller vessels at a disadvantage, because the $15 million ceiling allows larger vessel operators to cover only a fraction of the UPR, (2) discriminates against U.S. flag operators because the statute's requirements only apply to a vessel embarking passengers at United States ports (the Alaska trade is cited as an example, with most foreign flag operators allegedly embarking passengers at Vancouver, British Columbia), and (3) does not provide affected operators with sufficient time to comply.

P&I Clubs is concerned that many vessel operators that have become self-insurers in recent years will look to the P&I Clubs to provide the necessary security. P&I Clubs makes clear that its members would not be willing to increase their current involvement, and asks that the rule be reconsidered or postponed in order to provide more detailed consultation with the cruise industry.

**Discussion**

A number of comments deal with issues outside the scope of this rulemaking. Several comments indicate a desire that the Commission lift its current $15 million ceiling. American West supports lifting the ceiling, and believes this should be part of a comprehensive review of Commission regulations. PVA and Cruise West indicate that the ceiling creates a competitive disadvantage for smaller U.S. flag operators, as compared to their larger, foreign flag competitors. Interestingly, one of the larger, foreign flag operators, Carnival, also believes that the ceiling should be lifted, and should automatically adjust in line with increasing UPR. The Commission is mindful that the $15 million ceiling is only a fraction of the UPR potentially at risk for some PVOs, and shares the concerns of these commenters. Accordingly, the Commission has directed its staff to undertake a comprehensive review of the Commission's rules, including whether to change the ceiling. Based on that review, the Commission may institute a future rulemaking proceeding. Since the ceiling was not addressed in this proposed rule, however, the Commission is unable to effect any changes through this proceeding.

Another matter beyond the scope of this proceeding is the concern about the lack of protection available to those passengers on cruises not embarking passengers at U.S. ports. Carnival and PVA indicate a desire that the statute be amended to impose financial responsibility requirements on voyages embarking U.S. passengers from foreign ports. We know about the failures of three PVOs within the past two years which affected U.S. passengers embarking from foreign ports. Two of those PVOs participated in the Commission's program by having coverage for certain vessels embarking passengers at U.S. ports (but not for U.S. passengers embarking at foreign ports). Accordingly, those passengers who were to embark from U.S. ports were protected under the Commission's program, while other U.S. passengers had no protection. No passengers of the third PVO were protected by the Commission's program. The Commission has previously supported legislation to require coverage for ticket contracts sold in the United States, even for passengers embarking from foreign ports. The Commission intends to reiterate its concerns to Congress.

The concern of P&I Clubs that many current self-insurers will look to its members for required coverage appears to be unwarranted. Contrary to P&I Clubs' assertion, the elimination of self-insurance and limitation of guarantors will affect only two PVOs currently in the Commission's program. Preliminary indications are that neither of those PVOs would look to Protection and Indemnity Associations for coverage.

Cruise West, Glacier Bay (and Goldbelt) and PVA oppose the proposed rule, expressing concern about its impact on smaller, U.S. flag PVOs, which they claim will be disadvantaged. Cruise West suggests that the Commission maintain the flexibility to approve self-insurance and sliding scale treatment on a case-by-case basis. Should the Commission finalize the proposed rules, all ask for time to phase in their compliance.

The Commission is concerned about the financial protection provided to passengers under its program, and believes that self-insurance is a matter requiring immediate protection. The bankruptcy of a self-insurer leaves many passengers devoid of protection. Cruise West argues that rather than eliminate self-insurance, the Commission should scrutinize more closely the financial condition of self-insurers and require additional coverage as appropriate. While such an approach may appear to have merit in theory, experience has shown that requiring additional coverage is virtually impossible once a PVO's financial condition has deteriorated. Even now, Cruise West and Glacier Bay argue that the Commission should not impose greater

requirements because of the financial impact. Once a self-insurer's financial situation has deteriorated, imposition of additional coverage requirements would increase the likelihood of the PVO's failure and expose passengers to the very losses the Commission's program is designed to prevent. Also, experience demonstrates that the lag time in receiving financial data may prevent the Commission from knowing about a PVO's financial deterioration until well after it is too late to remedy the lack of coverage.

In support of self-insurance, Cruise West, Glacier Bay (and Goldbelt) and PVA indicate that its elimination would disadvantage small U.S. flag operators, since the qualifying assets currently must be maintained in the United States. This requirement has so far resulted in only U.S. flag PVOs requesting approval as a self-insurers. Yet one small U.S. flag operator, American West, fully supports the changes. Most U.S. flag PVOs do not utilize the self-insurance option. Instead, they provide evidence of financial responsibility with a bond or escrow agreement. Some of these U.S. flag PVOs compete with Cruise West and Glacier Bay, who argue that the costs of a bond or escrow agreement are competitively disadvantageous. However, finalizing the rule as proposed would put all of these operators on equal footing in this regard.

The Commission is sensitive to the impact of an abrupt change to its rules. For this reason, at its meeting of January 30, 2002, the Commission directed its staff to begin discussions with affected PVOs about alternative means of coverage. All affected PVOs were apprised of the Commission's intentions during the first week of February 2002. Currently, the introductory paragraph to 46 CFR 540.5 provides:

> Except as provided in § 540.9(j), the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the applicant on the date within the two fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue, unless the applicant qualifies for consideration under § 540.5(e). *The Commission, for good cause shown, may consider a time period other than the previous two-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required.* * * * (Emphasis added)

Thus, Commission rules already provide for case-by-case consideration of differing circumstances. The Commission will give consideration to special circumstances caused by issuance of this amendment to its rules, and allow some flexibility during a transition period. Accordingly, it is not necessary to modify the proposed rule to provide for such a transition period.

Commission staff have contacted those affected by this rule and will continue to be available to discuss an effective transition. However, this should not be seen as a willingness on the part of the Commission to allow continuation of self-insurance, even for a short time period. All affected parties have been on notice of the Commission's intention in this regard since at least early February. The Commission has determined that self-insurance provides inadequate coverage, and that it must undertake to make sure that passengers achieve the protections contemplated by the governing statute. Accordingly, while some flexibility in timing may be allowed, affected parties will be expected immediately to begin the transition with adequate safeguards in place to protect passengers. The Commission's staff will be available to discuss means of doing so.

The rule contains no additional information collection or recordkeeping requirements and need not be submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The Chairman has certified, pursuant to 5 U.S.C. 605, that the rule will not have a significant impact on a substantial number of small entities.

**List of Subjects in 46 CFR Part 540**

Insurance, Maritime carriers, Penalties, Reporting and record keeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; section 3 Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e); and section 17(a) of the Shipping Act of 1984, as amended (46 U.S.C. app. 1716(a), and for the reasons stated above, the Federal Maritime Commission amends 46 CFR part 540 as follows:

## PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

1. The authority citation to part 540 continues to read:

**Authority:** 5 U.S.C. 552, 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 317(e, 817d); sec. 17(a) of the Shipping Act of 1984 (46 U.S.C. app. 1716(a)).

2. Section 540.5 is amended as follows:

a. Revise the heading and introductory text;

b. Revise paragraph (c);

c. Remove paragraphs (d) and (e);

d. Redesignate paragraph (f) as paragraph (d).

The revisions read as follows:

**§ 540.5 Insurance, guaranties, and escrow accounts.**

Except as provided in § 540.9(j), the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the applicant on the date within the two fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue. The Commission, for good cause shown, may consider a time period other than the previous two-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including § 540.6 Surety Bonds) of the following methods:

* * * * *

(c) Filing with the Commission a guaranty on Form FMC–133A, by a Protection and Indemnity Association with established assets, reserves and reinsurance acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC–133A, however, may be amended by the Commission in a particular case for good cause.

* * * * *

3. Amend Form FMC–131, part II, as follows:

a. Revise Item 10;

b. Remove Item 15.

The revision reads as follows:

*Part II—Performance*

* * * * *

10. Items 11–14 are optional methods; answer only the one item which is applicable to this application. Check the appropriate box below:

☐ Insurance (item 11).

☐ Escrow (item 12).

☐ Surety bond (item 13).

☐ Guaranty (item 14).

* * * * *

15. [Removed]

By the Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 02–16756 Filed 7–3–02; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 02–1478, MB Docket No. 02–65, RM–10370]**

### Digital Television Broadcast Service; Georgetown, SC

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Community Television, Inc., an applicant for a new station to operate on channel *41 at Georgetown, South Carolina, substitutes DTV channel *38 for channel *41– at Georgetown. *See* 67 FR 15769, April 3, 2002. DTV channel *38 can be allotted to Georgetown, South Carolina, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 33–25–58 N. and 79–16–16 W. with a power of 500, HAAT of 144 meters and with a DTV service population of 220 thousand. With is action, this proceeding is terminated.

**DATES:** Effective August 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 02–65, adopted June 24, 2002, and released July 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

**List of Subjects in 47 CFR Part 73**

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.606 [Amended]**

2. Section 73.606(b), the Table of Television Allotments under South Carolina, is amended by removing Georgetown, TV channel *41–.

**§ 73.622 [Amended]**

3. Section 73.622(b), the Table of Digital Television Allotments under South Carolina, is amended by adding Georgetown, DTV channel *38.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 02–16871 Filed 7–3–02; 8:45 am]

BILLING CODE 6712–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 1842

**RIN 2700–AC33**

### Contractor Performance Information

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final Rule.

**SUMMARY:** This final rule amends the NASA FAR Supplement (NFS) by deleting the requirement for interim performance evaluations on contracts whose anniversary of award coincides with or occurs within three months of the end of the contract period of performance. This action eliminates redundancy in performance evaluations.

**EFFECTIVE DATE:** July 5, 2002.

**FOR FURTHER INFORMATION CONTACT:** Yolande Harden, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358-1279; e-mail: *yharden@hq.nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This change eliminates redundancy in performance evaluations on contracts where the length of time between the last interim evaluation and the final evaluation is relatively short. When the award anniversary is within 3 months of the end of the contract period of performance, the requirement to conduct both an interim and final evaluation creates an added burden on the evaluators as well as the contractor. Typically, there is little or no change in contractor performance during such a short span of time, particularly at the end of a contract, to warrant an additional interim evaluation. The final evaluation will include this period of contract performance.

**B. Regulatory Flexibility Act**

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS Part 1842 in accordance with 5 U.S.C. 610.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 1842**

Government procurement.

**Tom Luedtke,**

*Assistant Administrator for Procurement.*

Accordingly, 48 CFR part 1842 is amended as follows:

1. The authority citation for 48 CFR part 1842 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

## PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Revise section 1842.1502 to read as follows:

**1842.1502 Policy.**

(a) Within 60 days of every anniversary of the award of a contract having a term exceeding one year, contracting officers must conduct interim evaluations of performance on contracts subject to FAR Subpart 42.15 and this subpart. Interim evaluations are not required on contracts whose award anniversary is within 3 months of the end of the contract period of performance. The final evaluation will include an evaluation of the period between the last interim evaluation and the end of the contract period of performance. Interim performance evaluations are optional for SBIR/STTR Phase II contracts. A final evaluation summarizing all performance must be conducted on all contracts.

[FR Doc. 02–16881 Filed 7–3–02; 8:45 am]

BILLING CODE 7510–01–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 300, 600 and 660**

**[Docket No. 011231309–2090–03; I.D. 062702C]**

# Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Trip Limit Adjustments and Closures

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

**ACTION:** Inseason trip limit adjustments and closures; request for comments.

**SUMMARY:** NMFS announces changes in the following trip limits for the Pacific Coast groundfish fisheries: limited entry groundfish trawl gear fisheries north of 40°10′ N. lat. and limited entry fixed gear, open access, and recreational fisheries south of 40°10′ N. lat. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to prevent the fisheries from exceeding optimum yield (OY) and to protect the overfished species of darkblotched and bocaccio rockfish.

**DATES:** Changes to management measures are effective 0001 hours (local time) July 1, 2002, through the effective dates of the 2003 specifications and management measures for the Pacific Coast groundfish fishery, unless modified, superseded, or rescinded, by a subsequent rule which will be published in the **Federal Register**. Comments on this rule will be accepted through July 22, 2002

**ADDRESSES:** Submit comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213. This **Federal Register** document is available on the Government Printing Office's website at: *http://www.access.gpo.gov/su__docs/aces/aces140.html.*

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen or Becky Renko (Northwest Region, NMFS) 206–526–6140.

**SUPPLEMENTARY INFORMATION:**

## Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Annual groundfish specifications and management measures are initially developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The specifications and management measures for the current fishing year (January 1–December 31, 2002) were initially published in the **Federal Register** as an emergency rule for January 1–February 28, 2002 (67 FR 1540, January 11, 2002), and as a proposed rule for all of 2002 (67 FR 1555, January 11, 2002), then finalized effective March 1, 2002 (67 FR 10490, March 7, 2002). The final rule was subsequently amended at 67 FR 15338, April 1, 2002, at 67 FR 18117, April 15, 2002, at 67 FR 30604, May 7, 2002, and at 67 FR 40870, June 14, 2002.

The following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Tribes and the States of Washington, Oregon, and California, at its June 18–21, 2002, meeting in Foster City, CA. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments will be made as necessary to allow achievement of or avoid exceeding the 2002 OYs and allocations.

*Management Measures North of 40°10′ N. lat.*

Darkblotched rockfish, an overfished species, are typically encountered along the central Pacific Coast (Oregon and northern California)and occur at depths between 180 m and 360 m along the continental slope. Both adult and juvenile darkblotched rockfish are associated with mud and rock habitats. Adults move to deeper water as they increase in size and age; they are typically observed resting on mud, near cobble and boulders and do not often rise above the ocean floor.

Darkblotched rockfish are harvested by several sectors of the groundfish fishery and have experienced higher than expected landing during the first four months of 2002. Due to its overfished status, darkblotched rockfish is not managed as a targeted species in the 2002 Pacific Coast groundfish fishery. However, it is known to co-occur with several groundfish species that are directly targeted by the fishery. For example, Dover sole and petrale sole seasonally occupy areas and depths where darkblotched rockfish are found. This leads to an increased catch of darkblotched rockfish when Dover sole and petrale sole are targeted during this time. In order to allow the darkblotched rockfish stock to rebuild, inseason adjustments for target species that co-occur with darkblotched rockfish are necessary to minimize both the catch of darkblotched rockfish.

Management measures in 2002, which were intended to keep the darkblotched rockfish catch within its OY, include small cumulative trip limits of darkblotched rockfish that accommodate incidental catch but discourage targeting them. In addition, the 2002 management measures constrain northern DTS (Dover sole, thornyhead, sablefish) trawl fisheries during the November–December period to reduce the incidental catch of darkblotched rockfish. The management measures also constrain flatfish fisheries limits during the summer months when participation in the fishery is greatest and darkblotched rockfish are most likely to be encountered. Lower sablefish and Dover sole OYs are also expected to reduce the incidental take of darkblotched rockfish. On May 1, 2002, further action was taken by NMFS to reduce minor slope rockfish trip limits between 40°10′ N. lat. and 36° N. lat. for both the trawl and fixed gear limited entry fleets. This action was necessary as it reduced the catch of darkblotched rockfish while landings data were verified to determine if darkblotched rockfish were landed south of 40o10' N. lat during 2001.

For the 2002 specifications and management measures, NMFS introduced a new bycatch model for estimating rates that certain overfished species, including darkblotched rockfish, co-occur with healthier stocks that fishers specifically target. For the purpose of the bycatch model,''bycatch'' is the term used to describe a species other than the target species, regardless of whether or not it was retained (landed, sold, or otherwise used) or discarded. Co-occurrence rates for darkblotched rockfish (the proportion of darkblotched rockfish in relation to the target species) used in the bycatch model were in part based on landings data reported on fish tickets. Upon re-evaluation of fish ticket data it was determined that the darkblotched rockfish landings from waters between 40°10′ N. lat. and 36° N. lat. (Monterey management area) were not incorporated into the initial bycatch model. As a result, catch projections for darkblotched rockfish based on the initial model were lower than what may have actually occurred in the target

fisheries in the Monterey area. Because of this new information, significant landings of darkblotched rockfish were projected south of 40°10′ N. lat. during the first six months of 2002. Therefore, NMFS promulgated measures to reduce darkblotched rockfish landings on May 1, 2002, and this approach reduced darkblotched rockfish landings south of 40°10′ N. lat. NMFS and the Pacific Council manage the coastwide groundfish fisheries to minimize opportunities for incidental darkblotched rockfish catch so as to not exceed the darkblotched rockfish OY, which is set at a level that is intended to rebuild the stock.

At the June Pacific Council meeting, the best available science indicated that landings of darkblotched rockfish in 2002 were greater than projected. Coastwide commercial landings through June 8, 2002 were between 73 mt and 98 mt which represents 56 percent to 75 percent of the darkblotched rockfish landed catch OY (not including catch in the at-sea whiting sector). As of June 8, 2002, approximately 30 mt were landed south of 40°10′ N. lat. Due to the magnitude of catches earlier in the year combined with projected darkblotched rockfish bycatch from the area north of 40°10′ N. lat., and landings and estimated discards from the area south of 40°10′ N. lat., the projected year-end catch of darkblotched rockfish, under the current trip limit schedule, would exceed the rebuilding OY of 168 mt by approximately 35–40 mt.

In order to prevent the commercial fleet from exceeding the darkblotched rockfish OY, the Pacific Council recommended the following management measures: a small footrope requirement, changes to trip limits, and area closures. These management measures are designed to limit the darkblotched rockfish catch to 160 mt, which is within the 2002 darkblotched rockfish OY of 168 mt.

*Limited Entry Trawl Small Footrope Requirement North of 40°10′ N. lat.*

Due to concern about the incidental catch of darkblotched rockfish in the limited entry trawl fishery, the Pacific Council recommended eliminating the large footrope bottom trawl option for the remainder of the year. Beginning July 1, all vessels using bottom trawl gear must use a small footrope bottom trawl in order to reduce the incidental harvest of darkblotched rockfish. This small footrope bottom trawl requirement is expected to discourage fishing effort in the rocky habitat which darkblotched rockfish are believed to inhabit, thereby, reducing the interception of darkblotched rockfish, while allowing bottom trawl fisheries to continue through August.

*Limited Entry Trawl and Limited Entry Fixed Gear Limits for Pacific Ocean Perch (POP) North of 40°10′ N. lat.*

Much like darkblotched rockfish, POP are found in waters along the edge of the continental shelf, as well as in the waters of the upper continental slope. Because darkblotched rockfish and POP are both found along the shelf and associated with the ocean floor, darkblotched rockfish are taken as bycatch in the slope rockfish fishery along with POP.

In an effort to discourage targeting on POP but to allow for the incidental catch of POP in other slope fisheries, the Pacific Council recommended reducing trip limits for POP. Beginning July 1, the limited entry trawl and limited entry fixed gear limits for POP north of 40°10′ N. lat. will be reduced from 4,000 lb (1,814 kg) per month to 4,000 lb (1,814 kg) per 2 months. This reduction in POP trip limits is part of the Pacific Council's efforts to reduce the harvest of deepwater species so as to decrease the likelihood that darkblotched rockfish will be taken in fisheries targeting other deepwater species.

*Limited Entry Bottom Trawl Closure North of 40°10′ N. lat.*

Implementing a small footrope requirement in the limited entry trawl fishery and reducing the cumulative limit of POP, as described above, is expected to aid in reducing the interception of darkblotched rockfish. However, these measures alone may not be adequate to keep the 2002 darkblotched rockfish catch within its 168 mt OY, as the projected catch of darkblotched rockfish is still expected to be approximately 160 mt by the end of August. As a further precautionary measure to keep darkblotched rockfish within the 2002 OY and allow rebuilding of the stock, beginning September 1, it will be prohibited to prosecute any groundfish fishery north of 40o10' N. lat. with bottom trawl gear (small or large footrope).

The Pacific Council held a prolonged debate weighing the need to close fisheries in which darkblotched rockfish are taken incidentally versus the economic difficulties that would be felt in fishing communities that depend on groundfish income. In particular, the Pacific Council and the public were frustrated that the current management measure process does not allow fisheries for healthy stocks to occur in areas where darkblotched rockfish are not commonly found. Under the FMP, new groundfish management measures, including area restrictions, must be considered in a two-meeting process before implementation. New types of management measures are usually introduced in the two-meeting process used to develop annual specifications and management measures.

When reviewing 2002 landings data and historical survey data for darkblotched rockfish, the Pacific Council found that deepwater fisheries where the incidental take of darkblotched rockfish occurs tend to be prosecuted inshore of the 200 fathom depth contour. DTS species tend to be available to vessels operating offshore of 200 fathoms, particularly during the fall and winter months. Because of the FMP's process requirements for introducing new management measures, the Pacific Council understood that they could not craft new depth-based fishery restrictions through the usual specifications and management measures for a July 1 implementation. Using the two-meeting process, depth-based restrictions allowing the harvest of healthy stocks offshore of areas where darkblotched rockfish typically occur would likely not be in place until October 1, 2002, following the June and September Pacific Council meetings. To expedite fisheries access to deepwater stocks, the Pacific Council has requested NOAA consider depth-based restrictions beginning September 1, 2002, via an emergency rule. If NOAA determines that an emergency rule is necessary and appropriate, NMFS will announce the action in the **Federal Register**.

*Management Measures South of 40°10′ N. lat.*

Another overfished rockfish species, with higher than projected landings for the first half of 2002, is bocaccio rockfish. Bocaccio are widespread throughout central and southern California. Larvae can be found far from shore in the upper 10 m of the water column, juveniles often occur in shallow, nearshore waters, and adults move into deeper water (depths ranging from 50 - 300 m) along the continental shelf as they age. Because bocaccio are found in a broad range of depths and habitats throughout their life cycle, bocaccio are frequently intercepted in Pacific Coast groundfish fisheries.

In order to allow the bocaccio stock to rebuild, precautionary management measures have been in place for bocaccio and those species that co-occur with bocaccio. In 2002, bottom trawl opportunities for shelf rockfish have been extremely limited, no landings of bocaccio rockfish are allowed with large footrope trawl gear, and small amounts of bocaccio, an unavoidable bycatch,

taken with small footrope or midwater trawl gear were allowed to be landed in fisheries for healthy stocks. The chilipepper rockfish OY continues to be reduced to limit the incidental take of bocaccio. Additionally, California hook-and-line commercial fisheries have been closed during the same periods and in the same areas as the recreational fisheries and California maintained a rockfish bag limit of 10 fish, no more than 2 of which may be bocaccio rockfish.

As of June 8, 2002, the commercial landings of bocaccio rockfish were 21 mt, which represents 57 percent of the commercial harvest guideline. Although the commercial harvest is slightly higher than projected preseason, the estimated landings of bocaccio in the recreational fishery is of much greater concern. Recreational data estimates for the January - April period indicated that approximately 60 mt of bocaccio were taken. This estimated catch exceeds the 2002 recreational harvest guideline of 56 mt. By the end of June, the projected catch in the commercial and recreational fisheries combined may exceed the rebuilding OY of 100 mt and could approach or exceed the ABC of 122 mt. In order to allow the bocaccio stock to rebuild and prevent overfishing from occurring, the Pacific Council recommended that NMFS take the following actions to limit the harvest of bocaccio and co-occurring species.

*Limited Entry Trawl and Exempted Open Access Trawl Limits for Groundfish (With the Exception of DTS, Minor Slope Rockfish, and Rex, Petrale, and English Sole Landed with DTS) South of 40°10′ N. lat.*

Beginning July 1, the Pacific Council recommended that NMFS prohibit limited entry vessels from using trawl gear be prohibited south of 40°10′ N. lat. for all groundfish species except the deepwater DTS complex and minor slope rockfish.

In keeping with these measures, the amount of groundfish retention by vessels using exempted gear is also of concern. Typically only a few metric tons of bocaccio are taken with exempted gear. However, since the fleet is likely to harvest the bocaccio OY by the end of June, the Pacific Council recommended that NMFS prohibit the retention of groundfish in exempted trawl fisheries. Therefore, beginning July 1, it is prohibited to take and retain, possess, or land groundfish with exempted trawl gear south of 40°10′ N. lat.

*Sablefish Minimum Size Requirements and Cumulative Limits for All Groundfish Fisheries South of 40°10′ N. lat.*

In an effort to reduce fishing effort on the continental shelf where bocaccio are found and move vessels into deeper waters off the slope, the Pacific Council recommended reinstating the minimum 22 inch (56 cm) size requirement for sablefish taken with nontrawl gear and a reduced trip limit for sablefish under the 22 inch (56 cm) requirement taken with trawl gear. Larger sablefish tend to be found at greater depths, thus, prohibiting retention of small sablefish in the nontrawl fisheries and reducing the trip limit in the limited entry trawl fishery is expected to force vessels into deeper water when targeting sablefish. In the trawl fishery south of 40o10'N. lat., the currently scheduled cumulative sablefish limit of 3,000 lb (1,361 kg) per 2 months will remain in effect, with a per trip restriction of no more than 500 lb (227 kg) of sablefish smaller than 22 inches (56 cm). To encourage the non-trawl fisheries to also operate in deeper waters, currently scheduled limits will apply, but retention of sablefish smaller than 22 inches (56 cm) will be prohibited.

*Limited Entry Fixed Gear, All Open Access Gears, and Recreational Limits for Groundfish Fisheries (With the Exception of Primary Sablefish and Slope Rockfish) South 40°10′ N. lat.*

Because of the projected catch of bocaccio combined with bocaccio's depth distribution and widespread co-occurrence with other groundfish species, the catch of bocaccio by limited entry fixed gear and open access fisheries is of concern. Therefore, the Pacific Council recommended that, beginning July 1, outside of 20 fathoms (36.9 m) it will prohibited to take and retain, possess, or land all groundfish species (with the exception of sablefish and slope rockfish) with fixed gear south of 40°10′ N. lat. In addition, beginning July 1, inside of 20 fm (36.9 m) it will be prohibited to take and retain, possess, or land minor shelf rockfish, bocaccio, and chilipepper rockfish south of 40°10′ N. lat. These inshore closures for shelf rockfish species are needed to further reduce bocaccio catch.

Because the estimated amount of bocaccio catch in the recreational fishery has been so high during the first few months of 2002, the Pacific Council also recommended a closure outside of 20 fm (36.9 m) in the recreational fishery. Therefore, beginning July 1, it is prohibited to take and retain, possess, or land rockfish and lingcod with recreational gear outside of 20 fathom (36.9 m) south of 40°10′ N. lat. In keeping with these management measures, the state of California will implement similar regulations effective by July 1, 2002.

*Limited Entry Trawl, Limited Entry Fixed Gear, and Open Access Limits for Minor Slope Rockfish and Splitnose Rockfish Between 40°10′ N. Lat. and 36° N. lat.*

The best available information indicates that landings of minor slope rockfish by limited entry and open access fisheries has been approximately 17 percent of the harvest guideline. The minor slope rockfish fisheries will continue at their currently scheduled trip limits for the July–August cumulative period to allow access to healthy minor slope rockfish stocks during summer months. However, in keeping with other management measures to reduce the catch of bocaccio and to ensure that trip limit reductions are distributed among the groundfish fleet, the Pacific Council recommended a reduction in trip limits for minor slope rockfish starting September 1, 2002. Therefore, minor slope rockfish limits between 40°10′ N. lat. and 36° N. lat. will be as follows: the limited entry trawl limit will be reduced from 50,000 lb (22,680 kg) per 2 months to 1,800 lb (816 kg) per 2 months; the limited entry fixed gear limit will be reduced from 25,000 lb (11,340 kg) per 2 months to 1,800 lb (816 kg) per 2 months; and the open access limit will be reduced from 10,000 lb (4,536 kg) per 2 months to 1,800 lb (816 kg) per 2 months.

2002 landings of splitnose rockfish during the first six months of 2002 have been approximately 29 mt or 7 percent of the landed catch OY. Because the Pacific Council is concerned about the economic impacts associated with the July 2002 inseason management measures, attempts to allow harvesting of healthy groundfish stocks are allowed when possible. Beginning September 1, retention of splitnose rockfish between 40°10′ N. lat. and 36° N. lat. will be restricted to 1,800 lb (816 kg) per 2 months for limited entry trawl, limited entry fixed gear, and open access.

*Limited Entry Trawl and Limited Entry Fixed Gear Limits for Minor Slope Rockfish and Splitnose Rockfish South of 36° N. lat.*

For reasons described above, cumulative limited entry trawl and limited entry fixed gear limits for minor slope and splitnose rockfish are being adjusted for September - December.

Beginning September 1, limited entry limits for minor slope rockfish south of 36° N. lat. will be reduced as follows: the trawl limit will be reduced from 50,000 lb (22,680 kg) per 2 months to 15,000 lb (816 kg) per 2 months and the fixed gear limit will be reduced from 25,000 lb (11,340 kg) per 2 months to 15,000 lb (6,804 kg) per 2 months. Beginning September 1, limited entry limits for splitnose rockfish south of 36° N. lat. will be reduced as follows: the trawl limit will be reduced from 25,000 lb (11,340 kg) per 2 months to 15,000 lb (6,804 kg) per 2 months and the fixed gear limit will be reduced from 25,000 lb (11,340 kg) per 2 months to 15,000 lb (6,804 kg) per 2 months.

*Limited Entry Trawl Limits for Rex Sole, Petrale, Sole, English Sole, Arrowtooth Flounder, and Other Flatfish South of 40°10′ N. lat.*

To allow for retention of incidentally caught healthy flatfish stocks, the Pacific Council recommended an incidental catch allowance of rex sole, petrale sole, English sole, and arrowtooth flounder, beginning July 1, provided these fish are harvested and landed with the DTS complex. Therefore, beginning July 1, limited entry trawl flatfish limits for rex sole, petrale sole, English sole, and arrowtooth flounder, south of 40°10′ N. lat. will be 1,000 lb (454 kg) per trip if landed with DTS species. Flatfish landings must not exceed landing of DTS and flatfish other than the four species cannot be retained as of July 1, 2002.

As discussed previously, the Pacific Council recommended that depth restrictions be incorporated in the Pacific Council's suite of management options in an effort to minimize the economic impact of groundfish management measures on the Pacific Coast fishing industry. Depth restrictions would help shift fishing effort to areas and depths where overfished groundfish species are less likely to be encountered. This type of management measure should decrease the interception and landings of overfished species while allowing the harvest of healthy groundfish stocks. These depth restrictions are a new type of management measure and need to be implemented via emergency rule. Because of the required timeline for an emergency rule, depth restrictions are not expected to be implemented before September 1, 2002.

At the September 9–13, 2002, Pacific Council meeting in Portland, Oregon, additional groundfish landing data will be available. The projected catch of both darkblotched rockfish and bocaccio will be re-assessed at this time. Based on this updated information, groundfish management measures for the remainder of 2002 will be adjusted accordingly. Additionally, the Pacific Council's Groundfish Management Team (GMT) is scheduled to meet in early August. If the GMT projects that the darkblotched rockfish OY will be reached prior to the Pacific Council's September meeting, a recommendation will be made to NMFS that it should restrict the fishery to eliminate the catch of darkblotched rockfish.

## NMFS Actions

For the reasons stated here, NMFS concurs with the Pacific Council's recommendations and hereby announces the following changes to the 2002 specifications and management measures (67 FR 10490 March 7, 2002, as amended at 67 FR 15338 April 1, 2002, 67 FR 18117 April 15, 2002, 67 FR 30604 May 1, 2002, 67 FR 40870 June 14, 2002) to read as follows:

1. On page 10511, in column 1, in section *IV*. under A. General Definitions and Provisions,, paragraph (d) is revised to read as follows:

* * * * *

(d) *Sablefish size and weight limit conversions.* The following conversions apply to both the limited entry and open access fisheries when size and trip limits are effective for those fisheries. For headed and gutted (eviscerated) sablefish:

(i) The minimum size limit for headed sablefish, which corresponds to 22 inches (56 cm) TL for whole fish, is 15.5 inches (39 cm).

(ii) The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the state conversion factors may differ: fisher should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.)

* * * * *

2. On page 10513, in column 1, in section *IV*. under A. *General Definitions and Provisions*, paragraph (14(b)(iv) is revised to read as follows:

* * * * *

(iv) *More than one type of trawl gear on board.* The cumulative trip limits in Table 3 must not be exceeded. When fishing in areas where the use of a particular type of trawl gear [Example: large footrope gear] is prohibited, a fisher may not have more than one gear type on board. When fishing in areas where trawling is not restricted, a fisher may have more than one type of trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. [Example: If a vessel has large footrope gear on board, it cannot land yellowtail rockfish, even if the yellowtail rockfish is caught with a small footrope trawl. If a vessel has both small footrope trawl and midwater trawl gear on board, the landing is attributed to the most restrictive gear-specific limit, regardless of which gear type was used.

* * * * *

3. On page 10517, in section *IV*, under B. *Limited Entry Fishery*, at the end of paragraph (1), Tables 3 and 4 are revised to read as follows:

## IV. NMFS Actions

*B. Limited Entry Fishery*

(1) * * *

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**Table 3. Trip Limits[1] and Gear Requirements[2] for Limited Entry Trawl Gear**

**Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table**

| line | Species/groups | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **NOTE FOR **NORTH** OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING WITH LARGE FOOTROPE GEAR IS **PROHIBITED.** **NOTE FOR **SOUTH** OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING FOR GROUNDFISH IS **CLOSED** EXCEPT FOR DTS COMPLEX, MINOR SLOPE ROCKFISH SPECIES AND SPECIFIED FLATFISH AND GRENADIER TAKEN INCIDENTALLY IN THOSE FISHERIES. | | | | | | |
| 1 | **Minor slope rockfish** | | | | | | |
| 2 | North | 1,800 lb/ 2 months | | | | CLOSED[7] | |
| 3 | South | | | | | | |
| 4 | 40°10' - 36° N. lat. | 50,000 lb/ 2 months | | 5,000 lb/ 2 months | | 1,800 lb / 2 months | |
| 5 | South of 36° N. lat. | 50,000 lb/ 2 months | | | | 15,000 lb/ 2 months | |
| 6 | **Splitnose - South** | | | | | | |
| 7 | 40°10' - 36° N. lat. | 25,000 lb/ 2 months | | 5,000 lb/ 2 months | | 1,800 lb / 2 months | |
| 8 | South of 36° N. lat. | 25,000 lb/ 2 months | | | | 15,000 lb/ 2 months | |
| 9 | **Pacific ocean perch - North[6]** | 2,000 lb/ month | | 4,000 lb/ month | 4,000 lb/ 2 months | | |
| 10 | **Chilipepper - South[6]** | | | | | | |
| 11 | mid-water trawl | 25,000 lb/ 2 months | | | CLOSED[7] | | |
| 12 | small footrope trawl | 7,500 lb/ 2 months | | 4,000 lb/ 2 months | | | |
| 13 | large footrope trawl | 500 lb/ trip, not to exceed small footrope cumulative 2-month limits at any time during the year | | | | | |
| 14 | **DTS complex - North** | | | | | | |
| 15 | Sablefish | 6,000 lb/ 2 months | | 3,500 lb/ 2 months | 3,000 lb/ 2 months | CLOSED[7] | |
| 16 | Longspine thornyhead | 10,000 lb/ 2 months | | 6,000 lb/ 2 months | 1,500 lb/ 2 months | | |
| 17 | Shortspine thornyhead | 2,600 lb/ 2 months | | 2,000 lb/ 2 months | 1,500 lb/ 2 months | | |
| 18 | Dover sole | 30,000 lb/ 2 months | 28,000 lb/ 2 months | 14,000 lb/ 2 months | | | |
| 19 | **DTS complex - South** | | | | | | |
| 20 | Sablefish[9] | 4,500 lb/ 2 months | | | | | |
| 21 | Longspine thornyhead | 10,000 lb/ 2 months | | | | | |
| 22 | Shortspine thornyhead | 2,600 lb/ 2 months | | | | | |
| 23 | Dover sole | 22,000 lb/ 2 months | | | | | |
| 24 | **Flatfish - North** | | | | | | |
| 25 | All other flatfish [3] | LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits, includes arrowtooth flounder. | | LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits. Retention of **petrale and rex sole** prohibited if large footrope gear is onboard. | SMALL FOOTROPE REQUIRED: 40,000 lb/ month, no more than 15,000 of which may be petrale sole | CLOSED[7] | |
| | | SMALL FOOTROPE: | | SMALL FOOTROPE: | | CLOSED[7] | |
| | | 15,000 lb/ month | 35,000 lb/ month | 30,000 lb/ month, no more than 10,000 of which may be petrale sole | | | |
| 26 | Petrale sole | Not limited, large footrope allowed | | | | | |
| 27 | Rex sole | | | | | | |
| 28 | Arrowtooth flounder | LARGE FOOTROPE: included in "all other flatfish" limit. | | SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited | | CLOSED[7] | |
| | | SMALL FOOTROPE: | | | | | |
| | | 30,000 lb/ trip | | | | | |
| 29 | **Flatfish - South** | | | | | | |
| 30 | All other flatfish 3/ | LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits, includes arrowtooth flounder. | | LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits. Retention of **petrale and rex sole** prohibited if large footrope gear is onboard. | CLOSED[7] With the exception of 1,000 lb/ trip of rex sole, petrale sole, English sole, and arrowtooth flounder combined when landed with DTS complex. The amount of per trip flatfish landings must not exceed the amount of DTS landed. Landings can be made with large footrope gear. | | |
| | | SMALL FOOTROPE: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs. | | SMALL FOOTROPE: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs. Of the species other than Pacific sanddabs, no more than 15,000 lb may be petrale sole. | | | |
| 31 | Petrale sole | Not limited, large footrope allowed | | | | | |
| 32 | Rex sole | | | | | | |
| 33 | Arrowtooth flounder | LARGE FOOTROPE: included in "all other flatfish" limit. | | SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited | | | |
| | | SMALL FOOTROPE: | | | | | |
| | | 30,000 lb/ trip | | | | | |
| 35 | **Whiting [4]** | 20,000 lb/ trip | | Primary Season | | CLOSED[7] | |

**Table 3. (CONTINUED) Trip Limits[1/] and Gear Requirements[2/] for Limited Entry Trawl Gear**
**Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table**

| line | Species/groups | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **NOTE FOR **NORTH** OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING WITH LARGE FOOTROPE GEAR IS **PROHIBITED.** **NOTE FOR **SOUTH** OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING FOR GROUNDFISH IS **CLOSED** EXCEPT FOR DTS COMPLEX, MINOR SLOPE ROCKFISH SPECIES AND SPECIFIED FLATFISH AND GRENADIER TAKEN INCIDENTALLY IN THOSE FISHERIES. | | | | | | |
| 37 | **Minor shelf rockfish** | | | | | | |
| 38 | North | 300 lb/ month | | 1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish | | CLOSED[7/] | |
| 39 | South | 500 lb/ month | | 1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish | CLOSED[7/] | | |
| 40 | **Canary rockfish** | | | | | | |
| | North | 200 lb/ 2 months | | 600 lb/ 2months | 600 lb/ 2 months | CLOSED[7/] | |
| | South | | | | CLOSED[7/] | | |
| | **Widow rockfish** | | | | | | |
| 41 | North | | | | | | |
| 42 | mid-water trawl | CLOSED[7/] | | During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month | | | CLOSED[7/] |
| 43 | small footrope trawl | 1,000 lb/ month | | | | CLOSED[7/] | |
| | South | | | | | | |
| | mid-water trawl | CLOSED[7/] | | During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month | CLOSED[7/] | | |
| | small footrope trawl | 1,000 lb/ month | | | CLOSED[7/] | | |
| 44 | **Yellowtail - North[6/]** | | | | | | |
| 45 | mid-water trawl | CLOSED[7/] | | During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month | | | CLOSED[7/] |
| 46 | small footrope trawl | In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Combined with and without flatfish, not to exceed 30,000 lb/ 2 months. | | | | CLOSED[7/] | |
| 47 | **Bocaccio - South[6/]** | 600 lb/ 2 months | | 1,000 lb/ 2 months | CLOSED[7/] | | |
| 48 | **Cowcod** | CLOSED[7/] | | | | | |
| 49 | **Minor nearshore rockfish** | | | | | | |
| 50 | North | 300 lb/ month | | | | CLOSED[7/] | |
| 51 | South | 300 lb/ month | | | CLOSED[7/] | | |
| | **Lingcod[8/]** | | | | | | |
| | North | 800 lb/ 2 months | | 1,000 lb/ 2 months | | CLOSED[7/] | |
| | South | | | 1,000 lb/ 2 months | CLOSED[7/] | | |
| 52 | **Other Fish[10/]** | Not limited | | | Grenadier retention permitted | CLOSED[7/] | |

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ Gear requirements and prohibitions are explained above. See IV.A.(14).
3/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.
4/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies before and after the primary season.
5/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter. In areas where trawl gear is restricted, only one type of trawl gear is allowed on board at ony one time. See above.
6/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.
7/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
9/ The minimum size requirement for sablefish is 22 inches (56 cm) total length. No more than 500 lb of undersized sablefish may be landed per trip.
10/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 4. Trip Limits[1/] for Limited Entry Fixed Gear**
**Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table**

| line | Species/groups | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **NOTE FOR FISHING SOUTH OF 40°10': ALL GROUNDFISH FISHING IS **CLOSED** OFFSHORE OF THE 20 FATHOM DEPTH CONTOUR, EXCEPT FOR SABLEFISH, SHORTSPINE THORNYHEAD, AND SLOPE ROCKFISH. SEE FOOTNOTE 8/. | | | | | | |
| 1 | **Minor slope rockfish** | | | | | | |
| 2 | North | 1,000 lb/ month | | 5,000 lb/ 2 months | | | 2,000 lb/ 2 months |
| 3 | South | | | | | | |
| 4 | 40°10' - 36° N. lat. | 25,000 lb/ 2 months | | 5,000 lb/ 2 months | | 1,800 lb/ 2 months | |
| 5 | South of 36° N. lat. | 25,000 lb/ 2 months | | | | 15,000 lb/ 2 months | |
| 6 | **Splitnose - South** | | | | | | |
| 7 | 40°10' - 36° N. lat. | 25,000 lb/ 2 months | | 5,000 lb/ 2 months | | 1,800 lb/ 2 months | |
| 8 | South of 36° N. lat. | 25,000 lb/ 2 months | | | | 15,000 lb / 2 months | |
| 9 | **Pacific ocean perch - North[5/]** | 2,000 lb/ month | 4,000 lb/ month | | 4,000 lb/ 2 months | | 2,000 lb/ month |
| 10 | **Sablefish** | | | | | | |
| 11 | North of 36° N. lat. | 300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months | | | | | |
| 12 | South of 36° N. lat.[9/] | 350 lb/ day, or 1 landing per week of up to 1,050 lb | | 300 lb/ day, or 1 landing per week of up to 900 lb | | | |
| 13 | **Longspine thornyhead** | 9,000 lb/ 2 months | | | 9,000 lb/ 2 months[8/] | | |
| 14 | **Shortspine thornyhead** | 2,000 lb/ 2 months | | | North of 36° N. lat: 2,000 lb/ 2 months<br>South of 36° N. lat., CLOSED[4/] | | |
| 15 | **Dover sole** | 5,000 lb/ month (all flatfish) | | | 5,000 lb/ month (all flatfish)[8/] | | |
| 16 | **Arrowtooth flounder** | | | | | | |
| 17 | **Petrale sole** | | | | | | |
| 18 | **Rex sole** | | | | | | |
| 19 | **All other flatfish[2/]** | | | | | | |
| 20 | **Whiting[3/]** | 20,000 lb/ trip | | | | | |
| 21 | **Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish[5/]** | | | | | | |
| 22 | North | 200 lb/ month | | | | | |
| 23 | South | | | | | | |
| 24 | 40°10' - 34°27' N. lat. | 200 lb/ month | CLOSED[4/] | Shoreward of 20 ftm depth, 200 lb/ month, otherwise CLOSED[4/] | CLOSED[4/] | | |
| 25 | South of 34°27' N. lat. | CLOSED[4/] | 1,000 lb/ month | | | | |
| 26 | **Canary rockfish** | CLOSED[4/] | | | | | |
| 27 | **Yelloweye rockfish** | CLOSED[4/] | | | | | |
| 28 | **Cowcod** | CLOSED[4/] | | | | | |
| 29 | **Bocaccio - South[5/]** | | | | | | |
| 30 | 40°10' - 34°27' N. lat. | 200 lb/ month | CLOSED[4/] | | CLOSED[4/] | | |
| 31 | South of 34°27' N. lat. | CLOSED[4/] | 200 lb/ month | | | | |
| 32 | **Chilipepper - South[5/]** | | | | | | |
| 33 | 40°10' - 34°27' N. lat. | 500 lb/ month | CLOSED[4/] | | CLOSED[4/] | | |
| 34 | South of 34°27' N. lat. | CLOSED[4/] | 2,500 lb/ month | | | | |
| 35 | **Minor nearshore rockfish** | | | | | | |
| 36 | North | 5,000 lb/ month, no more than 2,000 lb of which may be species other than black or blue rockfish[6/] | | 6,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[6/] | | | |
| 37 | South | | | | | | |
| 38 | 40°10' - 34°27' N. lat. | 1,600 lb/ 2 months | CLOSED[4/] | Shoreward of 20 ftm depth, 1,600 lb/ 2 months, otherwise CLOSED[4/] | 1,600 lb/ 2 months[8/] | | CLOSED[4/] |
| 39 | South of 34°27' N. lat. | CLOSED[4/] | 2,000 lb/ 2 months | | 2,000 lb/ 2 months[8/] | | |
| 40 | **Lingcod[7/]** | | | | | | |
| 41 | North | CLOSED[4/] | | 400 lb/ month | | | CLOSED[4/] |
| 42 | South | | | | | | |
| 43 | 40°10' - 34°27' N. lat. | CLOSED[4/] | | Shoreward of 20 ftm depth, 400 lb/ month, otherwise CLOSED[4/] | 400 lb/ month[8/] | | CLOSED[4/] |
| 44 | South of 34°27' N. lat. | | | 400 lb/ month | | | |

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.
3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies.
4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).
5/ Yellowtail rockfish and widow rockfish coastwide and bocaccio and chilipepper rockfishes in the north are included in the trip limits for shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.
6/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
8/ South of 40°10' N. lat., trip limits apply to inside of 20 fm only. Beginning July 1, 2002, it is prohibited to prosecute groundfish fisheries with non-trawl gear outside 20 fm south of 40°10' N. lat.
9/ The minimum size requirement for sablefish is 22 inches (56 cm) total length.
**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

* * * * *

4. On page 10519 in section *IV.*, under C. *Trip Limits in the Open Access Fishery*, at the end after paragraph (1), Table 5 is revised to read as follows:

## IV. NMFS Actions

*C. Trip Limits in the Open Access Fishery*

(1) * * *

**Table 5. Trip Limits[1/] for Open Access Gears**
**Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table**
**Exceptions for exempted gears at Section IV.C.**

| line | Species/groups | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **NOTE FOR FISHING SOUTH OF 40°10': ALL GROUNDFISH FISHING IS **CLOSED** OFFSHORE OF THE 20 FATHOM DEPTH CONTOUR, EXCEPT SABLEFISH AND MINOR SLOPE ROCKFISH. SEE FOOTNOTE 8/. ** NOTE: EFFECTIVE JULY 1, 2002, THERE IS NO RETENTION OF GROUNDFISH WITH EXEMPTED TRAWL GEAR. | | | | | | |
| 1 | **Minor slope rockfish** | | | | | | |
| 2 | North | Per trip, no more than 25% of weight of the sablefish landed | | | | | |
| 3 | South | | | | | | |
| 4 | 40°10' - 36° N. lat. | 10,000 lb/ 2 months | | 5,000 lb/ 2 months | | 1,800 lb/ 2 months | |
| 5 | South of 36° N. lat. | 10,000 lb/ 2 months | | | | | |
| 6 | **Splitnose - South** | 200 lb/ month | | | | | |
| 7 | **Pacific ocean perch - North[4/]** | 100 lb/ month | | | | | |
| 8 | **Sablefish** | | | | | | |
| 9 | North of 36° N. lat. | 300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months | | | | | |
| 10 | South of 36° N. lat.[7/] | 350 lb/ day, or 1 landing per week of up to 1,050 lb | | 300 lb/ day, or 1 landing per week of up to 900 lb | | | |
| 11 | **Thornyheads** | | | | | | |
| 12 | North of 34° 27' N. lat. | CLOSED[3/] | | | | | |
| 13 | South of 34° 27' N. lat. | 50 lb/ day, no more than 2,000 lb/ 2 months | | | 50 lb/ day, no more than 2,000 lb/ 2 months[8/] | | |
| 14 | **Dover sole** | 3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs | | | 3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sandabs[8/] | | |
| 15 | **Arrowtooth flounder** | | | | | | |
| 16 | **Petrale sole** | | | | | | |
| 17 | **Rex sole** | | | | | | |
| 18 | **All other flatfish[2/]** | | | | | | |
| 19 | **Whiting** | 300 lb/ month | | | | | |
| 20 | **Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish[4/]** | | | | | | |
| 21 | North | 200 lb/ month | | | | | |
| 22 | South | | | | | | |
| 23 | 40°10' - 34°27' N. lat. | 200 lb/ month | CLOSED[3/] | Shoreward of 20 ftm depth, 200 lb/ month, otherwise CLOSED[3/] | CLOSED[3/] | | |
| 24 | South of 34°27' N. lat. | CLOSED[3/] | 500 lb/ month | | | | |
| 25 | **Canary rockfish** | CLOSED[3/] | | | | | |
| 26 | **Yelloweye rockfish** | CLOSED[3/] | | | | | |
| 27 | **Cowcod** | CLOSED[3/] | | | | | |
| 28 | **Bocaccio - South[4/]** | | | | | | |
| 29 | 40°10' - 34°27' N. lat. | 200 lb/ month | CLOSED[3/] | | CLOSED[3/] | | |
| 30 | South of 34°27' N. lat. | CLOSED[3/] | 200 lb/ month | | | | |
| 31 | **Chilipepper - South[4/]** | | | | | | |
| 32 | 40°10' - 34°27' N. lat. | 500 lb/ month | CLOSED[3/] | | CLOSED[3/] | | |
| 33 | South of 34°27' N. lat. | CLOSED[3/] | 2,500 lb/ month | | | | |
| 34 | **Minor nearshore rockfish** | | | | | | |
| 35 | North | 3,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[5/] | | 6,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[5/] | | | |
| 36 | South | | | | | | |
| 37 | 40°10' - 34°27' N. lat. | 1,200 lb/ 2 months | CLOSED[3/] | Shoreward of 20 ftm depth, 1,200 lb/ 2 months, otherwise CLOSED[3/] | 1,200 lb/ 2 months[8/] | | CLOSED[3/] |
| 38 | South of 34°27' N. lat. | CLOSED[3/] | 1,200 lb/ 2 months | | | | |
| 39 | **Lingcod[6/]** | | | | | | |
| 40 | North | CLOSED[3/] | | 300 lb/ month | | | CLOSED[3/] |
| 41 | South | | | | | | |
| 42 | 40°10' - 34°27' N. lat. | CLOSED[3/] | | Shoreward of 20 ftm depth, 300 lb/ month, otherwise CLOSED[3/] | 300 lb/ month[8/] | | CLOSED[3/] |
| 43 | South of 34°27' N. lat. | | | 300 lb/ month | | | |

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border. "South" means 40o10' N. lat. To the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

3/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).

4/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. Pop in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.

5/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The size limit for lingcod is 24 inches (61 cm) total length.

7/ The minimum size requirement for sablefish is 22 inches (56 cm) total length.

8/ South of 40°10' N. lat., trip limits apply to inside of 20 fm only. Beginning July 1, 2002, it is prohibited to prosecute groundfish fisheries with non-trawl gear outside 20 fm south of 40°10' N. lat.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

BILLING CODE 3510–22–C

5. On page 10521, in section *IV.*, under *C. Trip Limits in the Open Access Fishery*, paragraph (2)(a) is revised to read as follows:

* * * * *

(i) (a) *Trip limits.* Beginning July 1, it is prohibited to take and retain, possess, or land any groundfish species with exempted trawl gear south of 40°10′ N. lat. The trip limit is 300 lb (136 kg) of groundfish per fishing trip north of 40°10′ N. lat. North of 40°10′ N. lat, limits in Table 5 also apply and are counted toward the 300 lb (136 kg) groundfish limit. In any landing by a vessel engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers with exempted trawl gear, the amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish (*Squalas acanthias*) landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb (136 kg) per trip overall groundfish limit. The daily trip limits for sablefish north of 40°10′ N. lat. may not be multiplied by the number of days of the fishing trip. The closures listed in table 5 also apply.

* * * * *

6. On page 10521, in column 3, in Section *IV.*, under *D. Recreational Fishery*, paragraph (1)(9)(ii) is revised and on page 10522, in columns 1 and 2, under *D. Recreational Fishery*, paragraph (1)(a)(iii) is revised and paragraph (1)(b)(ii) is revised to read as follows:

* * * * *

(ii) *Seasons.* North of 40°10′ N. lat., recreational fishing for rockfish is open from January 1 through December 31. South of 40°10′ N. lat. and north of Point Conception (34° 27′ N. lat.), recreational fishing for rockfish is closed from March 1 through April 30, and from November 1 through December 31. This area is also closed to recreational rockfish fishing from May 1 through October 31, except that fishing for rockfish is permitted inside the 20 fm (37 m) depth contour, subject to the bag limits in paragraph (iii) of this section, except that bocaccio, canary rockfish and yelloweye rockfish retention is prohibited. South of Point Conception (34°27′ N. lat.), recreational fishing for rockfish is closed from January 1 through February 28 and from November 1 through December 31. This area is also closed to recreational rockfish fishing from July 1 through October 31, except that fishing for rockfish is permitted inside the 20 fm (37 m) depth contour, subject to bag limits in paragraph (iii) of this section, except that bocaccio, canary rockfish and yelloweye rockfish retention is prohibited. Recreational fishing for cowcod is prohibited all year in all areas.

(iii) *Bag limits. boat limits, hook limits.* In times and areas when the recreational season for rockfish is open, there is a 2–hook limit per fishing line, and the bag limit is 10 rockfish per day, of which no more than 2 may be bocaccio, no more than 1 may be canary rockfish, and no more than 1 may be yelloweye rockfish. No more than 2 yelloweye rockfish may be retained per vessel. Cowcod may not be retained. Bocaccio, canary rockfish, and yelloweye rockfish may not be retained, and no more than 2 shelf rockfish may be retained, in the area between 40°10′ N. lat. and Point Conception (34°27′ N. lat.) from May 1 through June 30, or in the area south of 40°10′ N. lat. from July 1 through October 31. (Note: California scorpionfish, are subject to California's 10 fish bag limit per species, but are not counted toward the 10 rockfish bag limit.) Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

* * * * *

(ii) *Seasons.* North of 40°10′ N. lat., recreational fishing for lingcod is open from January 1 through December 31. South of 40°10′ N. lat. and north of Point Conception (34°27′ N. lat.), recreational fishing for lingcod is closed from March 1 through April 30, and from November 1 through December 31. This area is also closed to recreational lingcod fishing from May 1 through October 31, except that fishing for lingcod is permitted inside the 20 fm (36.9 m) depth contour, subject to the bag limits in paragraph (iii) of this section. South of Point Conception (34° 27′ N. lat.), recreational fishing for lingcod is closed from January 1 through February 28 and from November 1 through December 31. This area is also closed to recreational lingcod fishing from May 1 through October 31, except that fishing for lingcod is permitted inside the 20 fm (36.9 m) depth contour, subject to the bag limits in paragraph (iii) of this section.

* * * * *

## Classification

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the cumulative trip limit period for the Pacific Coast groundfish fishery begins July 1, 2002, and affording prior notice and opportunity for public comment would impede the agency's function of managing fisheries to remain within the OY. Delaying implementation of these closures and trip limit reductions past July 1, 2002, may cause the catch of darkblotched rockfish to exceed its OY and may cause the catch of bocaccio rockfish to further exceed its OY and approach or exceed its ABC. Most of the trip limits adjustments in this document are reductions from the status quo. Decreases to trip limits and closures must be implemented in a timely manner to protect overfished and depleted groundfish species and to prevent the harvest of healthy stocks from exceeding the OY for 2002. Because the Pacific Coast groundfish fishery is managed by trip limits, most of which are based on a 2–month cumulative period (January–February, March–April, May–June, July–August, September–October, November–December), these actions should be implemented by the beginning of the next cumulative trip limit period (July 1, 2002). Delaying implementation of these closures and trip limit changes would allow fishers to harvest the higher trip limits that were previously scheduled for the July-August cumulative period. Allowing fishers to continue harvesting these higher trip limits or harvesting in an open fishery after the start of the cumulative trip limit period may cause the fisheries to exceed OYs for protected rockfish species. For these reasons, good cause also exists to waive the 30–day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3).

These actions are taken under the authority of 50 CFR 300.63(a)(3) and 660.323(b)(1), and are exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 773–773k; 1801 *et seq.*

Dated: June 28, 2002.

**Dean Swanson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 02–16811 Filed 7–1–02; 10:17 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 67, No. 129
Friday, July 5, 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 HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 1000

**[Docket No. FR–4676–N–04]**

### Indian Housing Block Grant Allocation Formula: Second Notice of Intent To Establish a Negotiated Rulemaking Committee; Second Request for Nominations; Clarification of Selection Criteria; and Announcement of Nominees

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Second notice of intent to establish a negotiated rulemaking committee; request for comments.

**SUMMARY:** HUD again announces its intent to establish a negotiated rulemaking committee for the purpose of negotiating a proposed rule that would revise the allocation formula used under the Indian Housing Block Grant (IHBG) Program. HUD first published a notice of intent to establish a negotiated rulemaking committee, but due to the events of September 11, 2001, HUD was not able to act on this notice within the timeframes originally intended, and is therefore publishing a second notice.

This notice therefore: Again advises the public of the establishment of the committee; provides the public with information regarding the committee; again solicits nominations for selection to the committee; explains the nomination procedures and criteria that will be used to select members of the committee; announces the names of those who successfully completed applications under the original notice; and announces the tentative dates for the first meeting of the committee.

**DATES:** *Comment Due Date:* August 5, 2002.

**ADDRESSES:** Interested persons are invited to submit comments regarding the Committee and its proposed members to the Office of 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:** Ted Key, Acting Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4126, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 401–7914 (this number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On March 12, 1998 (63 FR 12349), HUD published its final rule implementing the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA). NAHASDA reorganized the system of Federal housing assistance to Native Americans by eliminating several separate HUD programs of assistance and replacing them with a single Indian Housing Block Grant (IHBG) Program. In addition to simplifying the process of providing housing assistance, NAHASDA provides Federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance. As required by NAHASDA, HUD developed the March 12, 1998 final rule with active tribal participation and used the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). The March 12, 1998, final rule created a new 24 CFR part 1000 containing the regulations for the IHBG Program.

Under the IHBG Program, HUD makes assistance available to tribes for Indian housing activities. The amount of assistance made available to each Indian tribe is determined using a formula that was developed as part of the NAHASDA negotiated rulemaking process. A regulatory description of the formula is located in subpart D of 24 CFR part 1000 (§§ 1000.301–1000.340). Generally, the amount of funding for a tribe is the sum of the formula's Need component and the Formula Current Assisted Stock (FCAS) component, subject to a minimum funding amount authorized by § 1000.328. Based on the amount of funding appropriated annually for the IHBG Program, HUD calculates the annual grant for each tribe and conveys this information to Indian tribes. An Indian Housing Plan (IHP) for the tribe is then submitted to HUD. If the IHP is found to be in compliance with statutory and regulatory requirements, the grant is made. In Federal fiscal year 2001, HUD allocated approximately $643.4 million to Indian tribes.

Section 1000.306 of the IHBG Program regulations provides that the allocation formula shall be reviewed within five years after issuance. This 5-year period does not close until March 2003. However, the recently enacted Omnibus Indian Advancement Act (Pub. L. 105–568, approved December 27, 2000) (Omnibus Act) makes several statutory changes to the IHBG allocation formula that HUD has decided to implement through rulemaking. Accordingly, HUD believes this would be an appropriate time to revisit the IHBG formula and to determine whether any changes, in addition to those mandated by the Omnibus Act, should be made to 24 CFR part 1000, subpart D.

The Omnibus Act made two statutory changes concerning allocations under the IHBG formula. First, section 1003(g) of the Omnibus Act amends section 302(d)(1) of NAHASDA to address the allocation of funds for operation and modernization of housing units developed under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) to tribes with an Indian housing authority that owns or operates fewer than 250 units. Further, section 1003(k)(3) of the Omnibus Act amends section 502(a) of NAHASDA to provide that any housing that was subject to a terminated contract for tenant-based assistance under the 1937 Act shall be treated as a dwelling unit for purposes of section 302(b)(1) of NAHASDA (which establishes the factors for determination of need under the IHBG formula).

## II. Negotiated Rulemaking

HUD intends to establish a negotiated rulemaking committee for the purpose of reviewing HUD's regulations for the IHBG formula (24 CFR part 1000, subpart D), and negotiating recommendations for a possible proposed rule modifying the formula. The committee membership will consist of elected officers of tribal governments (or authorized designees of those tribal governments) with a definable stake in the outcome of a proposed rule. The committee would be established, and conduct its work, in accordance with the procedures of the Negotiated Rulemaking Act of 1990.

The basic concept of negotiated rulemaking is to have the agency that is considering drafting a rule to bring together representatives of affected interests for face-to-face negotiations. The give-and-take of the negotiation process is expected to foster constructive, creative and acceptable solutions to difficult problems. The establishment of the negotiated rulemaking committee will offer Indian tribal governments the opportunity to have input into any changes determined to be necessary to improve the distribution of funds under the IHBG formula.

The use of negotiated rulemaking procedures in this matter is consistent with the statutory goal of NAHASDA to respect the rights of Indian self-determination and tribal self-governance. Negotiated rulemaking also conforms to the consultation requirements of Executive Order 13175, entitled ''*Consultation and Coordination with Indian Tribal Governments,*'' issued on November 6, 2000 (the Order was published in the **Federal Register** on November 9, 2000 at 65 FR 67249). Executive Order 13175 requires that Federal agencies establish regular and meaningful collaboration with Indian tribal officials in the development of Federal policies that have tribal implications.

Section 564 of the Negotiated Rulemaking Act of 1990 requires that an agency, prior to the establishment of a negotiated rulemaking committee, publish a notice in the **Federal Register** announcing its intent to establish the committee, provide certain information regarding the formation of the committee, and solicit nominations for selection to the committee. The purpose of this notice is to implement the requirements of section 564.

## III. Committee Membership

HUD's goal is to develop a committee whose membership reflects a balanced representation of Indian tribes. NAHASDA acknowledges the government-to-government relationship that exists between the Federal Government and federally-recognized Indian tribes. In furtherance of this fundamental principle, membership on the committee shall be limited to elected officers of tribal governments (or authorized designees of those tribal governments). After receiving comments that the size of the committee should be increased, HUD has determined that a total of 24 tribal representatives will fairly represent the wide range of diverse interests needed. Two HUD representatives will represent the interests of the Federal Government. HUD will pay travel and per diem costs on an as-needed basis.

Comments were received in response to the original notice stating that the definition of ''small, medium and large tribe'' was unclear. The Department determined that it was unnecessary to strictly define these terms in the original notice, as most tribes can calculate for themselves where their interests lie within these categories. That determination remains the case. In general, the Department will use guidelines that consider tribes with under 250 affordable housing units in management as small, those with between 250 and 500 units as medium, and those with over 500 units in management as large.

In response to the original notice on this subject published on July 16, 2001 (66 FR 37098), HUD received a total of 44 nominations to the committee. Approximately one-half of the nominees provided complete applications. The Department wrote to all nominees in November, 2001, informing those with complete applications that they would be considered for membership on the committee unless HUD was informed by them that they were no longer interested, and requesting those with incomplete applications to provide the missing information identified in the letter within 30 days. Due to mail service delays caused by events beyond the control of either the Department or the nominees, replies from some nominees have taken longer than 60 days to be received. HUD will be extremely flexible in accepting information from these nominees. To date, approximately one-half of those with missing information have replied to the letters. The Department will continue to accept mail replies containing this information as it arrives, or until the deadline for submission of the second round of applications, whichever is later.

Listed below are the names of the nominees with complete applications. They represent the first round of successful candidates. Under this notice, HUD is also announcing that, in the Department's opinion, the interests represented by successful candidates do not constitute sufficient geographic distribution or diversity. Therefore, the Department is soliciting additional applications for a second and final nomination process. HUD will review all applications received under criteria identical to the original notice, and again afford those with incomplete or otherwise deficient applications the opportunity to provide the missing or incomplete information. HUD will notify those nominees by letter. After the deadline has passed for submission of missing or incomplete information, the Department will select participants from a consolidated list of both the original and second-round nominees. No distinctions will be made between original and second-round nominees when final selections are made.

First-round nominees whose names are not listed below may reapply under this notice and will be given equal consideration to that given to other nominees. No additional opportunities to apply for participation on the committee will occur.

The successful nominees are: Sabrina Jacobs, Bruce LaPointe, Grace Bunner, Glenn Edwards, Russell Sossamon, Robert Carlile, Jefferson Keel, Marvin Jones, Robert Gauthier, Wayne Ducheneaux, Miles McAllister, Gillard White, Jack Sawyers, Darlene Tooley, Michael Reed, Phil Bush, Dennis Jose, Judith Marasco, Larry Coyle, Tim King, Herb Johns, Dale Jones, Virginia Brings Yellow, Elena Bassett, David Frey, Don Kashevaroff, Blake Kazama, Delbert Rexford, Carol Gore, Marty Shuravloff, Myron Naneg.

Section IV of this notice establishes criteria for nominating individuals with the requisite experience and expertise, representing a wide range of interests (including geographically diverse small, medium and large tribes) that are willing and able to work within a consensus framework, on determining the need to revise the IHBG allocation formula.

Comments were received that the ''experience'' criterion was exclusionary, as it required an applicant to have served as a member of a board of commissioners of a housing authority or housing entity, or as a board member of another tribal organization. We wish to clarify that an employee of a tribe, housing authority or housing entity, or other organization is eligible for membership, so long as that person

meets other requirements and provides evidence that they are authorized to represent the interests of the tribe or tribes which the person purports to represent. The phrase ''or other relevant experience'' has been added to clarify the intent of this criterion.

HUD invites interested persons and organizations to submit nominations for members of this committee. HUD will review the nominations submitted for committee membership to ensure that those selected will reflect the diversity of tribes in terms of size, location, and special circumstances. After review of all the nominations, HUD will publish a notice in the **Federal Register** announcing its proposed list of committee members, and soliciting public comment on the proposed membership.

HUD does not believe that each potentially affected tribe must have its own representative. However, HUD must be satisfied that the group as a whole reflects a proper balance and mix of interests. Negotiation sessions will be open to members of the public, so individuals and organizations that are not members of the committee may attend all sessions and communicate informally with members of the committee.

## IV. Nominations for Committee Membership

Interested persons and organizations may nominate persons for committee membership by submitting a written nomination to HUD at the address listed in the **ADDRESSES** section of this notice no later than August 5, 2002. Nominations for membership on the committee must include:

1. The name and address of the nominee and a description of the interests such person shall represent;
2. Evidence that the nominee is authorized to represent a tribal government or group of tribal governments related to the interests the person proposes to represent;
3. A written commitment that the nominee shall actively participate in good faith in the development of the rule under consideration; and
4. A written statement indicating how the nominee meets the following five selection criteria:

- The nominee is an elected tribal officer, or is otherwise authorized by the tribal government to act on the tribe's behalf during the negotiated rulemaking sessions;
- The nominee has demonstrated housing experience as a member of the board of commissioners of a housing authority or housing entity, or other organization, or other relevant experience;
- Selection of the nominee will help to ensure the committee contains an appropriate balance of representatives from small, medium and large Indian tribal governments;
- Selection of the nominee will ensure the geographic diversity of the committee membership; and
- The nominee has demonstrated ability to analyze and extrapolate complex data.

## V. Final Committee Membership

After reviewing any comments on this notice and all nominations for membership, HUD will issue a follow-up **Federal Register** notice. That notice will announce HUD's proposed list of negotiated rulemaking committee members, and provide the public with an opportunity to comment on the proposed membership. HUD will announce the final composition of the negotiated rulemaking committee in a subsequent **Federal Register** notice.

## VI. Tentative Schedule

At this time, HUD's tentative plan is to hold the first committee meeting on January 14 and 15, 2003, at the Denver Marriott City Center, 1701 California Street, Denver, CO 80202. The purpose of the meeting will be to orient members to the negotiated rulemaking process, to establish a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus, and to begin to address the issues. Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter.

Advance notice of committee meetings will be published in the **Federal Register**. Meetings of the negotiated rulemaking committee will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public will be provided the opportunity to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. In the event that the date and time of these meetings is changed, HUD will advise the public through **Federal Register** notice.

## VII. Applicability of the Federal Advisory Committee Act (FACA)

Comments were received about the applicability of FACA. The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) do not apply to this negotiated rulemaking committee. In accordance with section 204(b) of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, approved March 22, 1995), FACA is not applicable to consultations between the Federal government and elected officers of Indian tribal governments (or their designated employees with authority to act on their behalf).

The Office of Management and Budget (OMB) issued guidelines implementing section 204(b). The OMB guidelines interpret the exemption broadly to include State, local, or tribal representatives with the authority to act on behalf of the State, local, or tribal government, regardless of their actual employment status. As the OMB guidelines provide:

> In accordance with the legislative intent, the exemption should be read broadly to facilitate intergovernmental communications on responsibilities or administration. This exemption applies to meetings between Federal officials and employees and State, local or tribal governments acting through their elected officers, officials, employees, and Washington representatives, at which 'views, information, or advice' are exchanged concerning the implementation of intergovernmental responsibilities or administration, including those that arise explicitly or implicitly under statute, regulation, or Executive Order. The scope of meetings covered by this exemption should be construed broadly to include meetings called for any purpose relating to intergovernmental responsibilities or administration. Such meetings include, but are not limited to, meetings called for the purpose of seeking consensus, exchanging views, information, advice, and/or recommendations; or facilitating any other interaction relating to intergovernmental responsibilities or administration. (OMB Memorandum 95–20 (September 21, 1995), pp. 6–7, published at 60 FR 50651, 50653 (September 29, 1995)).

Additionally, on July 10, 2001 (66 FR 37728), the General Services Administration (GSA) updated its regulations governing Federal Advisory Committee Management, and in these regulations, the GSA codified the OMB guidance issued in 1995. GSA's regulations at 41 CFR 102–3.40 provide that FACA does not apply to committees composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local and tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities. The GSA provides that FACA does not apply to these groups with the following qualification:

> However, the purpose of such a committee must be solely to exchange views, information or advice relating to the management or implementation of Federal programs established pursuant to statute, that

explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), OMB Memorandum M–95–20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405–0002).

That FACA may not apply to this negotiated rulemaking committee does not necessarily mean that HUD, or HUD and the committee members, would decide not to apply FACA voluntarily. Additional comments on this issue are welcome.

Dated: June 27, 2002.

**Michael Liu,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 02–16766 Filed 7–3–02; 8:45 am]

BILLING CODE 4210–33–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 02–1480, MB Docket No. 02–02–152, RM–10457]**

### Television Broadcast Service; Wiggins, MS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by KB Prime Media LLC, an applicant for a construction permit for a new television station to operate on channel 56 at Wiggins, Mississippi, proposing the substitution of channel 46- for channel 56 at Wiggins. TV Channel 46- can be allotted to at reference coordinates 30–32–32 N. and 89–10–40 W.

**DATES:** Comments must be filed on or before August 22, 2002, and reply comments on or before September 6, 2002.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Shaw Pittman LLP, 2300 N Street NW., Washington, DC 20037–1128 (Counsel for KB Prime Media LLC).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–152, adopted June 24, 2002, and released July 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC, 20554. This document 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.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.606 [Amended]**

2. Section 73.606(b), the Table of Television Allotments under Mississippi, is amended by removing Channel 56+ and adding Channel 46- at Wiggins.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 02–16867 Filed 7–3–02; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 02–1479, MB Docket No. 02–151, RM–10453]**

### Digital Television Broadcast Service; Yuma, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Arizona Western College proposing the allotment of DTV channel 24 at Yuma, Arizona, as the community's first local noncommercial DTV allotment. DTV Channel *24 can be allotted to Yuma at reference coordinates 32–56–57 N. and 114–36–46 W. with a power of 540, a height above average terrain HAAT of 490 meters. Since the community of Yuma is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government must be obtained for this allotment.

**DATES:** Comments must be filed on or before August 22, 2002, and reply comments on or before September 6, 2002.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper

can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William K. Keane, Arter & Hadden LLP, 1801 K Street, NW., Third Floor L Street, Washington, DC 20006–1301 (Counsel for Arizona Western College).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–151, adopted June 24, 2002, and released July 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document 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.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.622 [Amended]**

2. Section 73.622(b), the Table of Digital Television Allotments under Arizona is amended by adding DTV channel *24 at Yuma.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 02–16868 Filed 7–3–02; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 02–1483, MB Docket No. 02–155, RM–10452]**

## Digital Television Broadcast Service; Charleston, WV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Pappas Telecasting of America, an applicant for a new station to operate on analog channel 23 at Charleston, West Virginia, proposing the substitution of DTV channel 52 for channel 23 at Charleston. DTV Channel 52 can be allotted to at reference coordinates 38–30–21 N. and 82–12–33 W. with a power of 100, a height above average terrain HAAT of 273 meters. Since the community of Charleston is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

**DATES:** Comments must be filed on or before August 22, 2002, and reply comments on or before September 6, 2002.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications, Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee G. Petro, Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, Virginia 22209–3801 (Counsel for Pappas Telecasting of America).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–155, adopted June 24, 2002, and released July 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document 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.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.606 [Amended]**

2. Section 73.606(b), the Table of Television Allotments under West Virginia is amended by removing channel 23 at Charleston.

**§ 73.622 [Amended]**

3. Section 73.622(b), the Digital Table of Television Allotments under West Virginia is amended by adding DTV channel 52 at Charleston.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 02–16869 Filed 7–3–02; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 02–1482, MB Docket No. 02–154, RM–10490]**

## Television Broadcast Service; Topeka, KS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Davis Television Topeka, LLC, an applicant for a new station to operate on channel 43 at Topeka, Kansas, proposing the substitution of channel 22 for channel 43. Channel 22 can be allotted to Topeka, Kansas, with a plus offset at reference coordinates 39–00–00 N. and 96–07–45 W.

**DATES:** Comments must be filed on or before August 22, 2002, and reply comments on or before September 6, 2002.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*).*See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:Dennis P. Corbett, Leventhal, Senter & Lerman, PLLC, Suite 600, 2000 K Street, NW., Washington, DC 20006–1809 (Counsel for Davis Television Topeka, LLC).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–154, adopted June 24, 2002, and released July 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document 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.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.606 [Amended]**

2. Section 73.606(b), the Table of Television Allotments under Kansas, is amended by removing Channel 43 and adding Channel 22+ at Topeka.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 02–16870 Filed 7–3–02; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 020620152-2152-01; I.D. 061102A]**

**RIN 0648–AQ11**

## Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Control Date for Atlantic Mackerel

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Advance notice of proposed rulemaking; notice of control date for the purposes of controlling entry in the Atlantic mackerel fishery.

**SUMMARY:** NMFS announces that it is considering, and is seeking public comment on, proposed rulemaking to control future access to the Atlantic mackerel (Scomber scombrus) resource if a management regime is developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that limits the number of participants in the fishery. This announcement is intended, in part, to promote awareness of potential eligibility criteria for future access so as to discourage speculative entry into the fishery while the Mid-Atlantic Fishery Management Council (Council) and NMFS consider whether and how access to the Atlantic mackerel fishery should be controlled. The date of publication of this notification, July 5, 2002, shall be known as the ''control date'' and may be used for establishing eligibility criteria for determining levels of future access to the Atlantic mackerel fishery subject to Federal authority.

**DATES:** Written comments must be received on or before 5 p.m., local time, August 5, 2002.

**ADDRESSES:** Written comments should be directed to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904–6790. Mark the outside of the envelope, ''Comments on Atlantic Mackerel Control Date.'' Comments also may be sent via facsimile (fax) to (302) 674–5399. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.

**SUPPLEMENTARY INFORMATION:** Atlantic mackerel (*Scomber scombrus*) is a migratory species that supports important recreational and commercial fisheries along the Atlantic coast of the United States and Canada. The most recent stock assessment (SAW 30, 2000) concluded that the stock biomass is at high levels and is under exploited. The Council developed the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish (FMP) to provide for the development of the U.S. Atlantic mackerel, squid, and butterfish (MSB) fisheries. An initial notice establishing a control date of August 13, 1992 (1992 control date), was issued for the MSB fisheries (57 FR 36384, August 13, 1992), which stated that as of that date no vessel would be guaranteed entry into a limited access fishery, if the Council chose to implement one. This 1992 control date was rescinded for Atlantic mackerel on September 27, 1994 (59 FR 49235), because the Council and NMFS believed that information regarding biomass levels, fishing levels, fishing effort, and catch indicated that the Atlantic mackerel fishery would not require limited-entry management in the foreseeable future. Removal of the 1992 control date also removed a disincentive to accessing this underutilized resource for vessel owners who were facing severe restrictions in other Northeast fisheries.

In Amendment 5 to the FMP, the Council included a provision that would require the Secretary of Commerce to publish a control date for the Atlantic mackerel fishery when commercial landings reached 50 percent of allowable biological catch. NMFS did not include this provision in the proposed rule because, as explained in the preamble to that rule (60 FR 65618, December 20, 1995), it was not considered a management measure to be implemented by regulation. Rather, it was viewed as a statement of Council intent. NMFS further noted that the Council could recommend the publication of a control date when it deemed the action necessary. At its May 1997 meeting, the Council requested that NMFS issue an advance notice of proposed rulemaking reestablishing a control date for Atlantic mackerel. The Council intended the control date to discourage new vessels from entering the fishery speculatively while the Council considered implementing a management program for this fishery that would control the rate on capitalization in the fishery. Amendment 5 to the FMP estimated that the hold capacity for vessels issued MSB permits approached 50,000 mt if each vessel made just one trip at full capacity. The Council members noted that this capacity, combined with reports that a large factory trawler might enter the fishery, raised concerns because the estimate of long-term potential yield for the fishery was 150,000 mt. Further, both NMFS and the Council had indicated that first preference for entry into this fishery should be afforded to Northeast region vessels as an alternative to traditional fisheries that have been severely overfished. For these reasons, the Council voted to request publication of a second control date for Atlantic mackerel.

A second control date of September 12, 1997 (62 FR 48047)(1997 control date), was established to discourage speculative entry into the Atlantic mackerel fishery while potential management regimes to control access into the fishery were discussed and possibly developed by the Council. The Council intended to consider a controlled access plan in an amendment to the FMP, however, subsequent amendments focused on other issues, including the need to address the requirements of the 1996 Sustainable Fisheries Act.

The Council recently adopted a recommendation for an increase in the 2003 Domestic Annual Processing (DAP) specification for Atlantic mackerel to 150,000 mt. This three fold increase in the DAP specification compared with specifications in previous years was based on testimony from members of the harvesting and processing sectors of the Atlantic mackerel industry who indicated that there is significant interest in expansion of domestic shore-side processing for Atlantic mackerel in 2003. While the proposed increase in DAP for 2003 is consistent with the FMP and current stock condition, the Council is concerned about rapid expansion of harvest capacity in the fishery and possible overcapitalization. In addition, the Council is concerned that nearly five years have passed since the 1997 control date was published. The Council requested at its April 2002 meeting that a new control date for the Atlantic mackerel fisher y be published.

Publication of this July 5, 2002, control date is intended to discourage speculative entry into the Atlantic mackerel fishery while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. Establishment of a new control date will help to distinguish established participants from speculative entrants to the fishery. Although participants are notified that entering the fishery after this new control date will not assure them of future access to the Atlantic mackerel resource on the grounds of previous participation, additional and/or other qualifying criteria also may be applied. The Council may choose different and variably weighted methods to qualify fishermen, based on the type and length of participation in the fishery or on the quantity of landings. This notice establishes July 5, 2002, for potential use in determining historical or traditional participation in the Atlantic mackerel fishery. This action does not commit the Council to develop any particular management regime or to

use any specific criteria for determining entry to the fishery. The Council may choose a different control date, or may choose a management program that does not make use of such a date. The Council may choose also to take no further action to control entry or access to the fishery. Any action by the Council will be taken pursuant to the requirements for FMP development established under the Magnuson-Stevens Act.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the Atlantic mackerel fishery in Federal waters.

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

Dated: June 28, 2002.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 02–16813 Filed 7–3–02; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[I.D. 062602E]**

**RIN 0648–AP71**

## Fisheries of the Exclusive Economic Zone off Alaska; Amendment 69 To Allow American Fisheries Act Inshore Pollock Cooperatives To Contract With Non-Member Vessels

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

**ACTION:** Notice of Availability (NOA); request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 69 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This amendment would allow an American Fisheries Act inshore pollock cooperative to contract with a non-member catcher vessel to harvest a portion of the cooperative's annual pollock allocation. The purpose of this action is to provide a means by which the members of a cooperative may harvest their entire pollock allocation in a safe and cost-effective manner.

**DATES:** Comments on Amendment 69 must be received at the following address by September 3, 2002.

**ADDRESSES:** Comments on Amendment 69 may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel-Durall. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK, 99801. Copies of Amendment 69 and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at (907) 586–7228.

**FOR FURTHER INFORMATION CONTACT:** Kent Lind, (907) 586–7228 or *kent.lind@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and comment.

The American Fisheries Act (AFA) established a system of inshore pollock cooperatives under which the owners of catcher vessels that deliver to a particular processor may form a cooperative and receive an exclusive allocation of Bering Sea and Aleutian Islands Management Area (BSAI) pollock. Subparagraph 210(b)(1)(B) of the AFA specifies that only the member vessels of a cooperative may harvest the cooperative's annual pollock allocation.

In 2000, several inshore catcher vessel owners petitioned the Council to provide cooperatives with greater flexibility to contract with non-member vessels. They argued that members of inshore cooperatives need greater flexibility to (1) increase efficiency and provide vessel owners with a more functional market for leasing of individual pollock allocations, (2) ensure that a cooperative is able to harvest its entire allocation in the event of vessel breakdowns or other unanticipated emergencies, and (3) improve safety by providing greater flexibility for larger vessels to harvest cooperative allocations during hazardous winter months and when Steller sea lion conservation measures require that fishing be done further offshore--outside of Steller sea lion critical habitat.

The Council concurred and adopted Amendment 69 in October 2000. This amendment would revise the inshore cooperative structure to allow an inshore cooperative to contract with a non-member AFA inshore catcher vessel that is a member of another inshore cooperative to harvest a portion of the cooperative's allocation. However, this amendment would not change cooperative memberships or authorize non-AFA vessels to harvest BSAI pollock.

Subsection 213(c) of the AFA provides the Council with the authority to recommend measures that supersede certain aspects of the AFA. Subsection 213(c) states:

> ''The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act–that supersede the provisions of this title, except for Sections 206 and 208 for conservation or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery.''

Amendment 69 would supersede inshore cooperative restrictions set out in paragraphs 210(b)(1)(B) and 210(b)(5) of the AFA.

Public comments are being solicited on the amendment through the end of the comment period stated in this NOA. A proposed rule that would implement the amendment may be published in the Federal Register for public comment following NMFS's evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment, whether specifically directed to the amendment or the proposed rule. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered in the approval/disapproval decision, comments must be received by the close of business on the last day of the comment period specified in this NOA; that does not mean postmarked or otherwise transmitted by that date.

Dated: June 28, 2002.

**Dean Swanson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 02–16812 Filed 7–3–02; 8:45 am]

**BILLING CODE 3510–22–S**

# Notices

Federal Register
Vol. 67, No. 129
Friday, July 5, 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

### Office of the Secretary

### Notice of Intent To Seek Approval To Collect Information

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice and request for public comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and the Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Office of the White House Liaison's intention to request an extension of the currently approved manner of information collection (form AD–755) for all Advisory Committee Membership Background Information—expiration July 31, 2002; with the inclusion of one item (#19) at the end of the form, to be detailed later in this announcement.

**DATES:** Comments on this notice must be received by September 9, 2002.

**ADDRESSES:** Address all comments concerning this notice to Denise Bell, Program Support Specialist, Office of the White House Liaison, Telephone: (202) 720–2406, 1400 Independence Avenue, SW., the Whitten Building, Room 219–A, Washington, DC 20250.

**SUPPLEMENTARY INFORMATION:** Advisory Committee Membership Background Information. OMB Number 0505–0001.

**FOR FURTHER INFORMATION CONTACT:** Denise Bell at the above address or telephone: (202) 720–2406.

*Expiration Date of Approval:* July 31, 2002.

*Type of Request:* To extend the use of the currently approved information collection form (AD–755) with one addition to the form.

*Abstract:* The primary objective for the use of the AD–755 form is to determine the qualifications, suitability and availability of a candidate to serve on advisory committees and/or research and promotion boards. The information will be used to both conduct background clearances and to compile annual reports on advisory committees.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 30 minutes per respondent.

*Respondents:* Individuals or households.

*Estimated number of respondents:* 1,631.

*Estimated number of responses per respondent:* 1.

*Estimated total annual burden on respondents:* 815.

*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 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. (d) Finally, ways to minimize the burden of the collection of information on those who are to respond; such as through the use of appropriate automated, electronic, mechanical or other technological collection techniques or forms of information technology.

*Additional Information:* The USDA intends to provide electronic access and a submission alternative for applicants submitting this information on or before December 31, 2002.

*Proposed Change to form AD–755:* The Office of the White House Liaison proposes the addition of a section 19, requesting that a copy of the applicant's personal biography and/or résumé be submitted along with form AD–755.

*Send comments to:* Denise Bell, Program Support Specialist. Office of the White House Liaison. 1400 Independence Avenue, SW. The Whitten Building, Room 219–A Washington, DC 20250.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Dated: June 28, 2002.

**Ann M. Veneman,**

*Secretary of Agriculture.*

[FR Doc. 02–16826 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–01–M

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Solicitation of Applicants for Membership on a National Board on Rural America

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice.

**SUMMARY:** The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) was amended by section 6030 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) to create the National Board on Rural America. The Act provides that the Board shall consist of 14 members appointed by the Secretary. This notice solicits candidates interested in serving on this Board. Qualifications for candidates are specified in the **SUPPLEMENTARY INFORMATION** section of this Notice. Other than recommendations by elected members of Federal, State or county governments, nominations will be accepted from organizations only and should be on the organization's letterhead. Nominations from individuals, either for themselves or others, will not be considered.

**DATES:** Submit a completed application by 5:00 p.m. on July 19, 2002.

**ADDRESSES:** Submit completed written applications to the Office of the Under Secretary, Rural Development. ATTN: Duane Ischer. 1400 Independence Avenue, SW., Room 206–W, STOP 0107, Washington, DC 20250–0107 or by FAX to 202–720–2080. To ensure timely delivery, nominations may be faxed to (202) 720–2080.

**FOR FURTHER INFORMATION CONTACT:** Duane Ischer, Office of the Under Secretary, Rural Development, 202–720–2721. E-Mail: *Duane.Ischer@USDA.GOV.*

**SUPPLEMENTARY INFORMATION:** The Act provides that, in addition to the Secretary or the designee of the Secretary, the National Board shall consist of 14 members appointed by the Secretary from among representatives of:

(1) Nationally recognized entrepreneurship organizations;

(2) Regional planning and development organizations;

(3) Community-based organizations;

(4) Elected members of county governments;

(5) Elected members of State legislatures;

(6) The rural philanthropic community; and

(7) Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

An AD Form 755, Nominee Background Information, is required for each nominee. A copy of the AD Form 755 is available on the USDA Rural Development Web site at *http://www.rurdev.usda.gov/rd/farmbill2002.html.*

The term of office initially will be 4 years for 5 members, 3 years for 5 members, and 2 years for 4 members. After the initial term, the term will be for 4 years.

The responsibilities of the board include developing a national strategic investment plan for rural America and overseeing the delivery of planning and innovation grants to regional boards.

Dated: June 27, 2002.

**Ann M. Veneman,**

*Secretary.*

[FR Doc. 02–16825 Filed 7–3–02; 8:45 am]

**BILLING CODE 3410–XY–M**

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 02–073–1]**

### Notice of Request for Extension of Approval of an Information Collection

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

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations for the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico.

**DATES:** We will consider all comments we receive on or before September 3, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–073–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–073–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–073–1'' on the subject line.

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

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

**FOR FURTHER INFORMATION CONTACT:** For information on the regulations regarding importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico, contact Dr. Michael David, Assistant Director, Sanitary International Standards Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737; (301) 734–8093. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**SUPPLEMENTARY INFORMATION:**

*Title:* Importation of Poultry Meat and Other Poultry Products from Sinaloa and Sonora, Mexico.

*OMB Number:* 0579–0144.

*Type of Request:* Extension of approval of an information collection.

*Abstract*: The United States Department of Agriculture (USDA) is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction of contagious, infectious, or communicable diseases of livestock and poultry and for eradicating such diseases from the United States when feasible. In connection with this mission, Veterinary Services of the Animal and Plant Health Inspection Service, USDA, regulates the importation of animals and animals products in order to prevent the introduction of animal diseases, such as exotic Newcastle disease, into the United States. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR) in title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

We currently have regulations in place that restrict the importation of poultry meat and other poultry products from Mexico and other regions of the world where exotic Newcastle disease has been determined to exist. However, we allow the importation, under specified conditions, of poultry meat and poultry products from the Mexican States of Sinaloa and Sonora because we have determined that poultry meat and products from these two Mexican States, when imported in accordance with those conditions, pose a negligible risk of introducing exotic Newcastle disease into the United States. To ensure that these items are safe for importation, we require that certain data appear on the foreign meat inspection certificate that accompanies the poultry meat or other poultry products from Sinaloa and Sonora. We also require that serially numbered seals be applied to containers carrying the poultry meat or other poultry products. These requirements necessitate the use of information collection activities.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

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

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

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

*Estimate of burden*: The public reporting burden for this collection of information is estimated to average 1 hour per response.

*Respondents*: Federal animal health authorities in Mexico, and personnel in Sinaloa and Sonora, Mexico, who operate slaughtering and processing plants and who engage in the export of poultry meat and other poultry products to the United States.

*Estimated annual number of respondents:* 10.

*Estimated annual number of responses per respondent:* 4.

*Estimated annual number of responses:* 40.

*Estimated total annual burden on respondents*: 40 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of June, 2002.

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 02–16824 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 01–009–4]**

### Wildlife Services; Availability of a Supplemental Decision/Finding of No Significant Impact for Oral Rabies Vaccine Program

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

**ACTION:** Notice and request for comments.

**SUMMARY:** We are advising the public that we have prepared a supplement to an August 2001 decision/finding of no significant impact relative to oral rabies vaccination programs in several States. Since the publication of our original decision/finding of no significant impact, we have determined there is a need to expand the oral rabies vaccine program to include the States of Kentucky and Tennessee to effectively stop the westward spread of raccoon rabies. The purpose of the new decision/finding of no significant impact is to facilitate planning, interagency coordination, and program management and to provide the public with our analysis of potential individual and cumulative impacts of an expanded oral rabies vaccine program.

**DATES:** We will consider all comments that we receive by August 5, 2002. Unless new substantial issues bearing on the effects of the proposed expansion of the oral rabies vaccine program are brought to our attention, the new decision/finding of no significant impact will take effect upon the close of the comment period.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–009–4, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–009–4. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–009–4'' on the subject line.

To obtain copies of the environmental assessment, the original decision/finding of no significant impact, and the supplemental decision/finding of no significant impact, contact Tara Wilcox, Operational Support Staff, Wildlife Services, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234; phone (301) 734–7921, fax (301)734–5157, or e-mail: *tara.c.wilcox@aphis.usda.gov*. When requesting copies, please specify the document or documents you wish to receive.

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

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Dennis Slate, Rabies Program Coordinator, Wildlife Services, APHIS, 59 Chennell Drive, Suite 7, Concord, NH 03301–8548; phone (603) 223–6832.

**SUPPLEMENTARY INFORMATION:**

### Background

The Wildlife Services (WS) program in the Animal and Plant Health Inspection Service (APHIS) cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing conflicts between wildlife and human health and safety, agriculture, property, and natural resources. Wildlife-borne diseases that can affect domestic animals and humans are among the types of conflicts that APHIS–WS addresses. Wildlife is the dominant reservoir of rabies in the United States.

On December 7, 2000, a notice was published in the **Federal Register** (65 FR 76606–76607, Docket No. 00–045–1) in which the Secretary of Agriculture declared an emergency and transferred funds from the Commodity Credit Corporation to APHIS–WS for the continuation and expansion of oral rabies vaccination (ORV) programs to address rabies in the States of Ohio, New York, Vermont, Texas, and West Virginia.

On March 7, 2001, we published a notice in the **Federal Register** (66 FR 13697–13700, Docket No. 01–009–1) to solicit public involvement in the planning of a proposed cooperative program to stop the spread of rabies in the States of New York, Ohio, Texas, Vermont, and West Virginia. The notice also stated that a small portion of northeastern New Hampshire and the western counties in Pennsylvania that border Ohio could also be included in these control efforts, and discussed the possibility of APHIS–WS cooperating in smaller-scale ORV projects in the States of Florida, Massachusetts, Maryland, New Jersey, Virginia, and Alabama. The March 2001 notice contained detailed information about the history of the problems with raccoon rabies in eastern States and with gray fox and coyote rabies in Texas, along with information about previous and ongoing efforts using ORV baits in programs to prevent the spread of the rabies variants or ''strains'' of concern.

Subsequently, on May 17, 2001, we published in the **Federal Register** (66 FR 27489, Docket No. 01–009–2) a notice in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental effects of the ORV programs described in our March 2001 notice. We solicited comments on the EA for 30 days ending on June 18,

2001. We received one comment by that date. The comment was from an animal protection organization and supported APHIS' efforts toward limiting or eradicating rabies in wildlife populations. The commenter did not, however, support the use of lethal monitoring methods or local depopulation as part of an ORV program.

Finally, on August 30, 2001, we published a notice in the **Federal Register** (66 FR 45835–45836, Docket No. 01–009–3) in which we advised the public of APHIS' decision and finding of no significant impact (FONSI) regarding the use of oral vaccination to control specific rabies virus strains in raccoons, gray foxes, and coyotes in the United States. That decision allows APHIS–WS to purchase and distribute ORV baits, monitor the effectiveness of the ORV programs, and participate in implementing contingency plans that may involve the reduction of a limited number of local target species populations through lethal means (i.e., the preferred alternative identified in the EA). The decision was based upon the final EA, which reflected our review and consideration of the comments received from the public in response to our March 2001 and May 2001 notices and information gathered during planning/scoping meetings with State health departments, other State and local agencies, the Ontario Ministry of Natural Resources, and the Centers for Disease Control and Prevention.

Since the August 2001 publication of our original decision/FONSI, we have determined there is a need to expand the ORV programs to include the States of Kentucky and Tennessee to effectively stop the westward spread of raccoon rabies. The purpose of the new decision/FONSI is to facilitate planning, interagency coordination, and program management and to provide the public with our analysis of potential individual and cumulative impacts of the expanded ORV programs.

The States where APHIS–WS involvement would be continued or expanded include Kentucky, Tennessee, New York, Ohio, Texas, Vermont, Florida, Virginia, and West Virginia. A small portion of northwestern New Hampshire and the western counties in Pennsylvania that border Ohio could also be included in these control efforts. In addition, APHIS–WS may cooperate in smaller-scale ORV projects in the States of Florida, Massachusetts, Maryland, New Jersey, and Alabama as part of the proposed action. As noted above, the primary goal of the ORV programs is to stop the spread of specific strains of the rabies virus, i.e., raccoon rabies in the eastern States and gray fox and coyote rabies in Texas. The EA analyzed the proposed action and several alternatives with respect to a number of environmental and other issues raised by involved cooperating agencies and the public. Analyses of the potential impacts of ORV programs in those specific geographic areas that were not examined in the EA are presented in the supplemental decision/FONSI and have been incorporated into the decisionmaking process.

The EA, the August 2001 FONSI, and the supplemental FONSI that is the subject of this notice have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 28th day of June, 2002.

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 02–16823 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–34–P

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 98–090–3]**

### Classical Swine Fever: Availability of Risk Analysis Related to the Importation of Swine and Swine Products From the European Union

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

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** We are reopening and extending the comment period for a revised analysis of the risk of introducing classical swine fever virus in swine and swine products imported from the European Union. This action will allow interested persons additional time to prepare and submit comments.

**DATES:** We will consider all comments that we receive on or before July 17, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 98–090–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–090–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 98–090–2'' on the subject line.

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

You may request a copy of ''Risk Analysis for Importation of Classical Swine Fever in Swine and Swine Products from the European Union December 2000'' by writing to the person listed below under **FOR FURTHER INFORMATION CONTACT**. The risk analysis is also available on the Internet. Instructions for electronic access are included below under **SUPPLEMENTARY INFORMATION**.

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

**FOR FURTHER INFORMATION CONTACT:** Dr. Anne Goodman, Supervisory Staff Officer, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 3, 2002, we published in the **Federal Register** (67 FR 22388–22389, Docket No. 98–090–2) a notice of the availability of and request for comments on a revised risk analysis of the risk of introducing classical swine fever virus in swine and swine products imported from the European Union.

Comments on the revised risk analysis were required to be received on or before July 2, 2002. We are reopening and extending the comment period on the risk analysis for an additional 15 days ending July 17, 2002. This action

will allow interested persons additional time to prepare and submit comments.

*Accessing the Revised Risk Analysis on the Internet*

The Internet address for accessing the revised risk analysis is *http://www.aphis.usda.gov/vs/reg-request.html*. At the bottom of that Web site page, click on ''Information previously submitted by Regions requesting export approval and their supporting documentation.'' At the next screen, click on the triangle beside ''European Union/Not Specified/Classical Swine Fever,'' then on the triangle beside ''Response by APHIS.'' A link will then appear for ''Risk Analysis for Importation of Classical Swine Fever Virus in Swine and Swine Products from the European Union December 2000.'' Following that link will allow you to view the revised risk analysis.

**Authority:** 7 U.S.C. 450, 1622, 7711–7714, 7751, 7754, 8303, 8306, 8307, 8308, 8310, 8311, 8313, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 2nd day of July 2002.

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 02–16992 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### Notice of Funds Availability (NOFA) Inviting Applications for the Horse Breeder Loan Program

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice.

**SUMMARY:** This Notice announces the availability of funding to implement the Horse Breeder Loan Program as required by section 759 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Act) (Pub. L. 107–76), which was enacted November 28, 2001. The Act directed the Secretary to implement a temporary low-interest loan program to assist horse breeders suffering economic loss as a result of mare reproductive loss syndrome (MRLS).

**DATES:** The Agency will begin accepting applications on July 1, 2002. The deadline for receipt of an application Form FSA 410–1 is September 30, 2002. The Agency will not consider any application received after the deadline. The application package must be completed by June 30, 2003. Authority to make Horse Breeder loans terminates September 30, 2003. Comments on the information collection associated with this notice must be received on or before September 3, 2002, to be given full consideration.

**ADDRESSES:** General information and the application form FSA 410–1 may be obtained from the FSA Internet web site at: *www.fsa.usda.gov* or the USDA, Farm Service Agency listed in your local telephone directory.

**FOR FURTHER INFORMATION CONTACT:** Cathy Quayle, Senior Loan Officer or Patrick Spalding, Senior Loan Officer, USDA/FSA/DAFLP/STOP 0522, 1400 Independence Avenue, SW, Washington, DC 20250–0522; telephone (202) 720–1472; facsimile (202) 720–6797; electronic mail: *Cathy_Quayle@wdc.usda.gov* or *Patrick_Spalding@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires consultation with State and local officials.

During the 2001 horse breeding season, horse breeders suffered from an overwhelming number of early and late term fetal losses. Even with possible improvement in the coming breeding seasons, the economic impact on breeders will present financial difficulties over an extended period. The Agency is required by section 759(c) of the Act to make loans available to eligible horse breeders who have suffered a qualifying loss as a result of MRLS. Researchers have not pinpointed the exact cause of MRLS; however, as a result of extensive studies, common factors that are believed to have been the cause have been identified. The Agency is adopting the definition of MRLS developed by experts from the equine industry that is recognized and accepted by veterinarians.

These loans will mitigate the income loss and reduction in credit availability faced by horse breeders. Assistance is limited to only those horse breeders who have suffered losses as a result of MRLS, cannot obtain sufficient credit elsewhere and meet all other requirements established in this notice. To assure that the recipients of these loans are those most impacted by the effects of MRLS, eligibility requirements are restrictive. As required by the Act, the horse breeder must derive more than 70 percent of their income from breeding, boarding, raising, training, or selling horses. The losses must have resulted from MRLS, and at least 30 percent of the mares owned, or boarded on a farm owned, operated, or leased by the breeder must have failed to conceive, miscarried, aborted or otherwise failed to produce a live, healthy foal.

All persons approved for loan assistance must execute loan instruments and legal documents to secure the loan. For entity applicants, the loan instruments and legal documents must be executed in the name of the entity and all officers or partners and any board members. Horse Breeder loans are not made under the authority of the Consolidated Farm and Rural Development Act (CONACT), (7 U.S.C. 1961 *et seq.*); therefore, the Agency will service Horse Breeder loans in accordance with existing non-program Agency regulations in 7 CFR part 1951, subpart J, or its successor regulation. The Agency will not provide direct farm loan program loan servicing benefits to Horse Breeder Loan Program borrowers.

#### Environmental Compliance

The environmental impacts of the loan program to be implemented by this NOFA have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321, *et seq.*) Based on the nature and scope of this notice, FSA has concluded that the notice will not have any significant impacts upon the human environment as documented through the completion of an environmental assessment. A copy of the environmental assessment is available for inspection and review upon request. Therefore, FSA has developed a Finding of No Significant Impact (FONSI) pursuant to NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 1940, subpart G.

#### Paperwork Reduction Act

A request for emergency clearance of the information collections associated with this notice has been submitted to the Office of Management and Budget (OMB) under 5 CFR 1320.13(a)(2)(iii).

In accordance with the Paperwork Burden Reduction Act of 1995, FSA will provide a regular submission of the information collection package to OMB at the end of the comment period for the following notice.

*Title:* Horse Breeder Loans.

*OMB Control Number:* 0560–NEW.

*Type of request:* Request for review and extension.

*Abstract:* The collection of the information required by this notice is

required in order to certify that applicants for loans are eligible to receive benefits. The information will be collected from applicants in paper form by Agency loan approval officials in the county office that serves the applicant's geographic area. The information will be used and evaluated by the loan approval official to determine if the applicant meets the criteria established by the Agency. The information may be viewed, used and monitored by other Agency or USDA officials, and may be released in accordance with the Privacy Act or Freedom of Information Act. The information will be collected on an as needed basis. Failure to collect this information may result in persons receiving benefits other than intended program beneficiaries.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average .63 hours per response.

*Respondents:* Farms, individuals and businesses.

*Estimated number of respondents:* 800.

*Estimated number of responses per respondent:* 1.

*Estimated total annual burden on respondents:* 1258 hours.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden collection on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be addressed to Cathy Quayle, Senior Loan Officer, USDA, Farm Loan Programs, STOP 0522, 1400 Independence Avenue, SW, Washington DC 20250–0522. Comments are assured of having effect if received within 60 days of this notice. Comments received after that date will be considered to the extent practicable. All comments received in response to this notice, including names and addresses, will be a matter of public record. Copies of the submission may be obtained from Cathy Quayle by calling (202) 690–4018.

## I. Definitions Applicable to Horse Breeder Loans

*Additional security* is property that provides security in excess of the amount of security value equal to the loan amount.

*Adequate security* is property that provides a security value at least equal to the amount of the loan.

*Agency* is the Farm Service Agency, its employees, and any successor agency.

*Applicant* is the individual or business entity applying for the loan.

*Approval official* is an Agency official who has been delegated approval authorities within applicable loan programs.

*Bred* is the attempt to produce offspring by sexual union or artificial insemination.

*Business entity* is a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

*Cash flow budget* is a projection listing all anticipated cash inflows (including all farm income, non-farm income and all loan advances) and all cash outflows (including all farm and non-farm debt service and other expenses) to be incurred by the borrower during the period of the budget. A cash flow budget may be completed either for a 12-month period, a typical production cycle, or the life of the loan, as appropriate.

*False information* is information provided by an applicant, borrower, or other source to the Agency which is known by the provider to be incorrect, and was provided to the Agency in order to obtain benefits for which the applicant or borrower would not otherwise have been eligible.

*Feasible plan* is a plan that demonstrates that the loan will be repaid as agreed, as determined by the Agency. The plan must demonstrate that the applicant will meet all other credit needs and obligations, including judgments, for which the applicant is legally responsible.

*Financial needs* are ordinary and necessary expenses, and financial obligations which are incurred, in connection with the horse breeder business.

*Financial obligations* are the debts owed by the horse breeder that are directly related to the horse breeder business.

*Horse* is any mammal in the genus Equus, to include but not limited to ass, mule, pony and donkey.

*Horse breeder* is an individual or business entity who as of November 28, 2001, derives more than 70 percent of their gross income from the horse breeding business during the shorter of:

1. The 5-year period ending on January 1, 2001; or

2. the period the individual or business entity has been engaged in the horse breeder business.

*Horse breeder business* is the business of breeding, boarding, raising, training, or selling horses.

*Losses* are the verifiable damages of the interrupted horse reproductive process resulting from MRLS.

*Mare Reproductive Loss Syndrome (MRLS)* is, during the period beginning April 24, 2001, and ending June 30, 2001, the occurrence of any of the following equine medical conditions:

1. Early- and late-term equine fetal losses;
2. Pericarditis;
3. Epicarditis;
4. Unilateral endophthalmitis; or
5. Panophthalmitis.

*Ordinary and necessary expenses* are the operating expenses directly related to the horse breeder business, including, but not limited to: taxes, feed, veterinary expenses, fixtures and farm maintenance.

*Readily available* is when the insurance is sold by insurance agents in the applicant's normal trade area.

*Security* is property or right of any kind that is subject to a real or personal property lien. Any reference to ''collateral'' or ''security property'' will be considered a reference to the term ''security.''

*States or United States* is the United States itself, any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*United States non-citizen national* is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals (subject to certain residency requirements).

## II. Appeals

An applicant or borrower may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR parts 11 and 780 or its successor regulation.

## III. Eligibility Requirements

Applicants must meet all of the following requirements to be eligible for a Horse Breeder loan:

1. *Timely application.* The applicant must submit a signed form FSA 410–1 completed to the best of the applicant's ability to the Agency no later than September 30, 2002.

2. *Horse breeder.* The applicant must be a horse breeder as defined by this notice.

3. *Qualifying loss.* During the period beginning January 1 and ending October

1 of any calendar year 2000, 2001 or 2002:

(a) 30 percent or more of the mares owned by the applicant failed to conceive, miscarried, aborted or otherwise failed to produce a live healthy foal; or

(b) 30 percent or more of mares boarded on a farm owned, operated or leased by the applicant failed to conceive, miscarried, aborted or otherwise failed to produce a live healthy foal.

4. *Financial need.* The applicant is be unable to meet financial obligations, or pay ordinary and necessary expenses incurred in connection with the horse breeder business.

5. *Test for credit.* The applicant must be unable to obtain sufficient credit elsewhere at reasonable rates and terms.

(a) To establish this, the applicant must obtain written denials of credit from legally organized commercial lending institutions within reasonable proximity of the applicant that specify the reasons for the denial as follows:

(1) In the case of a loan request of $300,000 or more, two written denials of credit are required.

- One of these lenders must be the applicant's normal lender.
- Both lenders must typically make horse breeder business loans.

(2) In the case of a loan request of less than $300,000, one written denial of credit is required.

- The applicant's normal lender will be contacted unless the lender has already denied a request to continue with the applicant or extend additional credit.
- The applicant may contact another lender that makes horse breeder business loans.

(3) In the case of a loan request of $100,000 or less, the Agency may waive the requirement for obtaining a written denial of credit if the Agency determines that requiring a written denial would pose an undue burden on the applicant and based on the applicant's circumstances credit is not likely to be available.

(b) Notwithstanding the applicant's submission of the required written denial of credit, the Agency may contact other commercial lending institutions within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere.

(c) When the applicant is an entity, all individuals, members, stockholders, and partners must meet test for credit requirements.

6. *Citizenship.* The applicant must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws. For an entity applicant, the majority of the entity must be owned by members meeting the citizenship test or other entities that are domestically owned.

7. *Legal capacity.* The loan applicant must be of legal age, mental capacity, and have the authority to enter into a legally binding agreement. An entity applicant, and all entity members who will execute the promissory note, must meet this requirement.

8. *Federal debt.* At loan closing, the applicant and anyone who will execute the promissory note must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986, nor be a federal judgment debtor on a non-tax debt.

9. *Unpaid judgement.* At loan closing the applicant and anyone who will execute the promissory note must not have any outstanding unpaid judgements obtained by the United States in any court.

10. *False information.* The applicant, in past or present dealings with the Agency, must not have knowingly provided the Agency with false information.

11. *Credit history.* The individual or business entity applicant and all entity members must have acceptable credit history demonstrated by debt repayment. A history of failure to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate unacceptable credit history.

12. *Repayment.* The applicant must submit a feasible plan as defined in this notice.

## IV. Loan Uses

Loan funds only may be used to:

1. Pay ordinary and necessary expenses for the horse breeding business.

2. Replace mares and foals lost or disabled due to MRLS.

3. Purchase or lease additional existing pasture to replace pasture where a veterinarian or other recognized expert has determined the potential for MRLS exists.

4. Pay or refinance financial obligations as defined by this notice, provided the applicant can demonstrate a need to do so.

5. Pay loan closing costs.

## V. Limitations

1. The maximum cumulative loan amount any individual or business entity may receive under this notice is limited to $500,000.

2. The amount of the loan is further limited to the lesser of; (a) the financial needs of the applicant; or (b) the amount of loss suffered by the applicant as measured by Section XI of this notice.

3. Outstanding loan balances from Agency Farm Loan Programs, direct or guaranteed, will not affect the amount an applicant is eligible to receive under this section.

## VI. Prohibited Use of Loan Funds

1. Loan funds may not be used to pay expenses incurred for lobbying or related activities.

2. Loan funds may not be used for any purpose which contributes to excessive erosion of highly-erodible land or to the conversion of wetlands to produce an agricultural commodity.

3. Loan funds may not be used to refinance consumer debt, such as home equity loans, automobile loans, or credit card debt unless such debt is directly attributable to the horse breeder business operation.

4. Loan funds may not be used to pay Federal judgments.

## VII. Loans to Agency Employees

Loans may be made to Agency employees otherwise qualified for the loans.

## VIII. Federal Equal Credit Opportunity Act (ECOA)

The Agency must comply with the provisions of ECOA and the implementing regulations of the Federal Reserve System published in 12 CFR part 202.

## IX. Environmental Compliance

1. The environmental and historic preservation requirements contained in 7 CFR part 1940, subpart G or its successor regulation must be met prior to approval of any loan.

2. In order to minimize the financial risk associated with contamination of real property from hazardous waste and other environmental concerns, the Agency will complete an environmental risk evaluation.

(a) The Agency will not accept as security any real estate which has significant environmental risks, such as, but not limited to the presence of known or suspected underground storage tanks or hazardous waste.

(b) If the real estate offered as security contains significant environmental risks, the Agency will provide the applicant with the option of properly correcting or removing the risk, at the applicant's expense or offering other non-contaminated property as security for the loan.

**X. Other Federal, State, and Local Requirements**

Horse Breeder loan borrowers are required to comply with all applicable:

1. Federal, State, or local laws;

2. Regulatory commission rules; and

3. Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(a) Borrowing money, pledging security, and raising revenues for repayment of debt;

(b) Accounting and financial reporting; and

(c) Protection of the environment.

4. Any construction financed by the Agency must comply with applicable Federal, State, local, and industry building standards.

**XI. Loss Calculations**

1. (a) The applicant's Federal income tax and business records will the primary source of financial information for the loss calculation. Sales, receipts, invoices, or other official sale records will document the sales price of individual animals as referenced in paragraph (2) of this section.

(b) If the applicant does not have 3 complete years of business records, the Agency will obtain the most reliable and reasonable information available from sources such as the Cooperative Extension Service, universities, and breed associations to document production and expenses for those years for which the applicant does not have a complete year of business records. To the extent such additional information is unavailable, the Agency will use the applicant's available business records to make realistic income and expense calculations.

2. To determine the value of foals lost or disabled as a result of MRLS:

(a) The average sales price of horses sold by the applicant will be determined by adding the total proceeds from the sales of horses including only: weanlings, yearlings and 2-year old offspring for the previous 3 non-loss years, and dividing by the number of horses sold during those 3 years.

(b) The average sales price will be multiplied by the number of mares shown on the veterinarian certification that failed to conceive or produce a live healthy foal due to MRLS.

3. To determine the value of all other losses:

(a) Calculate the average annual net income for the horse breeder business for the previous 3 non-loss years, and subtract the horse breeder business net income for the loss year.

(b) The annual net income for the horse breeder business will be determined by subtracting all cash business expenses and proceeds from sales of weanlings, yearlings, and 2 year old offspring, from all business income reported on Schedule F and other related schedules of the applicant's Federal income tax return. Any depreciation shown on Schedule F is not a cash expense and must not be included as an expense in loss calculations.

(c) The average annual net income for the horse breeder business shall be calculated by adding the applicant's horse breeder business annual net income from the previous 3 non-loss years and dividing by 3.

4. The results of the calculations from paragraphs 2 and 3 of this section shall be added together to determine the total amount of loss the applicant has suffered as a result of MRLS.

**XII. Complete Loan Application**

An Agency application Form FSA 410–1, completed to the best of the applicant's ability and submitted on or before September 30, 2002, will meet the application deadline. However, a loan decision will not be made until a complete application is received in accordance with this section. All forms listed are available at any Agency office. The Agency will not consider any application that is not complete as of June 30, 2003. A complete loan application includes all of the following items:

1. A completed form FSA 410–1.

2. If the applicant is a business entity, all legal documents evidencing the organization and any state recognition of the entity such as articles of incorporation or partnership agreements. The application must include the following information for each entity member:

(a) Name.

(b) Address.

(c) Social Security number, or IRS tax ID number for a member that is a business entity.

(d) Percent ownership interest in the entity.

(e) In the case of a member that is itself a business entity, legal documents evidencing the organization and any State recognition of the entity.

3. Verification that the applicant or individual members of an entity applicant cannot obtain credit elsewhere including a loan guarantee by a State or other Federal agency.

4. Income tax and business records for the lesser of the previous 3 years or the number of years in business.

5. A current balance sheet that was prepared within 90 days of the date of application.

6. Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FSA 431–2 or other similar plan of operation acceptable to the Agency.

7. Verification of off-farm employment, and other non-farm income, if any. This will be required only when the applicant is relying on off-farm income for a feasible plan.

8. A legal description of farm, real estate property securing the loan and a copy of any lease, contract, option or agreement, or a written statement setting forth terms or conditions of any agreement entered into by the applicant which may be pertinent to consideration of the application.

9. A written certification from a licensed veterinarian, see Exhibit 1 sample, stating the number of mares:

(a) Owned or boarded that were bred.

(b) That failed to conceive or otherwise produce a live healthy foal.

10. A credit report fee of $28.00 for individual applicants, $34.00 for joint applicants and $40.00 for commercial business applicants.

11. Any other documents requested by the Agency and needed to process the application.

**XIII. Interest Rate**

Loans closed in accordance with this notice will be charged interest at the rate established for Emergency loans in 7 CFR part 764. Current rates are available at any Agency office.

**XIV. Terms**

1. *Repayment period.* The Agency schedules repayment of Horse Breeder loans based on the useful life of the loan security and the applicant's repayment ability, but not to exceed 20 years. Loans secured only by collateral other than real estate shall not exceed 7 years. If necessary to improve the repayment ability of the borrower and real estate security is available, the term of the loan may be extended up to a total length not to exceed 20 years from the date of the promissory note. Balloon installments are prohibited. Balloon installments are final installments that exceed twice the amount of the regular amortized installment.

2. *Minimum payment requirement.* The repayment schedule must include at least one payment every year. Payments must be no less than the interest accrued on the principal balance at the time the installment is to be paid and may not result in a prohibited balloon installment.

**XV. Security Requirements**

1. The applicant shall have sufficient equity to provide adequate security for

the loan. In addition, the applicant shall provide additional security, if available, not to exceed 150 percent of the loan amount.

2. Loans shall be secured by collateral that can be adequately described in security instruments.

3. The Agency will take the best lien obtainable on the following security, if available, as necessary to protect the Government's interest. The security will be taken in the order of priority as follows:

(a) *Real Estate.* A survey is not required if the property is adequately described. The applicant is responsible for obtaining and paying any costs for documentation necessary to properly identify the security property.

(b) *Chattels and crops, other than horses.* Chattels consist of equipment or livestock, other than horses. Equipment must be identified by manufacturer, model, year, and serial number, where available.

(c) *Other assets owned by the applicant.* Other assets owned by the applicant such as certificates of deposit may be taken as security. The applicant shall provide satisfactory documentation as to the value of the assets and their availability for Agency lien perfection.

(d) *Third party pledges of property not owned by the applicant.* Interests in property not owned by the applicant (such as, but not limited to: real estate, leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties) can be offered as security for the loan.

(e) *Horses.* Horses must be identified by color, sex, and distinguishing marks (i.e., socks, blaze, registration numbers).

(f) *Repayment ability.* The applicant's repayment ability may be accepted as adequate security provided that the applicant can meet all of the following requirements.

(1) The applicant has pledged as security for the loan all available personal and business collateral.

(2) The feasible plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history and addresses applicable income risks to the extent practicable through the use of breeder's insurance, mortality insurance, or similar risk management practices.

(3) The applicant has had positive net income from the horse breeder business in at least 3 of the past 5 years. If the applicant has been in the horse breeder business for fewer than 5 years, the applicant must have had positive net income from the horse breeder business in at least 50 percent of the years the applicant has been in the horse breeder business.

(4) The applicant has given the Agency an assignment on any USDA program payments, unencumbered installment sales proceeds, or other contractually based income.

## XVI. Appraisals and Valuation Requirements

Appraisals generally are required for real estate and chattel property used to secure a Horse Breeder loan. Real estate appraisals, however, are not required when the amount of the loan does not exceed $50,000 and the loan approval official clearly documents that the estimated value of security, less existing liens, exceeds the loan amount. Real estate and chattel appraisals shall be completed in accordance with 7 CFR 761.7.

## XVII. Taking Indian Trust Lands as Security

The Agency may take a lien on Indian Trust lands as security provided that the requirements of 7 CFR part 1943, subpart A or its successor regulations are satisfied.

## XVIII. Insurance for Loan Security

An applicant must obtain insurance, consistent with this section, equal to the lesser of the value of the security at the time of loan closing, or the principal of the loan.

1. *Hazard insurance.* All security (except growing crops) must be covered by hazard insurance if it is readily available and economically feasible.

2. *Flood or mudslide insurance.* Real estate security located in a special Flood Hazard Area as determined by the Federal Emergency Management Agency, must be covered by flood or mudslide insurance.

3. *Crop insurance.* Growing crops used to provide adequate security must be covered by crop insurance if such insurance is readily available and economically feasible.

4. *Mortality insurance.* All horses used as security for the loan must be covered by mortality insurance if it is readily available and economically feasible.

5. *Indemnities.* An applicant must:

(a) List the Agency as loss payee for the insurance indemnity payment or as a beneficiary of a mortgagee loss payable clause; and

(b) In the case of crop and mortality insurance, execute an assignment of indemnity in favor of the Agency.

## XIX. Funding Applications

Loan requests will be funded based on the date the Agency receives the complete application. Loan approval is subject to the availability of Emergency loan funds.

## XX. Loan Closing

The loan approval official, or designee, shall close the loan according to the following.

1. The applicant must meet all conditions specified in this notice prior to loan closing.

2. There must have been no significant changes in the plan of operation or the applicant's financial condition since the loan was approved and less than 90 days has passed since financial information has been updated.

3. The applicant shall execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security position in property, and protect the Government's interests in accordance with applicable State and Federal laws.

4. Horse Breeder loans with security other than real estate shall be closed in accordance with 7 CFR part 1941, subpart B, or its successor regulation.

5. Horse Breeder loans secured by real estate shall be closed in accordance with 7 CFR part 1927, subpart B, or its successor regulation. Loans with real estate security will be closed by a closing agent, selected by and paid for by the applicant.

(a) For loans over $25,000, title clearance is required when real estate is taken as security.

(b) For loans of $25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, naming the record owner of the real estate in question and listing the balances due on all known debts against the real estate. Whenever the loan approval official is uncertain of the record owner or debts against the real estate security, a title search is required.

## XXI. Fees

The applicant will pay all loan closing fees including but not limited to fees for title clearance, recording any legal instruments determined to be necessary, and all notary, lien search, attorney fees and similar fees incident to loan transactions. No fees will be assessed for work performed by Agency employees.

## XXII. Reporting

The borrower must notify the Agency of any adverse actions related to the loan, including but not limited to, anticipated default on the loan.

## XXIII. Loan Servicing

If any installment is not paid according to the terms of the loan agreement, the loan is not fully satisfied at expiration of the loan agreement, or the borrower is in default on any term of the loan agreement or security instruments, the loan will be serviced in accordance with 7 CFR 1951.468 or its successor regulation, during the term of the loan.

Signed at Washington, DC, on June 28, 2002.

**James R. Little,**

*Administrator, Farm Service Agency.*

**Exhibit 1.—Sample Veterinary Certification**

**Woodside Veterinary Clinic, P.O. Box 29, Alexandria, Virginia 45207**

William A. Doctor, D.V.M.
Tanya J. Thoms, D.V.M.
Equine and Companion Animals
Medicine and Surgery
Telephone: 303–233–4455
FAX 303–233–4456

*Name of Client:* Circle K Farms.
*Address of Client:* 123 Shade Tree Lane, Alexandria, Virginia 45207.
*Period covered by this Certification:* 2000 and 2001 Breeding and Foal Seasons.

The number of mares owned that were bred _____

The number of mares boarded that were bred _____

As a result of MRLS:
The number of mares that failed to conceive or produce a live healthy foal._____

_____
Signature of Veterinarian

[FR Doc. 02–16827 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2002–June 30, 2003

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the annual adjustments to: The national average payment rates for meals and supplements served in child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers; the food service payment rates for meals and supplements served in day care homes; and the administrative reimbursement rates for sponsoring organizations of day care homes, to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are made on an annual basis each July, as required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

**EFFECTIVE DATE:** July 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Melissa Rothstein, Section Chief, Child and Adult Care and Summer Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 305–2620.

**SUPPLEMENTARY INFORMATION:**

### Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR part 226).

### Background

Pursuant to sections 4, 11 and 17 of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1773) and §§ 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR part 226), notice is hereby given of the new payment rates for institutions participating in CACFP. These rates shall be in effect during the period July 1, 2002 through June 30, 2003. As provided for under the NSLA and the CNA, all rates in the CACFP must be revised annually on July 1 to reflect changes in the Consumer Price Index (CPI) for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes, and the administrative reimbursement rates for sponsors of day care homes on June 27, 2001, at 66 FR 34144 (for the period July 1, 2001–June 30, 2002).

CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

[Per meal rates in whole or fractions of U.S. dollars]
[Effective from July 1, 2002–June 30, 2003]

| Centers | Breakfast | Lunch and supper [1] | Supplement |
|---|---|---|---|
| Contiguous States: | | | |
| Paid | .22 | .20 | .05 |
| Reduced price | .87 | 1.74 | .29 |
| Free | 1.17 | 2.14 | .58 |
| Alaska: | | | |
| Paid | .32 | .33 | .08 |
| Reduced price | 1.57 | 3.07 | .47 |
| Free | 1.87 | 3.47 | .95 |
| Hawaii: | | | |
| Paid | .24 | .24 | .06 |
| Reduced price | 1.07 | 2.10 | .34 |
| Free | 1.37 | 2.50 | .68 |

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the **Federal Register.**

| Day care homes | Breakfast | | Lunch and supper | | Supplement | |
|---|---|---|---|---|---|---|
| | Tier I | Tier II | Tier I | Tier II | Tier I | Tier II |
| Contiguous States | .98 | .37 | 1.80 | 1.09 | .53 | .14 |

| Day care homes | Breakfast | | Lunch and supper | | Supplement | |
|---|---|---|---|---|---|---|
| | Tier I | Tier II | Tier I | Tier II | Tier I | Tier II |
| Alaska | 1.55 | .56 | 2.93 | 1.76 | .87 | .24 |
| Hawaii | 1.13 | .42 | 2.11 | 1.27 | .63 | .17 |

ADMINISTRATIVE REIMBURSEMENT RATES FOR SPONSORING ORGANIZATIONS OF DAY CARE HOMES

[Per home/per month rates in U.S. dollars]

| | Initial 50 | Next 150 | Next 800 | Each additional |
|---|---|---|---|---|
| Contiguous States | 84 | 64 | 50 | 44 |
| Alaska | 136 | 104 | 81 | 71 |
| Hawaii | 98 | 75 | 59 | 52 |

The changes in the national average payment rates for centers reflect a 2.59 percent increase during the 12-month period, May 2001 to May 2002, (from 173.1 in May 2001 to 177.6 in May 2002) in the food away from home series of the CPI for All Urban Consumers.

The changes in the food service payment rates for day care homes reflect a 1.56 percent increase during the 12-month period, May 2001 to May 2002, (from 172.8 in May 2001 to 175.5 in May 2002) in the food at home series of the CPI for All Urban Consumers.

The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 1.18 percent increase during the 12-month period, May 2001 to May 2002, (from 177.7 in May 2001 to 179.8 in May 2002 in the series for all items of the CPI for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (See 7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518).

**Authority:** Sec. 4(b)(2), 11a, 17(c) and 17(f)(3)(B) of the Richard B. Russell National School Lunch Act, as amended (42 U.S.C. § 1753(b)(2), 1759a, 1766(f)(3)(B)) and sec. 4(b)(1)(B) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773(b)(1)(B)).

Dated: June 27, 2002.

**Roberto Salazar,**

*Administrator.*

[FR Doc. 02–16906 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–30–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Southwestern Region; Authorization of Livestock Grazing Activities on the Sacramento Grazing Allotment, Sacramento Ranger District, Lincoln National Forest, Otero County, NM

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised notice of intent to prepare an environmental impact statement.

**Authority:** 16 U.S.C. 472,551.

**SUMMARY:** The Forest Service will prepare an environmental impact statement on a proposal to authorize livestock grazing activities on the Sacramento Grazing Allotment. The project area encompasses over 111,000 acres of National Forest lands on the Sacramento Ranger District of the Lincoln National Forest. The Sacramento Grazing Allotment comprises approximately 25% of the ranger district. The project has generated controversy on three main points; effects to threatened and endangered animal and plant species, concern for degraded riparian areas, and forage competition between wildlife and livestock.

The Notice of Intent to prepare an environmental impact statement was first published in the **Federal Register** on Friday, May 5, 1999 (Volume 64, Number 86, pages 24132–24134). The Notice announced that a draft environmental impact statement would be available for review in July 1999, and a final environmental impact statement would be available for review in September 1999. A Revised Notice of Intent was published in the **Federal Register** on March 8, 2000 (Volume 65, Number 46, page 12202). The revised Notice announced that a draft environmental impact statement was now expected to be available for public review in July 2000 and a final environmental impact statement should be available for review by October 2000. This Notice revises the expected date of availability for public review of a draft environmental impact statement to June 2002, a final environmental impact statement should be available for review in October 2000.

**FOR FURTHER INFORMATION CONTACT:** Rick Newmon or Mark Cadwallader, Lincoln National Forest, Sacramento Ranger District, P.O. Box 288, Cloudcroft, New Mexico 88317, (505) 682–2551.

Dated: April 17, 2002.

**Jose M. Martinez,**

*Forest Supervisor, Lincoln National Forest.*

[FR Doc. 02–16878 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Glady Fork Environmental Impact Statement, Monongahela National Forest, Randolph and Tucker Counties, WV

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA Forest Service will prepare an environmental impact statement for timber harvest, stream restoration, wildlife enhancement, and

road management activities in the Glady Fork watershed of the Monongahela National Forest. This notice provides a description of the proposed action, displays the estimated dates for filing the EIS, provides information concerning public participation, and provides the names and addresses of the responsible agency official and individuals who can provide additional information.

**DATES:** We need to receive your comments on this Notice of Intent in writing 45 days after this notice is published in the **Federal Register.** The draft environmental impact statement is expected February 2003 and the final environmental impact statement is expected May 2003.

**ADDRESSES:** Send written comments to: Michele Jones, Forest NEPA Team Leader, Monongahela National Forest, 200 Sycamore Street, Elkins, West Virginia 26241. Faxes should be sent to (304) 636–1875. For further information, mail correspondence to the same address.

**FOR FURTHER INFORMATION CONTACT:** Michele Jones, Forest NEPA Team Leader, Monongahela National Forest, 200 Sycamore Street, Elkins, West Virginia 26241, or by calling (304) 636–1800.

**SUPPLEMENTARY INFORMATION:**

## Purpose and Need for Action

The purpose and need for action in the Glady Fork project area is to increase forest health, to improve water quality and fish habitat, to enhance wildlife habitat, and to provide forest products to the local community.

## Proposed Action

The proposed activities all fall within Management Prescription 6.1 under the Monongahela National Forest Land and Resource Management Plan. The primary purpose of Management Prescription 6.1 is to manage for remote habitat species intolerant of disturbance. Secondary purposes are to manage for a semi-primitive non-motorized type of recreational environment, a mix of forest products, and manage sites reverting from hardwood to conifer and the intermingled high site hardwood types.

The proposed action includes an estimated 797 acres of thinning, 689 acres of crop tree release, 51 acres of clearcuts, 96 acres of shelterwood, 345 acres of two-age harvest, and 20 acres of overstory removal. In total, approximately 1,998 acres of commercial timber harvest is proposed, which would be logged by using helicopter yarding on 1,205 acres and 793 acres of conventional ground-based skidding. Post-harvest treatments proposed include 609 acres of herbicide use, site preparation, and fencing, and 51 acres of planting.

Road management proposed in the Glady Fork project includes 2.0 miles of new road construction, 25.5 miles of road maintenance, 3.3 miles of road to be put in storage, and 10.3 miles of road to be abandoned.

Planting or seeding of willow, aspen, alder, or other native trees or shrubs along Daniels Creek is proposed to provide shade and future large woody debris. In addition, trees would be placed in Daniels Creek, McCray Run, and Nichols Lane Run to help channel stability and to provide stream structure.

The proposed action includes one stand that would be converted to a savannah, approximately 10 acres in size. An estimated 56 acres of red spruce release would occur to improve habitat for wildlife species such as the endangered West Virginia northern flying squirrel. Two wildlife openings, approximately 3 acres each, would be developed to provide open, grassy habitat for species such as white-tailed deer, wild turkey, and black bear.

## Responsible Official

The responsible official is Clyde N. Thompson, Monongahela National Forest Supervisor, 200 Sycamore Street, Elkins, West Virginia 26241.

## Nature of Decision To Be Made

The responsible official will make a determination in his decision whether the proposed action should proceed as proposed, as modified, or not at all. The decision will also include mitigation measures to be implemented with the project and associated monitoring requirements. The decision maker will also determine whether or not an amendment to the Monongahela National Forest Land and Resource Management Plan is needed.

## Scoping Process

The scoping period last for 45 days from the date this notice is published in the **Federal Register**. Written and oral comments from the public will be received through the postal service, via fax, or over the telephone. No public meetings, open houses, or field trips are planned at this time.

## Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments will be used to identify significant issues, which will be used to develop alternatives to the proposed action. Comments should be as specific as possible. In order for the Forest Service to consider research identified in comments, the commentor must identify why the research is pertinent to the Glady Fork project and must provide a copy of the research papers.

*Early Notice of Importance of Public Participation in Subsequent Environmental Review:* A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7. and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: June 28, 2002.

**Clyde N. Thompson,**

*Forest Supervisor.*

[FR Doc. 02–16816 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Resource Advisory Committee Meeting

**AGENCY:** Modoc Resource Advisory Committee, Alturas, California, USDA Forest Service.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–462) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Modoc National Forest's Modoc Resource Advisory Committee will meet Wednesday, August 7th, 2002, Wednesday, August 21st, 2002, and Wednesday, September 11th, 2002, in Alturas, California for business meetings. The meetings are open to the public.

**SUPPLEMENTARY INFORMATION:** The business meeting August 7th begins at 5 pm., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of July 10, 2002 minutes, projects submitted for the new fiscal year 2003, reports from subcommittees and review and selection of projects that will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve health and water quality that meet the intent of Pub. L. 106–393. Time will also be set aside for public comments at the beginning of the meeting. The business meeting August 21st begins at 5 pm., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of the August 7, 2002 minutes, projects submitted for the new fiscal year 2003, reports from subcommittees and selection of projects on the Modoc National Forest that meet the intent of Pub. L. 106–393. Time will be set aside for public comments at the beginning of the meeting. The business meeting September 11th begins at 5 pm., at the Modoc National Forest Office, Conference Room 800 West 12th St., Alturas. Agenda topics will include approval of the August 21, 2002 minutes, projects submitted for the new fiscal year 2003, reports from subcommittees and selection of projects on the Modoc National Forest that meet the intent of Pub. L. 106–393. Time will be set aside for public comments at the beginning of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Dan Chisholm, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

**Dan Chisholm,**

*Forest Supervisor.*

[FR Doc. 02–16810 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Lower Clear Boggy Creek Watershed, Site 32B, Atoka County, Oklahoma

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of availability of record of decision.

**SUMMARY:** M. Darrel Dominick, responsible Federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Oklahoma, is hereby providing notification that a record of decision to proceed with the installation of the Lower Clear Boggy Creek Watershed, Site 32B project is available. Single copies of this record of decision may be obtained from M. Darrel Dominick at the address shown below.

**FOR FURTHER INFORMATION CONTACT:** M. Darrel Dominick, State Conservationist, Natural Resources Conservation Service, State Office, 100 USDA Suite 206, Stillwater, Oklahoma, 74074–2655, telephone (405) 742–1227.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: June 19, 2002.

**M. Darrel Dominick,**

*State Conservationist.*

[FR Doc. 02–16876 Filed 7–3–02; 8:45 am]

BILLING CODE 4310–16–M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

*Comments Must Be Received on or Before:* August 4, 2002.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters

should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Products**

Product/NSN: Battery, Nonrechargeable/ 6135–00–826–4798. (Remaining Requirement for DSCR).
NPA: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina.
Contract Activity: Defense Supply Center—Richmond, Richmond, Virginia.

Product/NSN: Battery, Nonrechargeable/ 6135–00–900–2139. (Remaining Requirement for DSCR).
NPA: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina.
Contract Activity: Defense Supply Center—Richmond, Richmond, Virginia.

Product/NSN: Battery, Nonrechargeable/ 6135–00–985–7845. (Total Requirement for DSCR).
NPA: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina.
Contract Activity: Defense Supply Center—Richmond, Richmond, Virginia.

Product/NSN: Paper, Toilet Tissue, 48 Ct., 2-ply/8540–00–NIB–0043.
NPA: Outlook-Nebraska, Incorporated, Fremont, Nebraska.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, New York.

Product/NSN: Board, Assembly, Jack, Ground/2510–00–741–7585.
NPA: Pennyroyal Regional MH–MR Board, Inc., Hopkinsville, Kentucky.
Contract Activity: Defense Supply Center—Columbus, Columbus, Ohio.

*Services*

Service Type/Location: Custodial Service/ Basewide, Schriever AFB, Colorado.
NPA: Professional Contract Services, Inc., Austin, Texas.
Contract Activity: USAF, 50 CONS/LGCZW, Schriever AFB, Colorado.

Service Type/Location: Janitorial/Custodial/ Naval Air Station, Buildings 180 and 349 Whidbey Island, Oak Harbor, Washington.
NPA: New Leaf, Inc., Oak Harbor, Washington.
Contract Activity: Naval Facilities Engineering Command, Oak Harbor, Washington.

**Deletions**

I certify that the following action will not have a significant impact on a substantial number of small entities.

The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

The following products have been proposed for deletion from the Procurement List:

*Products*

Product/NSN: Harness Assembly/1660–00–066–2078.
NPA: Human Technologies Corporation, Utica, New York.
Contract Activity: Defense Supply Center—Richmond, Richmond, Virginia.

Product/NSN: Insert, Foam, Laminated/ 8135–00–NSH–0002.
NPA: None currently authorized.
Contract Activity: Bureau of the Mint, Department of the Treasury, Washington, DC.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 02–16843 Filed 7–3–02; 8:45 am]

BILLING CODE 6353–01–P

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Assay for Detecting, Measuring, and Monitoring the Activities and Concentrations of Proteins and Methods of Use Thereof

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/848,370 entitled ''Assay for Detecting, Measuring, and Monitoring the Activities and Concentrations of Proteins and Methods of Use Thereof,'' filed May 4, 2001. Foreign rights are also available (PCT/US01/14444). The United States Government, as represented by the Secretary of the Army has rights in this invention.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** As assay for detecting, measuring, or monitoring the activity of concentration of at least two proteins that have similar or overlapping properties is disclosed. The assay comprises first determining the sensitivity coefficients of the substrates for each of the proteins in which the concentrations are to be determined. This method may be used for detecting, measuring, or monitoring the activity and concentration of AChE, BChE, or both in a test sample which test sample may be whole and unprocessed blood or tissue. Also disclosed are methods of using the assay to detect a subject's exposure to an agent which affects cholinesterase, determine the efficacy or progress of a treatment, determine the amount of protection provided against exposure to an agent which affects cholinesterase, or both, screen a subject for having a drug sensitivity or a particular disease, detect a change in red blood cell count of a subject, determine whether a candidate compound affects cholinesterase. Also disclosed are devices and kits for detecting, measuring, or monitoring the activities and concentrations of AChE, BChE, or both.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 02–16884 Filed 7–3–02; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Force Sensing Treadmill

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 60/368,807 entitled ''Force Sensing Treadmill,'' filed March 21, 2002. The United States Government, as represented by the Secretary of the Army has rights in this invention.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** Used to study gait mechanics in multiple successive strides especially during movement at walking/marching speeds.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 02–16883 Filed 7–3–02; 8:45 am]

**BILLING CODE 3710–08–M**

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Ricin Vaccine and Methods of Making and Using Thereof

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 110/083.336 entitled ''Ricin Vaccine and Methods of Making and Using Thereof,'' filed February 27, 2002. Foreign rights are also available (PCT/US02/05732). The United States Government, as represented by the Secretary of the Army has rights in this invention.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 691–6664, both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** Methods of immunizing against, treating, and preventing ricin intoxication are disclosed.

**Luz D. Oritz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 02–16885 Filed 7–2–02; 8:45 am]

**BILLING CODE 3710–08–M**

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Corps of Engineers

### Intent to Prepare a Draft Environmental Impact Statement/Environmental Impact Report for a Proposed Daguerre Point Dam Fish Passage Improvement Project

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of Intent.

**SUMMARY:** The U.S. Army Corps of Engineers (USACE) and the California Department of Water Resources (DWR) are lead agencies preparing a joint Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR), pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), to evaluate the Daguerre Point Dam Fish Passage Improvement Project. The purpose of the project is to improve fish passage at Daguerre Point Dam. The project has a goal to improve upstream and downstream fish passage for native anadromous fish species at Daguerre Point Dam and contribute to overall population recovery. Additional objectives are to keep water interests whole and not increase food risk. Stakeholder meetings have identified alternatives to consider during the preparation of the environmental document.

**DATES:** Written comments will be accepted no later than July 25, 2002.

**ADDRESSES:** Submit written comments to Ted Frink, Department of Water Resources Fish Passage Improvement Program, P.O. Box 942836, Sacramento, CA 94236–0001, phone (916) 651–9630, fax (916) 651–9607.

**FOR FURTHER INFORMATION CONTACT:** Doug Grothe, U.S. Army Corps of Engineers, Englebright/Martis Creek Lakes, P.O. Box 6, Smartville, CA 95977, phone (530) 639–2342, fax (530) 639–2175.

**SUPPLEMENTARY INFORMATION:** Preliminary resource issues that have been identified and will be evaluated in the joint document include but are not limited to fish passage, water supply, sediment fate, and biological resources. In addition to No Action/No Project, four alternative concepts are being considered.

**1. State-of-the-Art Fish Ladder(s)**

This alternative concept would replace the two existing fish ladders with either one or two state-of-the-art ladders. Potential siting and configuration depends on engineering design considerations.

**2. Notch Dam to Passable Height**

This alternative concept would cut a notch out of the existing dam to a height that adult fish can successfully pass. Accumulated sediment behind the dam may be dredged or released downstream naturally.

**3. Natural River Channel Bypass Around Dam**

This alternative concept would create a new river channel that bypasses the existing dam. The bypass channel length and width would be determined based on engineering design considerations. Daguerre Point Dam would remain in place.

**4. Dam Removal**

This alternative concept would remove Daguerre Point Dam. Accumulated sediment behind the dam may be dredged or released downstream naturally. The environmental review will be conducted pursuant to NEPA and CEQA, the Endangered Species Act, and other applicable laws, to analyze potential environmental impacts of implementing each feasible alternative. The Daguerre Point Dam Preliminary Fish Passage Improvement Study completed in 2001 by the USACE is the starting point for this process. Alternatives described in this report will be re-evaluated and updated to reflect current conditions and knowledge. Public input on additional alternatives or combination of alternatives that should be considered will be sought through the scoping process.

Comments, including names and addresses of respondents, are typically made available for public review. Individual respondents may request their home addresses withheld from public disclosure. These requests would be honored to the extent allowable by law. Requests to withhold your home address must be stated prominently at the beginning of your comment letter. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available to the public in its entirety. A public scoping meeting for the DEIS/EIR was held on June 27, 2002 from 6:30 to 8:30 p.m., at Yuba-Sutter Chamber of Commerce (meeting room), 429 10th Street, Marysville, CA 95901. (See Dates and Addresses above for more information.)

Availability of the DEIS/EIR: The DEIS/EIR is estimated to be available in early 2003.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 02–16882 Filed 7–3–02; 8:45 am]

**BILLING CODE 3710–EZ–M**

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## DEPARTMENT OF DEFENSE

## Department of the Army

## Corps of Engineers

## Intent to Prepare a Draft Environmental Impact Statement/Subsequent Environmental Impact Report for a Permit Application for the Proposed West Basin Marine Terminal Improvement Projects in the Port of Los Angeles, Los Angeles County, CA

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) Los Angeles District is considering future applications for Section 404 and Section 10 permits to conduct dredge and fill activities associated with a continuing program of waterside, marine terminal, and transportation improvement projects in the West Basin area of the Port of Los Angeles. Some of the project elements are completed and others are previously approved actions by the Port of Los Angeles (Port) and the Corps, including the Channel Deepening Project (Corps/Port 2000) that will dredge all navigational channels in the West Basin to −53 feet and construct 43 acres of new landfill in the Southwest Slip. Major project elements to be covered in the Draft Environmental Impact Statement/Subsequent Environmental Impact Statement/Subsequent Environmental Impact Report (EIS/SEIR) include: Dredging, wharf renovation and new wharf construction, to match the approved −53 foot channel depths construction of new landfill, and potential channel realignment. Landside developments will include expansion, redevelopment and construction of marine terminal facilities, and transportation infrastructure improvements including a grade separation a bridge structure, an intermodal rail facility and potential realignment of road and railways.

The primary Federal concern is the dredging and discharging of materials within waters of the United States and potential impacts on the human environment. Therefore, in accordance with the National Environmental Policy Act (NEPA), the Corps is requiring the preparation of an Environmental Impact Statement (EIS) prior to consideration of any permit action. The Corps may ultimately make a determination to permit or deny the above project or permit or deny modified versions of the above project.

Pursuant to the California Environmental Quality Act (CEQA), the Port will serve as Lead Agency for the preparation of a subsequent Environmental Impact Report (EIR) for its consideration of development approvals within its jurisdiction. The Corps and the Port have agreed to jointly prepare a Draft EIS/SEIR in order to optimize efficiency and avoid duplication. The Draft EIS/SEIR is intended to be sufficient in scope to address both the Federal and the state and local requirements and environmental issues concerning the proposed activities and permit approvals.

**DATES:** A public scoping meeting for the Draft EIS/SEIR will be held at the Port of Los Angeles on July 16, 2002, at 6:30 P.M. Written comments will be received until August 5, 2002.

**ADDRESSES:** Copies of comments and questions regarding scoping of the Draft EIS/SEIR may be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch. ATTN: File Number 2002–01070–AOA, P.O. Box 532711, Los Angeles, CA 90053–2325. Copies should also be sent to Dr. Ralph Apply, Director of Environmental Management, Port of Los Angels, 425 S. Palos Verdes St., San Pedro, CA 90731.

**FOR FURTHER INFORMATION CONTACT:** Phone messages or questions can be directed to Dr. Aaron O. Allen: (805) 585–2148.

**SUPPLEMENTARY INFORMATION:**

### 1. Project Site and Background Information

The proposed project is located in the northwestern portion of the Port of Los Angeles, adjacent to the Wilmington and San Pedro Districts of the City of Los Angeles, CA. The proposed dredge activities would take place at various berths throughout the West Basin portion of the Port of Los Angeles, including the Berth 100–102 area, the Berth 118–131 area, and the Berth 136–147 area. Dredging would also be required if the navigation channel at Berths 121–127 was to be widened. Major areas of fill include the Southwest Slip and possibly the slip at Berths 132–134. The proposed improvement projects represent a continuation of a long-term, ongoing process of optimizing cargo handling efficiencies and thereby reducing environmental impacts of increased container terminal operations in the West Basin area. The proposed improvement projects involve dredge and fill operations, new wharf construction, renovation of existing wharfs coupled with terminal expansion on adjacent areas of existing land, and improvement of transportation infrastructure.

Optimization of terminals and infrastructure in the West Basin was initially evaluated in the West Basin Transportation Improvements Program Environmental Impact Report (WBTIP EIR, LAHD 1997a). The 1997 EIR and subsequent CEQA and NEPA assessments have been used to certify and approve many project elements in the West Basin. Since the certification of the 1997 Program EIR many project elements have been completed and others are planned.

Key objectives of the new West Basin EIS/SEIR identified in this notice of intent will be to: (1) Establish an updated baseline of current Port operations and environmental conditions with the West Basin and (2) assess potential environmental effects of implementing currently proposed projects within this part of the Port of Los Angeles. A key component of this new EIS/SEIR will be to update the cargo-handling capacity of the West Basin container terminals and update environmental impacts of ship, truck, and rail traffic associated with proposed project elements.

### 2. Proposed Action

Construction of the proposed project would require dredging approximately 1,000,000 cubic yards of material if all project elements are implemented. Placement of sediment within the West Basin to construct additional landfill in the Southwest slip would require approximately 5,000,000 cubic yard of material and result in the permanent loss of 32 acres of open-water habitat. The placement of material generated by the federal channel deepening project in the Southwest slip to meet this need has been reviewed in terms of dredge disposal options in the Port of Los Angeles Channel Deepening Project SEIS/SEIR (2000). The potential channel widening between Berths 121 to 126 would create an additional 6 acres of open-water habitat and the potential fill between Berths 131 to 136 would remove 13 acres of open-water habitat. Additional material would originate from sources outside of the West Basin such as the Pier 400 storage area. In addition to project elements that may arise from the public scoping process will also be evaluated in the West Basin

Marine Terminal Improvement Projects EIS/SEIR, the proposed improvement projects include the following elements:

(a) Berth 100–102 area Phase II and III projects.

(1) Construction and operation of a second 1,300 foot long wharf.

(2) Construct and operate container terminal backlands, buildings, facilities and infrastructure on the 43 acres created under Channel Deepening Project.

(3) Construct a bridge to the Berth 118–131 area across the Southwest Slip.

(4) Potential realignment of the Front Street road and railways around Knoll Hill.

(5) Consolidation of adjacent parcels at Berth 99, from the Front Street realignment, and the former Todd Shipyard parking lot for container terminal operators.

(6) Creation of up to 32 acres of new landfill in the adjacent Southwest Slip for construction and operation of terminal backlands and infrastructure.

(b) Improvements to the Berth 118–131 area.

(1) Construction and upgrades of up to 2,800 feet of new and reconstructed wharves to match the planned −53 foot channel depths.

(2) Wharf improvements, including upgrade to 100-foot gauge crane rail.

(3) Construction of new facilities and buildings.

(4) Redevelopment of the 20-acre marine oil terminal at Berths 118–129 to container terminal operations.

(5) Potential widening of the navigation channel at between Berths 121 to 126.

(6) Potential landfill at the slip between Berths 131 to 136 of approximately 13 acres.

(c) Improvements to the Berth 136–151 area.

(1) Consolidation of the area into a single facility.

(2) Construct and upgrade up to 2,600 feet of wharves.

(3) Wharf improvement, including upgrade to 100-foot gauge crane rail.

(4) Construct and operate additional terminal gate facilities and buildings.

(5) Construction and operation of a grade separation at Neptune Avenue.

(6) Expansion of the terminal into the 20-acre area south of the realigned Harry Bridges Blvd.

(7) Construction and operation of additional 10-acre intermodal rail and infrastructure.

(8) Consolidation of the 17-acre marine oil terminal and infrastructure at Berths 148–151 into a five to six acre site and redevelopment of the area at Berth 149 to container terminal operations.

**3. Issues**

There are several potential environmental issues that will be addressed in the EIS/SEIR. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

(a) Land use and planning impacts, including creation of new landfill requiring amendment of the Port Master Plan and approval by the California Coastal Commission.

(b) Geological issues including dredging and stabilization of fill areas in an area of known seismic activity.

(c) Impacts to water quality.

(d) Potential impacts to marine biological resources and endangered species of birds.

(e) Impacts to air quality.

(f) Impacts to traffic, including marine navigation and ground transportation.

(g) Potential for noise impacts.

(h) Impacts to public utilities and services.

(i) Potential impacts to aesthetic resources including increased light and glare.

(j) Potential impacts on public health and safety.

(k) Potential impacts to recreation.

(l) Cumulative impacts.

**4. Alternatives**

Several alternatives are being considered for the proposed improvement projects. These alternatives will be further formulated and developed during the scoping process and an appropriate range of alternatives, including the no federal action alternative, will be considered in the EIS/SEIR.

**5. Scoping Process**

A public scoping meeting (see **DATES**) will be held to receive public comment and assess public concerns regarding the appropriate scope and preparation of the Draft EIS/SEIR. Participation in the public meeting by federal, state and local agencies and other interested organizations and persons is encouraged.

The Corps will also be consulting with the U.S. Fish and Wildlife Service under the Endangered Species Act and the Fish and Wildlife Coordination Act, and with the National Marine Fisheries Service under the Magnuson-Stevens Act. Additionally, the EIS/SEIR will assess the consistency of the proposed action with the Coastal Zone Management Act and assess potential water quality impacts pursuant to Section 401 of the Clean Water Act.

**6. Availability of the Draft SEIR/EIS**

The Draft SEIR/EIS is expected to be published and circulated in the fall of 2002 and a public hearing will be held after the publication of the Draft EIS/SEIR.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 02–16886 Filed 7–3–02; 8:45 am]

**BILLING CODE 3710–KF–M**

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the U.S. Naval Academy Board of Visitors

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

**DATES:** The meeting will be held on Monday, July 15, 2002, from 8:30 a.m. to 1 p.m. The closed Executive Session will be from 12:15 p.m. to 1 p.m.

**ADDRESSES:** The meeting will be held in the Bo Coppedge Dining Room of Alumni Hall at the U.S. Naval Academy.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Mark DeBuse, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

**SUPPLEMENTARY INFORMATION:** This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information, which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy

has determined in writing that the special committee meeting shall be partially closed to the public because it will be concerned with matters as outlined in section 552(b)(2), (5), (6), (7), and (9) of title 5 U.S.C.

Dated: June 21, 2002.

**R.E. Vincent II,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 02–16937 Filed 7–3–02; 8:45 am]

BILLING CODE 3810–FF–P

## DELAWARE RIVER BASIN COMMISSION

### Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, July 17, 2002. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 10 a.m. Topics of discussion will include an update on the Comprehensive Plan (CP); reports on the PCB TMDL development effort; a report on the development of water quality criteria for toxic pollutants; a report on the Flow Management Technical Advisory Committee meeting of June 25; and an update on Flood Advisory Committee activities.

The subjects of the public hearing to be held during the 1 p.m. business meeting include, in addition to the dockets listed below: a resolution correcting paragraph 2.A. of Resolution No. 2002–6 to reflect that the Thermal Release Bank expires on April 30, 2003 and not on October 31, 2002; a resolution amending Docket D–77–110 CP by the addition of a ''Designated Unit'' to Table A (Revised); and a resolution concerning the declaration of drought emergency issued by the Commission on December 18, 2001.

The dockets scheduled for public hearing are as follows:

1. *Holdover Project: Mercer County Improvement Authority D–99–28 CP.* A project to construct a surface water intake on Assunpink Creek at Mercer Lake to withdraw 2.6 million gallons per day (mgd) of water. The new intake, in addition to an existing intake that can provide 1.3 mgd, will irrigate the applicant's Mercer Oaks II Golf Course located in West Windsor Township, Mercer County, New Jersey.

2. *Conshohocken Borough Authority D–2001–59 CP.* A project to rerate a 2.3 mgd sewage treatment plant (STP) to treat 2.35 mgd on an average monthly basis and up to 3 mgd as a maximum monthly flow. The STP will continue to provide high quality secondary treatment and discharge to the Schuylkill River through the existing outfall. The project is located at Elm and Jones Streets in Conshohocken Borough, Montgomery County, Pennsylvania. The plant will continue to serve Conshohocken Borough, plus portions of Whitemarsh and Plymouth Townships, all within Montgomery County.

3. *Newark Country Club D–2002–12.* A ground water withdrawal project to supply up to 2.1 mg/30 days of water to the applicant's golf course from new Well No.5 in the Christianstead Gneiss Formation, and to increase the existing withdrawal from all wells to 5.0 mg/30 days. The project is located in the Christina River and White Clay Creek watersheds in the City of Newark, New Castle County, Delaware.

4. *Bidermann Golf Club D–2002–13.* A ground water withdrawal project to supply up to 0.864 mg/30 days of water to the applicant's golf course from new Well No. 5 in the Wissahickon Formation, and to increase the existing withdrawal from all sources to 15.8 mg/30 days. The project is located in the Brandywine Creek watershed in the City of Wilmington, New Castle County, Delaware.

5. *Town of Roxbury D–2002–14 CP.* A project to export 0.3 mgd of water, half in the form of raw sewage from failing on-lot systems and half as ground water supply, from the Hamlet of Roxbury in the Delaware River Basin to the Hamlet of Grand Gorge in the Mohawk-Hudson River Basin. Both hamlets are located in the Town of Roxbury, Delaware County, New York. The proposed ground water withdrawal and exportation project will replace a collapsed production well (No. 1) in the Roxbury Water District with a new one. The proposed ground water withdrawal from new Well No. 1 of up to 3 mg/30 days will be taken from the Catskill Formation. The raw sewage will be conveyed via force main to the existing NYCDEP Grand Gorge Sewage Treatment Plant located off State Route 23, and following treatment will be discharged to adjacent Bear Creek.

6. *Fifer Orchards, Inc. D–2002–20.* A ground water withdrawal project to supply up to 51.45 mg/30 days of water to the applicant's orchard from new Wells Nos. 6 and 7, in the Columbia/Choptank and Columbia Formations, respectively, and to limit the existing withdrawal from all sources to 543 mg/30 days. The project is located in the St. Jones River watershed in the City of Wyoming, Kent County, Delaware.

In addition to the public hearing items, the Commission will address the following at its 1 p.m. business meeting: Minutes of the May 31, 2002 business meeting; announcements; a report on Basin hydrologic conditions; a report by the Executive Director; and a report by the Commission's General Counsel, including consideration by the Commission of an agreement reached by the Petitioners in the appeal of Docket No. D–98–11 CP of the Pennsylvania Suburban Water Company (the ''Cornog Quarry'' project). The meeting will end with an opportunity for public dialogue.

Documents relating to the dockets and other items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions. Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY), to discuss how the Commission may accommodate your needs.

Dated: June 28, 2002.

**Pamela M. Bush,**

*Commission Secretary and Assistant General Counsel.*

[FR Doc. 02–16809 Filed 7–3–02; 8:45 am]

BILLING CODE 6360–01–P

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.083A]**

### Women's Educational Equity Program (WEEA); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

*Summary:* The Secretary invites applications for new grant awards for FY 2002 for the Women's Educational Equity Program. These grants are authorized by subpart 21, part D, title V, of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act, Public Law 107–110.

*Purpose of Program:* To provide financial assistance: to promote gender

equity in education; to enable educational agencies to meet the requirements of title IX of the Education Amendments of 1972; and to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex and race, ethnic origin, limited English proficiency, disability or age.

*Eligible Applicants:* Public agencies, private nonprofit agencies, organizations, institutions, student groups, community groups, and individuals.

*Applications Available:* July 5, 2002.

*Deadline for Transmittal of Applications:* August 19, 2002.

*Deadline for Intergovernmental Review:* October 18, 2002.

*Available Funds:* $842,000.

*Estimated Range of Awards:* $95,000–$200,000.

*Estimated Average Size of Awards:* $145,000.

*Estimated Number of Awards:* 4–7 (The Department is not bound by any estimates in this notice).

**Note:** In order to ensure the equitable distribution of grants, the Secretary, to the extent feasible, will award a slate of grants that address:

- A variety of levels of education, including preschool, elementary and secondary education, higher education, vocational education and adult education;
- Different regions of the United States; and
- A diversity of urban, rural, and suburban entities.

*Project Period:* Up to 48 months. Fiscal year 2002 funds available under this competition would be used for the first 12 months of a project.

*E-Mail Notification of Intent to Apply for Funding:* The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant for the Women's Educational Equity program to notify the Department by e-mail that it intends to submit an application for funding. The Secretary requests that this e-mail notification be sent no later than August 5, 2002. The e-mail notification should be sent to Diane Austin at *diane.Austin@ed.gov.* Applicants that fail to provide this e-mail notification may still apply for funding.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

**SUPPLEMENTARY INFORMATION:** The Department will award grants for the implementation of gender equity programs in schools. Examples of statutory activities under the program include—

(a) Assisting educational agencies and institutions to implement policies and practices to comply with title IX of the Education Amendments of 1972;

(b) Training for teachers, counselors, administrators, and other school personnel, especially preschool and elementary school personnel, in gender-equitable teaching and learning practices;

(c) Leadership training for women and girls to develop professional and marketable skills to compete in the global marketplace, improve self-esteem, and benefit from exposure to positive role models;

(d) School-to-work transition programs, guidance and counseling activities, and other programs to increase opportunities for women and girls to enter a technologically demanding workplace and, in particular, to enter highly skilled, high-paying careers in which women and girls have been underrepresented;

(e) Enhancing educational and career opportunities for those women and girls who suffer multiple forms of discrimination, based on sex and on race, ethnic origin, limited English proficiency, disability, socioeconomic status, or age;

(f) Assisting pregnant students and students rearing children to remain in or to return to secondary school, graduate, and prepare their preschool children to start school;

(g) Evaluating exemplary model programs to assess the ability of such programs to advance educational equity for women and girls;

(h) Introduction into the classroom of textbooks, curricula, and other materials designed to achieve equity for women and girls;

(i) Programs and policies to address sexual harassment and violence against women and girls and to ensure that educational institutions are free from threats to the safety of students and personnel;

(j) Nondiscriminatory tests of aptitude and achievement and of alternative assessments that eliminate biased assessment instruments from use;

(k) Programs to increase educational opportunities, including higher education, vocational training, and other educational programs for low-income women, including underemployed and unemployed women, and women receiving Aid to Families with Dependent Children benefits;

(l) Programs to improve representation of women in educational administration at all levels; and

(m) Planning, development, and initial implementation of:

- Comprehensive institution- or districtwide evaluatio to assess the presence or absence of gender equity in educational settings;
- Comprehensive plans for implementation of equity programs in State and local educational agencies and institutions of higher education, including community colleges; and
- Innovative approaches to school-community partnerships for educational equity.

**Note:** Due to a limited budget, the Department is not inviting applications under CFDA #84.083B (research and development grants) for FY 2002.

*Invitational Priority for Implementation Grants:* The Secretary invites and encourages applications that meet one or more of the following three invitational priorities for implementation grants:

(1) Projects that replicate or expand, and evaluate exemplary model programs that advance educational equity and contribute to improving teaching and learning for girls and women with disabilities. The Secretary is particularly interested in projects that include one of the following:

(a) Programs involving disabled girls and women who are likely to experience, or have experienced, multiple forms of discrimination based on sex, race, ethnic origin, limited English proficiency, disability, socioeconomic status or age;

(b) Mentoring programs and leadership training for disabled girls and women; and

(c) Identification of curricula and other materials designed to achieve equity for girls and women with disabilities and the effective implementation of these materials in the classroom.

(2) Projects that assist pregnant students and students with children to:

(a) Remain in or return to secondary school and graduate;

(b) Prepare their preschool children for school with an emphasis on reading;

(c) Explore postsecondary training and education.

(3) Projects that increase the role of parents in working in partnership with educational institutions to develop programs to encourage the full educational development of girls and women

(4) Projects that seek to increase opportunities for girls and women to enter a technologically demanding

workplace and, in particular, to enter highly skilled careers in which women have been underrepresented, particularly in mathematics, scientific and information technology fields.

**Note:** An application that meets this invitational priority does not receive competitive or absolute preference over other applications.

*Selection Criteria for Implementation Grants:* The Secretary evaluates applications for implementation grants on the basis of the following criteria. The maximum possible score for each criterion is indicated in parentheses with the criterion. The Secretary awards up to 100 points for all of the criteria.

(1) *Effectively achieving the purposes of WEEA.* (10 points)

The Secretary reviews each application to determine how well the project will effectively achieve the purposes of the WEEA Program.

**Note:** Applicants should consider the following statutory provisions when responding to this criterion. Under 20 U.S.C. 7283a, the purpose of the WEEA program is: (a) To promote gender equity in education in the United States; (b) to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Educational Amendments of 1972; and (c) to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex, race, ethnic origin, limited-English proficiency, disability, or age. Under 20 U.S.C. 7283d(e) nothing in this subpart shall be construed as prohibiting men and boys from participating in any program or activity assisted with funds under this subpart.

(2) *Project as a component of a comprehensive plan.* (10 points)

The Secretary reviews each application to determine the extent to which the project is a significant component of a comprehensive plan for educational equity and compliance with title IX of the Educational Amendments of 1972 in the particular school district, institution of higher education, vocational-technical institution, or other educational agency or institution.

(3) *Implementing an institutional change strategy.* (5 points)

The Secretary reviews each application to determine the extent to which the project implements an institutional change strategy with long-term impact that will continue as a central activity of the applicant after the WEEA grant has been terminated.

(4) *Need for project.* (10 points)

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

a. The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

b. The extent to which the proposed project will promote equity in educational and career opportunities for those women and girls who suffer multiple forms of discrimination, based on sex and race, ethnic origin, limited English proficiency, disability, or age.

(5) *Quality of the project design.* (20 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary 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 or other identified needs.

c. The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

d. The extent to which the project promotes the involvement of parents.

(6) *Quality of Project Personnel.* (10 points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

a. The qualifications, including relevant training and experience, of the project director or principal investigator.

b. The qualifications, including relevant training and experience, of key project personnel.

c. The qualifications, including relevant training and experience, of project consultants or subcontractors.

(7) *Adequacy of resources.* (5 points)

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary 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 extent to which the budget is adequate to support the proposed project.

(8) *Quality of the management plan.* (15 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

a. The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

b. The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

c. How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(9) *Quality of the project evaluation.* (15 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

a. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

b. 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 to the extent possible.

c. The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

d. The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

**Note:** Applicants should consider the following statutory provision when responding to this criterion. Under 20 U.S.C. 7283c(1), applicants for WEEA funds are required to describe policies and procedures that will ensure a comprehensive evaluation of the grant activities, including an evaluation of the practices, policies, and materials used by the applicant and an evaluation or estimate of the continued significance of the work of the project following completion of the award period.

*For Applications Contact:* Education Publications Center (ED Pubs), P.O. Box

1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/about/ordering.jsp*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.363A.

*For Content Information and Technical Assistance Contact:* Diane Austin, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E124, Washington, DC 20202–6140. Telephone: (202) 260–1393 or via Internet: *diane.austin@ed.gov*

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**Program Authority:** 20 U.S.C. 6651(b).

Dated: July 1, 2002.

**Susan B. Neuman,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 02–16888 Filed 7–3–02; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.361]**

## Office of Elementary and Secondary Education; Voluntary Public School Choice Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

*Purpose of Program:* This program provides grants to eligible applicants to assist them in establishing or expanding a program of voluntary public school choice in order to provide parents, particularly parents whose children attend low-performing schools, with greater choice in their children's education.

*Eligible Applicants:* (a) One or more State educational agencies (SEAs); (b) one or more local educational agencies (LEAs); (c) one or more SEAs in partnership with one or more LEAs or other public, for-profit, or non-profit entities; or (d) one or more LEAs in partnership with one or more public, for-profit, or non-profit entities.

*Applications Available:* July 5, 2002.

*Deadline for Transmittal of Applications:* August 19, 2002

*Deadline for Intergovernmental Review:* September 18, 2002.

*Estimated Available Funds:* $25,000,000.

*Estimated Range of Awards:* $2,500,000–$5,000,000 per year.

*Estimated Average Size of Awards:* $3,750,000 per year.

*Estimated Number of Awards:* 5–10.

**Note:** These estimates are for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

*Project Period:* Up to five years.

**Note:** Not more than 12 months may be used to plan and design a program.

*E-Mail Notification of Intent to Apply for Funding:* The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant for this program to notify the Department by e-mail that it intends to submit an application for funding. The Secretary requests that this e-mail notification be sent no later than August 5, 2002. The e-mail notification should be sent to Ms. Iris Lane at *Iris.Lane@ed.gov.* Applicants that fail to provide this e-mail notification still may apply for funding.

*Page Limits:* The Program Narrative (Part IV of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part IV to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and on both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the table of contents; Part III, the project abstract and application requirements; Part V, the budget section, including the narrative budget justification; part VI, the assurances and certifications; or Part VII, the proof of eligibility. However, you must include all of the program narrative in Part IV.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

*Applicable Regulations and Statute:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 86, 97, 98, and 99. (b) Title V, Part B, Subpart 3 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, 20 U.S.C. 7225–7225g.

*Waiver of Proposed Rulemaking:* In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. Ordinarily, this practice might have applied to one or more of the priorities and requirements in this notice. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts rules that apply to the first competition under a new or substantially revised program from this requirement. Because this competition is the first Voluntary Public School Choice program competition under the newly reauthorized ESEA, it qualifies as a new competitive grant program and is exempt from notice and comment rulemaking. The Secretary, in accordance with section 437(d)(1) of GEPA, to ensure timely awards, has decided to forego public comment. This notice applies to the FY 2002 competition only.

*Application Requirements:* An application submitted to the Secretary must include the following:

(1) A description of the program for which the eligible entity seeks funds and the goals for the program;

(2) A description of how and when parents of students in the area to be served by the program will be notified of the existence of the program and of the program's availability, and provided a clear explanation of how the program will operate, as required under section 5245(a)(2) of the ESEA;

(3) A description of how students will be selected for the program;

(4) A description of how the program will be coordinated with, and will complement and enhance, other related Federal and non-Federal programs administered by the applicant or applicants;

(5) If the program is to be carried out by a partnership, the name of each partner and a description of the partner's responsibilities; and

(6) A description of the information collection that the applicant plans to conduct in order to meet the requirements of 34 CFR 75.590 and to participate in any evaluation of the program that the Secretary conducts under section 5246(b) of the ESEA. Section 75.590 requires the recipient of an award to evaluate at least annually its progress in meeting the purposes of the program, and the effect of the program on the participants in the project. Section 5246(b) of the ESEA authorizes the Secretary to conduct evaluations that examine, among other things, how, and the extent to which, projects promote educational equity and excellence; the characteristics of students participating in projects; and the effect of projects on academic achievement of students participating in the projects, including students who move from school improvement under section 1116 of the ESEA to schools not so identified.

**Note:** The application requirements described above must be addressed in the Project Abstract and Application Requirements section (Part III) of your application.

*Priority Points:* Under 34 CFR 75.105(c)(2) of the Education Department General Administrative Regulations, the Secretary will award a maximum of up to 5 priority points for each criterion the applicant meets, and a maximum of up to 15 priority points for applications that meet all of the following criteria:

(a) *Wide Variety of Choices* (up to 5 points). The project would provide a wide variety of choices to all students in participating schools. In determining whether a proposed project would provide a wide variety of choices, the Department will consider, among other things, the characteristics of the school district. For example, a wide variety of choices in a small rural district may differ from a wide variety of choices in a large urban school district.

(b) *Substantial Impact on Students in Low-Performing Schools* (up to 5 points). The project would, through various choice options, have a substantial impact in allowing students in low-performing schools to attend higher-performing schools. In determining whether a proposed project would have a substantial impact in allowing students in low-performing schools to attend higher-performing schools, the Department will consider, among other things, the percentage of students in low-performing schools who would be able to attend higher-performing schools under the jurisdiction of the applicant(s).

**Note:** The term ''low-performing school'' means a public elementary or secondary school that has failed to make adequate yearly progress, as described in section 1111(b) of the ESEA, for two or more consecutive years.

(c) *Partnership/Interdistrict Approach* (up to 5 points). The project would establish a partnership that implements an interdistrict approach to carrying out a public school choice program.

These priorities are specified in the authorizing statute for the program (see section 5244 of the ESEA). The priority points are in addition to any points the applicant earns under the selection criteria listed below. The Secretary may select an application that meets a priority over an application of comparable merit that does not meet the priority. The maximum number of points an application may earn based on the priority points and the selection criteria is 115 points.

*Selection Criteria:* The Secretary will use the selection criteria in 34 CFR 75.210 and selection criteria based on statutory provisions to evaluate applications for new grants under this competition. The maximum possible score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. The criteria are as follows:

(a) *Need for the Project* (up to 100 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance* (up to 15 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The likelihood that the proposed project will result in system change or improvement.

(2) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services (*i.e.,* choice options) that address the needs of the target population.

(3) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) Quality of Project Design). (up to 40 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project encourages parental involvement and ensures that parents have high-quality information about their choices.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) The extend to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about

**Permissible Uses of Funds**

An eligible entity that receives a grant under this subpart may use the grant funds for—

(a) Planning or designing a program (for not more than 1 year);

(b) The cost of making tuition transfer payments to public elementary schools or secondary schools to which students transfer under the program.

(c) The cost of capacity-enhancing activities that enable high-demand public elementary schools or secondary schools to accommodate transfer requests under the program;

(d) The cost of carrying out public education campaigns to inform students and parents about the program; and

(e) Other costs that are reasonably necessary to implement the program.

**Nonpermissible Use of Funds**

An eligible entity that receives a grant under this program may not use the grant funds for school construction.

**Parent and Community Involvement and Notice**

In carrying out a project under this program, an eligible entity must—

(1) Develop the project with (a) the involvement of parents and others in the community to be served; and (b) individuals who will carry out the program, including administrators, teachers, principals, and other staff; and

(2) Provide to parents of students in the area to be served by the program with prompt notice of (a) the existence of the program; (b) the program's availability; and (c) a clear explanation of how the program will operate.

**Selection of Students by Lottery**

An eligible entity that receives a grant under this program must select students to participate in its public school choice program on the basis of a lottery, if more students apply for admission to the program than can be accommodated.

**Note:** For purposes of this program, a lottery is defined as a random selection process through which applicants for admission to a participating public school are admitted to the school.

**Voluntary Participation**

Student participation in a project funded under this program must be voluntary.

*For Applications or Information Contact:* Iris A. Lane, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C156, Washington, DC 20202–6140. Telephone: (202) 260–1999. Inquiries may also be sent by e-mail to: *Iris.Lane@ed.gov*

Or by FAX to: (202) 205–5630. The Department intends to offer prospective applicants further information about the program and assistance in preparing applications at the following Internet site: *http://www.ed.gov/GrantApps/#84.361*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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**Program Authority:** 20 U.S.C. 7225–7225g.

Dated: July 1, 2002.

**Susan B. Neuman,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 02–16889 Filed 7–3–02; 8:45 am]

BILLING CODE 4000–01–U

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## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Inviting Applications for New Awards

**AGENCY:** Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal years (FY) 2002; Correction.

On May 24, 2002, a notice inviting applications for new awards under the Office of Special Education and Rehabilitative Services; Grant Applications under the Special Education—Training and Information for Parents of Children with Disabilities Program was published in the **Federal Register** (67 FR 36774). Under the Parent Training and Information Centers (84.328M) priority on page 36776, in column 1, ''Estimated Project Awards'' section, and the table also included on page 36777, the notice states that one award may be made to New York in the amount of $234,075 to a qualified applicant for a parent center to serve the entire State. The first sentence in the second paragraph of the ''Estimated Project Awards'' section is corrected to begin, ''With the exception of New York, where the award will serve the metropolitan New York City area, one award may be made in the following amounts to a qualified applicant for a parent center to serve the entire State''.

**FOR FURTHER INFORMATION CONTACT:** For further information on this notice contact Debra Sturdivant, U.S. Department of Education, 400 Maryland Avenue, SW, room 3527, Switzer Building, Washington, DC 20202–2641. FAX: (202) 205–8105 (FAX is the preferred method for requesting information). Telephone: (202) 205–8038. Internet: *Debra.Sturdivant@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

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**Program Authority:** 20 U.S.C. 1482.

Dated: July 1, 2002.

**Robert H. Pasternack,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 02–16880 Filed 7–3–02; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF EDUCATION

### William D. Ford Federal Direct Loan Program

**AGENCY:** Department of Education.

**ACTION:** Notice of the annual updates to the income contingent repayment (ICR) plan formula for 2002.

**SUMMARY:** The Secretary announces the annual updates to the ICR plan formula for 2002. Under the William D. Ford Federal Direct Loan (Direct Loan) Program, borrowers may choose to repay

their student loans under the ICR plan, which bases the repayment amount on the borrower's income, family size, loan amount, and interest rate. Each year, we adjust the formula for calculating a borrower's payment to reflect changes due to inflation. This notice contains the constant multiplier chart and the required updates based on inflation for examples of how the calculation of the monthly ICR amount is performed, the income percentage factors, and charts showing sample repayment amounts. These updates are effective from July 1, 2002 to June 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Don Watson, U.S. Department of Education, Room 092B1, UCP, 400 Maryland Avenue, SW., Washington, DC 20202–5400. Telephone: (202) 377–4008. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** Direct Loan Program borrowers may choose to repay their Direct Loans under the ICR plan. The attachment to this notice provides updates to examples of how the calculation of the monthly ICR amount is performed, the income percentage factors, the constant multiplier chart, and charts showing sample repayment amounts.

We have updated the income percentage factors to reflect changes based on inflation. We have revised the income percentage factor table by changing the dollar amounts of the incomes shown by a percentage equal to the estimated percentage change in the Consumer Price Index for all urban consumers from December 2001 to December 2002. Further, we provide examples of monthly repayment amount calculations and two charts that show sample repayment amounts for single and married or head-of-household borrowers at various income and debt levels based on the updated income percentage factors.

The updated income percentage factors, at any given income, may cause a borrower's payments to be slightly lower than they were in prior years. This updated amount more accurately reflects the impact of inflation on a borrower's current ability to repay.

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**Program Authority:** 20 U.S.C. 1087 *et seq.*

Dated: July 1, 2002.

**Candace M. Kane,**

*Acting Chief Operating Officer, Federal Student Aid.*

### Attachment—Examples of the Calculations of Monthly Repayment Amounts

*Example 1.* This example assumes you are a single borrower with $15,000 in Direct Loans, the interest rate being charged is 8.25 percent, and you have an adjusted gross income (AGI) of $32,345.

*Step 1:* Determine your annual payments based on what you would pay over 12 years using standard amortization. To do this, multiply your loan balance by the constant multiplier for 8.25 percent interest (0.1315449). The constant multiplier is a factor used to calculate amortized payments at a given interest rate over a fixed period of time. (The 8.25 percent interest rate used in this example is the maximum interest rate charged for all Direct Loans excluding Direct PLUS Loans and may not be your actual interest rate. You can view the constant multiplier chart at the end of this notice to determine the constant multiplier that you should use for the interest rate on your loan. If your exact interest rate is not listed, use the next highest for estimation purposes.)

- 0.1315449 × $15,000 = $1,973.17

*Step 2:* Multiply the result of Step 1 by the income percentage factor shown in the income percentage factors table that corresponds to your income and then divide the result by 100. (If your income is not listed in the income percentage factors table, calculate the applicable income percentage factor by following the instructions under the ''Interpolation'' heading later in this notice.):

- 88.77 × $1,973.17÷100 = $1,751.58

*Step 3:* Determine 20 percent of your discretionary income. Because you are a single borrower, subtract the poverty level for a family of one, as published in the **Federal Register** on February 14, 2002 (67 FR 6931), from your income and multiply the result by 20 percent:

- $32,345 − $8,860 = $23,485
- $23,485 × 0.20 = $4,697

*Step 4:* Compare the amount from Step 2 with the amount from Step 3. The lower of the two will be your annual payment amount. In this example, you will be paying the amount calculated under Step 2. To determine your monthly repayment amount, divide the annual amount by 12.

- $1,751.58 ÷ 12 = $145.97

*Example 2.* In this example, you are married. You and your spouse have a combined AGI of $61,121 and are repaying your loans jointly under the ICR plan. You have no children. You have a Direct Loan balance of $10,000, and your spouse has a Direct Loan balance of $15,000. Your interest rate is 8.25 percent.

*Step 1:* Add your and your spouse's Direct Loan balances together to determine your aggregate loan balance:

- $10,000 + $15,000 = $25,000

*Step 2:* Determine the annual payment based on what you would pay over 12 years using standard amortization. To do this, multiply your aggregate loan balance by the constant multiplier for 8.25 percent interest (0.1315449). (The 8.25 percent interest rate used in this example is the maximum interest rate charged for all Direct Loans excluding Direct PLUS Loans and may not be your actual interest rate. You can view the constant multiplier chart at the end of this notice to determine the constant multiplier that you should use for the interest rate on your loan. If your exact interest rate is not listed, use the next highest for estimation purposes.)

- 0.1315449 × $25,000 = $3,288.62

*Step 3:* Multiply the result of Step 2 by the income percentage factor shown in the income percentage factors table that corresponds to your and your spouse's income and then divide the result by 100. (If your and your spouse's aggregate income is not listed in the income percentage factors table, calculate the applicable income percentage factor by following the instructions under the ''Interpolation'' heading later in this notice.):

- 109.40 × $3,288.62÷ 100 = $3,597.75

*Step 4:* Determine 20 percent of your discretionary income. To do this, subtract the poverty level for a family of two, as published in the **Federal Register** on February 14, 2002 (67 FR 6931), from your aggregate income and multiply the result by 20 percent:

- $61,121 − $11,940 = $49,181
- $49,181 × 0.20 = $9,836.20

*Step 5:* Compare the amount from Step 3 with the amount from Step 4. The lower of the two will be your annual payment amount. You and your spouse will pay the amount calculated under Step 3. To determine your monthly repayment amount, divide the annual amount by 12.

- $3,597.75÷12 = $299.81

*Interpolation:* If your income does not appear on the income percentage factors table, you will have to calculate the income percentage factor through interpolation. For example, assume you are single and your income is $25,000.

*Step 1:* Find the closest income listed that is less than your income of $25,000 and the closest income listed that is greater than your income of $25,000.

*Step 2:* Subtract the lower amount from the higher amount (for this discussion, we will call the result the ''income interval''):

• $25,751 − $21,641 = $4,110

*Step 3:* Determine the difference between the two income percentage factors that are given for these incomes (for this discussion, we will call the result, the ''income percentage factor interval''):

• 80.33% − 71.89% = 8.44%

*Step 4:* Subtract from your income the closest income shown on the chart that is less than your income of $25,000:

• $25,000 − $21,641 = $3,359

*Step 5:* Divide the result of Step 4 by the income interval determined in Step 2:

• $3,359 ÷ $4,110 = 0.81727

*Step 6:* Multiply the result of Step 5 by the income percentage factor interval:

• 8.44% × 0.81727 = 6.89776%

*Step 7:* Add the result of Step 6 to the lower of the two income percentage factors used in Step 3 to calculate the income percentage factor interval for $25,000 in income:

• 6.89776% + 71.89% = 78.79% (rounded to the nearest hundredth)

The result is the income percentage factor that will be used to calculate the monthly repayment amount under the ICR plan.

BILLING CODE 4000–01–P

**2002 Income Percentage Factors**

(Based on Annual Income)

| Single | | Married/ Head of Household | |
|---|---|---|---|
| Income | % Factor | Income | % Factor |
| 8,455 | 55.00% | 8,455 | 50.52% |
| 11,634 | 57.79% | 13,342 | 56.68% |
| 14,970 | 60.57% | 15,900 | 59.56% |
| 18,383 | 66.23% | 20,786 | 67.79% |
| 21,641 | 71.89% | 25,751 | 75.22% |
| 25,751 | 80.33% | 32,345 | 87.61% |
| 32,345 | 88.77% | 40,565 | 100.00% |
| 40,566 | 100.00% | 48,788 | 100.00% |
| 48,788 | 100.00% | 61,121 | 109.40% |
| 58,637 | 111.80% | 81,674 | 125.00% |
| 75,082 | 123.50% | 110,450 | 140.60% |
| 106,340 | 141.20% | 154,469 | 150.00% |
| 121,929 | 150.00% | 252,414 | 200.00% |
| 217,178 | 200.00% | | |

**Constant Multiplier Chart for 12-Year Amortization**

| Interest Rate | Annual Constant Multiplier |
|---|---|
| 7.00% | 0.1234057 |
| 7.25% | 0.1250107 |
| 7.46% | 0.1263678 |
| 7.50% | 0.1266272 |
| 7.75% | 0.1282550 |
| 8.00% | 0.1298943 |
| 8.25% | 0.1315449 |
| 8.38% | 0.1324076 |
| 8.50% | 0.1332067 |
| 8.75% | 0.1348796 |
| 9.00% | 0.1365637 |

**Sample First-Year Monthly Repayment Amounts for a Single Borrower at various Income and Debt Levels**

| Income | Initial Debt | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $ 2,500 | $ 5,000 | $ 7,500 | $ 10,000 | $ 12,500 | $ 15,000 | $ 17,500 | $ 20,000 | $ 22,500 | $ 25,000 | $ 30,000 | $ 35,000 | $ 40,000 | $ 45,000 | $ 50,000 | $ 55,000 | $ 60,000 | $ 65,000 | $ 70,000 | $ 75,000 | $ 80,000 | $ 85,000 | $ 90,000 | $ 100,000 |
| $ 1,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 3,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 4,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 6,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 7,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 9,000 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 |
| 10,000 | 15 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 |
| 12,500 | 16 | 32 | 48 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 |
| 15,000 | 17 | 33 | 50 | 66 | 83 | 100 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 |
| 17,500 | 18 | 36 | 53 | 71 | 89 | 106 | 124 | 142 | 144 | 144 | 144 | 144 | 144 | 144 | 144 | 144 | 144 | 144 | 144 | 144 | 144 | 144 | 144 | 144 |
| 20,000 | 19 | 38 | 57 | 76 | 95 | 114 | 133 | 152 | 171 | 186 | 186 | 186 | 186 | 186 | 186 | 186 | 186 | 186 | 186 | 186 | 186 | 186 | 186 | 186 |
| 22,500 | 20 | 40 | 61 | 81 | 101 | 121 | 141 | 161 | 182 | 202 | 227 | 227 | 227 | 227 | 227 | 227 | 227 | 227 | 227 | 227 | 227 | 227 | 227 | 227 |
| 25,000 | 22 | 43 | 65 | 86 | 108 | 130 | 151 | 173 | 194 | 216 | 259 | 269 | 269 | 269 | 269 | 269 | 269 | 269 | 269 | 269 | 269 | 269 | 269 | 269 |
| 30,000 | 24 | 47 | 71 | 94 | 118 | 141 | 165 | 188 | 212 | 235 | 282 | 329 | 352 | 352 | 352 | 352 | 352 | 352 | 352 | 352 | 352 | 352 | 352 | 352 |
| 35,000 | 25 | 51 | 76 | 101 | 127 | 152 | 177 | 203 | 228 | 253 | 304 | 355 | 405 | 436 | 436 | 436 | 436 | 436 | 436 | 436 | 436 | 436 | 436 | 436 |
| 40,000 | 27 | 54 | 82 | 109 | 136 | 163 | 190 | 218 | 245 | 272 | 326 | 381 | 435 | 489 | 519 | 519 | 519 | 519 | 519 | 519 | 519 | 519 | 519 | 519 |
| 45,000 | 27 | 55 | 82 | 110 | 137 | 164 | 192 | 219 | 247 | 274 | 329 | 384 | 438 | 493 | 549 | 602 | 602 | 602 | 602 | 602 | 602 | 602 | 602 | 602 |
| 50,000 | 28 | 56 | 83 | 111 | 139 | 167 | 195 | 222 | 250 | 278 | 334 | 389 | 445 | 500 | 556 | 612 | 667 | 686 | 686 | 686 | 686 | 686 | 686 | 686 |
| 55,000 | 29 | 59 | 88 | 118 | 147 | 177 | 206 | 236 | 265 | 294 | 353 | 412 | 471 | 530 | 589 | 648 | 707 | 766 | 769 | 769 | 769 | 769 | 769 | 769 |
| 60,000 | 31 | 62 | 93 | 124 | 155 | 185 | 216 | 247 | 278 | 309 | 371 | 433 | 494 | 556 | 618 | 680 | 742 | 804 | 852 | 852 | 852 | 852 | 852 | 852 |
| 65,000 | 32 | 64 | 96 | 128 | 159 | 191 | 223 | 255 | 287 | 319 | 383 | 446 | 510 | 574 | 638 | 701 | 765 | 829 | 893 | 936 | 936 | 936 | 936 | 936 |
| 70,000 | 33 | 66 | 99 | 131 | 164 | 197 | 230 | 263 | 296 | 329 | 394 | 460 | 526 | 591 | 657 | 723 | 789 | 854 | 920 | 986 | 1019 | 1019 | 1019 | 1019 |
| 75,000 | 34 | 68 | 101 | 135 | 169 | 203 | 237 | 271 | 304 | 338 | 406 | 474 | 541 | 609 | 677 | 744 | 812 | 880 | 947 | 1015 | 1083 | 1083 | 1083 | 1083 |
| 80,000 | 35 | 69 | 104 | 138 | 173 | 208 | 242 | 277 | 311 | 346 | 415 | 485 | 554 | 623 | 692 | 761 | 831 | 900 | 969 | 1038 | 1107 | 1177 | 1186 | 1186 |
| 85,000 | 35 | 71 | 106 | 142 | 177 | 212 | 248 | 283 | 318 | 354 | 425 | 495 | 566 | 637 | 708 | 778 | 849 | 920 | 991 | 1062 | 1132 | 1203 | 1269 | 1269 |
| 90,000 | 36 | 72 | 108 | 145 | 181 | 217 | 253 | 289 | 325 | 362 | 434 | 506 | 579 | 651 | 723 | 796 | 868 | 940 | 1012 | 1085 | 1157 | 1229 | 1302 | 1352 |
| 95,000 | 37 | 74 | 111 | 148 | 185 | 222 | 259 | 295 | 332 | 369 | 443 | 517 | 591 | 665 | 739 | 813 | 886 | 960 | 1034 | 1108 | 1182 | 1256 | 1330 | 1436 |
| 100,000 | 38 | 75 | 113 | 151 | 189 | 226 | 264 | 302 | 339 | 377 | 453 | 528 | 603 | 679 | 754 | 830 | 905 | 981 | 1056 | 1131 | 1207 | 1282 | 1358 | 1508 |

Sample repayment amounts are based on an interest rate of 8.25%.

**Sample First-Year Monthly Repayment Amounts for a Married or Head-of-household Borrower at various Income and Debt Levels**

| Income | Family Size = 3 | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Initial Debt | | | | | | | | | | | | | | | | | | | | | | | |
| | $ 2,500 | $ 5,000 | $ 7,500 | $ 10,000 | $ 12,500 | $ 15,000 | $ 17,500 | $ 20,000 | $ 22,500 | $ 25,000 | $ 30,000 | $ 35,000 | $ 40,000 | $ 45,000 | $ 50,000 | $ 55,000 | $ 60,000 | $ 65,000 | $ 70,000 | $ 75,000 | $ 80,000 | $ 85,000 | $ 90,000 | $ 100,000 |
| $ 1,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 3,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 4,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 6,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 7,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 9,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 10,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 12,500 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 15,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 17,500 | 17 | 34 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 | 41 |
| 20,000 | 18 | 36 | 55 | 73 | 83 | 83 | 83 | 83 | 83 | 83 | 83 | 83 | 83 | 83 | 83 | 83 | 83 | 83 | 83 | 83 | 83 | 83 | 83 | 83 |
| 22,500 | 19 | 39 | 58 | 77 | 96 | 116 | 125 | 125 | 125 | 125 | 125 | 125 | 125 | 125 | 125 | 125 | 125 | 125 | 125 | 125 | 125 | 125 | 125 | 125 |
| 25,000 | 20 | 41 | 61 | 81 | 102 | 122 | 142 | 162 | 166 | 166 | 166 | 166 | 166 | 166 | 166 | 166 | 166 | 166 | 166 | 166 | 166 | 166 | 166 | 166 |
| 30,000 | 23 | 46 | 68 | 91 | 114 | 137 | 160 | 182 | 205 | 228 | 250 | 250 | 250 | 250 | 250 | 250 | 250 | 250 | 250 | 250 | 250 | 250 | 250 | 250 |
| 35,000 | 25 | 50 | 75 | 100 | 126 | 151 | 176 | 201 | 226 | 251 | 301 | 333 | 333 | 333 | 333 | 333 | 333 | 333 | 333 | 333 | 333 | 333 | 333 | 333 |
| 40,000 | 27 | 54 | 82 | 109 | 136 | 163 | 190 | 217 | 245 | 272 | 326 | 380 | 416 | 416 | 416 | 416 | 416 | 416 | 416 | 416 | 416 | 416 | 416 | 416 |
| 45,000 | 27 | 55 | 82 | 110 | 137 | 164 | 192 | 219 | 247 | 274 | 319 | 384 | 438 | 493 | 500 | 500 | 500 | 500 | 500 | 500 | 500 | 500 | 500 | 500 |
| 50,000 | 28 | 55 | 83 | 111 | 138 | 166 | 194 | 221 | 249 | 277 | 332 | 387 | 443 | 498 | 553 | 583 | 583 | 583 | 583 | 583 | 583 | 583 | 583 | 583 |
| 55,000 | 29 | 57 | 86 | 115 | 144 | 172 | 201 | 230 | 258 | 287 | 344 | 402 | 459 | 517 | 574 | 631 | 666 | 666 | 666 | 666 | 666 | 666 | 666 | 666 |
| 60,000 | 30 | 59 | 89 | 119 | 149 | 178 | 208 | 238 | 268 | 297 | 357 | 416 | 476 | 535 | 595 | 654 | 714 | 750 | 750 | 750 | 750 | 750 | 750 | 750 |
| 65,000 | 31 | 62 | 92 | 123 | 154 | 185 | 216 | 246 | 277 | 308 | 369 | 431 | 493 | 554 | 616 | 677 | 739 | 800 | 833 | 833 | 833 | 833 | 833 | 833 |
| 70,000 | 32 | 64 | 95 | 127 | 159 | 191 | 223 | 255 | 286 | 318 | 382 | 446 | 509 | 573 | 637 | 700 | 764 | 828 | 891 | 916 | 916 | 916 | 916 | 916 |
| 75,000 | 33 | 66 | 99 | 131 | 164 | 197 | 230 | 263 | 296 | 329 | 394 | 460 | 526 | 592 | 657 | 723 | 789 | 855 | 920 | 986 | 1000 | 1000 | 1000 | 1000 |
| 80,000 | 34 | 68 | 102 | 136 | 170 | 203 | 237 | 271 | 305 | 339 | 407 | 475 | 543 | 610 | 678 | 746 | 814 | 882 | 949 | 1017 | 1083 | 1083 | 1083 | 1083 |
| 85,000 | 35 | 70 | 104 | 139 | 174 | 209 | 243 | 278 | 313 | 348 | 417 | 487 | 556 | 626 | 695 | 765 | 834 | 904 | 973 | 1043 | 1112 | 1166 | 1166 | 1166 |
| 90,000 | 35 | 71 | 106 | 142 | 177 | 213 | 248 | 284 | 319 | 355 | 426 | 497 | 568 | 639 | 710 | 781 | 852 | 923 | 994 | 1065 | 1136 | 1207 | 1250 | 1250 |
| 95,000 | 36 | 72 | 109 | 145 | 181 | 217 | 254 | 290 | 326 | 362 | 435 | 507 | 580 | 652 | 725 | 797 | 870 | 942 | 1015 | 1087 | 1160 | 1232 | 1304 | 1333 |
| 100,000 | 37 | 74 | 111 | 148 | 185 | 222 | 259 | 296 | 333 | 370 | 444 | 518 | 592 | 666 | 740 | 814 | 887 | 961 | 1035 | 1109 | 1183 | 1257 | 1331 | 1416 |

Sample repayment amounts are based on an interest rate of 8.25%.

[FR Doc. 02–16879 Filed 7–3–02; 8:45 am]

BILLING CODE 4000–01–C

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC02–73–001]**

### Caledonia Generating, LLC, Cogentrix Energy Power Marketing, Inc., Cogentrix Lawrence County, LLC, Green Country Energy, LLC, Jackson County Power, LLC, Quachita Power, LLC, Rathdrum Power, LLC, Southaven Power, LLC & Aquila Merchant Services, Inc.; Notice of Filing

June 28, 2002.

Take notice that on June 17, 2002, Caledonia Generating, LLC, Cogentrix Energy Power Marketing, Inc., Cogentrix Lawrence County, LLC, Green Country Energy, LLC, Jackson County Energy, LLC, Quachita Power, LLC, Rathdrum Power, LLC, Southaven Power, LLC (Operating Companies) and Aquila Merchant Services, Inc. (AMS) filed with the Federal Energy Regulatory Commission (Commission), an amendment to the joint application submitted on June 5, 2002 in the above-referenced docket. The amendment removed Section VI thereof in its entirety, while the Application remains unchanged in all other respects.

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.

*Comment Date*: July 5, 2002.

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

*Deputy Secretary.*

[FR Doc. 02–16833 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ES02–46–000]**

### McDonough Power Cooperative; Notice of Application

June 28 , 2002.

Take notice that on June 20, 2002, McDonough Power Cooperative (McDonough) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make borrowings under a long-term loan agreement with the National Rural Utilities Cooperative Finance Corporation by issuing one or more secured promissory notes during a two-year period in an amount not to exceed $15,900,000.

McDonough also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine 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.

*Comment Date:* July 19, 2002.

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

*Deputy Secretary.*

[FR Doc. 02–16835 Filed 7–05–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER02–2033–001]**

### Midwest Independent Transmission System Operator, Inc., American Transmission Company LLC; Notice of Filing

June 27, 2002.

Take notice that on June 25, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and American Transmission Company LLC (ATCLLC) filed an errata to their June 5, 2002 filing proposing revisions to the Midwest ISO open access transmission tariff to add limitation of liability provisions. Applicant request an effective date of August 5, 2002.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 with respect to service on all required parties. The Midwest ISO has posted this filing on its Internet site at *www.midwestiso.org,* and the Midwest ISO will provide hard copies to any interested parties upon request.

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.

*Comment Date*: July 9, 2002.

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

*Deputy Secretary.*

[FR Doc. 02–16801 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ES02–47–000]**

### Old Dominion Electric Cooperative; Notice of Application

June 28, 2002.

Take notice that on June 21, 2002, Old Dominion Electric Cooperative (Old Dominion) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue up to and including $66 million of long-term debt.

Old Dominion also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine 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.

*Comment Date:* July 19, 2002.

Dated:

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

*Deputy Secretary.*

[FR Doc. 02–16836 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

June 28, 2002.

In the matter of: EL00–95–064, EL00–98–053, EL00–107–012, EL00–97–006, EL00–104–011, EL01–1–012, EL01–2–006, EL01–68–016; San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator and the California Power Exchange, Investigation of Practices of the California Independent System Operator and the California Power Exchange, Public Meeting in San Diego, California, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C. v. California Independent System Operator Corporation, California Electricity Oversight Board v. All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange, California Municipal Utilities Association v. All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Californians for Renewable Energy, Inc. (CARE) v. Independent Energy Producers, Inc., and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council; Notice of Filing.

Take notice that on June 24, 2002, the California Independent System Operator Corporation (ISO) submitted a filing with the Federal Energy Regulatory Commission (Commission) in compliance with the Commission Order issued in the captioned dockets on May 15, 2002, 99 FERC ¶ 61,158. The ISO states that it has served the filing upon all entities that are on the official service lists for the captioned dockets.

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). 0Protests 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.

*Comment Date*: July 15, 2002.

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

*Deputy Secretary.*

[FR Doc. 02–16834 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP02–204–000]**

### Transcontinental Gas Pipe Line Corporation; Notice of Site Visit

June 27, 2002.

On July 9, 2002, the Office of Energy Projects (OEP) staff will conduct a pre-certification site visit of Transcontinental Gas Pipe Line Corporation's (Transco) Trenton Woodbury Expansion Project in Mercer and Burlington Counties, New Jersey. We will examine the proposed project route and potential route variations. Representatives of Transco will be accompanying the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. Those interested in attending should meet at 1:00 p.m. at the following location: Municipal Building, Township of Chesterfield, 300 Bordentown-Chesterfield Road, Trenton, New Jersey 08620.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

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

*Deputy Secretary.*

[FR Doc. 02–16800 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER02–2102–000]**

### Utility Contract Funding, L.L.C.; Notice of Filing

June 20, 2002.

Take notice that on June 14, 2002, Utility Contract Funding, L.L.C. submitted a Notice of Succession pursuant to 18 CFR 35.16 and 131.51. Utility Contract Funding, L.L.C. is succeeding to the electric tariffs, rate schedules, and service agreements currently on file with the Federal Energy Regulatory Commission by Cedar Brakes III, L.L.C.

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.

*Comment Date:* July 5, 2002.

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

*Deputy Secretary.*

[FR Doc. 02–16803 Filed 7–3–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC02–79–000, et al.]**

### Electric Rate and Corporate Regulation Filings

June 27, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Logan Generating Company, L.P., Pittsfield Generating Company, L.P., and Cogentrix Energy, Inc.**

[Docket Nos. EC02–79–000, ER95–1007–015, and ER98–4400–004]

Take notice that on June 21, 2002, Logan Generating Company, L.P. (Logan), Pittsfield Generating Company, L.P. (Pittsfield), and Cogentrix Energy, Inc. (Cogentrix) (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act seeking authorization for the transfer of certain jurisdictional facilities that will result from the sale of Cogentrix's indirect interest in Logan and Pittsfield to General Electric Capital Corporation. Logan controls and operates a 218 MW qualifying cogeneration facility located in Logan Township, New Jersey. Pittsfield controls and operates a 165 MW qualifying cogeneration facility located in Pittsfield, Massachusetts. Logan and Pittsfield also request that that the Commission accept the filing as a notice of change in status in their respective rate dockets.

*Comment Date:* July 11, 2002.

**2. Lake Road Trust Ltd., Lake Road Generating Company, L.P.**

[Docket No. EC02–80–000]

Take notice that on June 21, 2002, Lake Road Trust Ltd. (Lake Road Trust) and Lake Road Generating Company, L.P. (Lake Road Gen), tendered for filing, pursuant to section 203 of the Federal Power Act, 16 U.S.C. § 824b (1994), and part 33 of the Commission's regulations, 18 CFR part 33, an application to authorize an assignment of beneficial interests in Lake Road Trust to Lake Road Gen.

*Comment Date:* July 12, 2002.

**3. Metcalf Energy Center, LLC**

[Docket No. EG02–157–000]

Take notice that on June 21, 2002, Metcalf Energy Center, LLC (Metcalf) 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.

Metcalf, a Delaware limited liability company, proposes to own and operate a nominally rated 600 megawatt natural gas-fired, combined cycle electric generating facility to be located in Santa Clara County, California. Metcalf intends to sell the output at wholesale to an affiliated marketer.

*Comment Date:* July 18, 2002.

**4. Keyspan-Ravenswood, Inc.**

[Docket No. EG02–158–000]

Take notice that on June 20, 2002 KeySpan-Ravenswood, Inc. (KeySpan-Ravenswood) filed with the Federal Energy Regulatory Commission (FERC or the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

KeySpan-Ravenswood states it is a New York corporation that will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities located in Queens, New York. The eligible facilities will consist of approximately 2,210 MW of gas and/or oil fired electric generation facilities and related interconnection facilities. The output of the eligible facilities will be sold exclusively at wholesale.

*Comment Date:* July 18, 2002.

**5. Maine Public Service Company**

[Docket No. ER00–1053–006]

Take notice that on June 18, 2002, pursuant to section 2.4 of the Settlement Agreement filed on June 30, 2000, in Docket No. ER00–1053–000, and accepted by the Federal Energy Regulatory Commission on September 15, 2000, Maine Public Service Company (MPS) submited a correction to its June 17, 2002 informational filing that set forth the changed open access transmission tariff charges effective June 1, 2002 together with back-up materials.

Copies of this filing were served on the parties to the Settlement Agreement in Docket No. ER00–1053–000, the Commission Trial Staff, the Maine Public Utilities Commission, the Maine Public Advocate, and current MPS open access transmission tariff customers.

*Comment Date:* July 9, 2002.

**6. Ameren Services Company**

[Docket No. ER02–930–001]

Take notice that on June 24, 2002, Ameren Services Company (ASC) tendered for filing an unexecuted Network Integration Transmission

Service Agreement and Network Operating Agreement between ASC and City of Farmington, Missouri. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreements in Docket No. ER02–930–000 with revised unexecuted Agreements.

*Comment Date:* July 15, 2002.

**7. International Transmission Company**

[Docket Nos. ER02–1576–001]

Take notice that on June 24, 2002, International Transmission Company tendered a filing with the in response to a deficiency letter from the Federal Energy Regulatory Commission (Commission) issued on June 14, 2002, in the above-referenced docket. The Commission's June 14, 2002 letter requested additional information and support from International Transmission Company regarding its treatment of certain facilities in its Generator Interconnection and Operating Agreement with FirstEnergy Generation Corp. as interconnection facilities.

*Comment Date:* July 15, 2002.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

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

*Deputy Secretary.*

[FR Doc. 02–16821 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 2942–005, 2931–002, 2941–002, 2932–003, and 2897–003]**

### S.D. Warren Company; Notice of Availability of Final Environmental Impact Statement

June 27, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (FERC or Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects staff has reviewed the applications for new licenses for the Dundee, Gambo, Little Falls, Mallison Falls, and the Saccarappa hydroelectric projects, and has prepared a Final Environmental Impact Statement (FEIS) for the projects. In the FEIS, the Commission's staff has analyzed the potential environmental impacts of the existing projects and has recommended that approval of the projects, with appropriate environmental protection measures, would be in the public interest.

Copies of the FEIS are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

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

*Deputy Secretary.*

[FR Doc. 02–16802 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 516, South Carolina]**

### South Carolina Electric & Gas Company; Notice of Availability of Draft Environmental Assessment

June 28, 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 prepared a Draft Environmental Assessment (DEA) for the Saluda Dam Seismic Remediation Project. The Saluda Dam is a part of the Saluda Project (FERC No. 516) and is located on the Saluda River in Lexington, Richland, Newberry, and Saluda counties, South Carolina.

The DEA contains the staff's analysis of the potential environmental impacts of the dam remediation project and contains measures to minimize those impacts. The DEA concludes that the project, with recommended mitigation measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance), or at *http://www.ferc.gov/hydro/docs/saludaea.pdf*.

Any comments must be filed by July 15, 2002 and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. P–516 to all comments. Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

For further information, contact John Mudre at (202) 219–1208 or john.mudre@ferc.gov.

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

*Deputy Secretary.*

[FR Doc. 02–16837 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 6058–005 and 6059–006 New York]**

### Hydro Development Group, Inc.; Notice of Availability of Multi-Project Environmental Assessment

June 28, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for licenses for the Hailesboro #4 Hydroelectric Project (P–6058–005), and Fowler #7 Project (P–6059–006), located on the Oswegatchie River in St. Lawrence County, New York, and has prepared a multi-project Environmental Assessment (EA) for the projects. There are no Federal lands or Indian reservations occupied by projects' works

or located within the projects' boundaries.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is 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).

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 6058–005 and 6059–006 to all comments. Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

For further information, contact Monte TerHaar at (202) 219–2768.

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

*Deputy Secretary.*

[FR Doc. 02–16840 Filed 7–3–02; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission; National Park Service, Department of the Interior

**[Project No. 11659–002 Alask]**

### Gustavus Electric Company; Notice of Intent to Prepare Environmental Impact Statement

June 28, 2002.

*Summary:* The Federal Energy Regulatory Commission (FERC) and the National Park Service (NPS) are jointly preparing an environmental impact statement (EIS) in accordance with the National Environmental Policy Act (NEPA) of 1969, and consistent with the Council on Environmental Quality's guidelines, 40 CFR part 1500, on a proposal to construct the Falls Creek Hydroelectric Project (FERC No 11659–002). The Glacier Bay National Park Boundary Adjustment Act of 1998 [105 Public Law 317; 112 Stat. 3002 (1998)] (Act) specifies the NPS shall participate as a joint lead agency (with FERC) in the development of this environmental document.

The Act authorizes FERC to accept a hydropower license application from Gustavus Electric Company (GEC) for the construction, operation and maintenance of the proposed 800 kW Falls Creek Hydroelectric Project located within Glacier Bay National Park. GEC filed their application with FERC on October 23, 2001.

The Act authorizes the Secretary of the Interior to exchange designated wilderness land located in Glacier Bay National Park to the State of Alaska (State), for this project. This exchange is authorized if the Secretary of the Interior concludes that the Falls Creek Hydroelectric Project can be constructed and operated without adversely impacting the purposes and values of the park, as constituted after the land exchange. The exchange is predicated upon the State conveying to the United States lands worthy of being included in the National Park System. To ensure this transaction maintains approximately the same amount of designated wilderness in the National Wilderness Preservation System as currently exists, other land in Glacier Bay National Park and Preserve shall be designated wilderness upon consummation of the land exchange. This land shall be administered according to the laws governing national wilderness areas in Alaska.

The federal actions under consideration in this EIS are whether to issue a license for construction, operation and maintenance of the Falls Creek Hydroelectric Project; the exchange of federal land with state land; and the removal of land from wilderness designation and designation of other land as wilderness.

To prepare the license application, GEC followed the FERC alternative licensing procedures. In accordance with the FERC Regulations for Licensing Hydroelectric Projects at 18 CFR 4.34 this included conducting a scoping process and preparing a preliminary draft environmental assessment (PDEA). The PDEA describes GEC's scoping process and includes copies of comments received by GEC.

The information and analysis from the PDEA will be used, in conjunction with other information, to prepare the EIS. A copy of the PDEA and license application is on file with FERC and is available for public inspection. This filing 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). The PDEA and application are also available from GEC, P.O. Box 102, Gustavus, Alaska 99826, 907–697–2299.

The EIS will consider a reasonable range of alternatives developed in response to issues raised through public involvement and comment from the GEC pre-application scoping process and any additional scoping occurring under this Notice of Intent. The potential range of alternatives will include the proposed action as described in the PDEA, a no action, a modified proposed action and alternative means of power generation that may be economically and environmentally viable.

The potential alternatives will consider the issues previously identified through GEC's scoping and other issues identified in scoping for the EIS. The major issues are: (1) The impact of reduced water flow on the hydrologic regime, resident Dolly Varden, associated Falls Creek habitats, and aesthetics; (2) impacts to the Falls Creek uplands and wetlands from the access and penstock routes; (3) impacts of the proposal on surrounding Glacier Bay National Park lands and waters; (4) effect of the proposal on the purposes and values of Glacier Bay National Park; (5) impacts on resources and recreation in the project area and surrounding lands resulting from a change in land management from NPS to State administration; and (6) impacts of the land exchange, including the removal of wilderness lands from Glacier Bay National Park wilderness and designation of wilderness lands elsewhere.

*Scoping:* The scoping conducted to date by GEC under the FERC Alternative Licensing Process and comments filed with FERC on the application apply and will be taken into account in the EIS. No additional scoping meetings will be held. FERC and NPS are soliciting written comments from federal and state agencies, local government, private organizations, recreational users, and the public. Notice of this comment period will be announced in local and regional newspapers, including Gustavus, Juneau and Anchorage.

**DATES:** Comments concerning the scope of this project should be filed within 60 days of the issuance of this notice. The draft EIS is projected to be available in late 2002 or early 2003.

*Filing Information:* FERC's Rules of Practice require all intervenors filing documents with FERC to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with FERC 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. 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 may also be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

If individuals submitting comments request that their name and/or address be withheld from public disclosure, the request will be honored to the extent allowable by law. Such requests must comply with Commission regulations (see 18 CFR 388.112). In particular, individuals requesting their name and/or address be withheld from public disclosure must submit two versions of each filing: one with their name and/or address redacted from the document, and one unredacted version of the document that includes the information to be withheld and boldly indicating on the front page ''Contains Privileged Information—Do Not Release.'' There also may be circumstances wherein the FERC and NPS will withhold a respondent's identity to the extent allowable by law. All submissions from organizations, businesses, or persons identifying themselves as representatives or officials of organizations and businesses will be made available for public inspection. Anonymous comments will not be considered.

Any questions regarding this notice may be directed to Bob Easton (FERC representative) at (202) 219–2782 or Bruce Greenwood (NPS representative) at (907) 257–2623.

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

*Deputy Secretary.*

[FR Doc. 02–16841 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

June 28, 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.:* 1979–012.

c. *Date Filed:* June 21, 2002.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Alexander Hydroelectric Project.

f. *Location:* On the Wisconsin River near the City of Merrill, Lincoln County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. David W. Harpole, Wisconsin Public Service Corporation, 700 N. Adams Street, P.O. Box 19002, Green Bay, Wisconsin. 54307 (920) 433–1264.

i. *FERC Contact:* Michael Spencer, *michael.spencer@FERC.fed.us*, (202) 219–2846.

j. *Deadline for filing additional study requests:* August 20, 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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *The existing Alexander Project consists of:* (1) A dam, comprised of earthen embankments, an integral powerhouse and a gated spillway; (2) a 803-acre reservoir; (3) a powerhouse with an total installed capacity of 4,200-kilowatts and (4) appurtenant facilities. The applicant estimates that the average annual generation is 23,550 mega-watthours.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

Additional study requests may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*. n. With this notice, we are initiating consultation with the *Wisconsin State Historic Preservation Officer (SHPO)*, as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so.

Issue Deficiency Letter—August 2002

Issue Acceptance letter—November 2002

Issue Scoping Document 1 for comments—December 2002

Request Additional Information—February 2003

Issue Scoping Document 2—March 2003

Notice of application is ready for environmental analysis—March 2003

Notice of the availability of the draft EA—September 2003

Notice of the availability of the final EA—December 2003

Ready for Commission's decision on the application—December 2003

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

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

*Deputy Secretary.*

[FR Doc. 02–16838 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 3615–002]**

## Drew River Mill, Inc.; Notice of Site Visit

June 28, 2002.

The staff of the Office of Energy Projects (OEP) will be conducting a site visit for the Branch River Mill Project (Project) on August 1, 2002. Representative(s) of Drew River Mill, Inc. will accompany the OEP staff. All interested parties may meet at 9:30 a.m. at the Project dam. Attendees must provide their own transportation.

For further information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

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

*Deputy Secretary.*

[FR Doc. 02–16839 Filed 7–3–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Regulations Governing Off-the-Record Communications; Public Notice

June 28, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of this filing are on file with the Commission and are available for public inspection. The documents 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).

| Docket No. | Date Filed | Presenter or Requester |
|---|---|---|
| Exempt | | |
| 1. CP01–415–000 | 6–20–02 | Bill Carrico |
| 2. CP01–415–000 | 6–20–02 | Olen L. Gallimore |
| 3. CP01–415–000 | 6–20–02 | Calvin H. Web |
| 4. Project No. 1494–000 | 6–25–02 | Jim Burroughs |
| 5. Project No. 2659–000 | 6–25–02 | Nancy Kochan |
| 6. Project No. 10100–000 | 6–25–02 | Bonnie B. Bunning |
| 7. CP01–361–000 | 6–26–02 | Nancy Morris |

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

*Deputy Secretary.*

[FR Doc. 02–16842 Filed 7–3–02; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7241–9]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Synopses of Proposed Contract Actions and Market Research Questions

**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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Synopses of Proposed Contract Actions and Market Research Questions, EPA ICR Number 1910.02, OMB Control No. 2030–0039 expiring 12/31/02. 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 September 3, 2002.

**ADDRESSES:** Ariel Rios Building, 1200 Pennsylvania Avenue NW, Attn: 3802R, Washington, DC 20460.

**FOR FURTHER INFORMATION OR A COPY CONTACT:** Jill Robbins, (202) 564–1052, email: *robbins.jill@epa.gov*

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are those which seek to provide supplies and services to EPA. Title: Synopsis of Proposed Contract Actions and Market Research Questions (OMB Control Number 2030–0039 ; EPA ICR No. 1910.02) expiring 12/31/02.

*Abstract:* EPA frequently publicizes anticipated contract actions in accordance with FAR Part 5, and also conducts market research in accordance with FAR Part 10. In both instances, the public is invited to voluntarily respond to specific questions regarding anticipated procurements or to provide comments to EPA. Comments received are used by the Agency for acquisition planning purposes. 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 annual public reporting and record keeping burden for this collection of information is estimated to average 3.25 hours per response. It is estimated that any individual may respond to synopses or market research questions 5 times per year. EPA anticipates publicizing approximately 250 contract actions per year, and conducting 3800 market research inquiries. 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 28, 2002.

**Leigh Pomponio,**

*Manager, Policy and Oversight Service Center.*

[FR Doc. 02–16856 Filed 7–3–02; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7242–1]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Construction Grants Delegation to States

**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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Construction Grants Delegation to States Information Collection Request, EPA ICR No. 0909.07 and Control No. 2040–0095, current expiration date March 31, 2003. 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 September 3, 2002.

**ADDRESSES:** Gajindar Singh, Office of Wastewater Management, Mail Code 4204M, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by writing to the preceding address.

**FOR FURTHER INFORMATION CONTACT:** Gajindar Singh, Telephone Number: (202) 564–0634 , Facsimile Number: (202) 501–2396, E-mail: *singh.gajindar@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Comments:* Comments shall be submitted to Gajindar Singh, Mail Code 4204M, Environmental Protection Agency, Office of Wastewater Management, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope. Comments may also be submitted electronically to *singh.gajindar@epa.gov* or faxed to (202) 501–2396.

Electronic comments must be submitted as a Word Perfect or Word file. Electronic comments must be identified by the use of words ''Construction Grants Delegation Comments.'' No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in Corel Word Perfect or Word file. The record for this proposed ICR renewal has been established in the Office of Wastewater Management, Municipal Assistance Branch, and includes supporting documentation. It does not include any information claimed as CBI. The record is available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays, at the Municipal Assistance Branch, 1201 Constitution Ave., NW., Washington, DC 20460. For access to the docket materials, please call (202) 564–0634 to schedule an appointment.

*Affected entities:* Entities potentially affected by this action are States which administer elements of the construction grants program under a delegation agreement with EPA and municipalities which received construction grants from EPA.

*Title:* Construction Grants Delegation to States; OMB No. 2040 0095; EPA ICR No. 0909.07 expiring 3/31/2003.

*Abstract:* The purpose of this ICR is to revise and extend the current clearance for the collection of information under the Construction Grants Program Delegation to States, 40 CFR part 35, subpart J, and Title II of the Clean Water Act (CWA). While the Construction Grants Program is being phased out and replaced by the State Revolving Loan Fund (SRF) program, collection activities for the Construction Grants Program must continue until program completion. The program includes reporting, monitoring, and program requirements for municipalities and delegated States.

The information collection activities described in this ICR are authorized under section 205(g) of the Clean Water Act as amended, 33 U.S.C. 1251 *et seq.*, and under 40 CFR part 35, subpart J. The requested information provides the minimum data necessary for the Federal government to maintain appropriate fiscal accountability for use of section 205(g) construction grant funds. The information is also needed to assure an adequate management overview of those State project review activities that are most important to fiscal and project integrity, design performance, Federal budget control, and attainment of national goals.

Managers at the State and Federal levels both rely on the information described in this ICR. State managers rely on the information for their own program and project administration. Federal managers rely on this information to assess, control, and predict the impacts of the construction grants program on the Federal Treasury. Federal managers also use this information to respond to OMB and Congressional requests and to maintain fiscal accountability. In addition, builders of wastewater treatment plants may use the information discussed in this ICR.

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:* Respondents: States and municipalities.

*Estimated Number of Respondents:* 15.

*Frequency of Response:* 47 per year.

*Responses Per Respondent:* 2.6 per year.

*Estimated Total Annual Hour Burden:* 2,297 hours.

*Average Burden Hours Per Response:* 52.5.

*Estimated Total Annualized Cost Burden:* $98,432.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, 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 26, 2002.

**James A. Hanlon,**

*Director, Office of Wastewater Management.*

[FR Doc. 02–16860 Filed 7–3–02; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7242–2]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Superfund Administrative Reform Surveys

**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 Requests (ICRs) have been forwarded to the Office of Management and Budget (OMB) for review and approval: Superfund Orphan Share Compensation Reform Survey ICR, EPA ICR 2035.01; Superfund De Minimis Settlement Reform Survey ICR, EPA ICR 2036.01; and PRP Oversight Reform Survey ICR, EPA ICR 2037.01. The ICRs describe the nature of the information collection and their expected burden and costs; and they include the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 5, 2002.

**ADDRESSES:** Send comments, referencing EPA ICR Nos. 2035.01, 2036.01 and/or 2037.01, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 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 Nos. 2035.01, 2036.01 and/or 2037.01. For technical questions about any of the ICRs contact Bruce Pumphrey by phone at 202–564–6076 or by e-mail at *pumphrey.bruce@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* (1) Superfund Orphan Share Compensation Reform Survey ICR, EPA ICR No. 2035.01. This is a new collection.

*Abstract:* This voluntary one-time information collection is for a survey of orphan share compensation reform participants who were offered orphan share compensation as part of the reform. The survey will be administered to a non-random sample consisting of one-third (33 percent) of the settlors and one-third (33 percent) of the non-settlors for each offer extended by the Agency, subject to a minimum of three offerees in each category. The information will not be generalized to the population of relevant offerees. The information collected from this survey will be used in a broader evaluation of the orphan share compensation reform's overall effectiveness. The information will also be used to identify any revisions to the reform necessary to achieve the goal of promoting settlements with responsible parties to perform or pay for response actions. No confidential information is being collected under this ICR.

*Burden Statement:* Affected Entities: Entities potentially affected by this action are persons who have participated in the orphan share compensation reform.

*Estimated Number of Respondents:* 300.

*Frequency of Response:* One time.

*Estimated Total Annual Burden:* 825 hours.

*Estimated Total Annual Cost Burden:* $25,403.

*Title:* (2) Superfund De Minimis Settlement Reform Survey ICR, EPA ICR No. 2036.01. This is a new collection.

*Abstract:* This voluntary one-time information collection is for a survey of de minimis settlement reform participants who were offered a de minimis settlement as part of the reform. The survey will be administered to a non-random sample consisting of one-fifth (20 percent) of the settlors and one-fifth (20 percent) of the non-settlors for each offer extended by the Agency, subject to a minimum of three offerees in each category. The information will not be generalized to the population of relevant offerees. The information collected from this survey will be used in a broader evaluation of the de minimis settlement reform's overall effectiveness in achieving the goals of the reform (promoting early settlement with small waste contributors and minimizing their legal transaction costs) and to identify any changes necessary to achieve these goals. No confidential information is being collected under this ICR.

*Respondents/Affected Entities:* Entities potentially affected by this action are persons who have participated in the de minimis settlement reform.

*Estimated Number of Respondents:* 347.

*Frequency of Response:* One time.

*Estimated Total Annual Hour Burden:* 1041 hours.

*Estimated Total Annual Cost Burden:* $32,743.

*Title:* (3) Superfund PRP Oversight Reform Survey ICR, EPA ICR No. 2037.01. This is a new collection.

*Abstract:* This voluntary one-time information collection is for a survey of parties that did work during FY00 under settlement agreements with EPA that provide for payment of oversight costs. The survey will be administered to all of the approximately 210 potential respondents that are willing to voluntarily participate. The information collected from this survey will be used in a broader evaluation of the PRP

Oversight Reform's overall effectiveness in promoting effective and efficient PRP oversight and identifying best practices which could be more widely applied to meet the reform's goals and objectives. No confidential information is being collected under this ICR.

*Respondents/Affected Entities:* Entities potentially affected by this action are parties that did work during FY00 under settlement agreements with EPA that provide for payment of oversight costs.

*Estimated Number of Respondents:* 210.

*Frequency of Response:* One time.

*Estimated Total Annual Hour Burden:* 682.

*Estimated Total Annual Cost Burden:* $21,848.

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 November 9, 2001 (66 FR 56670). No comments were received. Burden Statement: The annual reporting and recordkeeping burden for this collection of information is estimated to average 3 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.

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 Nos. 2035.01, 2036.01 and/or 2037.01 in any correspondence.

Dated: June 27, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–16861 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7242–3]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Hazardous Remediation Waste Management Requirements (HWIR-Media)

**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: ''Hazardous Remediation Waste Management Requirements (HWIR-Media),'' EPA ICR Number 1775.03; OMB Control Number 2050–0161; expiration date 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 August 5, 2002.

**ADDRESSES:** Send comments, referencing EPA ICR No. 1775.03 and OMB Control No. 2050–0161, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–001; 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) 260–4901, by e-mail at *auby.susan@epamail.epa.gov* or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1775.03. For technical questions about the ICR contact Mike Fitzpatrick at EPA by phone at (703) 308–8411 or by e-mail at *fitzpatrick.mike@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* ''Hazardous Remediation Waste Management Requirements (HWIR-Media),'' OMB Control No. 2050–0161; EPA ICR No. 1775.03, expiration date June 30, 2002. This is a request for extension of a currently approved collection.

*Abstract:* All information collection activities required by this rule are authorized by sections 3004 and 3005 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912(a), 6921, 6924, 6925, 6926, and 6927. EPA believes the information collection for this rule is necessary to balance streamlined regulations of remediation wastes with the Agency's responsibility to protect human health and the environment. The respondents are primarily owners or operators of facilities that wish to voluntarily clean up contamination of their site. The information to be collected includes the name, location and other identifying information for the site, a chemical and physical analysis of the waste or contaminated media to be managed, along with a plan for the management of such materials sufficient to determine whether the management of these materials will be protective of human health and the environment and will be in compliance with standards established pursuant to RCRA.

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 20, 2002 (67 FR 12988); no comments were received.

*Burden Statement:* The annual public reporting and record keeping burden for this collection of information is estimated to average about 28 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:* Facility Owners and Operators of Hazardous Remediation Waste Management Sites.

*Estimated Number of Respondents:* 176.

*Frequency of Response:* Once.

*Estimated Total Annual Hour Burden:* 4,959 hours.

*Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden:* $334.

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. 1775.03 and OMB Control No. 2050–0161 in any correspondence.

Dated: June 27, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–16862 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6630–8]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.Weekly receipt of Environmental Impact Statements Filed June 24, 2002 Through June 28, 2002 Pursuant to 40 CFR 1506.9.

*EIS No. 020270, DRAFT SUPPLEMENT, NRC, PA,* Peach Bottom Atomic Power Station Unit 2 and 3, Renewal of the Operating License for Nuclear Plants, NUREG–1437 Supplement 10, Located on the Banks of the Susquehanna River, York County, PA, *Comment Period Ends:* September 17, 2002, Contact: Duke Wheeler (301) 415–1444.

*EIS No. 020271, DRAFT SUPPLEMENT, COE, KS,* John Redmond Lake (JRL) Reallocation of Water Supply Storage Project, Equitable Redistribution of Water Storage between the Flood Control Pool and the Conservation Pools, Neosho River, Marion and Council Grove Lakes, Coffey and Lyon Counties, KS, *Comment Period Ends:* August 19, 2002, Contact: James C. Randolph (918) 669–4396.

*EIS No. 020272, FINAL EIS, FRC, ME,* Presumpscot River Projects, Relicensing of Five Hydroelectric Projects for Construction and Operation, Dundee Project (FERC No. 2942); Gambo Project (FERC No. 2931); Little Falls Project (FERC No. 2932); Mallison Falls Project (FERC No. 2941) and Saccarappa Project (FERC No. 2897), Cumberland County, ME, *Wait Period Ends:* August 05, 2002, Contact: Allan Creamer (202) 219–0365. This document is available on the Internet at: *http://www.ferc.fed.us/online/rims.htm.*

*EIS No. 020273, FINAL EIS, FHW, NE,* Lincoln South and East Beltways Project, Circumferential Transportation System Completion linking I–80 on the north and US 77 on the west, Funding and US Army COE Section 404 Permit and NPDES Permit Issuance, Lancaster County, NE, *Wait Period Ends:* August 05, 2002, Contact: Edward Kosola (402) 437–5973.

*EIS No. 020274, DRAFT EIS, BLM, AK,* Renewal of Federal Grant for the Trans-Alaska Pipeline System, Right-of-Way, Approval, AK, *Comment Period Ends:* August 20, 2002, Contact: Rob McWhorter (907) 257–1355.

*EIS No. 020275, DRAFT EIS, GSA, WI,* Badger Army Ammunition Plant, Property Disposal, Implementation, Townships of Sumpter and Merrimac, Sauk County, WI, *Comment Period Ends:* August 19, 2002, Contact: Mark N. Lundgren (312) 353–0302.

*EIS No. 020276, FINAL SUPPLEMENT, FRC, WA,* Condit Hydroelectric (No. 2342) Project, Updated Information concerning an Application to Amend the Current License to Extend the License Term to October 1, 2006, White Salmon River, Skamania and Klickitat Counties, WA, *Wait Period Ends:* August 05, 2002, Contact: Nicholas Jayjack (202) 219–2825.

*EIS No. 020277, DRAFT EIS, FHW, NC,* US–17 Interstate Corridor Improvements, south of NC–1127 (Possum Track Road) to north of NC–1418 (Roberson Road) Funding and Permit Issuance, City of Washington and Town of Chocowinity Vicinity, Beaufort and Pitt Counties, NC, *Comment Period Ends:* August 30, 2002, Contact: Nicholas L. Graf (919) 856–4346.

*EIS No. 020278, DRAFT EIS, FHW, NY, NY–17* Highway Reconstruction, Bridge Reconstruction and Modification, Funding and US Army COE Section 404 Permit Issuance, Town and Village of Horseheads, Chemung County, NY, *Comment Period Ends:* August 19, 2002, Contact: Robert E. Arnold (518) 431–4127.

*EIS No. 020279, FINAL EIS, GSA, GA,* Chamblee Campus Centers for Disease Control and Prevention (CDC) Expansion, Atlanta Metro Area, City of Chamblee, Dekalb County, GA, *Wait Period Ends:* August 05, 2002, Contact: Phil Youngberg (404) 562–0787.

*EIS No. 020280, FINAL EIS, FRC, MI, WI,* Bond Falls Project, Issuing a New License for Existing Hydroelectric License, (FERC No. 1864–005) Ontonagon River Basin, Ontonagon and Gogebic Counties, MI and Vilas County, WI, *Wait Period Ends:* August 05, 2002, Contact: Patrick K. Murphy (202) 219–2659. This document is available on the Internet at: *http://www.ferc.fed.us/online/rims.htm.*

*EIS No. 020281, DRAFT EIS, USA, UT,* Activities Associated with Future Programs at US Army Dugway Proving Ground, Implementation, Tooele and Jaub Counties, UT, *Comment Period Ends:* August 19, 2002, Contact: Nicholas J. Cavallaro (703) 697–8995.

*EIS No. 020282, FINAL EIS, COE, NJ,* Meadowlands Mills Project, Construction of a Mixed-Use Commercial Development, Permit Application Number 95–07–440–RS, US Army COE Section 10 and 404 Permit Issuance, Boroughs of Carlstadt and Monnachie, Township of South Hackensack, Bergen County, NJ, *Wait Period Ends:* August 05, 2002, Contact: Steven Schumach (212) 264–0183.

*EIS No. 020283, FINAL EIS, FTA, WA,* Sound Transit, Lakewood-to-Tacoma Commuter Rail and WA–512 Park and Ride Expansion, Construction and Operation, Central Puget Sound Regional Transit Authority, City of Tacoma and City of Lakewood, WA, *Wait Period Ends:* August 05, 2002, Contact: Rick Krochalis (206) 220–7954.

*EIS No. 020284, FINAL EIS, AFS, MT,* White Pine Creek Project, Timber Harvest, Prescribe Fire Burning, Watershed Restoration and Associated Activities, Implementation, Kootenai National Forest, Cabinet Ranger District, Sanders County, MT, *Wait Period Ends:* August 05, 2002, Contact: John Gubel (406) 827–3533.

Dated: July 1, 2002.

**B. Katherine Biggs,**

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

[FR Doc. 02–16875 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[AD–FRL–7242–4]**

## Request for Applications for Cooperative Agreement: New and Emerging Air Technologies (NEAT) Web Data Base

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

**ACTION:** Notice; request for applications.

**SUMMARY:** This request for applications (RFA) solicits proposals to develop, maintain, promote and sustain a New and Emerging Air Technologies (NEAT) data base on the World Wide Web (Web). The purpose of this Web site is to aid industry, contractors, and State and local air permitting agencies in identifying new and emerging air technologies. These technologies need to be addressed in major permitting actions. They also need to be considered by State and local air pollution agencies and tribes in implementing programs to maintain and improve ambient air quality and protect public health.

**DATES:** The opening date of the solicitation is July 5, 2002. Letters of intent to apply must be postmarked, or sent via electronic mail (E-mail), no later than August 5, 2002. The closing date of the solicitation is November 1, 2002.

**ADDRESSES:** *Official Mailing Address:* NEAT Project, Attn: Bob Blaszczak (E143–03), U.S. EPA, OAQPS, ITPID, ITG, Research Triangle Park, NC 27711. *Courier Address:* NEAT Project, Attn: Bob Blaszczak (E143–03), U.S. EPA, OAQPS, ITPID, ITG, 4930 Old Page Road, Research Triangle Park, NC 27709. *E-mail Address: blaszczak.bob@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Blaszczak, Information Transfer Group (E143–03), Information Transfer & Program Integration Division, Office of Air Quality Planning & Standards, Office of Air & Radiation, U.S. EPA, Research Triangle Park, NC 27711. Telephone (919) 541–5432, Fax (919) 541–0242, E-mail *blaszczak.bob@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The following outline is provided to aid in locating information in this notice:

I. Statutory Authority
II. Background
III. Funding
IV. Duration
V. Eligibility
VI. Description/Scope
VII. Review and Selection Process
VIII. Additional Considerations
IX. How to Apply
X. Pre-Application Assistance
XI. Fields in the EPA Data Base

### I. Statutory Authority

The statutory authority for this action is Clean Air Act Section 103(b)3. The Catalog of Federal Domestic Assistance (CFDA) Number is 66.606.

### II. Background

Section 108(h) of the Clean Air Act (the Act) Amendments of 1990, ''RACT/BACT/LAER Clearinghouse'' (RBLC), requires that the Administrator of EPA make information regarding emission control technology available to States and the general public through a central data base. As prescribed in the Act, the primary sources for this information are permits to construct new and/or modified major stationary sources issued by State and local agencies. These permits are part of the New Source Review (NSR) program legislated by Congress in parts C and D of Title I of the Act. These permitting actions require that the applicants propose and that permitting agencies determine, on a case-by-case basis, Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) for emission sources locating in attainment (meets National Ambient Air Quality Standards) and nonattainment areas, respectively.

In 1993, the Clean Air Act Advisory Committee (CAAAC) recommended that the RBLC provide information on new and emerging air pollution prevention and control technologies in addition to NSR permit technology decisions. The CAAAC is made up of representatives from industry, State and local permitting agencies, and environmental organizations. The information on new and emerging technologies would be used by all of these groups, tribes and the public at large to expedite the NSR permitting process. This permit process requires:

1. Preparation of a comprehensive permit application by industry (or their contractors) that addresses emission control and prevention options and recommends the best technology (the application also must include analyses of potential air quality and other environmental impacts, air quality monitoring data or a plan to acquire it, and compliance verification procedures);
2. Review and processing of permit applications and issuance of permits by State or local permitting agencies and tribes that require best technology; and
3. Public review and comment on the permit and technology requirements.

The EPA has concluded that the best way to address this recommendation would be through the establishment of a Web data base that would provide information on new and emerging air pollution technologies. Air pollution technologies include methods, procedures, or devices, developed in the U.S. or abroad, that are used to: monitor air quality; control or prevent air pollution; analyze air pollution and related impacts; or test, monitor and verify compliance. This new Web data base would complement the existing RBLC Web that contains data on air permit emission limits and technology decisions that have already been made. To be successful the NEAT Web needs to:

1. Rely on coordination and communications with air pollution technology developers and suppliers;
2. List supplier and vender information on a public Web page;
3. Provide links to commercial sites; and
4. Promote the NEAT Web site and its capabilities.

The EPA believes that these activities are essential to the creation and maintenance of this new Web site, and will be very beneficial to the public. These essential activities can best be accomplished by an independent organization or institution with an existing presence on the Web, and a reputation for expertise in the field of air pollution. The EPA also believes that this proposed air pollution technology data base could generate revenue and sustain itself over time once it has been established (i.e., venders and suppliers would be willing to pay a nominal fee to list their technologies and/or provide linkage to a vender/supplier Web site or E-mail). The EPA expects to negotiate a program income plan with the successful offeror that will ensure long term sustainability. (See 40 CFR 30.24(b)(1) and (h))

This project directly benefits all parties (industry, contractors, State and local agencies, and the general public) involved in the development, review and processing of NSR permit applications and permits. Funds cannot be awarded for projects intended for the direct use and benefit of the Federal Government.

### III. Funding

The amount of Federal funds available is $ 300,000 and the number of individual awards is one. All revenue generated by the operation of the NEAT Web site shall be used to maintain, improve, and sustain the NEAT Web site.

Funds awarded under this agreement may not be used to solicit user feedback or conduct user surveys. Non-Federal

funds must be used for such activities. However, funds awarded under this agreement may be used to analyze information derived from user feedback mechanisms and surveys specifically related to the implementation of the NEAT Web site.

The EPA shall provide applicants that submit a letter of intent to apply (See Section IX—How to Apply) with a Microsoft Access data base that contains information on new and emerging air pollution technologies compiled by EPA. Section XI of this notice provides a list and description of fields included in the EPA data base. The data base contains records for approximately 300 new and emerging technologies developed in the U.S. and abroad. Note that the data base is part of a system that consists of various Web interfaces that interact with the data base. These interfaces are written in Microsoft Active Server Pages (ASP) and, in order to use the interfaces, must reside on a Windows server running Microsoft Internet Information Systems (IIS). This data base (and the interfaces, if appropriate) can be used by the successful applicant as the startup data base for the NEAT Web site. The data base and interfaces to be provided by EPA for review by applicants shall be on Compact Disk (CD).

## IV. Duration

This assistance effort will last 2 years starting from the date of award.

## V. Eligibility

Academic and not-for-profit institutions and organizations located in the U.S. are eligible to apply. Profit-making firms are not eligible to receive cooperative agreements from EPA under this program. Applications will be accepted from single institutions or organizations and from consortia that include more than one institution or organization. Federal agencies, national laboratories funded by Federal agencies (Federally Funded Research and Development Centers, FFRDCs), and Federal employees are not eligible to submit applications to this program and may not serve in a principal leadership role on this award.

Federal employees may not receive salaries or in other ways augment their agency's appropriations through this cooperative agreement. However, the nature of the cooperative assistance agreement mechanism, which will be used to support the NEAT Web site, contemplates collaboration between EPA personnel and the assistance provider's institution, organization or consortium. Personnel from EPA will actively consult and collaborate with the awardee in developing and maintaining the Web site. However, discussions regarding EPA collaboration will not take place until the final negotiation phase of the cooperative agreement.

The EPA reserves the right to reject all applications and proposals and make no award.

## VI. Description/Scope

This solicitation is for a cooperative agreement. Because of RBLC staff experience in working with stakeholders and in supplying air pollution technology information, EPA anticipates that there will be substantial EPA involvement in the design and initial implementation of this proposal. Also, EPA is suppling a Web compatible data base to serve as a starting point for implementing this proposal and is prepared to advise the applicant concerning the development and maintenance of that data base.

The applicant must address the following items in the proposal:

1. Existing Web presence, equipment, capabilities, security and support.

2. Institution's/organization's level of expertise and recognition in the field of air pollution and air pollution technologies.

3. The approach that will be taken to establish a searchable Web data base (including an automated data entry procedure/system for information providers) that contains information on new, emerging and existing air technologies. These technologies shall include emission controls, pollution prevention, emissions and ambient air monitoring, air pollution modeling, and environmental management, tracking, and decision-making approaches. Provisions shall be made to include both U.S. and foreign technologies.

4. How the data base will be maintained and kept current. This should include a procedure to require venders to update their data periodically.

5. Methods that will be used to promote this data base to encourage data submittal by technology developers and suppliers and use by industry, permitting agencies, environmental groups and the general public. If applicable, indicate methods that will be used to acquire appropriate co-sponsors (e.g., industry and professional trade associations, environmental groups, etc.)

6. Basic quality assurance and security procedures to maintain the integrity of the data base.

7. Mechanism to acquire feedback from stakeholders and users that can be used in establishing and maintaining this Web data base as a relevant and reliable information source. Funds awarded under this agreement may not be used to solicit user feedback or conduct user surveys. Non-Federal funds must be used for such activities. However, funds awarded under this agreement may be used to analyze information derived from user feedback mechanisms and surveys specifically related to the implementation of the NEAT Web site.

8. Sustainability Plan—methods, procedures and time frame to make the NEAT Web site self-sustaining and ensure the viability of the site. Applicants should describe the decision-making process that will be used to identify and evaluate revenue generating procedures that can sustain this site over time. Revenue generating opportunities may include, but are not limited to, nominal fees for listing technologies, links to vender Web sites, E-mail links to venders, and including existing air technologies in the data base to increase the potential revenue base. Applicants should describe the decision-making process to determine how and when revenue generating procedures will be implemented once the NEAT Web site has established itself as a major air technologies Web site. Applicants should indicate other resources that may be used to support and sustain the NEAT Web.

9. Budget, staffing and administrative procedures. OMB circulars on regulations, cost principles, and other administrative requirements (40 CFR part 30) shall be followed. See Application Kit for Federal Assistance under Section IX (How to Apply) for more information.

10. Applicants must clearly mark any information in the application that they consider confidential. The EPA will make final confidentiality decisions in accordance with Agency regulations at 40 CFR part 2, subpart B.

## VII. Review and Selection Process

Applicants must have an established presence on the World Wide Web and possess strong expertise in the field of air pollution. Applicants will be judged on the following criteria:

1. Adequacy of existing Web site (hardware and software) to support the New and Emerging Air Technologies Web. (Weight: 10%)

2. Relevant experience of the applicant (institution/organization) in the field of air pollution technology. (Weight: 10%)

3. Originality and creativity of the proposal to develop, maintain, support and promote the New and Emerging Air

Technology Web site and data base. (Weight: 30%)

4. Plan to acquire and evaluate user/stakeholder input and implement improvements to generate and sustain interest in and usefulness of the site. Funds awarded under this agreement may not be used to solicit user feedback or conduct user surveys. Non-Federal funds must be used for such activities. However, funds awarded under this agreement may be used to analyze information derived from user feedback mechanisms and surveys specifically related to the implementation of the NEAT Web site. (Weight: 20%)

5. Originality and creativity of the proposal's Sustainability Plan in identifying, evaluating, selecting and implementing procedures that will generate revenue and allow the site to become self-sustaining. (Weight: 30%) All applications will be reviewed by an appropriate application review panel. The panel will be composed of EPA staff with expertise in information transfer, World Wide Web applications, air pollution prevention and control technology, and environmental monitoring, measurements and analysis.

## VIII. Additional Considerations

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' provides States the opportunity to review and comment on activities proposed for Federal funding. Where feasible, and to the extent permitted by law, State and local review processes and comments must be incorporated into Federal Programs as early in the planning stage as possible. See Application Kit for Federal Assistance under Section IX (How to Apply) for additional information.

## IX. How To Apply

Applicants must:

1. Send a letter of intent to apply to the address listed under **ADDRESSES** above (or via E-mail to blaszczak.bob@epa.gov) before submitting an application for this assistance. Letters of intent to apply must be postmarked (or sent via E-mail) no later than August 5, 2002. Letters of intent must include the name of your organization and a contact person's name, mailing address, E-mail address, phone number, and fax number.

2. Obtain, complete and submit an Application Kit for Federal Assistance. The kit and any additional forms can be acquired on the Web at <*http://www.epa.gov/ogd/grants/how_to_apply.htm*>. Hard copies are available from the Program Office contact listed under **FOR FURTHER INFORMATION CONTACT** above.

3. Include a narrative that addresses all of the areas listed under Section VI (Description/Scope); and

4. Submit one (1) original and four (4) printed copies of the application to the address listed under **ADDRESSES** above. Applications must be received by 4:00 PM Eastern Daylight Savings Time November 1, 2002. Only a printed (hard copy) submittal will be accepted.

## X. Pre-Application Assistance

The EPA will conduct one conference call to allow potential applicants to ask questions. Only potential applicants who submit letters of intent to apply will be provided conference call information. The call is intended to assist applicants with questions about the proper completion and submission of their proposals. The content of the calls is entirely dependent upon the questions asked. The EPA will also take questions via E-mail that is posted (dated) on or before September 6, 2002. All E-mail questions must be sent to the Program Office Contact listed under **FOR FURTHER INFORMATION CONTACT** above. All questions received by E-mail and EPA's response to the questions will be posted on the Web at <*http://www.epa.gov/ttn/catc/*> no later than September 23, 2002.

In order to ensure that all applicants have access to the same information, the only forums for posing substantive questions on the competition are the conference call and E-mail procedure noted above. Except for responses to procedural questions (e.g., due dates, proposal formats), EPA will not provide other assistance prior to final submission of applications.

## XI. Fields in the EPA Data Base

The following fields are in the current EPA data base:

1. ID—Primary Key
2. TECH—Name of Technology
3. SUMMARY—Description of Technology
4. CLASS—Classification of Technology (pollution prevention, modeling, monitoring, testing, add-on)
5. DEGDEV—Degree of Development (commercially available, prototype, product design phase)
6. CATEGORY—Controlled Process Type (based on RBLC process types)
7. POLL—1—Primary Pollutant Treated ($NO_X$, SOx, VOC, PM2.5, PM10, NH3, HAP, CO)
8. CONTEFF—P1—Likely Control Efficiency of Primary Pollutant
9. CONTEFF—H—P1—Maximum Control Efficiency of Primary Pollutant
10. CONTEFF—L—P1—Minimum Control Efficiency of Primary Pollutant
11. CSTON—P1—Average Annual Cost Per Ton of Primary Pollutant Reduced
12. POLL—2—Secondary Pollutant Treated ($NO_X$, SOx, VOC, PM2.5, PM10, NH3, HAP, CO)
13. CONTEFF—P2—Likely Control Efficiency for Secondary Pollutant
14. CONTEFF—H—P2—Maximum Control Efficiency for Secondary Pollutant
15. CONTEFF—L—P2—Minimum Control Efficiency for Secondary Pollutant
16. CSTON—P2—Average Annual Cost Per Ton of Secondary Pollutant Reduced
17. POLL—3—Tertiary Pollutant Treated ($NO_X$, SOx, VOC, PM2.5, PM10, NH3, HAP, CO)
18. CONTEFF—P3—Likely Control Efficiency for Tertiary Pollutant
19. CONTEFF—H—P3—Maximum Control Efficiency for Tertiary Pollutant
20. CONTEFF—L—P3—Minimum Control Efficiency for Tertiary Pollutant
21. CSTON—P3—Average Annual Cost Per Ton of Tertiary Pollutant Reduced
22. CAPCST—Capital Cost ($)
23. OMCST—Operation and Maintenance Cost ($/year)
24. DLYR—Cost Dollar Year ($1999, $2000, etc.)
25. LIFETIME—Expected Equipment Life (years)
26. NAME—Name of Vendor, or Developer
27. EMAIL—E-mail of Vendor, or Developer
28. VZP—Zip Code of Vendor, or Developer
29. VST—State of Vendor, or Developer (all U.S. States and Canadian Provinces)
30. PURL—Web Page URL for Technology
31. VCTY—City of Vendor, or Developer
32. VADD—Address of Vendor, or Developer
33. VADD2—Additional Address Information of Vendor, or Developer
34. VNAME—Name of Organization that developed, or sells technology
35. VPH—Phone Number of Vendor, or Developer
36. TITLE—Job Title of Point of Contact
37. POLL—CONC—Applicable Pollutant Concentration (microgram per cubic meter, concentration ranges)
38. STREAM—TEMP—Applicable Gas Stream Temperature (degrees Celsius, temperature ranges)
39. STREAM—TEMP—H—Maximum Temperature of Gas Stream (degrees Celsius, temperature ranges)
40. STREAM—TEMP—L—Minimum Temperature of Gas Stream (degrees Celsius, temperature ranges)

41. VOL—FL—RT—Volumetric Flow Rate (cubic feet per second, rate ranges)
42. APP—ST—States that have Approved Use of this Technology
43. APP—AGENCIES—Federal Agencies that have Approved Use of this Technology
44. PARAM—MEA—Monitored Parameter
45. SAMP—FREQ—Sampling Frequency
46. SAMP—PREC—Sampling Precision
47. SAMP—ACC—Sampling Accuracy
48. MAN—AUTO—Manual or Automated (manual, automated, or not applicable)
49. ADDITIONAL—Other Applicable Information
50. PRF—TST—MTHD—Performance Test Method
51. ENFORC—PROC—Enforcement and Inspection Procedure
52. CONT—PARA—Continuous or Parametric Monitoring System
53. CRIT—HAP?—Criteria Pollutant or HAP List?
54. IONIC—Ionic Species as Applicable
55. PHYS—ST—Physical State at X Temperature
56. PHYS—ST—TEMP—Physical State Temperature
57. PHYS—ST—PRES—Physical State Pressure
58. OP—PARAM—CONT—PM—MONT—Operational Parameters for Continuous Parametric Monitoring
59. COLL—MECH—Sample Collection, Transport, Recovery and Analysis Mechanisms
60. VALID—STAT—Validation Status as related to Verification, EPA Method 301 validation, Peer Review, or Collaborative Testing Results
61. AVAIL—DOC—Available Documentation
62. COST—PER—TEST—Cost Per Test numeric
63. SYS—REQ—System Requirements

Dated: June 27, 2002 .

**Elizabeth Craig,**

*Deputy Assistant Administrator for Air and Radiation.*

[FR Doc. 02–16863 Filed 7–3–02; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0125; FRL–7186–6]**

## FIFRA Scientific Advisory Panel; Notice of Public Meeting

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

**ACTION:** Notice.

**SUMMARY:** There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act Scientific Advisory Panel (FQPA SAP) to consider and review EPA's Draft Termite Bait Product Performance Testing Guideline.

**DATES:** The meeting will be held on July 30–31, 2002, from 8:30 a.m. to approximately 5 p.m.

For dates on requests to present oral comments, submission of written comments, or requests for special seating arrangements, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** This meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Hotel is (703) 486–1111.

Requests to present oral comments, submission of written comments, or requests for special seating arrangements 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, your request must identify docket ID number OPP–2002–0125 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Olga Odiott, Designated Federal Official, Office of Science Coordination and Policy (7202M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses: odiott.olga@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and FQPA. Since other entities may also 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/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**— Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guideline referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

A meeting agenda, EPA's position paper, questions to FIFRA SAP, and FIFRA SAP composition (i.e., members and consultants) will be available no later than July 15. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap.

2. *In person.* The Agency has established an official record for this meeting under docket ID number OPP–2002–0125. The official record consists of the documents specifically referenced in this notice, 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. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the official record, which includes printed, paper versions of any electronic comments that may be 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 May I Participate in this Meeting?*

You may submit requests to present oral comments, written comments, or requests for special seating arrangements through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you

identify docket ID number OPP–2002–0125 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments.

Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern standard time, July 25, 2002, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, the speaker should bring to the meeting 30 copies of the oral comments and presentation slides for distribution to FIFRA SAP at the meeting.

1. *Written comments*. Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted no later than noon, eastern standard time, July 22, 2002, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

2. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Olga Odiott at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

*D. Submission of Requests and Written Comments*

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

2. *In person or by courier*. Deliver your request or written 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 request or written comments electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0/9.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket ID number OPP–2002–0125. You may also file a request online at many Federal Depository Libraries.

## II. Background

*A. Purpose of the Meeting*

The FIFRA SAP will meet to consider and review the design and scientific soundness of the Agency's draft Termite Bait Product Performance Testing Guideline, OPPTS 810.3800 - Termite Baits. The guideline outlines both the testing methodologies and performance standards for efficacy data submitted to EPA to allow evaluation of the performance of termite bait products.

The use of termite bait products has emerged as an important method of termite control. Because of the highly specialized nature of termite baits, a number of evaluation issues have arisen in the past 6 years, including minimum product performance standards needed for termite bait product registration. This meeting of the FIFRA SAP will provide a forum for experts and the public to comment on the product performance standards and testing protocols proposed by the Agency to address these and other issues related to termite bait products.

*B. The FIFRA SAP Meeting Minutes*

FIFRA SAP will prepare a report of its recommendations to the Agency in approximately 60 days. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of the **SUPPLEMENTARY INFORMATION**.

## List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 28, 2002.

**Sherell A. Sterling,**

*Acting Director, Office of Science Coordination and Policy.*

[FR Doc. 02–16996 Filed 7–3–02; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2002–0028; FRL–7186–1]**

## Certain New Chemicals; Receipt and Status Information

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

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 3, 2002 to May 21, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

**DATES:** Comments identified by the docket control number OPPT–2002–0028 and the specific PMN number, must be received on or before August 5, 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 OPPT–2002–0028 and the specific PMN number in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

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

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

2. *In person*. The Agency has established an official record for this action under docket ID number OPPT–2002–0028. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

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

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0028 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT–2002–0028 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

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

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

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

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

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

## II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 3, 2002 to May 21, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA

as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 74 PREMANUFACTURE NOTICES RECEIVED FROM: 05/03/02 TO 05/21/02

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–02–0630 | 05/06/02 | 08/04/02 | Solutia Inc. | (S) Resin for industrial paints | (G) Modified polyester resin |
| P–02–0631 | 05/06/02 | 08/04/02 | CBI | (S) Reactive dye for textile | (G) Substituted naphthalene sulfonic acid, alkali salt |
| P–02–0632 | 05/06/02 | 08/04/02 | CBI | (S) Acrylic polymer used as a photoresist component | (G) Acrylic polymer |
| P–02–0633 | 05/06/02 | 08/04/02 | Solutia Inc. | (S) Resin for industrial paints | (G) Modified polyester resin |
| P–02–0634 | 05/07/02 | 08/05/02 | CBI | (G) Fuel oil/diesel oil | (G) Methoxymethylbenzenes methylanisoles |
| P–02–0635 | 05/07/02 | 08/05/02 | CBI | (G) Fuel oil/diesel oil | (G) Methoxymethylbenzenes methylanisoles |
| P–02–0636 | 05/07/02 | 08/05/02 | CBI | (G) Fuel oil/diesel oil | (G) Methoxymethylbenzenes methylanisoles |
| P–02–0637 | 05/07/02 | 08/05/02 | CBI | (G) Fuel oil/diesel oil | (G) Methoxymethylbenzenes methylanisoles |
| P–02–0638 | 05/07/02 | 08/05/02 | Alberdingk Boley Inc. | (S) Exterior wood protection | (G) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, 1,6-hexanediol, hexanedioic acid amide derivative, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 1,1′-methylenebis[4-isocyanatocyclohexane], compound with nu, nu-diethylethaneamine |
| P–02–0639 | 05/07/02 | 08/05/02 | EM Industries, Inc. | (G) Treating agent | (S) Silane, trimethoxydecyl- |
| P–02–0640 | 05/08/02 | 08/06/02 | Clariant LSM (America) Inc. | (S) Anti-fouling agent in marine paints | (G) Mono-halo tri-alkylsilane |
| P–02–0641 | 05/08/02 | 08/06/02 | Clariant LSM (America) Inc. | (S) Anti-fouling agent in marine paints | (G) Tri-alkyl-silyl ester |
| P–02–0642 | 05/08/02 | 08/06/02 | Clariant LSM (America) Inc. | (S) Anti-fouling agent in marine paints | (G) Tri-alkylsilyl hydride |
| P–02–0643 | 05/08/02 | 08/06/02 | Forbo adhesives, LLC | (G) Hot melt adhesive | (G) Hot melt polyurethane adhesive |
| P–02–0644 | 05/08/02 | 08/06/02 | Forbo adhesives, LLC | (G) Hot melt adhesive | (G) Hot melt polyurethane adhesive |
| P–02–0645 | 05/09/02 | 08/07/02 | Houghton International, Inc. | (S) Lubricant additive/emulsifier | (S) Fatty acids, $C_{16-18}$ and $C_{18}$-unsaturated, branched and linear, diesters with polyethylene glycol |
| P–02–0646 | 05/09/02 | 08/07/02 | CBI | (S) Surfactant for making aqueous adhesive dispersions | (G) Ethoxylated phosphate salt |
| P–02–0647 | 05/09/02 | 08/07/02 | U.S. Paint Corporation | (G) Resin for coatings | (G) Hydroxyl-terminated aliphatic polycarbonate |
| P–02–0648 | 05/09/02 | 08/07/02 | Phillips Petroleum Company | (S) Hydrocarbon solvent | (S) Naphtha (petroleum), hydrodesulfurized, light, dearomatized |
| P–02–0649 | 05/10/02 | 08/08/02 | CBI | (G) Component of polyurethane | (G) Aromatic polyester polyol |
| P–02–0650 | 05/10/02 | 08/08/02 | CBI | (G) Component of polyurethane | (G) Aromatic polyester polyol |
| P–02–0651 | 05/10/02 | 08/08/02 | Vantico Corp. | (S) Resin for structural composites; resin for electronic laminates | (G) Bis(phenol), 3,3-bis(3,4-dihydro-3phenyl-2h-1,3-benzoxazin-6-yl) derivative |
| P–02–0652 | 05/09/02 | 08/07/02 | CBI | (G) Pigment dispersant | (G) Polyurethane derivative |
| P–02–0653 | 05/10/02 | 08/08/02 | Vantico Corp. | (S) Resin for electronic laminates; adhesives resin; encapsulants resin; composites resin | (G) Polyphenol, 2h-1,3-benzoxazine derivative |
| P–02–0654 | 05/13/02 | 08/11/02 | CBI | (G) Open, non-dispersive, (resin) | (G) Powder polyester coating resin |
| P–02–0655 | 05/13/02 | 08/11/02 | CBI | (S) Marine(antifouling) coating | (G) Copolymer of acrylic and methacrylic esters |
| P–02–0656 | 05/13/02 | 08/11/02 | CBI | (G) Open, non-dispersive, (resin) | (G) Powder coating polyester resin |
| P–02–0657 | 05/13/02 | 08/11/02 | CBI | (G) Open, non-dispersive, (resin) | (G) Powder coating resin |

I. 74 PREMANUFACTURE NOTICES RECEIVED FROM: 05/03/02 TO 05/21/02—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–02–0658 | 05/13/02 | 08/11/02 | E.i. Dupont De Nemours and Co., Inc | (G) Polymer modifier | (G) Ethylene copolymer |
| P–02–0659 | 05/14/02 | 08/12/02 | Crompton Corporation | (G) Catalyst | (S) Stannane, dimethylbis[[(9z)-1-oxo-9-octadecenyl]oxy]- |
| P–02–0660 | 05/15/02 | 08/13/02 | Dow Agro Sciences | (S) Chemical intermediate | (G) Chlorooxazole |
| P–02–0661 | 05/15/02 | 08/13/02 | CBI | (G) Open, non-dispersive (urethane) | (G) Polyurethane-polyurea based on ipdi |
| P–02–0662 | 05/15/02 | 08/13/02 | CBI | (S) Reactive dye for textile | (G) Substituted naphthalene sulfonic acid, alkali salt |
| P–02–0663 | 05/15/02 | 08/13/02 | CBI | (G) Open, non-dispersive (urethane) | (G) Polyurethane-polyurea based on ipdi |
| P–02–0664 | 05/15/02 | 08/13/02 | American Honda Motor Co., Inc. | (S) Component of electrolyte for capacitor of automobile | (S) Ethanaminium, nu,nu-diethyl-nu-methyl-, tetrafluoroborate (1-) |
| P–02–0665 | 05/15/02 | 08/13/02 | Crompton Corporation | (G) Lubricating oil additive | (S) Benzoic acid, 5-dodecyl-2-hydroxy-, calcium salt (2:1), branched |
| P–02–0666 | 05/16/02 | 08/14/02 | CBI | (S) Additive for adhesion of rubber to metal in tire and wire coatings | (G) Dicyclopentadiene-resorcinol copolymer |
| P–02–0667 | 05/15/02 | 08/13/02 | Houghton international, Inc. | (S) Lubricant additive/emulsifier | (S) Fatty acids, $C_{16–18}$ and $C_{18}$-unsaturated, branched and linear, esters with polyethylene glycol mono(branched 4-nonylphenyl) ether |
| P–02–0668 | 05/13/02 | 08/11/02 | Wacker silicones, a division of wacker chemical corporation | (S) Binder for silicone coatings | (S) Siloxanes and silicones, di-me, polymers with ph silsesquioxanes, hydrolyzed, reaction products with trimethoxy[3-(oxiranylmethoxy)propyl]silane |
| P–02–0669 | 05/16/02 | 08/14/02 | CBI | (S) Resin component for ultraviolet cure coatings | (G) Aliphatic diacrylate |
| P–02–0670 | 05/16/02 | 08/14/02 | Gelest, Inc. | (S) Catalyst research | (S) Titanium, chlorotris(2-propanolato)- |
| P–02–0671 | 05/14/02 | 08/12/02 | Vulcan Performance Chemicals | (G) Open, non-dispersive use in paper pulp | (G) Alkoxylated alkyl ether phosphate |
| P–02–0672 | 05/20/02 | 08/18/02 | E.I. Dupont De Nemours and Co., Inc | (G) Polymeric polymer additive-open non-dispersive | (G) Modified polyvinyl butyral |
| P–02–0673 | 05/20/02 | 08/18/02 | E.I. Dupont De Nemours and Co., Inc | (G) Polymeric polymer additive-open non-dispersive | (G) Modified polyvinyl butyral |
| P–02–0674 | 05/20/02 | 08/18/02 | E.I. Dupont De Nemours and Co., Inc | (G) Polymeric polymer additive-open non-dispersive | (G) Modified polyvinyl butyral |
| P–02–0675 | 05/20/02 | 08/18/02 | E.I. Dupont De Nemours and Co., Inc | (G) Polymeric polymer additive-open non-dispersive | (G) Modified polyvinyl butyral |
| P–02–0676 | 05/20/02 | 08/18/02 | E.I. Dupont De Nemours and Co., inc | (G) Polymeric polymer additive-open non-dispersive | (G) Modified polyvinyl butyral |
| P–02–0677 | 05/20/02 | 08/18/02 | E.I. Dupont De Nemours and Co., Inc | (G) Polymeric polymer additive-open non-dispersive | (G) Modified polyvinyl butyral |
| P–02–0678 | 05/20/02 | 08/18/02 | CBI | (S) Intermediate for polyurethanes | (G) Urethane diol |
| P–02–0679 | 05/20/02 | 08/18/02 | CBI | (S) Laminating adhesive; ink receptive coating (printing) | (G) Polyester polyurethane polymer |
| P–02–0680 | 05/20/02 | 08/18/02 | CBI | (G) Destructive use-plastics additive | (G) Surface modified aluminum hydroxide |
| P–02–0681 | 05/20/02 | 08/18/02 | CBI | (G) Destructive use-plastics additive | (G) Surface modified aluminum hydroxide |
| P–02–0682 | 05/20/02 | 08/18/02 | CBI | (G) Destructive use-plastics additive | (G) Surface modified aluminum hydroxide |
| P–02–0683 | 05/20/02 | 08/18/02 | CBI | (G) Destructive use-plastics additive | (G) Surface modified aluminum hydroxide |
| P–02–0684 | 05/20/02 | 08/18/02 | CBI | (G) Destructive use-plastics additive | (G) Surface modified aluminum hydroxide |
| P–02–0685 | 05/21/02 | 08/19/02 | Meadwestvaco Corporation - Specialty Chemicals Division | (S) Binding agent in paper coatings | (G) Butyl acrylate, polymer with styrene and methylamino chloride compounds |
| P–02–0686 | 05/21/02 | 08/19/02 | CBI | (G) Emulsifier or surfactant | (G) Alkylamidoalkylsulfonic acid salt |
| P–02–0687 | 05/21/02 | 08/19/02 | CBI | (G) Emulsifier or surfactant | (G) Alkylamidoalkylsulfonic acid salt |
| P–02–0688 | 05/21/02 | 08/19/02 | CBI | (G) Chemical intermediate | (G) Unsaturated hydrocarbon |
| P–02–0689 | 05/21/02 | 08/19/02 | CBI | (G) Chemical intermediate | (G) Unsaturated hydrocarbon |
| P–02–0690 | 05/21/02 | 08/19/02 | CBI | (G) Chemical intermediate | (G) Unsaturated hydrocarbon |
| P–02–0691 | 05/21/02 | 08/19/02 | CBI | (G) Chemical intermediate | (G) Unsaturated hydrocarbon |
| P–02–0692 | 05/21/02 | 08/19/02 | CBI | (G) Lubricant base fluid | (G) Saturated hydrocarbon |
| P–02–0693 | 05/21/02 | 08/19/02 | CBI | (G) Lubricant base fluid | (G) Saturated hydrocarbon |

I. 74 PREMANUFACTURE NOTICES RECEIVED FROM: 05/03/02 TO 05/21/02—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–02–0694 | 05/21/02 | 08/19/02 | CBI | (G) Lubricant base fluid | (G) Saturated hydrocarbon |
| P–02–0695 | 05/21/02 | 08/19/02 | CBI | (G) Lubricant base fluid | (G) Saturated hydrocarbon |
| P–02–0696 | 05/21/02 | 08/19/02 | CBI | (G) Polymeric binder | (G) Styrene-methacrylate copolymer |
| P–02–0697 | 05/20/02 | 08/18/02 | CBI | (G) Catalyst component | (G) Dineopentyl-4-substituted phthalate |
| P–02–0716 | 05/21/02 | 08/19/02 | Meadwestvaco Corporation - Specialty Chemicals Division | (S) Binding agent in paper coatings | (G) Butyl acrylate, polymer with styrene and methylamino chloride compounds, nitrate |
| P–02–0717 | 05/21/02 | 08/19/02 | Meadwestvaco Corporation - Specialty Chemicals Division | (S) Binding agent in paper coatings | (G) Butyl acrylate, polymer with styrene and methylamino chloride compounds, lactate |
| P–02–0718 | 05/21/02 | 08/19/02 | Meadwestvaco Corporation - Specialty Chemicals Division | (S) Binding agent in paper coatings | (G) Butyl acrylate, polymer with styrene and methylamino chloride compounds, acetate |
| P–02–0719 | 05/21/02 | 08/19/02 | Meadwestvaco Corporation - Specialty Chemicals Division | (S) Binding agent in paper coatings | (G) Butyl acrylate, polymer with styrene and methylamino chloride compounds, hydrochloride |
| P–02–0720 | 05/21/02 | 08/19/02 | Meadwestvaco Corporation - Specialty Chemicals Division | (S) Binding agent in paper coatings | (G) Butyl acrylate, polymer with styrene and methylamino chloride compounds, citrate |
| P–02–0721 | 05/21/02 | 08/19/02 | Meadwestvaco Corporation - Specialty Chemicals Division | (S) Binding agent in paper coatings | (G) Butyl acrylate, polymer with styrene and methylamino chloride compounds, acrylate |

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 26 NOTICES OF COMMENCEMENT FROM: 05/03/02 TO 05/21/02

| Case No. | Received Date | Commencement/ Import Date | Chemical |
|---|---|---|---|
| P–00–0011 | 05/21/02 | 04/15/02 | (G) Alcohols, ethoxylated propoxylated |
| P–00–1149 | 05/20/02 | 04/16/02 | (S) Benzene, diethenyl-, polymer with ethenylbenzene and ethenylethylbenzene, chloromethylated, cyclized, reaction products with ethylbenzene |
| P–01–0187 | 05/16/02 | 05/10/02 | (G) Fatty acids, tall-oil, reaction products with castor oil and substituted amines, acetates |
| P–01–0188 | 05/16/02 | 05/10/02 | (G) Fatty acids, tall-oil, reaction products with castor oil and substituted amines, phosphates |
| P–01–0238 | 05/07/02 | 04/10/02 | (G) Modified polyacrylate |
| P–01–0262 | 05/13/02 | 04/28/02 | (G) Distillates (petroleum), steam-cracked, polymers with light steam-cracked petroleum conc. and tall oil fatty acid |
| P–01–0833 | 05/07/02 | 04/26/02 | (G) Crosslinked polyamine |
| P–01–0869 | 05/03/02 | 04/22/02 | (G) Acrylic polymer |
| P–01–0870 | 05/06/02 | 05/01/02 | (G) Acrylic non-aqueous dispersion |
| P–02–0017 | 05/07/02 | 04/04/02 | (G) Azo oil soluble dye |
| P–02–0057 | 05/10/02 | 04/16/02 | (G) Polycarboxylic resin |
| P–02–0095 | 05/13/02 | 04/09/02 | (G) Substituted pyridine |
| P–02–0121 | 05/03/02 | 04/08/02 | (S) Siloxanes and silicones, di-me, hydrogen-terminated, reaction products with bisphenol a diglycidyl ether and 10-undecenoic acid |
| P–02–0157 | 05/03/02 | 04/15/02 | (G) Polyurethane-poly carbonate polymer |
| P–02–0227 | 05/10/02 | 04/12/02 | (G) Polyether |
| P–02–0233 | 05/10/02 | 04/18/02 | (G) Modified alkyl ammonium salts |
| P–02–0236 | 05/10/02 | 04/16/02 | (G) Acrylic copolymer |
| P–02–0244 | 05/10/02 | 04/18/02 | (G) Urea resin |
| P–02–0263 | 05/10/02 | 04/30/02 | (G) Acrylate/allylether copolymer |
| P–02–0268 | 05/10/02 | 04/22/02 | (G) Acrylic copolymer |
| P–02–0275 | 05/10/02 | 04/22/02 | (G) Acrylic copolymer |
| P–02–0277 | 05/15/02 | 05/08/02 | (G) Polyester acrylate |
| P–98–0513 | 05/14/02 | 04/22/02 | (G) Methylacrylate copolymer |
| P–98–1029 | 05/03/02 | 04/21/02 | (S) 1,2-ethanediamine, n-[3-(triethoxysilyl)propyl]- |
| P–99–0851 | 05/08/02 | 01/16/02 | (G) Metal ammine nitrate complex |
| P–99–1327 | 05/03/02 | 04/02/02 | (G) Halogenated alkane |

**List of Subjects**

Environmental protection, Chemicals, Premanufacturer notices.

Dated: June 20, 2002.

**Mary Louise Hewlett,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 02–16896 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–S

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 92–237; DA 02–1487]**

## Next Meeting of the North American Numbering Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On June 28, 2002, the Commission released a public notice announcing the July 17–18, 2002 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

**FOR FURTHER INFORMATION CONTACT:** Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *dblue@fcc.gov.* The address is: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW, Suite 5–A420, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** *Released:* June 28, 2002.

The North American Numbering Council (NANC) has scheduled a meeting to be held Wednesday July 17, 2002, from 8:30 a.m. until 5 p.m., and on Thursday, July 18, 2002, from 8:30 a.m., until 12 noon (if required). The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW, Room TW–C305, Washington, DC.

This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

**Proposed Agenda—Wednesday, July 17, 2002**

1. Announcements and Recent News
2. Approve Minutes
—Meeting of May 21–22, 2002
3. Report of North American Numbering Plan Administrator (NANPA)
—NANP Exhaust Results
—NPA Relief Planning Status Report
—CO Code Activity Report
—NRUF Update
—Update on Return Codes with Ported TNs
—Review of NANPA Performance Improvement Plan (PIP)
—Review of NANC Chairman letter to FCC re Change Management Administration contractor
4. Update on Selection of Next NANPA
—Issuance of Requirements Document
—Procurement Schedule
5. Report of NANP Expansion/Optimization IMG
6. Review of Oversight Working Groups
—Regular Report of NANPA Oversight Working Group (NOWG)
—Formation of Pooling Administrator Oversight Working Group (PAOWG)
—Rechartering NOWG
—Two WG's or one?
7. Status of Industry Numbering Committee activities
8. Report of the Local Number Portability Administration (LNPA) Working Group
Wireless Number Portability Operations (WNPO) Subcommittee
—WNPO/CTIA: Status of meeting the Nov. 24, 2002 pooling and porting deadline
9. Report of National Thousands-Block Pooling Administrator
10. Report of NAPM LLC
11. Report from NBANC
—Status of next NBANC contract
12. Report of Cost Recovery Working Group
13. Report of E–Conferencing Subcommittee
14. Steering Committee
—Table of NANC Projects
15. Report of Steering Committee
16. Action Items
17. Public Participation (5 minutes each)
18. Other Business
Adjourn (no later than 5:00 p.m.) Thursday, July 18, 2002 (if required)
19. Complete any unfinished Agenda Items
20. Other Business
Adjourn (no later than 12:00 Noon)
Next meeting: September 24–25, 2002.

Federal Communications Commission.

**Sanford S. Williams,**

*Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau.*

[FR Doc. 02–16872 Filed 7–3–02; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL HOUSING FINANCE BOARD

## Sunshine Act Meeting; Announcing an Open Meeting of the Board

*Time and Date:* 10:00 a.m., Wednesday, July 10, 2002.

*Place:* Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

*Status:* The entire meeting will be open to the public.

*Matters To Be Considered During Portions Open to the Public:*

- Federal Home Loan Bank of Indianapolis Capital Plan
- Federal Home Loan Bank of Des Moines Capital Plan
- Federal Home Loan Bank of Topeka Capital Plan

*Contact Person for More Information:* Elaine L. Baker, Secretary to the Board, (202) 408–2837.

**James L. Bothwell,**

*Managing Director.*

[FR Doc. 02–16954 Filed 7–2–02; 11:15 am]

BILLING CODE 6725–01–P

## FEDERAL MARITIME COMMISSION

## Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

*Agreement No.:* 011809.

*Title:* Tropical/Tecmarine Agreement.

*Parties:* Tropical Shipping & Construction Company, Ltd. Tecmarine Lines, Inc.

*Synopsis:* Under the proposed agreement, Tecmarine will refrain from competing with Tropical in the trade between the Untied States and the Guianas and the Eastern Caribbean. This agreement is in consideration of Tropical's purchase of certain Tecmarine assets and stock companies operating in the foregoing trading areas.

*Agreement No.:* 200063–023.

*Title:* NYSA–ILA Tonnage Assessment Agreement Assignment Agreement.

*Parties:* New York Shipping Association, Inc. International Longshoremen's Association, AFL–CIO.

*Synopsis:* The amendment reduces certain assessment rates and classifies

uncontainerized bagged cocoa as an excepted cargo.

*Agreement No.:* 201113–001.

*Title:* Oakland/SSA Terminals, LLC Preferential Assignment Agreement.

*Parties:* Port of Oakland, SSA Terminals, LLC.

*Synopsis:* The amendment revises the delivery of certain portions of the leasehold, clarifies the improvements the port will install on the premises, and clarifies the repair and maintenance obligations of the parties. The amendment also amends the minimum annual guarantees and break point levels as well as revises the terms for the termination of other agreements.

By Order of the Federal Maritime Commission.

Dated: June 28, 2002.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 02–16757 Filed 7–3–02; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Request for Additional Information

The Commission gives notice that it has requested that the parties to the below listed agreements provide additional information pursuant to section 6(d) of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* The Commission has determined that further information is necessary to evaluate the agreements. This action prevents the agreements from becoming effective as originally scheduled.

*Agreement No.:* 011804.

*Title:* Eastern Car Liner/Fesco Ocean Management Ltd. Space Charter Agreement.

*Parties:* Eastern Car Liner, Ltd., Fesco Ocean Management Limited.

*Agreement No.:* 011807.

*Title:* SNL/HASCO Cross Space Charter and Sailing Agreement.

*Parties:* Sinotrans Container Line Co., Ltd., Shanghai Hai Hua Shipping Co., Ltd.

By Order of the Federal Maritime Commission.

Dated: June 28, 2002.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 02–16804 Filed 7–3–02; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

**[Docket No. 98–14]**

### Shipping Restrictions, Requirements and Practices of the People's Republic of China

**AGENCY:** Federal Maritime Commission.

**ACTION:** Further notice of inquiry.

**SUMMARY:** In connection with an ongoing inquiry, the Federal Maritime Commission (''FMC'' or ''Commission'') is seeking comments from the shipping public specifically with regards to recently proposed implementing rules of the Government of the People's Republic of China which may have an adverse impact on U.S. shipping, and which may merit Commission attention under section 19 of the Merchant Marine Act, 1920 or the Foreign Shipping Practices Act of 1988.

**DATE:** Comments due on or before August 5, 2002.

**ADDRESS:** Send comments (original and 15 copies) to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725, e-mail: *Secretary@fmc.gov.*

**FOR FURTHER INFORMATION, CONTACT:** David R. Miles, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001 (202) 523–5740.

**SUPPLEMENTARY INFORMATION:**

### Background

This proceeding was initiated on August 12, 1998, to gather information regarding certain apparently restrictive laws, rules and regulations of the People's Republic of China (''PRC'' or ''China'') with the issuance of Information Demand Orders and a Notice of Inquiry. The Commission is attempting to compile a record in order to determine if further Commission action under section 19 of the Merchant Marine Act, 1920 or the Foreign Shipping Practices Act of 1988 is warranted.[1] The Commission issued a Notice of Inquiry seeking information regarding the Regulations of the PRC on International Maritime Transportation (Regulations), promulgated on December 21, 2001 and effective January 1, 2002. 67 Fed. Reg. 11695–11696 (March 15, 2002). The Commission, in its effort to continue to monitor the issues identified in this proceeding, is now issuing this Further Notice of Inquiry.

Recently, the Ministry of Communications (''MOC'') issued a ''Notice on Inviting Comments on the Implementing Rules for the Regulations of the People's Republic of China on International Maritime Transportation'' (''Notice'') on June 21, 2002. This Notice, published on the MOC website (*http://www.moc.gov.cn*), together with the text of the proposed ''Implementing Rules,'' both in English, solicits comments in writing (via fax or email) by July 15, 2002.

The Commission is concerned that the proposed Implementing Rules may have significant effects on the companies currently operating in the U.S.-China trade, as well as the Commission's continuing review of potentially restrictive practices of the PRC. Therefore, the Commission is now issuing this Further Notice of Inquiry. The Commission may also formulate further Information Demand Orders, as appropriate, to ensure it has the most accurate information with regard to these issues, and so that it may in turn determine whether any current Chinese laws, rules, regulations or practices merit the initiation of a proceeding under section 19 of the Merchant Marine Act, 1920, or the Foreign Shipping Practices Act.

### Discussion and Request for Comments

It appears that U.S. ocean transportation intermediaries, carriers and other transportation operators may face serious restrictions in obtaining the necessary licenses and permissions to do business in China. Indeed, it appears that wholly foreign-owned NVOCCs continue to be completely barred from engaging in a number of commercial activities, such as offering through transportation as an NVOCC. Other

[1] Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876, authorizes and directs the Commission, *inter alia,* to ''make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade * * * which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country* * *.'' The Foreign Shipping Practices Act of 1988, 46 U.S.C. app. § 1710a, authorizes the Commission to investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime related services in a foreign country result in the existence of conditions that (1) adversely affect the operations of United States carriers in the United States oceanborne trade; and (2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States. If the Commission determines that such adverse conditions exist, it may take actions including limitations on sailings, suspension of tariffs, suspension of agreements, or fees not to exceed $1,000,000 per voyage.

types of services may be permitted, but only if a foreign firm enters into a joint venture with a Chinese entity. It appears that these enterprises must be structured in such a way that the Chinese partner controls the majority of the joint venture and that Chinese nationals must control the highest levels of management. The Commission is also interested in hearing about any other impacts of the Implementing Rules on companies serving the U.S.-China trade.

The Commission is particularly seeking to establish a clear record of the likely or anticipated impact of these rules on the services U.S. NVOCCs are now permitted to perform in China, what activities are prohibited, what requirements or prerequisites are imposed and what, if any, detrimental effects these requirements and prohibitions have on U.S. companies doing business or seeking to do business in China. It would also be helpful to learn whether compliance with the Implementing Rules by ocean common carriers, agents or other entities has affected or is likely to affect the ability of U.S. NVOCCs to do business and serve customers in China and the U.S.

In light of the publication of the Notice and Implementing Rules by the Government of the People's Republic of China, the Commission encourages companies affected by the Regulations and the Implementing Rules to submit comments to MOC. The Commission would also welcome comments from any carrier, shipper, intermediary or any other party directly or indirectly affected by the Implementing Rules. Providing such comments will assist the Commission in measuring the effects of the Implementing Rules. Specifically, the Commission is seeking information with regard to how companies serving the U.S.-China trade will be affected by the Implementing Rules. Any supporting documentation would be especially welcome. Upon request, the Commission may hold information submitted in response to this Further Notice of Inquiry confidential, pursuant to 46 U.S.C. 876(h) and 46 U.S.C. 1710a(d)(3). The Commission cannot, however, ensure the confidentiality of documents submitted via e-mail due to the nature of such transmissions.

Persons who have commented on the Commission's prior NOI may wish to take this opportunity to supplement their comments, if necessary, in light of these new implementing rules.

*Now therefore, it is ordered,* that this Further Notice of Inquiry be published in the **Federal Register**.

By the Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 02–16760 Filed 7–3–02; 8:45 am]

**BILLING CODE 6320–01–P**

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## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 2770NF.
Name: All Flags Forwarding Inc.
Address: 147–35 183rd Street, Jamaica, NY 11434.
Date Revoked: May 12, 2002.
Reason: Failed to maintain valid bonds.

License Number: 13566N.
Name: Amerilines—U.S.A., Inc.
Address: 1890 NW 82nd Avenue, Suite 112, Miami, FL 33126.
Date Revoked: May 12, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15077N.
Name: Anchor Shipping Co. dba Anchor Shipping Line.
Address: 1031 Ives Dairy Road, Suite 228, North Miami Beach, FL 33179.
Date Revoked: June 1, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17337NF.
Name: Clarke Transportation Services, Inc.
Address: 2000 Professional Way, Bldg. 100, Woodstock, GA 30188.
Date Revoked: May 17, 2002.
Reason: Failed to maintain valid bonds.

License Number: 1882F.
Name: New England Household International Division of New England Household Moving & Storage, Inc.
Address: 104 Bartzak Drive, Holliston, MA 01746–0000.
Date Revoked: May 23, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15367N.
Name: IOCC Corp.
Address: 10865 NW 29th Street, Suite 200, Miami, FL 33172.
Date Revoked: June 9, 2002.
Reason: Failed to maintain a valid bond.

License Number: 11870N.
Name: I.T.N. Consolidators, Inc.
Address: 8430 NW 72nd Street, Miami, FL 33166.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3574F.
Name: I.T.N. of Miami, Inc. dba International, Transportation Network.
Address: 8430 NW 72nd Street, Miami, FL 33166.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 10443N.
Name: Immortal Service Inc.
Address: 440 South Hindry Avenue, Suite F, Inglewood, CA 90301.
Date Revoked: June 6, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4246F.
Name: International Shipping Link, Inc.
Address: 2418 W. Devon Avenue, Chicago, IL 60659.
Date Revoked: May 24, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16503NF.
Name: Lukini Shipping Inc.
Address: JFK International Airport, Cargo Bldg. 80, Room 203, Jamaica, NY 11430.
Date Revoked: May 25, 2002.
Reason: Failed to maintain valid bonds.

License Number: 16031N.
Name: Marquis International Consolidators, Inc.
Address: 8209 N.W. 68th Street, Miami, FL 33166.
Date Revoked: April 30, 2002.
Reason: Surrendered license voluntarily.

License Number: 4613F.
Name: N.C.A. International Ocean Freight Forwarders, Inc.
Address: 6801 Chippendale Court, Tampa, FL 33634.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15567NF.
Name: Osher Corporation.
Address: 10838 27th Street, Miami, FL 33172.
Date Revoked: May 29, 2002.
Reason: Failed to maintain valid bonds.

License Number: 16171N.
Name: Petcon Air Freight (USA) Inc.
Address: 175–01 Rockaway Blvd., Room 215, Jamaica, NY 11434.

Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 1941F.
Name: Rome International Freight Consultants, Inc.
Address: 8000 NW 68th Street, Miami, FL 33166.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 41F.
Name: S. Jackson & Son, Inc.
Address: 1555 Poydras Street, Suite 1600, New Orleans, LA 70112.
Date Revoked: May 8, 2002.
Reason: Failed to maintain a valid bond.

License Number: 12905N.
Name: Schaefco Container Ltd.
Address: 555 Route 1 South, Woodbridge Towers, Iselin, NJ 08830.
Date Revoked: June 6, 2002.
Reason: Failed to maintain a valid bond.

License Number: 1457F.
Name: Schmidt, Pritchard & Co., Inc.
Address: 9801 West Lawrence Avenue, Schiller Park, IL 60176.
Date Revoked: May 23, 2002.
Reason: Failed to maintain a valid bond.

License Number: 2745NF.
Name: Ssangyong (U.S.A.), Inc.
Address: 601 16th Street, Carlstadt, NJ 07072.
Date Revoked: June 6, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17334N.
Name: Suburban Moving & Storage, Inc.
Address: 1720 Willow Avenue, Weehawken, NJ 07087.
Date Revoked: May 23, 2002.
Reason: Failed to maintain a valid bond.

License Number: 11619N.
Name: Victoriana C. Tirona dba Bulakena Ocean & Air Forwarders.
Address: 4995 Mission Street, San Francisco, CA 94112.
Date Revoked: June 9, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16837F.
Name: West Coast Forwarding, Inc.
Address: 3255 Wilshire Blvd., Suite 1805, Los Angeles, CA 90010.
Date Revoked: May 2, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4341F.
Name: USA Logistics, Incorporated.
Address: 22029 West Conway Place, Saugus, CA 91350.
Date Revoked: May 22, 2002.
Reason: Failed to maintain a valid bond.

**Sandra L. Kusumoto,**
*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 02–16759 Filed 7–3–02; 8:45 am]

BILLING CODE 6720–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

**Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants**

Go-Trans (New York) Ltd., 147–32 Farmers Blvd., 2/F., Jamaica, NY 11434. *Officer:* Muhammad Bhatti, Chief Operating Officer (Qualifying Individual).

Marine Express, Inc., P.O. Box 6448, Concordia #249 Altos, Mayaguez, P.R. 00681–6448. *Officers:* Nestor Gonzalez, President (Qualifying Individual), Dr. Luis Aponte, Vice President.

Mirsonia, Inc., 611 Howard Street #236, Glendale, CA 91206. *Officers:* Jamie Yoon, Vice President (Qualifying Individual), Kiryong Lee, President.

Zohar Worldwide LLC dba Relampago International, dba Relllampago Express, 1069 Sneath Lane, San Bruno, CA 94066. *Officers:* Houshang Arasteh, Vice President (Qualifying Individual), Carlos A. Larios, Jr., President.

Dimex Consulting, Inc., 118 W. Hazel Street, Ste. A, Inglewood, CA 90302. *Officer:* Diem T. Nguyen, Owner.

**Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants**

Eastern Shipping Worldwide, Inc., 1050 Busse Highway, Suite 125, Bensenville, IL 60106. *Officers:* Eric Wagner, President (Qualifying Individual), Catherine Wagner, Vice President.

Trac-Mar Network Inc., 7225 NW 25 Street, Suite 203, Miami, FL 33122. *Officers:* Teresita Rodriguez-Adan, President (Qualifying Individual), Juan J. Adan, Secretary.

Ameritrans World Group, Inc., 7102 NW 50th Street, Miami, FL 33166–5636. *Officers:* Martin Roy Leon, President, Cesar Ocampo, Senior Vice President, Henry Zuluaga, Exec. Vice President, Carlos Ospina, Vice President (Qualifying Individuals), Roy Leon Jr., Vice President.

Speedex Air & Ocean, Inc., 12906 Acord Street, Cerritos, CA 90703. *Officer:* Jung Ah Shim, President (Qualifying Individual).

Dated: June 28, 2002.

**Bryant L. VanBrakle,**
*Secretary.*

[FR Doc. 02–16758 Filed 7–3–02; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**SUMMARY:**

**Background**

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer–Joseph F. Lackey, Jr.—Office of Information and Regulatory Affairs, Office of Management and Budget, New

Executive Office Building, Room 10235, Washington, DC 20503 (202–395–7316).

**Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports:**

1. *Report title:* Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation for State Member Banks

*Agency form number:* Reg H–5

*OMB Control number:* 7100–0261

*Frequency:* Aggregate report, quarterly; policy statement, annually

*Reporters:* State member banks

*Annual reporting hours:* 21,060 hours

*Estimated average hours per response:* Aggregate report, 5 hours; policy statement, 20 hours

*Number of respondents:* 976

Small businesses are affected.

*General description of report:* This information collection is mandatory (12 U.S.C. 1828(o)) and is not given confidential treatment.

*Abstract:* State member banks must adopt and maintain a written real estate lending policy. Also, banks must identify their loans in excess of the supervisory loan–to–value limits and report (at least quarterly) the aggregate amount of the loans to the bank's board of directors.

Board of Governors of the Federal Reserve System, June 27, 2002.

**Jennifer J. Johnson**

*Secretary of the Board.*

[FR Doc. 02–16661 Filed 7–3–02; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 2002.

**A. Federal Reserve Bank of Kansas City** (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. First Commerce Financial Corporation*, Marysville, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First Commerce Bank, National Association, Marysville, Kansas, a *de novo* bank.

Board of Governors of the Federal Reserve System, June 27, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02–16662 Filed 7–3–02; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 2002.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

*1. The Colonial BancGroup, Inc.*, Montgomery, Alabama; to merge with Palm Beach National Holding Company, Palm Beach, Florida, and thereby indirectly acquire voting shares of Palm Beach National Bank and Trust Company, Palm Beach, Florida.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

*1. Sterling Bancshares, Inc.*, Houston, Texas; to merge with ENB Bankshares, Inc., Dallas, Texas, and thereby indirectly acquire voting shares of ENB Delaware Bankshares, Inc., Wilmington, Delaware, and its banking subsidiary Eagle National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, June 28, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02–16783 Filed 7–3–02; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 10 a.m. (EDT) July 15, 2002.

**PLACE:** 4th Floor, Conference Room, 1250 H Street, N.W., Washington, DC.

**STATUS:** Parts will be open to the public and part closed to the public.

**MATTERS TO BE CONSIDERED:**

**Parts Open to the Public**

1. Approval of the minutes of the June 17, 2002, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director (with discussion of litigation to be closed to the public).

**Part Closed to the Public**

Discussion of litigation.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 2, 2002.

**Elizabeth S. Woodruff,**

*Secretary to the Board, Federal Retirement Thrift Investment Board.*

[FR Doc. 02–17013 Filed 7–2–02; 2:14 pm]

BILLING CODE 6760–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 02175]**

### Applied Research on Antimicrobial Resistance (AR): Validation of National Committee for Clinical Laboratory Standards (NCCLS) Breakpoints for Bacterial Pathogens of Public Health Importance; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds to fund grants for Applied Research on Antimicrobial Resistance (AR): Validation of National Committee for Clinical Laboratory Standards (NCCLS) Breakpoints for Bacterial Pathogens of Public Health Importance was published in the **Federal Register** on June 4, 2002, Vol. 67, No. 107, pages 38501–38503. The notice is amended as follows: On page 38502, first column, Section E. Program Requirements, Paragraph 3, should be revised to read:

''2. For organisms for which NCCLS has yet to establish and publish a standardized susceptibility testing method, a method in line with other NCCLS methods would have to be elucidated (including the appropriate quality control organisms and the ranges of MICs or zone diameters that constituted a test that was in control). Thus, potential projects include validating existing interpretive criteria for pathogens of public health importance, developing new interpretive criteria for pathogens of public health importance using existing NCCLS methods and quality control, or developing new interpretive criteria and new antimicrobial susceptibility testing methods for pathogens of public health importance using existing NCCLS methods and quality control as a starting point for novel test development.''

Dated: June 21, 2002.

**Sandra R. Manning,**

*CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–16232 Filed 7–3–02; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 02199]**

### Centers of Excellence for Autism and Other Developmental Disabilities Epidemiology; Notice of Availability of Funds

#### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Centers of Excellence for Autism and Other Developmental Disabilities Epidemiology. This program addresses the ''Healthy People 2010'' focus areas for Maternal, Infant, and Child Health.

The purpose of the program is to collect and analyze epidemiologic data on the prevalence, correlates, and causes of autism and other developmental disabilities. The new Center(s) will be part of an existing collaborative network (which consist of four Centers presently) investigating autism spectrum disorder (ASD) and other developmental disabilities. The Centers will conduct active population-based surveillance; multi-Center analytic case-control studies; and Center-initiated special studies. Quantifiable and measurable outcomes of the cooperative agreement will be measured against the Government Performance Results Act performance goal, to find causes and risk factors for birth defects and developmental disabilities in order to develop prevention strategies.

#### B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 311 and 317(C) of the Public Health Service Act, (42 U.S.C. Sections 241, 243, and 247b–4), as amended, and Section 102 of the Children's Health Act of 2000, (Pub. L. 106–310). The Catalog of Federal Domestic Assistance number is 93.283.

#### C. Eligible Applicants

Assistance will be provided only to the Health Departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Only one application from each State or Territory may be submitted.

To be eligible, applicants must document a study population of at least 30,000 live births per year (in order to be able to detect sufficient numbers of cases) within a State, a contiguous area of a State (such as the catchment of a local health agency), or a contiguous area comprised of a combination of States, based on United States Census Data (based on 2000 census data). This information should be placed directly behind the face page of the application. Applications that fail to submit the evidence requested above will be considered non-responsive and returned without review.

**Note:** Title 2 of the United States Code, Section 1611 states than an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

#### D. Availability of Funds

Approximately $400,000 to $700,000 will be available in FY 2002 to fund approximately one award. The average award will be approximately $500,000. It is expected that the award will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may change.

It is anticipated that in FY 2003, additional approved but not funded awards may be made from this announcement, if funds become available.

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. Matching funds are not required for this program.

#### E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under ''1. Recipient Activities,'' and CDC will be responsible for the activities listed under ''2. CDC Activities.''

1. Recipient Activities:

a. Surveillance System.

(1) Develop or enhance a population-based epidemiologic surveillance system for ASD and other developmental disabilities to generate timely population-based data. Activities may include, but are not limited to, development or enhancement of surveillance case definitions, multiple source case ascertainment methods (e.g., from educational and medical sources), and data collection instruments.

(2) Establish or enhance a multiple-source methodology for case ascertainment by developing collaborative relationships with appropriate professionals and organizations.

(3) Develop or enhance a plan for training community service providers to improve case ascertainment.

(4) Implement or enhance quality assurance procedures to ensure that study protocols are followed.

(5) Develop or enhance an evaluation plan for estimating the validity and completeness of the surveillance system.

(6) Develop, implement, and evaluate a plan to use surveillance data to improve community and service provider awareness regarding ASD and other developmental disabilities and/or access of children with ASD and other developmental disabilities to comprehensive, community-based, family-centered care.

b. Collaborative Case-Control Study: Collaborate with other previously funded Centers to design, implement, analyze, and evaluate joint case-control studies based on a pooled study data base.

c. Center-Initiated Special Studies: Develop, implement, and evaluate a Center-initiated special study drawing on special strengths and expertise of Center staff. It is anticipated that development of the special study would be initiated in Year Two of the grant award and utilize the Center's surveillance and case-control study infrastructure. The study could include, but may not be limited to, the following issues related to ASD or other developmental disabilities:

(1) Evaluation of prenatal, perinatal, and/or postnatal risk factors, including genetic factors and environmental exposures,

(2) Evaluation of natural history, including associated developmental disabilities and secondary conditions,

(3) Identification of biomarkers,

(4) Evaluation of economic costs,

(5) Development, implementation, and evaluation of intervention programs for children with ASD and their families,

d. Disseminate findings of the Surveillance, Collaborative Case-Control, and Center-Initiated Special Studies activities for the professional community and the public to increase public health awareness.

e. Participate fully as a member of the coordinating committee, which is comprised of principal investigators of all funded Centers of Excellence.

2. CDC Activities:

a. Surveillance Activities.

(1) Assist recipient in the development and implementation of surveillance activities including the development of standardized surveillance case definitions.

(2) Provide current information on surveillance methods, including the identification of potential sources for surveillance.

(3) Assist recipient, in the development of quality assurance procedures.

(4) Provide assistance, in the development of an evaluation plan for the completeness and validity of data from the surveillance system.

(5) Facilitate communication/coordination among funded Centers, to improve efficiency of activities and quality of surveillance data.

(6) Provide technical consultation regarding data analyses.

b. Collaborative Case-Control Studies.

(1) Assist recipients in developing a plan for on-site activities, such as selection and enrollment of study subjects, implementation of the joint study protocol, quality assurance procedures, data management, and timely submission of computerized data to a central repository for inclusion in a pooled data set.

(2) Obtain CDC Institutional Review Board (IRB) clearances and Office of Management and Budget (OMB) clearance as necessary.

**F. Content of Application**

*Letter of Intent (LOI)*

An LOI is requested for this program announcement. The LOI will not be used to eliminate potential applicants, but it will enable CDC to determine the level of interest and plan for the review more efficiently. The LOI should be no more than two, double-spaced pages, printed on one side, with one-inch margins and 12 point font. The LOI should include the following information: this program announcement number; applicant's name and address; project director's name, phone number, and e-mail address.

*Applications*

Applicants should use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important for applicants to follow the specific information noted in laying out the program plan.

**G. Submission and Deadline**

*Letter of Intent (LOI)*

On or before July 22, 2002, submit the LOI to the official designated for programmatic technical assistance identified in the ''Where to Obtain Additional Information'' section of this announcement.

*Application*

Submit the original and two copies of PHS 398 (OMB Number 0925–0001). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

The application must be received on or before 5 p.m. Eastern Time, August 9, 2002. Submit the application to: Technical Information Management-PA 02199, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

*Deadline:* Applications shall 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 the submission requirements.

**H. Evaluation Criteria**

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of various identified objectives of the grant/cooperative agreement. Measures of Effectiveness must relate to the performance goals as stated in section ''A. Purpose'' of this announcement.

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.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Description of Program and Methodology (30 points).

a. Extent to which applicant describes the methods they will use to (1) identify all relevant sources for surveillance case ascertainment for ASD and other developmental disabilities within the study area; (2) obtain permission to access records from relevant sources; (3) develop standard case definitions for ASD and other developmental disabilities and implement a strategy to conduct multiple-source case ascertainment; (4) train community service providers to improve case ascertainment; (5) develop and implement quality assurance procedures and an evaluation plan for the surveillance system; (6) develop and implement a plan to use surveillance data to improve public awareness regarding ASD and other developmental disabilities and/or access to care of affected children; and (7) develop an analytic and dissemination plan, and prepare manuscripts.

b. Extent to which applicant describes the plan for implementing the collaborative case-control study, including selection and enrollment of cases and controls from the applicant's study population.

c. Extent to which the applicant describes the objectives, based on special strengths and expertise of the applicant, for a Center-initiated special study.

2. Understanding the Problem (15 points).

a. Extent to which applicant has a clear, concise understanding of the requirements and purpose of the cooperative agreement;

b. Extent to which applicant understands the issues, challenges, and barriers associated with developing and implementing population-based surveillance and epidemiologic studies for ASD and other developmental disabilities;

c. Extent to which applicant understands the issues, challenges, and barriers associated with case ascertainment for ASD; and

d. Extent to which applicant describes the need for funds to develop/enhance ASD and other developmental disability surveillance and epidemiologic studies in their State.

3. Goals and Objectives (15 points).

a. Extent to which applicant clearly describes the short-term and long-term goals and measurable objectives of the project;

b. Extent to which applicant's goals and objectives are realistic and are consistent with the stated goals and purpose of this announcement;

c. The degree to which 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.

4. Collaborative Efforts (15 points).

a. Extent to which applicant demonstrates the ability to collaborate with multiple sources such as school systems, diagnostic centers, health/mental health service providers and other intervention service providers for the purpose of case ascertainment (include written assurances).

b. Extent to which applicant demonstrates their willingness to collaborate with other Centers to develop joint project efforts and carry out the joint project efforts in a manner that allows for pooling of standardized data.

c. Extent to which recipient identifies possible collaborative relationships with existing surveillance and research programs that may enhance recipients' future research activities (e.g., birth defects surveillance, National Institutes of Health, Collaborative Programs of Excellence in Autism).

d. Extent to which collaborative efforts with other relevant programs are documented (such as Part C, State developmental disabilities programs, genetics programs, etc.).

5. Staffing and Management System (15 points).

a. Extent to which key personnel have qualifications, skills and experience in epidemiologic methods, public health surveillance, data management and analysis to develop and implement surveillance and analytic studies in ASD and other developmental disabilities.

b. Extent to which applicant has the ability to manage and coordinate surveillance, research, and integration components of the project.

c. Extent to which applicant demonstrates expertise in abstracting and reviewing records.

d. Extent to which there is appropriate dedicated staff time to develop and implement the project.

e. Extent to which applicant provides an appropriate time line and includes activities and personnel responsibilities.

f. Extent to which applicant demonstrates an organizational structure (include an organizational chart) and facilities/space/equipment that are adequate to carry out the activities of the program.

6. Evaluation Plan (10 points).

a. Extent to which applicant describes an evaluation plan that will monitor reliability, progress, timeliness, and completeness of the objectives and activities of the project.

b. Extent to which applicant describes a study to evaluate the completeness of ascertainment of children for the surveillance portion of the study.

7. Human Subjects Review (not scored).

Does the applicant adequately address the requirements of 45 CFR part 46 for the protection of human subjects?

8. Budget (not scored).

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. Applicants should include in their first year budget two trips to CDC, Atlanta for up to two persons and two days each trip.

## I. Other Requirements

*Technical Reporting Requirements*

Provide CDC with an original plus two copies of:

1. Semiannual progress reports, which should include:

a. Brief project description;

b. Comparison of the actual accomplishments to the goals and objectives established for the period;

c. Data requirements that demonstrates measures of effectiveness. In the case that established goals and objectives are not accomplished, or are delayed, please discuss the reason for the goals and objectives not being accomplished, as well as the anticipated corrective action needed to achieve the goals and objectives. If there is a need to change or delete goals or objectives, please discuss and explain the reason;

d. Other pertinent information, including preliminary findings from the analysis of any available data; and

e. Financial recap of obligated dollars to date as a percentage of total available funds.

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

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–22 Research Integrity

### J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*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: Sheryl Heard, Grants Management Specialist, Acquisition and Assistance Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention, Announcement 02199, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2723, email address: *shl3@cdc.gov.*

For program technical assistance, contact: Frank Destefano, M.D., M.P.H., National Center on Birth Defects and Development Disabilities, 4770 Buford Highway, Mail Stop F–15, Atlanta, Georgia 30341, Telephone number: 770–488–7288, email address: *fxd1@cdc.gov.*

Dated: June 27, 2002.

**Sandra R. Manning,**

*CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–16815 Filed 7–3–02; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[Program Announcement 02059]**

## Cooperative Agreement for Development of the National Violent Death Reporting System (NVDRS); Notice of Availability of Funds

### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Development of the National Violent Death Reporting System (NVDRS). This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

The purpose of the program is to begin establishing state violent death information collection systems that will form the basis of NVDRS. The purpose of NVDRS is to generate public health surveillance information at the national, state, and local levels that is more detailed, useful, and timely than is currently available. This information will help develop, inform, and evaluate violence prevention strategies at both state and national levels. The proposed system will build upon a pilot system, the National Violent Injury Statistics System (NVISS), that has been under development since 1999. Additional information on this pilot system can be found at www.NVISS.org.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for Injury Prevention and Control (NCIPC):

1. Reduce the risk of youth violence.

2. Reduce violence against women.

3. Enhance the capacity of states to implement effective rape prevention and education programs.

4. Increase external input on the research priorities, policies, and procedures related to the extramural research supported by CDC.

5. Provide online access to injury prevention data.

6. Improve the uniformity, quality, and accessibility of emergency department data for public health surveillance in several states; ultimately developing the capacity to improve data in all states through development of guidelines, recommendations, or technical assistance.

### B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act and section 391(a) (42 U.S.C. 280(b)) of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

### C. Eligible Applicants

Assistance will be provided only to the health departments of states or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the federally recognized Indian tribal governments. In consultation with States, assistance may be provided to political subdivisions of States.

The ability to obtain population-based information from core data sets is crucial for the successful development of the NVDRS. Eligible applicants must document through letters of support access to information on individual, identifiable decedents from all of the following data sources:

1. Death certificates.

2. Medical examiner and/or coroner records.

3. Police records (Supplemental Homicide Reports at a minimum).

4. Crime laboratory records.

The letters of support must come from the agency authorized to grant access to the specific required data. They must note the most recent year for which data are available and make a statement regarding a memorandum of agreement/understanding that is in place between the applicant and the data agency. The memorandum of agreement must provide the applicant access to data while specifying any limitations regarding data use. A copy of the memorandum of agreement/understanding should accompany each letter of support to confirm access.

Applicants from states that do not have centralized, statewide medical examiner/coroner or police records must obtain the letters of support from the appropriate agencies serving the three largest cities within the state.

Applications that fail to submit evidence listed above will be considered non responsive and will be returned without review.

Funding will be available to those applicants who are willing to pilot test a child fatality NVDRS module developed to collect additional data

from child fatality review committees on violent deaths occurring in children less than 18 years of age.

*Minimum Requirements*

In order to qualify for this funding, the applicant must provide evidence of an existing centralized statewide child fatality review committee and access to information on individual, identifiable decedents generated by this committee.

Acceptable documentation, at a minimum, is a letter of support from the child fatality review committee on committee letterhead. The letter must note the most recent year for which data are available and make a statement regarding a memorandum of agreement/ understanding that is in place between the applicant and the data agency. The memorandum of agreement must provide the applicant access to data while specifying any limitations regarding data use. A copy of the memorandum of agreement/ understanding should accompany each letter of support to confirm access. Applicants that do not apply for this optional funding will not be considered non responsive because this activity is optional.

Applications will be classified into two categories, ''New'' and ''Experienced.'' States with funding from an external source (other than state funds) for any form of violent death reporting or surveillance occurring among adults, defined as 18 years of age or older, will be considered an ''Experienced'' system. States with surveillance projects (state or local) funded by the Harvard Injury Control Research Center as part of the NVISS will be considered Experienced. States without any such external funding will be considered a ''New'' system. Funds awarded for this program cannot be used to supplant (replace) existing activity funds.

**Note:** Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

## D. Availability of Funds

Approximately $1.2 million is available in FY 2002 to fund approximately five awards. It is expected that the average award will be $240,000, ranging from $150,000 to $220,000 for states with up to 800 cases of violent death in calendar year 2000 and from $220,000 to $320,000 for states with greater than 800 cases of violent death in 2000. At least one applicant from each funding range will be funded.

''New'' and ''Experienced'' system applications will be evaluated separately; at least one applicant from each group will be funded. It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Approximately $100,000 of optional funding is available to fund up to five states to pilot test the child fatality NVDRS module. It is expected the average award will be $20,000. It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Matching funds are not required for this program.

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.

## E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. or 2. and 3. (if applying for optional funds), Recipient Activities, and CDC will be responsible for the activities under 4. CDC Activities.

*For New Violent Death Reporting Systems*

1. Recipient Activities.

a. Establish an advisory committee that will help in the development of the state violent death reporting system. Membership should include representatives from agencies that control medical examiner/coroner records, death certificates, police records, and crime laboratory data.

b. Establish routine access to uniquely identifiable case information from each of the four critical data sources for deaths occurring on January 1, 2003 or later.

c. Use uniform data elements provided by the CDC to collect required data.

d. Abstract and code uniform data elements from all core data sources for all cases identified.

e. Develop procedures to combine information from the data sources. Maintain a unique case ID number.

f. Establish (1) a centralized location for maintaining a secure data storage system that allows for ready access and retrieval of abstracted and edited data and (2) an off-site backup storage system of abstracted and edited data.

g. Develop a quality assurance program that includes an automated record tracking system, edit reports, systematic review of the accuracy and completeness of abstracted data from all core data sources, and methods to identify and resolve case ascertainment and data collection and processing problems, e.g., identifying and removing duplicate records prior to submission to CDC.

h. Transmit data free of personal identifiers electronically to CDC using a specified time schedule.

i. Disseminate surveillance results.

j. Evaluate the surveillance system according to standard guidelines, including simplicity, flexibility, data quality, acceptability, sensitivity, predictive value positive, representativeness, timeliness and stability. (See MMWR Recommendations and Reports, ''Updated guidelines for evaluating public health surveillance systems,'' RR–13, vol. 50, July 27, 2001.)

k. Prepare standard reports with aggregated data and distribute them widely.

l. Share information learned from project through presentations, peer-reviewed journals and media events.

m. Participate in a collaborative effort to establish a uniform violent death reporting system across states. Meetings will be held on a semiannual basis.

*For Experienced Violent Death Reporting Systems*

2. Recipient Activities.

a. Maintain an advisory committee that will help in the enhancement of the reporting system. The committee should be able to help develop methods for data dissemination and set priorities for helping to develop prevention strategies. The committee should include, at a minimum, representatives from agencies that control the core data sources.

b. Maintain or expand routine access to uniquely identifiable case information from each of the four core data sources for deaths occurring on January 1, 2003 or later.

c. Use uniform data elements provided by the CDC to collect required data.

d. Use or modify existing procedures that combine information from the data sources. Maintain a unique case ID number.

e. Maintain or modify (1) an existing secure data storage system that allows for ready access and retrieval of all abstracted and edited data and (2) off-site backup data storage system for all abstracted and edited data from the core data sources.

f. Develop a quality assurance program that includes an automated

record tracking system, edit reports, systematic review of the accuracy and completeness of abstracted data from all core data sources, and methods to identify and resolve case ascertainment and data collection and processing problems e.g., identifying and removing duplicate records prior to submission to CDC.

g. Transmit data free of personal identifiers electronically to the CDC using a specified time schedule.

h. Disseminate surveillance results.

i. Evaluate the surveillance system according to standard guidelines including simplicity, flexibility, data quality, acceptability, sensitivity, predictive value positive, representativeness, timeliness and stability. (See MMWR Recommendations and Reports, ''Updated guidelines for evaluating public health surveillance systems,'' RR–13, vol. 50, July 7, 2001.)

j. Prepare standard reports with aggregated data and distribute them widely.

k. Share information learned from the project through presentations, peer review journals and media events.

l. Participate in a collaborative effort to establish a uniform violent death reporting system across states. Meetings will be held on a semiannual basis.

*Child Fatality NVDRS Module*

3. Recipient Activities.

a. Establish or maintain partnership with child death review team(s).

b. Use uniform data elements provided by the CDC to collect required data.

c. Transmit data free of personal identifiers electronically to the CDC using a specified time schedule.

d. Provide feedback to CDC regarding the appropriateness of module for gaining data related to violent deaths to children.

**Note:** ''New'' recipients may choose to begin data gathering in smaller geographic areas, such as a city or region rather than beginning statewide.

''Experienced'' recipients may choose to expand data gathering to a broader geographic area, region or statewide, if not currently statewide. If an applicant chooses to begin collecting data in a portion of the state, the applicant must outline a plan for expansion statewide within the five-year project period.

4. CDC Activities.

a. Provide required uniform data elements and definitions to be collected similar to those used by NVISS.

b. Provide standardized software that will be used to transmit data to CDC, either through a web-based or distributed (a stand-alone server located in the state) system. The software will be menu-driven with editing functions, data transmission protocols, and report options for use in data review and quality assurance by the state prior to submission to CDC.

c. Provide training in data standards and coding, data entry, data editing and other quality assurance functions, record tracking, and transmission of data to the CDC.

d. Provide technical assistance in solving problems in all aspects of the system.

e. Provide updates to the necessary software as needed.

f. Review submitted records for quality and completeness and provide feedback to recipients. Work with the recipient to systematically resolve problems of missing or inaccurate data.

g. Prepare an analysis file of final edited data to be shared with the recipient for data analysis and reporting of findings.

h. Prepare standard reports with aggregated data and distribute them widely.

**F. Content**

*Applications*

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 30 pages, double-spaced, printed on one side, with one inch margins, and unreduced font. The total number of pages should not exceed 65 pages, including appendices and abstract. Applicants that fit into the ''Experienced'' category are allowed up to an additional five pages for a required appendix that evaluates their current violent death surveillance system according to standard guidelines. States applying for funding to pilot test the child fatality NVDRS module should submit a separate plan no greater than five pages in length.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

The application narrative should include the following information:

1. Documentation of access to required data source.

2. A one-page abstract of proposed activities and project outcomes. The abstract should specify the type of applicant (''new'' or ''experienced''), the number of violent deaths category into which the state fits (less than or equal to 800 or greater than 800 deaths), and whether the state is applying for the child fatality NVDRS module optional funding.

3. Background.

4. Goal(s) and Objectives.

5. Methods.

6. Experience.

7. Capacity and Staffing.

8. Evaluation.

9. Collaboration.

10. Human Subjects.

11. Budget.

12. Plan for incorporating child fatality NVDRS module into existing or proposed state violent death system. (Only if applying for child fatality NVDRS module optional funds).

13. Appendices.

**G. Submission and Deadline**

*Application*

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
Human Subjects Certification
Indirect Cost Rate Agreement
Narrative

The application must be received on or before 5:00 p.m. Eastern Time August 19, 2002. Submit the application to: Technical Information Management Section, PA 02059, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

*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 the submission requirements.

**H. Evaluation Criteria**

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. 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 CDC.

1. Methods (25 points).

a. The extent that the applicant describes the methods used for case ascertainment and those used to access and abstract data from core data sources. This should include a discussion of methods used in motivating reporting sources, ensuring high quality data abstraction, and resolving data issues.

b. The extent that the applicant documents a detailed and clear description of how linkage of records from different sources will be or is accomplished.

c. The extent that the applicant describes how data will be maintained, edited, and transferred to the CDC from a central location in the state.

d. The extent that the applicant provides a five-year time line for the planned activities.

e. The extent that the applicant provides a detailed plan for assuring confidentiality where required by state law or regulation.

f. The extent that the applicant provides evidence that proposed activities are not duplications of existing activities. (Experienced applicants only)

2. Goal(s) and Objectives (15 points).

a. The extent that the applicant has included goals which are relevant and consistent with the purpose of the program announcement.

b. The extent that the objectives are specific, measurable, assigned, realistic, and time-phased.

3. Experience (15 points).

a. The extent that the applicant documents experience in accessing, collecting, linking, editing, managing and analyzing surveillance information from multiple data sets, especially experience with mortality surveillance.

b. The extent that the applicant provides evidence of experience in injury surveillance, conducting data quality assurance activities and generating data reports.

4. Capacity and Staffing (15 points).

a. The extent that the applicant provides evidence of existing staff with SAS and Microsoft Access expertise, computer programming skills, and skills in data management and quality assurance, especially involving large complex databases, or a plan (position description) to hire someone with such skills and expertise. Resumes or curriculum vitae should be included.

b. The extent that the applicant provides a time table showing when information regarding the occurrence of a violent death during a given calendar quarter is available to the applicant from each of the four required data sources.

c. The extent that the applicant describes existing or needed computer facilities for storing, managing and transmitting data to CDC.

5. Collaboration (15 points).

a. The extent that the applicant provides evidence of involvement by key stakeholders in the current system or a plan for including key stakeholders in the development of a violent death reporting system.

b. The extent that the applicant documents the quality and specificity of access to required and optional data sources, e.g., the limitations of that access, the most recent year data are available, the timeliness and availability of data from all core and optional data sources, the duration of access, etc. Information from the letters of support will be considered in this context.

c. The extent that the applicant provides additional letters of support from potential partners in the project.

d. The extent that the letters of support document specific contributions of the partner, including but not limited to a description of the precise nature of past and proposed collaborations, products, services, and other activities that will be provided by and to the applicant through the proposed collaboration.

6. Evaluation (10 points).

a. The extent that the applicant provides a detailed plan for evaluating the surveillance system. The plan should include standard surveillance evaluation measures described above.

b. The extent that the applicant describes both system and data quality assurance procedures.

7. Background (5 points).

The extent that the applicant documents the magnitude of the violent death problem in the applicant's state and/or target area.

8. Child Fatality NVDRS Module Plan (Not Scored).

The extent that the applicant adequately describes how the child fatality NVDRS module will be incorporated into the existing or proposed state violent death reporting system.

9. Human Subjects (Not Scored).

The extent that the applicant adequately addresses the requirements of 45 CFR Part 46 for the protection of human subjects.

10. Budget (Not Scored).

a. The extent that the budget request is clearly explained, adequately justified, reasonable, sufficient and consistent with the stated objectives and planned activities.

The Budget should include funds for at least two trips to CDC for program related meetings and training.

b. If applying to pilot test the child fatality NVDRS module, a separate budget must be attached.

**Note:** Applicants applying for additional funds to pilot test the child fatality NVDRS module will only receive this funding if they successfully compete for NVDRS funding.

**I. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Semiannual progress reports. The progress report will include a data requirement that demonstrates measures of effectiveness.

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.

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 1 of the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

AR–21 Small, Minority, Women-Owned Businesses
AR–22 Research Integrity

**J. Where To Obtain Additional Information**

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For business management assistance, contact: Van A. King, Grants Management Specialist ,Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770)488–2751, E-mail address: *Vking@cdc.gov.*

For program technical assistance, contact: Leroy Frazier, Jr., MSPH, CHES, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Hwy, NE, MS K60, Atlanta, GA 30341, Telephone number: (770)488–1507, E-mail address: *Lfrazier1@cdc.gov.*

Dated: June 27, 2002.

**Sandra R. Manning,**

*CGFM Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–16814 Filed 7–3–02; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## Cooperative Agreement To Support the Joint Institute for Food Safety and Applied Nutrition; Notice of Intent To Renew a Cooperative Agreement; RFA–FDA–CFSAN–02–04

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its intention to accept and consider a single source application for the award of a cooperative agreement in fiscal year (FY) 2002 to the University of Maryland, College Park (UMCP) to support the Joint Institute for Food Safety and Applied Nutrition (JIFSAN), which is located on the University of Maryland campus in College Park, MD. An estimated amount of support in FY 2002 will be up to $3 million per year (direct and indirect costs), with an additional 4 years of support. Competition is limited to UMCP because of the unique partnership between FDA and UMCP. The cooperative agreement will continue to allow for a more efficient use of research, education, and outreach resources which enhances overall public health by expanding and improving food safety and nutrition programs as well as other program areas that impact on public health policy.

**DATES:** Submit the application by August 19, 2002. If this date falls on a weekend, it will be extended to Monday; if this date falls on a holiday, it will be extended to the following workday.

**ADDRESSES:** The completed application should be submitted to Peggy Jones, Grants Management Officer, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. If the application is either hand carried or commercially delivered, it should be addressed to Peggy Jones, 5630 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7160, FAX 301–827–7101, e-mail address: pjones1@oc.fda.gov.

The application forms are available either from Peggy Jones (see **ADDRESSES**) or by the Internet at http://grants.nih.gov/grants/funding/phs398/phs398.html. NOTE: Do not send the application to the Center for Scientific Research (CSR), National Institutes of Health (NIH).

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the administrative and financial management aspects of this notice*: Peggy Jones (see **ADDRESSES**).

*Regarding the programmatic aspects*: Christine L. Hileman, Center for Food Safety and Applied Nutrition (HFS–006), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–7153; e-mail: Chileman@CFSAN.fda.gov.

**SUPPLEMENTARY INFORMATION:** FDA is announcing its intention to accept and consider a single source application from UMCP for a cooperative agreement to support JIFSAN. FDA's authority to enter into grants and cooperative agreements is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public. This application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR part 100).

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national effort to reduce morbidity and mortality and to improve quality of life. Applicants may obtain a paper copy of the ''Healthy People 2010'' objectives, volumes I and II, conference edition (B0074) for $22 per set, by writing to the Office of Disease Prevention and Health Promotion Communication Support Center (Center), P.O. Box 37366, Washington, DC 20013–7366. Each of the 28 chapters of ''Healthy People 2010'' is priced at $2 per copy. Telephone orders can be placed to the Center on 301–468–5690. The Center also sells the complete conference edition in CD-ROM format (B0071) for $5. This publication is available as well on the Internet at http://health.gov/healthypeople. Internet viewers should proceed to ''Publications.''

**I. Background**

Through a formal Memorandum of Understanding (MOU) between FDA and UMCP, JIFSAN was established in April 1996. JIFSAN creates a partnership that allows for more efficient use of research, education, and outreach resources, thereby enhancing overall public health by expanding and improving food safety and nutrition programs as well as in other program areas that impact on public health policy. The primary focus of JIFSAN is food safety and nutrition, specifically as related to risk analysis, applied microbiology, natural toxins, chemical contaminants, animal health sciences, biotechnology and food composition and nutrition. JIFSAN also encompasses other program areas such as cosmetics, dietary supplements, and food labeling.

In the **Federal Register** of May 22, 1997 (62 FR 28049), FDA published a request for a single source application for a cooperative agreement to support JIFSAN. The application was reviewed and approved by an ad hoc panel of experts. The panel's approval recommendation was then approved by the National Advisory Environmental Health Sciences Council in September 1997. FDA awarded the cooperative agreement to UMCP on September 30, 1997.

In the **Federal Register** of July 26, 1999 (64 FR 40380), FDA published a

notice of its intention to noncompetitively supplement the cooperative agreement with UMCP. FDA awarded the noncompetitive supplement to the cooperative agreement with UMCP on September 29, 1999.

JIFSAN is a jointly administered, multidisciplinary research, education, and outreach program. Under the cooperative agreement, UMCP has established and staffed the JIFSAN at the UMCP campus. UMCP has established core facilities that enable FDA and the University to share resources, such as major laboratory instrumentation, and has initiated a mechanism to permit access to the university's library facilities for appropriate FDA employees. Programs initiated by JIFSAN have demonstrated that the benefits from this partnership are substantial. The unique administrative structure of JIFSAN allows it to most effectively use resources to plan, organize, and run multidisciplinary, multiinstitutional programs in research, education, and outreach. The structure and policies of a major land-grant university offer the flexibility needed to enable JIFSAN to create and operate strategic alliances involving multiple partners and multiple funding sources. JIFSAN provides a neutral environment in which experts from industry, consumer and trade groups, international organizations, government agencies, and academia pool their resources and ideas to provide the scientific bases for the development of sound public health policy.

## II. Goals and Objectives

### *A. Concept*

FDA believes that the cooperative research with UMCP through JIFSAN will further research related to food safety, will help to ensure the security of the American food supply, and will provide opportunities to leverage additional resources so that important national and international problems in food, nutrition, animal health science activities, cosmetics, dietary supplements, biotechnology, and food labeling can be addressed in a timely manner. FDA also believes that cooperative research through JIFSAN will promote the efficient use of the complementary resources (e.g., major instrumentation, space, information, and computer technologies) of both parties. All research will be related to FDA program requirements that ensure the safety of food.

### *B. Project Emphasis*

The purpose of this cooperative agreement will be to continue to:

1. Develop a critical mass of scientific expertise to address ongoing and increasingly complex key public health issues, to provide early warning of emerging problems, to provide support during emergencies and crisis situations, and to provide scientific expertise in close proximity to FDA's administrative office to expedite regulatory policy and decisions. (All official regulatory activities, however, will be performed by FDA employees only);
2. Provide a collaborative environment and expertise for more efficient use of current resources devoted to risk analysis and biotechnology research and related activities;
3. Develop more effective methods for communicating public health policy and risk associated with both microbial and chemical hazards to the general public by going beyond the study of the science to the study of how that science is heard and understood;
4. Share resources to enhance the research infrastructure and provide for effective use of increasingly sophisticated scientific equipment with high acquisition, installation, and maintenance costs and the corresponding expertise of both parties; and
5. Establish mechanisms for exchange of technical information and scientific concepts between FDA, other Federal and State agencies, industry, academia, consumer and trade groups, and international organizations.

### *C. Summary of Future Objectives*

The MOU between FDA and UMCP continues to provide the essential foundation for a vigorous, high quality scientific research program to support sound regulatory policy and performance. FDA faces an increasing number of critical and complex food safety issues. Having a nearby source of complementary and specialized scientific expertise and facilities, enhances FDA's ability to respond rapidly to regulatory challenges and to expedite regulatory policy and decisions. FDA believes that JIFSAN is a sound investment to ensure the public health of American consumers. It provides an opportunity for extensive cooperation with University scientists, and it will significantly stimulate collaborative efforts between Government, academia, industry, and consumers to improve and ensure a safe food supply.

The American people will benefit from this type of collaboration because it will ensure that FDA is positioned to respond rapidly in crisis situations to protect, promote, and enhance the health of the public.

## III. Mechanism of Support

### *A. Award Instrument*

Support of this program, if awarded, will be in the form of a cooperative agreement. In FY 2002, FDA anticipates providing up to $3 million (direct and indirect costs) for this award. It is anticipated that funding will remain at this level in the subsequent noncompetitive years unless appropriations change. The award will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52, 45 CFR part 74, and the PHS grants policy statement.

### *B. Length of Support*

The length of support will be 1 year, with the possibility of an additional 4 years of noncompetitive support. Continuation, beyond the first year, will be based upon satisfactory performance during the preceding year and the availability of Federal fiscal year appropriations.

## IV. Reasons for Single Source Selection

UMCP is uniquely qualified to fulfill the objectives of the proposed cooperative agreement. UMCP is in close proximity to the congressionally directed location of FDA's Center for Food Safety and Applied Nutrition's (CFSAN's) and Center for Veterinary Medicine's (CVM's) offices and laboratories in Prince Georges's County, MD. UMCP has vast resources, which complement and greatly expand FDA's research, scientific, and outreach resources. UMCP is the Washington region's most comprehensive research institution, with numerous academic programs relevant to FDA's mission and the resources to support CFSAN's areas of interest, including: Microbiology, chemistry, food science, animal health sciences, biotechnology, agriculture, public policy, risk assessment, computational science, economics, and survey methodology. UMCP serves as the primary center for graduate study and research and provides undergraduate instruction across a broad spectrum of academic disciplines. The University extends its vast intellectual resources to the community through innovative projects designed to serve individuals, governments, and the private sector throughout the State of

Maryland, the nation, and the international community. In 1988 the General Assembly of Maryland designated UMCP as the flagship institution for the University of Maryland System, which consists of 11 campuses across the State and offers programs at some 200 sites worldwide.

The University has developed core facilities to provide effective use of state-of-the-art scientific instrumentation with high acquisition, installation, and maintenance costs to conduct research at the forefront of science. An electron microscopy facility jointly supported by FDA and the University opened in 2000. CFSAN has moved its nuclear magnetic resonance (NMR) instrumentation and personnel to the University's NMR facility in the Chemistry building. These instrumentation centers complement CFSAN's resources and expertise.

The University has developed a food safety risk analysis clearinghouse with oversight from the interagency risk assessment consortium (RAC) established under the auspices of the former administration's Food Safety Initiative. The intent of the clearinghouse is to provide a centralized information source in areas of risk analysis related to food safety with initial emphasis on microbial pathogens and their toxins. The unique feature of this clearinghouse model lies in the examinations and documentation of state-of-the-art methods, data sources, and current results of on-going risk assessments so that a much more complete and up-to-date picture of risk assessment is assembled.

Acknowledging the importance of an interdisciplinary approach to knowledge, the University maintains organized research units outside the usual department structures (i.e., Department of Chemistry and Biochemistry and Department of Molecular, Cell and Microbial Biology, etc.). Through the collaborative projects, FDA has access to additional University resources that include: (1) The Center for Research in Public Communication, where cooperative projects related to risk communication studies could be developed; (2) the Survey Research Center and the Institute for Philosophy and Public Policy, which will promote more efficient development and dissemination of public policy; (3) the University of Maryland's Biotechnology Institute, including its Center for Agricultural Biotechnology, which will facilitate the development of a biotechnology program focused on food safety and nutrition; and (4) the Maryland Fire and Rescue Institute, which will facilitate the maintenance of emergency response readiness credentials of the FDA Safety Staff who are responsible for maintaining and ensuring safety and regulatory compliance at FDA facilities where collaborative research is conducted.

Collaboration between the public and the private sectors has proven to be an efficient means for both FDA and the University to remain current with scientific and technical advances related to food safety and applied nutrition. These collaborative programs produce knowledge and expertise that can be used by all segments of the food safety and nutrition community, as well as by public health organizations, other Federal agencies, and academic institutions in the performance of their roles. The partnership between FDA and UMCP provides both the technical and educational expertise for effective creation of technology transfer mechanisms that facilitate the movement of new technology and provides fundamental food safety and nutrition information to the public and private sector.

## V. Reporting Requirements

Program progress reports and financial status reports will be required annually, based on date of award. These reports will be due within 90 days after the end of the budget period. A final program progress report and financial status report will be due 90 days after expiration of the project period of the cooperative agreement.

## VI. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial involvement in the program activities of the projects funded by the cooperative agreement. Substantive involvement includes, but is not limited to, the following:

1. FDA will have prior approval of the appointment of all key administrative and scientific personnel proposed by the grantee.

2. FDA will be directly involved in the guidance and development of the program and of the personnel management structure for the program.

3. FDA scientists will participate, with the grantee, in determining and carrying out the methodological approaches to be used. Collaboration will also include data analysis, interpretation of findings, and, where appropriate, coauthorship of publications.

## VII. Review Procedures

First, the grants management and program staff will review the application submitted in response to this request for application (RFA) for responsiveness. To be responsive, an application must: (1) Be received by the specified due date, (2) be submitted in accordance with sections VIII. ''Submission Requirements'' and IX.A. ''Submission Instructions'' of this document, (3) not exceed the recommended funding amount stated in the **SUMMARY** of this document, (4) address the specific program goals and objectives as detailed in section II.B. ''Project Emphasis'', and (5) bear the original signatures of both the principal investigator and the University's authorized official. Staff will consider the application nonresponsive if it does not contain the information set forth in this section. If the application is found to be nonresponsive, the staff will return the application to the applicant without further consideration. The staff will also consider an application nonresponsive for any of the following reasons: (1) The applicant organization is ineligible, (2) it is received after the specified receipt date, (3) it is incomplete, (4) it is illegible, (5) it is not responsive to the RFA, or (6) the material presented is insufficient to permit an adequate review.

Next, if the application is responsive, it will undergo a dual peer review. A responsive application will be reviewed first for scientific and technical merit by an ad hoc panel of experts in areas associated with food safety, nutrition, animal health sciences, biotechnology, and risk analysis. The application will then be presented to the National Advisory Environmental Health Sciences Council for their concurrence with the ad hoc panel's recommendation.

## VIII. Submission Requirements

The original and two copies of the completed Grant Application Form PHS 398 (rev. 4/98 or Rev. 5/01) with copies of the appendices for each of the copies, must be delivered to Peggy Jones (see **ADDRESSES**). No supplemental or addendum material will be accepted after the receipt date.

## IX. Method of Application

### *A. Submission Instruction*

An application from UMCP will be accepted during normal business hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. The application will be considered received on time if sent or mailed on or before the receipt date as

evidenced by a legible U.S. Postal Service dated postmark or a legible dated receipt from a commercial carrier, unless it arrives too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. An application not received on time will not be considered for review and will be returned to the applicant. (The applicant should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.) Do not send the application to the CSR, NIH. The application must be submitted via mail or hand delivered as stated above. FDA is unable to receive the application electronically. The applicant is advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by NIH for its applications.

*B. Format for Application*

Submission of the application must be on Grant Application Form PHS 398 (Rev. 4/98 or Rev. 5/01). All ''General Instructions'' and ''Specific Instructions'' in the application kit must be followed with the exception of the receipt dates and the mailing label address.

The face page of the application must reflect the request for application number, RFA-FDA CFSAN–02–3.

Data and information included in the application, if identified by the applicant as trade secret or confidential commercial information will be given treatment as such to the extent permitted by the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–001.

Dated: June 27, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–16817 Filed 7–3–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02N–0253]**

### Withdrawal of 53 Guidances on Individual Product Labeling

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

**ACTION:** Notice; withdrawal.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal of 53 individual product labeling guidances. The guidances are being withdrawn because they are outdated and of little use to the generic drug industry. The agency has developed other guidance and resources to assist industry in obtaining up-to-date labeling for reference listed drugs.

**DATES:** General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written requests for the guidance for industry entitled ''Revising ANDA Labeling Following Revision of the RLD Labeling'' to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. See the **SUPPLEMENTARY INFORMATION** section for electronic access to agency guidance documents.

**FOR FURTHER INFORMATION CONTACT:** Rita Hassall, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5845.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the withdrawal of 53 individual product labeling guidances. These labeling guidances, currently available on the Center for Drug Evaluation and Research (CDER) guidance list, were intended to provide sponsors of abbreviated new drug applications (ANDAs) with product specific templates for package insert labeling that would be accepted by the Office of Generic Drugs (OGD). Package insert labeling for innovator products changes frequently, and it is difficult to keep the guidances updated. The guidances are being withdrawn because they are outdated and of limited use to the generic drug industry.

The withdrawal of these 53 product specific labeling guidances is part of a long-term effort in OGD to review guidance documents on the development of generic drug products with the goal of identifying documents that need to be revised, reformatted, or withdrawn because they are no longer current (64 FR 36886, July 8, 1999).

The following guidances are withdrawn:

| Guidance | Date of Issuance |
|---|---|
| Acetaminophen, Aspirin and Codeine Phosphate Tablets and Acetaminophen, Aspirin and Codeine Phosphate Capsules | Revised December 1993 |
| Acetaminophen and Codeine Phosphate Oral Solution and Oral Suspension | Revised December 1993 |
| Alprazolam Tablets | Revised August 1996 |
| Amiloride Hydrochloride and Hydrochlorothiazide Tablets USP | September 1997 |
| Amlodipine Besylate Tablets | September 1997 |
| Astemizole Tablets | September 1997 |
| Atenolol Tablets | August 1997 |
| Butalbital, Acetaminophen and Caffeine Tablets USP or Butalbital, Acetaminophen and Caffeine Capsules USP | September 1997 |
| Butalbital, Acetaminophen, Caffeine and Hydrocodone Bitartrate Tablets | September 1997 |
| Butorphanol Tartrate Injection USP | Revised October 1992 |
| Captopril and Hydrochlorothiazide Tablets USP | April 1995 |
| Captopril Tablets | February 1995 |
| Carbidopa and Levodopa Tablets USP | Revised February 1992 |
| Cimetidine Hydrochloride Injection | September 1995 |
| Cimetidine Tablets USP | Revised September 1995 |
| Cisapride Oral Suspension | September 1997 |
| Cisapride Tablets | September 1997 |
| Clindamycin Phosphate Injection, USP | Revised September 1998 |
| Diclofenac Sodium Delayed-Release Tablets | Revised February 1995 |
| Diltiazem Hydrochloride Extended-Release Capsules | Revised September 1995 |

| Guidance | Date of Issuance |
|---|---|
| Diphenoxylate Hydrochloride and Atropine Sulfate Oral Solution USP | April 1995 |
| Diphenoxylate Hydrochloride and Atropine Sulfate Tablets USP | April 1995 |
| Fludeoxyglucose F18 Injection | January 1997 |
| Flurbiprofen Tablets USP | Revised January 1994 |
| Fluvoxamine Maleate Tablets | September 1997 |
| Gentamicin Sulfate Ophthalmic Solution USP and Gentamicin Sulfate Ophthalmic Ointment USP | Revised April 1992 |
| Heparin Sodium Injection USP | Revised March 1991 |
| Hydrocodone Bitartrate and Acetaminophen Tablets USP | Revised April 1994 |
| Indomethacin Capsules USP | Revised September 1995 |
| Itraconazole Capsules | September 1998 |
| Leucovorin Calcium for Injection | July 1996 |
| Leucovorin Calcium Tablets USP | July 1996 |
| Medroxyprogesterone Acetate Tablets USP | Revised September 1998 |
| Metaproternol Sulfate Inhalation Solution USP | Revised May 1992 |
| Metaproterenol Sulfate Syrup USP | Revised May 1992 |
| Metaproterenol Sulfate Tablets USP | Revised May 1992 |
| Metoclopramide Tablets USP and Metoclopramide Oral Solution USP | Revised February 1995 |
| Naproxen Sodium Tablets USP | September 1997 |
| Naproxen Tablets USP | September 1997 |
| Paclitaxel Injection | September 1997 |
| Quinidine Sulfate Tablets, USP | October 1995 |
| Ranitidine Tablets USP | Revised November 1993 |
| Risperidone Oral Solution | September 1997 |
| Risperidone Tablets | September 1997 |
| Sulfacetamide Sodium Ophthalmic Solution USP and Sulfacetamide Sodium Ophthalmic Ointment USP | Revised August 1993 |
| Sulfacetamide Sodium and Prednisolone Acetate | Revised January 1995 |
| Sulfamethoxazole and Trimethoprim Tablets USP and Sulfamethoxazole and Trimethoprim Oral Suspension USP | Revised August 1993 |
| Theophylline | Revised February 1995 |
| Theophylline Intravenous Dosage Forms | September 1995 |
| Tobramycin Sulfate Injection USP | Revised May 1993 |
| Venlafaxine Hydrochloride Tablets | October 1997 |
| Verapamil Hydrochloride Tablets | October 1991 |
| Zolpidem Tartrate Tablets | September 1997 |

In May 2000, the agency issued the guidance for industry entitled ''Revising ANDA Labeling Following Revision of the RLD Labeling.'' This guidance provides information on how to access current package insert labeling on OGD's Labeling Review Branch Web site at http://www.fda.gov/cder/ogd/rld/labeling_review_branch.htm.

Interested persons may submit written or electronic comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments 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. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Persons with access to the Internet may obtain CDER guidance documents at http://www.fda.gov/cder/guidance/index.htm.

Dated: June 24, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–16796 Filed 7–3–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99D–1454]**

### Guidance for Industry on Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products—Chemistry, Manufacturing, and Controls Documentation; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products—Chemistry, Manufacturing, and Controls Documentation.'' This document provides guidance for industry on the chemistry, manufacturing, and controls documentation that should be submitted in new drug applications (NDAs) and abbreviated new drug applications (ANDAs) for nasal spray and inhalation solution, suspension, and spray drug products intended for local and/or systemic effect. The guidance also provides recommendations on labeling.

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Guirag Poochikian, Center for Drug Evaluation and Research (HFD–570), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1050.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance for industry entitled ''Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products—Chemistry, Manufacturing, and Controls Documentation.'' This guidance provides recommendations on the information that should be submitted in NDAs and ANDAs for these products, including information on drug product components, manufacturing process, and the associated controls. However, it does not address the manufacture of drug substances. The guidance gives recommendations on information that should be provided to ensure continuing quality and performance characteristics for these drug products. This guidance also provides information on labeling.

In the **Federal Register** of June 2, 1999 (64 FR 29657), FDA announced the availability of a draft version of this guidance. The June 1999 guidance gave interested persons an opportunity to submit comments through August 31, 1999. All comments received during the comment period have been carefully reviewed and incorporated in this revised guidance where appropriate. As a result of the public comment, the guidance is clearer and more concise than the draft version. FDA is participating in research relating to these types of drug products through the Product Quality Research Institute (Internet address at http://www.pqri.org) and will evaluate whether to update the guidance as information from this research becomes available.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on chemistry, manufacturing, and controls documentation for nasal spray and inhalation solution, suspension, and spray drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may, at any time, submit written or electronic comments on the guidance to the Dockets Management Branch (see **ADDRESSES**). Two copies of any comments 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. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: June 24, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–16797 Filed 7–3–02; 8:45 am]

**BILLING CODE 4160–01–S**

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

### Radio Frequency Cauterization Biopsy

*Bradford J. Wood and Christan Pavlovich (CC)*

DHHS Reference Nos. E–207–01/0 filed Oct 17, 2001 and E–207–01/1 filed Apr 08, 2002

*Licensing Contact:* Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov.*

The invention is a method and apparatus for using radio frequency (RF) energy to cauterize the needle track after percutaneous image-guided needle biopsy using an RF ablation probe. The invention is designed to limit the risks of bleeding and needle track seeding that are inherent risks of any needle biopsy. The device uses a coaxial biopsy arrangement with the outer needle coated with a non-conducting polymer that insulates the needle shaft and the tissue immediately in contact with the shaft. As the needle is pulled back from the organ or tumor target, RF energy is applied to an exposed end portion of the probe, causing cauterization and coagulation of the tissue immediately adjacent to the needle track. A variation on the device could be used to limit bleeding after catheter placement into organs, such as for nephrostomy, biliary drainage, or transhepatic islet cell transplantation.

### Method and Apparatus for Countercurrent Chromatography

*Yoichiro Ito (NHLBI)*

DHHS Reference No. E–148–01/0 filed Apr 05, 2002

*Licensing Contact:* Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov.*

This invention is an improved column design for High Speed Counter Current Chromatography (HSCCC) that increases partition efficiency by using novel tubing geometries. A standard HSCCC centrifuge uses a multilayer coil as a separation column to produce a high efficiency separation with good retention of the stationary phase in many solvent systems. However, the standard HSCCC, when used for highly viscous, low interfacial solvent systems, is unsuccessful at retaining a suitable amount of the stationary phase. This invention greatly improves efficiency by modifying the column from a coil to spiral geometry. Thereby, this invention creates a centrifugal force gradient, which allows for distribution of the heaver phase in the peripheral and the lighter phase in the proximal part of the column. The effect of the gradient becomes more pronounced as the pitch of the spiral is increased.

### Method for Segmenting Medical Images and Detecting Surface Anomalies in Anatomical Structures

*Ronald M. Summers et al. (CC)*

U.S. Patent 6,246,784 issued Jun 12, 2001; U.S. Patent 6,345,112 issued Feb 05 2002; Serial No. 10/072,667 filed Feb 05, 2002

*Licensing Contact:* Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov.*

The invention is a method for automatically detecting surface anomalies in anatomical structures in virtual colonoscopy and other imaging studies. A region growing method segments three-dimensional image data of an anatomical structure using a tortuous path length limit to constrain voxel growth. The path length limit constrains the number of successive generations of voxel growth from a seed point to prevent leakage of voxels outside the boundary of the anatomical structures. Once segmented, a process for detecting surface anomalies performs a curvature analysis on a computer model of the surface of the structure. This process detects surface anomalies automatically by traversing the vertices in the surface model, computing partial derivatives of the surface at the vertices, and computing curvature characteristics from the partial derivatives. To identify possible anomalies, the process compares the curvature characteristics with predetermined curvature characteristics of anomalies and classifies the vertices. The process further refines potential anomalies by segmenting neighboring vertices that are classified as being part of an anomaly using curvature characteristics. Finally, the process colorizes the anomalies, and computes a camera position and direction for each one to assist the user in viewing 2D rendering of the computer model.

The method may be useful for automated detection of inflammatory, pre-cancerous and cancerous lesions of internal body cavities, such as the colon, airways, blood vessels and bladder. An example of a potential commercial application is as a component of software for clinical interpretation of virtual colonoscopy (CT colonography) examinations.

This research is also described in Summers et al., ''Automated Polyp Detection at CT Colonography: Feasibility Assessment in a Human Population,'' Radiology 219:51–59 (2001) and in Summers et al., ''Complementary Role of Computer-Aided Detection of Colonic Polyps with CT Colonography,'' Radiology, in press.

Dated: June 24, 2002.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 02–16795 Filed 7–3–02; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center on Minority Health and Health Disparities; 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 discussion 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 Center on Minority Health and Health Disparities Special Emphasis Panel, Excellence in Partnerships for Community Outreach, Research on Health Disparities and Training.

*Date:* July 15–17, 2002.

*Time:* 6 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Teresa Chapa, PhD, Chief, Division of Extramural Activities, National Center on Minority Health hand Health Disparities, National Institutes of Health, Bethesda, MD 20852, 301/402–1366, *chapat@od.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.

Dated: June 26, 2002.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16793 Filed 7–3–02; 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 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 Alcohol Abuse and Alcoholism Special Emphasis Panel Fellowship Application.

*Date:* July 16, 2002.

*Time:* 8 am to 6 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.

*Contact Person:* Kathy Ray, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute of Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, 301–443–2932, klray@mail.nih.gov.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel RFA AA02–007—Mutant Mouse Phenotyping: Ethanol-related Behavior and Nervous System Function.

*Date:* July 17, 2002.

*Time:* 1:30 pm to 3:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

*Contact Person:* Karen P. Peterson, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel RFA AA02–006 Non-Human Primate Models of Neurobiological Mechanisms of Adolescent Alcohol Abuse.

*Date:* July 18, 2002.

*Time:* 8 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Sandra Camman, Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892, 301–443–9419, *scamman@willco.niaaa.nih.gov.*

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel SBIR Contract Topic 023.

*Date:* July 18, 2002.

*Time:* 12:30 pm to 2 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

*Contact Person:* Karen P. Peterson, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel SBIR Contract Topic 017.

*Date:* July 23, 2002.

*Time:* 1:30 pm to 3 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

*Contact Person:* Karen P. Peterson, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel RFA AA02–011—Role of S-adenosyl-L-methionine (SAMe) in the Treatment of Alcoholic Liver Disease.

*Date:* July 25–26, 2002.

*Time:* 8 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel, Rockville, MD 20852.

*Contact Person:* Kathy Ray, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute of Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, 301–443–2932, klray@mail.nih.gov.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel RFA AA02–009—Intergrative Neuroscience Initiative on Alcoholism

*Date:* July 30–31, 2002.

*Time:* 8 am to 5 pm.

*Place:* Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Kathy Ray, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute of Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, 301–443–2932, klray@mail.nih.gov.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel RFA AA02–010 Stem Cells in Alcohol Research.

*Date:* August 13, 2002.

*Time:* 8 am to 6 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.

*Contact Person:* Karen P. Peterson, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@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 26, 2002.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16792 Filed 7–3–02; 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 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 Mental Health Special Emphasis Panel, WHO Collaborative Agreement Review.

*Date:* July 11, 2002.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Governor's House, 1615 Rhode Island Avenue, NW, Washington, DC 20036.

*Contact Person:* Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1601, *mcarey@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 26, 2002.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16794 Filed 7–3–02; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### SAMHSA Last Receipt Date for Program Announcement (PA) No. PA–98–090—Conference Grants

**SUMMARY:** This notice is to inform the public that the last receipt date for applications under SAMHSA Program Announcement No. PA–98–090, SAMHSA Knowledge Dissemination Conference Grants (Short Title: SAMHSA Conference Grants) will be September 10, 2002. A new program announcement for conference grants will be published soon after that date.

Conference Grants fund up to 75 percent of the total direct costs of domestic conferences that are of national significance to consumer and provider services oriented constituency groups for the purpose of advancing the mental health and substance abuse fields through knowledge synthesis and dissemination. Each of the three centers participate when funding is available. Awards range from a minimum of $25,000 to a maximum of $50,000 in total costs.

Information about the program and the full text of the current PA–98–090 conference grant announcement can be obtained from:

The CMHS Knowledge Exchange Network (KEN) at: 1–800–789–2647, Monday through Friday, 8:30 a.m. to 5:00 p.m., EST, *Write:* P.O. Box 42490, Washington, DC 20015

The National Clearinghouse for Alcohol and Drug Information at: 1–800–729–6686, Monday through Friday, 8:30 a.m. to 5:00 p.m., EST, *Write:* P.O. Box 2345, Rockville, MD 20847–2345

Or from the SAMHSA web site at *http://www.SAMHSA.gov.*

For questions concerning program issues, contact:

For mental health topics: David Morrissette, DSW, Center for Mental Health Services/SAMHSA, 5600 Fishers Lane, Room 11C–22, Rockville, MD 20857, (301) 443–3653, e-mail: *dmorriss@samhsa.gov.*

For substance abuse treatment topics: Kim Plavsic, Center for Substance Abuse Treatment/SAMHSA, 5515 Security Lane, Suite 840, Rockville,

MD 20852, (301) 443–7916, e-mail: *kplavsic@samhsa.gov*.

For substance abuse prevention topics: Boris R. Aponte, Ph.D., CHES, Center for Substance Abuse Prevention/ SAMHSA, 5515 Security Lane, Suite 800, Rockville, MD 20852, (301) 443–2290, e-mail: *baponte@samhsa.gov*.

For more information on PA–98–090 go to the online announcement.

Dated: June 26, 2002.

**Patricia Bransford,**

*Acting Executive Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 02–16818 Filed 7–3–02; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Correction of Application Deadline for the Grant Program, National Technical Assistance Center for the Mental Health Services Needs of Older Adults (SM 02–016)

**AGENCY:** Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

**ACTION:** Correction of application Deadline for the grant program, National Technical Assistance Center for the Mental Health Services Needs of Older Adults (SM 02–016).

**SUMMARY:** This notice is to inform the public that the application deadline published on June 27, 2002, for the grant program, National Technical Assistance Center for the Mental Health Services Needs of Older Adults (SM 02–016), is incorrect. The correct application deadline is August 8, 2002.

**PROGRAM CONTACT:** For questions about the due date for this program or other program issues relating to this program, contact: Betsy McDonel Herr, Ph.D., Social Science Analyst, Center for Mental Health Services, SAMHSA, Room 11C–22, 5600 Fishers Lane, Rockville, MD 20857, (301) 594–2197, (301) 443–0541 (Fax), e-mail: *bmcdonel@samhsa.gov.*

Dated: June 28, 2002.

**Chuck Novak,**

*Acting Executive Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 02–16789 Filed 7–3–02; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4739–N–26]**

### Notice of Proposed Information Collection: Comment Request; Request for Credit Approval of Substitute Mortgagor

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 3, 2002.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review; as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Request for Credit Approval of Substitute Mortgagor.

*OMB Control Number, if applicable:* 2502–0036.

*Description of the need for information and proposed use:* This information collection is used by HUD to approve the credit of a substitute mortgagor who desires to assume an FHA-insured mortgage. The information is also needed to document the financial stability of the mortgagor.

*Agency form numbers, if applicable:* HUD–92210.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated total number of hours needed to prepare the information collection is 10,000, the number of respondents is 1,000 generating approximately 10,000 annual responses, the frequency of response is on occasion, and the number of hours per response is one.

*Status of the proposed information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 27, 2002.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.*

[FR Doc. 02–16761 Filed 7–3–02; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4739–N–25]**

### Notice of Proposed Information Collection: Comment Request; Flexible Subsidy, Capital Improvement Loan Program

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commission, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 3, 2002.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Flexible Subsidy, Capital Improvement Loan Program.

*OMB Control Number, if applicable:* 2502–0395.

*Description of the need for the information and proposed use:* The collection of such information is necessary to the Department to determine which projects will best benefit from Flexible Subsidy loans in order to improve financial soundness, improve management and maintain affordability. In addition, this information provides the Department with a means to account for, on a project specific basis, the use of flexible subsidy dollars and the progress being made by each project toward its physical, financial, and management improvement goals.

*Agency form numbers, if applicable:* HUD–9823A, 9823B, 9824B, 9835, 9835A, and 9835B.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated total number of hours needed to prepare the information collection is 760, the number of respondents is 20 generating approximately 320 annual responses, the frequency of response is monthly, quarterly, and annually, and the number of hours per response varies from one to 20 hours.

*Status of the proposed information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 27, 2002.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commission.*

[FR Doc. 02–16762 Filed 7–3–02; 8:45 am]

**BILLING CODE 4210–27–M**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4739–N–24]**

## Notice of Proposed Information Collection: Comment Request; Contractor's Requisition Project Mortgages

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 3, 2002.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Contractor's Requisition Project Mortgages.

*OMB Control Number, if applicable:* 2502–0028.

*Description of the need for the information and proposed use:* This information is collected on form HUD–92448 from contractors and is used to obtain program benefits, consisting of distribution of insured mortgage proceeds when construction costs are involved. The information regarding completed work items is used by the Multifamily Hub Centers to ensure that payments from mortgage proceeds are made for work actually completed in a satisfactory manner. The certification regarding prevailing wages is used by the Multifamily Hub Centers to ensure compliance with prevailing wage rates.

*Agency form numbers, if applicable:* HUD–92448.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of respondents is 1,000 generating 12,000 responses annually, the estimated time needed to prepare each response is approximately 6 hours, the frequency of

response is monthly, and the total burden hours requested is 72,000.

*Status of the proposed information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 26, 2002.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.*

[FR Doc. 02–16763 Filed 7–3–02; 8:45 am]

**BILLING CODE 4210–27–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4739–N–23]**

### Notice of Proposed Information Collection: Comment Request; Local Appeals to Single-Family Mortgage Limits

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 3, 2002.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarify of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Local Appeals to Single-Family Mortgage Limits.

*OMB Control Number, if applicable:* 2502–0302.

*Description of the need for the information and proposed use :* HUD's collection of this information permits interested parties to appeal for increases in FHA's maximum mortgage limits for specific counties or metropolitan statistical areas (MSA's). This collection also sets forth the general and specific requirements, which must be met before a property can be endorsed for data to support an increase in mortgage limits.

*Agency form numbers, if applicable:* None.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of respondents is 80 generating approximately 80 responses annually, frequency of response is on occasion, the estimated time needed to prepare the response is 40 hours, and the estimated annual burden hours requested is 3,200.

*Status of the proposed information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 26, 2002.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.*

[FR Doc. 02–16764 Filed 7–3–02; 8:45 am]

**BILLING CODE 4210–27–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4736–N–07]**

### Notice of Proposed Information Collection for Public Comment—Management Operations Certification

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 3, 2002.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–0614, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Management Operations Certification.

*OMB Control Number:* 2577—(Formerly 2535–0106).

*Description of the need for the information and proposed use:* Public Housing Agencies (PHAs) annually submit management operations information to HUD in accordance with the requirements of the Public Housing Assessment System. Electronic submission of this data requires the use of a template. HUD will continue to use the management operations information it collects from PHAs to assist in evaluation of their overall condition. Requiring PHAs to report electronically has enabled HUD to provide a more comprehensive assessment of the PHAs receiving federal funds from HUD. The Real Estate Assessment Center responsibility for this collection of information was transferred to the Assistant Secretary for Public and Indian Housing.

*Agency form numbers, if applicable:* Form HUD–50072.

*Members of affected public:* Local, State, or Tribal Governments, Not-for-profit Institutions.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* Management Operations Certification: 3,169 PHAs; annual submission per PHA; average hours for PHA response is 1.9 hours; the total reporting burden is 6,202.5 hours.

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 28, 2002.

**Michael Liu,**

*Assistant Secretary for Public and Indian Housing.*

**BILLING CODE 4210–32–M**

**Public Housing Assessment System (PHAS) Management Operations Certification**

**U.S. Department of Housing and Urban Development**
Real Estate Assessment Center

OMB No. 2535-0106
(exp.09/01/2002)

**Public reporting burden for** this collection of information is estimated to average **1.8 hours per response**, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information is collected to implement section 502 of the National Affordable Housing Act of 1990, as amended, which established specific indicators to assess the management performance of public housing agencies (PHAs) in all major areas of management operations. PHAs will complete the PHAS Certification form HUD-50072 and electronically submit it to HUD. If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has Internet access. In the event local resources are not available, a PHA may go to the nearest HUD Public Housing program office and assistance will be given to the PHA to transmit this PHAS certification. The information is used by HUD as a component of PHAS to assess all major areas of PHA's management operations, designate PHAs as troubled and PHAs troubled with respect to the program for assistance from the Capital Fund under Section 9, enter into a Memorandum of Agreement (MOA) with troubled PHAs and PHAs troubled with respect to the program for assistance from the Capital Fund under Section 9, and report annually to Congress on the status of troubled PHAs and PHAs troubled with respect to the program for assistance from the Capital Fund under Section 9. This information is required for HUD to fulfill statutory requirements of the 1990 Act. The information collected does not lend itself to confidentiality.

**Instructions:** A PHA/AME's electronic responses to this certification must be the PHA/AME's actual data; e.g., prior to any adjustments to the indicators. Round percentages to the nearest two decimal points.

| PHA/AME Name | For FY Ending | Submission Date |
|---|---|---|
| | | |

Project name(s) if AME

The management functions for the following sub-indicator (s) have been assumed by an RMC, and the RMC certification will be completed and submitted to HUD (enter sub-indicator numbers or N/A):

### Sub-Indicator #1: Vacant Unit Turnaround Time

| | | |
|---|---|---|
| V12400 | Total number of turnaround days. | |
| V12500 | Total number of vacancy days exempted for Capital Fund. | |
| V12600 | Total number of vacancy days exempted for other reasons. | |
| V12700 | Total number of vacant units turned around and lease in effect in the PHA's immediate past fiscal year. | |
| V12800 | Average number of calendar days units were in down time. | |
| V12900 | Average number of calendar days units were in make ready time. | |
| V13000 | Average number of calendar days units were in lease up time. | |
| V13100 | Average unit turnaround days. | [READ ONLY] |

### Sub-Indicator #2: Capital Fund

| | | |
|---|---|---|
| CF10000 | Do you have any open Capital Fund programs (e.g., CIAP, CGP, Hope VI, LBPRA, VRP) (Y/N)? Open = any program that does not have a pre-audit end date or that received a pre-audit end date during the fiscal year being assessed. Component #1 and #2 (please circle yes or no) | Yes No |

Component #1: Unexpended Funds Over Three Federal Fiscal Years (FFYs) Old

| | | |
|---|---|---|
| CF10050 | Total funds authorized over 3 FFYs old that do not have a pre-audit end date or that received a pre-audit end date during the fiscal year being assessed. | $ |
| CF10100 | Total funds expended over 3 FFYs old that do not have a pre-audit end date or that received a pre-audit end date during the fiscal year being assessed. | $ |
| CF10200 | Unexpended funds to be recaptured. | $ |
| CF10300 | Unexpended funds approved by HUD over 3 FFYs old. | $ |
| CF10400 | Unexpended funds with time extensions due to reasons outside of PHA control. | $ |
| CF10500 | Adjusted total unexpended funds. | $ [READ ONLY] |

Component #2: Timeliness of Fund Obligation

**Public Housing Assessment System (PHAS) Management Operations Certification**

**U.S. Department of Housing and Urban Development**
Real Estate Assessment Center

OMB No. 2535-0106
(exp.09/01/2002)

| | | |
|---|---|---|
| CF11100 | Total funds authorized for grants older than 2 FFYs old. | $ |
| CF11200 | Total funds obligated over 2 FFYs old. | $ |
| CF11300 | Unobligated funds approved by HUD over 2 FFYs old. | $ |
| CF11400 | Unobligated funds with time extensions due to reasons outside of PHA control. | $ |
| CF11500 | Adjusted total unobligated funds. | $ [READ ONLY] |

Component #3: Adequacy of Contract Administration

| | | |
|---|---|---|
| CF11700 | The date of the last HUD/Army Corps of Engineers on-site inspection and/or audit related to contract administration (include A-133 Audit). | (mm/dd/yyyy) |
| CF11800 | The number of findings related to contract administration. | |
| CF11900 | The number of findings related to contract administration that have been corrected by the PHA. | |
| CF12000 | The number of findings related to contract administration that the PHA is in the process of correcting. | |

Component #4: Quality of the Physical Work

| | | |
|---|---|---|
| CF12200 | The date of the last HUD/Army Corps of Engineers on-site inspection and/or audit related to the quality of physical work. | (mm/dd/yyyy) |
| CF12300 | The number of findings related to the quality of physical work. | |
| CF12400 | The number of findings related to the quality of physical work that have been corrected by the PHA. | |
| CF12500 | The number of finding related to the quality of physical work that the PHA is in the process of correcting. | |

Component #5: Adequacy of Budget Controls

| | | |
|---|---|---|
| CF12700 | Total amount of Capital Funds expended during the PHA fiscal year being assessed. | $ |
| CF12800 | The amount of Capital Funds expended on approved work items not subject to budget revisions during the PHA fiscal year being assessed. | $ |
| CF12900 | The amount of Capital Funds expended under budget revisions with prior HUD approval during the PHA fiscal year being assessed. | $ |
| CF13000 | The amount of Capital Funds expended under budget revisions not requiring prior HUD approval during the PHA fiscal year being assessed. | $ |

**Sub-Indicator #3: Work Orders**

Component #1: Emergency Work Orders

| | | |
|---|---|---|
| W10000 | Total number of emergency work orders. | |
| W10100 | Total number of emergency work orders completed / abated within 24 hours. | |
| W10200 | Percentage of emergency work orders completed / abated within 24 hours. | [READ ONLY] % |

Component #2: Non-Emergency Work Orders

| | | |
|---|---|---|
| W10500 | Total number of non-emergency work orders. | |
| W10600 | Total number of calendar days it took to complete non-emergency work orders. | |
| W10700 | Average number of days PHA has reduced the time it takes to complete non-emergency work orders over the past three years. | |
| W10800 | Average completion days. | [READ ONLY] |

**Sub-Indicator #4: Annual Inspection of Dwelling Units and Systems**

**Public Housing Assessment System (PHAS) Management Operations Certification**

**U.S. Department of Housing and Urban Development**
Real Estate Assessment Center

OMB No. 2535-0106
(exp.09/01/2002)

Component #1: Annual Inspection of Dwelling Units

| | | |
|---|---|---|
| A10000 | The total number of ACC units. | |
| A10100 | The sum of units exempted where the PHA made two documented attempts to inspect and is enforcing the lease. | |
| A10200 | Vacant units exempted for Capital Fund. | |
| A10300 | Vacant units exempted for other reasons. | |
| A10400 | Total number of units inspected using the Uniform Physical Condition Standards (UPCS). | |
| A10550 | Total number of units inspected that did not require repairs. | |
| A10600 | The number of units where necessary repairs were completed to comply with UPCS either during the inspection, issued work orders for the repairs, or referred the deficiency to the current year's or next year's Capital Fund program. | |
| A10700 | Adjusted units available. | [READ ONLY] |
| A10800 | Percent of units inspected by PHA. | [READ ONLY]% |

Component #2: Annual Inspection of Systems including Common Areas and Non-Dwelling Space

| | | |
|---|---|---|
| A11100 | Total number of sites. | |
| A11200 | Total number of sites exempted from the inspection of systems. | |
| A11300 | The total number of sites where all systems were inspected in accordance with the UPCS. | |
| A11400 | Total number of buildings. | |
| A11500 | Total number of buildings exempted from the inspection of systems. | |
| A11600 | The total number of buildings where all systems were inspected in accordance with the UPCS. | |
| A11700 | The number of buildings and sites where necessary repairs were completed to comply with the Uniform Physical Conditions Standards either during the inspection, issued work orders for the repairs, or referred the deficiency to the current year's or next year's Capital Funds program. | |
| A11800 | Percentage of sites inspected. | [READ ONLY]% |
| A11900 | Percentage of buildings inspected. | [READ ONLY]% |

**Sub-Indicator #5: Security**

Component#1: Tracking and Reporting Crime-Related Problems

| | | |
|---|---|---|
| S10000 | The date that the Board adopted current policies to track crime and crime-related problems. | (mm/dd/yyyy) |
| S10100 | The date that the PHA implemented the current procedures to track crime and crime-related problems. | (mm/dd/yyyy) |
| S10200 | The date that the PHA implemented a current cooperative system for tracking and reporting crime to local police authorities. | (mm/dd/yyyy) |
| S10300 | The number of crimes that the PHA can document it reported to local police authorities. | |
| S10400 | Percentage of developments where PHA can document it tracks crime and crime-related problems. | % |

Component#2: Screening of Applicants

| | | |
|---|---|---|
| S10500 | The date the Board adopted current screening policies that reflect the One-Strike criteria. | (mm/dd/yyyy) |
| S10600 | The date the PHA implemented current screening procedures that reflect the One-Strike criteria. | (mm/dd/yyyy) |
| S10700 | PHA can document that current screening procedures result in successfully denying admission to applicants who meet the One-Strike criteria. (please circle yes or no) | Yes No |
| S10800 | The total number of applicants denied who met the One-Strike criteria. | |

Component#3: Lease Enforcement

| | | |
|---|---|---|
| S10900 | The date the Board adopted current eviction procedures that reflect the One-Strike criteria. | (mm/dd/yyyy) |

**Public Housing Assessment System (PHAS) Management Operations Certification**

**U.S. Department of Housing and Urban Development**
Real Estate Assessment Center

OMB No. 2535-0106
(exp.09/01/2002)

| | | |
|---|---|---|
| S11000 | The date the PHA implemented current eviction procedures that reflect the One-Strike criteria. | (mm/dd/yyyy) |
| S11100 | PHA can document that current eviction screening procedures resulted in the eviction of residents who meet the One-Strike criteria. (please circle yes or no) | Yes No |
| S11200 | The total number of evictions as a result of the One-Strike criteria. | |

Component#4: Drug Prevention and/or Crime Reduction Program Goals

| | | |
|---|---|---|
| S11350 | The number of HUD-funded drug prevention and/or crime reduction programs. | |
| S11450 | The number of non HUD-funded drug prevention and/or crime reduction programs that the PHA requests to be assessed. | |
| S11550 | The number of documented program goals that are related to drug prevention and/ or crime reduction. | |
| S11600 | The number of goals the PHA can document it met under the implementation plan(s) for any and all of these programs. | |
| S11700 | Percentage of goals that the PHA can document it met under implementation plan(s) for any and all of these programs. | [READ ONLY]% |

**Sub-Indicator #6: Economic Self-Sufficiency**

| | | |
|---|---|---|
| E10000 | The number of HUD-funded economic self-sufficiency programs. | |
| E10100 | The number of non HUD-funded economic self-sufficiency programs that the PHA requests to be assessed. | |
| E10200 | The number of documented program goals that are related to economic self-sufficiency. | |
| E10300 | The number of goals the PHA can document it met under the implementation plan(s) for any and all of these programs. | |
| E10400 | Percentage of goals that the PHA can document it met under implementation plan(s) for any and all of these programs. | [READ ONLY]% |

**Adjustments for Physical Condition and/or Neighborhood Environment**

Please enter project number and name and indicate which area the adjustment for Physical Condition and/or Neighborhood Environment applies for a project. (Check all that apply)

| Project No. | Project Name | Site | Common Areas | Building Exteriors |
|---|---|---|---|---|
| | | ☐ | ☐ | ☐ |
| | | ☐ | ☐ | ☐ |

Please attach additional sheets as necessary for additional projects.

I certify that, as of the submission date, the above sub-indicators, under Public Housing Assessment System indicator #3 Management Operations are true and accurate for the fiscal year indicated. I further certify that, to my present knowledge, there is no evidence to indicate seriously deficient performance that casts doubt on the PHA's capacity to present and protect its public housing developments and operate them in accordance with

**Public Housing Assessment System (PHAS) Management Operations Certification**

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Real Estate Assessment Center

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(exp.09/01/2002)

Federal law and regulations. Appropriate sanctions for intentional false certification will be imposed, including suspension or debarment of the signatory.

A Board Resolution approving this certification is required. I further certify that Board Resolution number _____ approving this certification was passed on (mm/dd/yyyy) _____.

| Executive Director (signature) | Date (mm/dd/yyyy) |
|---|---|
| X | X |

[FR Doc. 02–16767 Filed 7–3–02; 8:45 am]

BILLING CODE 4210–32–C

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4739–N–22]**

### Notice of Proposed Information Collection: Comment Request; Construction Complaint—Request for Financial Assistance

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 3, 2002.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Construction Complaint—Request for Financial Assistance.

*OMB Control Number, if applicable:* 2502–0047.

*Description of the need for the information and proposed use:* There is a need for HUD to know defects in new construction. The HUD form 92556 is used to identify the items of complaint in order to help the homeowner obtain correction. The information collection is also used to identify builders not conforming to applicable standards, and to determine eligibility for financial assistance.

*Agency form numbers, if applicable:* HUD–92556.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of respondents is 5,000 generating approximately 5,000 annual responses, frequency of response is on occasion, the estimated time needed to prepare each response is 30 minutes, and the estimated annual burden hours requested is 2,500.

*Status of the proposed information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 26, 2002.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.*

[FR Doc. 02–16765 Filed 7–3–02; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4730–N–27]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** July 5, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 27, 2002.

**John D. Garrity,**

*Director, Office of Special Needs Assistance Programs.*

[FR Doc. 02–16686 7–3–02; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4513–N–10]**

### Credit Watch Termination Initiative

**AGENCY:** Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

**FOR FURTHER INFORMATION CONTACT:** The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St. SW, Room B133-P3214, Washington, DC 20410; telephone (202) 708–2830. (This is not a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** HUD has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating origination approval agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

**Termination of Origination Approval Agreement**

Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Agreement between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

**Cause**

HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the tenth review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 300 percent of the field office rate.

**Effect**

Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as set forth by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024.

**Action**

The following mortgagees have had their Agreements terminated by HUD:

| Mortgagee name | Mortgagee branch address | HUD office jurisdictions | Termination effective date | Home ownership centers |
|---|---|---|---|---|
| A and E Mortgage Co. LLC | 625 W First Ave., Roselle, NJ 07203 | Newark, NJ | 05/02/2002 | Philadelphia. |
| Alliance Mortgage Banking Corp | 2735 Buffalo Road, Rochester, NY 14624. | Buffalo, NY | 05/01/2002 | Philadelphia. |
| Embassy Mortgage Inc | 2121 Woodale Blvd., Ste C, Baton Rouge, LA 70806. | New Orleans, LA | 05/01/2002 | Denver. |
| Lincoln Mortgage Corp | 27950 Orchard Lake Rd., Ste 120, Farmington Hills, MI 48334. | Detroit, MI | 03/02/2002 | Philadelphia. |
| Luzal Inc | 10312 Jurupa Road, Mira Loma, CA 91752. | Santa Ana, CA | 05/01/2002 | Santa Ana. |
| Mortgage One Corp | 9610 Two Notch Road, Ste 5, Columbia, SC 29223. | Columbia, SC | 05/01/2002 | Atlanta. |
| Regal Mortgage Services, Inc | 3802 W. 96th Street, Ste 120, Indianapolis, IN 46268. | Indianapolis, IN | 05/02/2002 | Atlanta. |
| SGB Corporation | 1 South 660 Midwest Rd., Ste 100, Oakbrook Terrace, IL 60181. | Chicago, IL | 05/02/2002 | Atlanta. |

Dated: June 24, 2002.

**John C. Weicher,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 02–16768 Filed 7–3–02; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

**DATES:** Written data, comments or requests must be received by August 5, 2002.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358–2104.

**SUPPLEMENTARY INFORMATION:**

### Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

*Applicant:* Brian Bailey, Roswell, NM, PRT–058597.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

*Applicant:* William E. Kessler, Suwanee, GA, PRT–058636.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

*Applicant:* Raymond D. Bond, Butte, MT, PRT–058635.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

*Applicant:* Raymond H. Robertson, Carson City, NV, PRT–058816.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

*Applicant:* Antibody Systems, Inc., Hurst, TX, PRT–058324.

The applicant requests a permit to import biological samples from Komodo Island monitor (*Varanus komodoensis*) collected in the wild from Komodo, Rintja, and Flores Islands, Indonesia for the purpose of scientific research. This notice covers activities conducted by the applicant over a five year period.

*Applicant:* Dr. Claudio Ciofi/Yale University, New Haven, CT, PRT–058696.

The applicant requests a permit to import biological samples from Komodo Island monitor (*Varanus komodoensis*) collected from wild and captive-bred specimens in Indonesia, for the purpose of scientific research. This notice covers activities conducted by the applicant over a five year period.

### Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

*Applicant:* Bonnie L. Prochnow, Medford, WI, PRT–058491.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

*Applicant:* Charles A. Dorrance, Austin, TX, PRT–058414.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

*Applicant:* George R. Harms, Brielle, NJ, PRT–058893.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: June 21, 2002.

**Michael S. Moore,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 02–16805 Filed 7–3–02; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Services

## Notice of Receipt of Applications for Endangered Species Recovery Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications.

**SUMMARY:** The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*). The U.S. Fish and Wildlife Service solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

**DATES:** Written comments on these permit applications must be received within 30 days of the date of publication of this notice.

**ADDRESSES:** Written data or comments should be submitted to the Chief,

Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

**SUPPLEMENTARY INFORMATION:**

**Permit No. TE–026092**

*Applicant:* Paul Kephart, Carmel Valley, California. The permittee requests an amendment to remove/reduce to possession the *Erysimum menziesii* (Menzies' wallflower) in conjunction with restoration efforts in Monterey County, California for the purpose of enhancing its survival.

**Permit No. TE–057714**

*Applicant:* Dawn Reis, Santa Cruz, California. The applicant request a permit to take (harass by survey, capture, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys in Santa Cruz, Monterey, San Benito, and San Luis Obispo Counties, California for the purpose of enhancing its survival.

**Permit No. TE–056801**

*Applicant:* Alan Roy Wilkins, Middleton, Massachusetts. The applicant requests a permit to purchase, in interstate commerce, captive bred Hawaiian (=nene) geese (*Nesochen* [=*Branta*] *sandvicensis*) for the purpose of enhancing the species propagation and survival. This notification covers activities conducted by the applicant over the next 5 years.

**Permit No. 056955**

*Applicant:* Morro Estuary Greenbelt Alliance, Incorporated. The permittee request an amendment to take (locate and capture) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with habitat enhancement in San Luis Obispo, California for the purpose of enhancing its survival.

Dated: June 12, 2002.

**Carolyn A. Bohan,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 02–16798 Filed 7–3–02; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permit for Marine Mammals

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permit for marine mammals.

**SUMMARY:** The following permits were issued.

**ADDRESSES:** Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358–2104.

**SUPPLEMENTARY INFORMATION:** On January 11, 2002, a notice was published in the **Federal Register** (67 FR 1494), that an application had been filed with the Fish and Wildlife Service by Xavier University for a permit (PRT–049136) to conduct research with sound recognition on one captive-held and one captive-born manatee (*Trichechus manatus latirosis*).

Notice is hereby given that on June 19, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 7, 2002, a notice was published in the **Federal Register** (67 FR 30721), that an application had been filed with the Fish and Wildlife Service by Truman D. Wade for a permit (PRT–055298) to import one polar bear taken from the Northern Beaufort Sea population in Canada for personal use.

Notice is hereby given that on June 11, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Dated: June 21, 2002.

**Michael S. Moore,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 02–16806 Filed 7–3–02; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–990–02–5101–ER–L016]**

### Notice of Availability of Trans-Alaska Pipeline System Right-of-Way Renewal Draft Environmental Impact Statement (DEIS), Announcement of Public Review Period and Hearings Schedule Including Subsistence-Related Hearings

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability of DEIS, Announcement of Public Review Period and Hearings Schedule Including Subsistence-Related Hearings.

**SUMMARY:** The Bureau of Land Management (BLM) announces availability of the Trans-Alaska Pipeline System (TAPS) Right-of-Way Renewal Draft Environmental Impact Statement (DEIS). The current Right-of-Way expires in 2004. Three alternatives are considered in the DEIS: to renew the TAPS Right-of-Way for 30 years, to renew the Right-of-Way for less than 30 years, and to not renew the Right-of-Way. Appendix E of the Draft EIS indicates that each of the alternatives may affect subsistence activities. As required by section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), BLM is evaluating the effects of the alternatives on subsistence uses and needs and is holding public hearings in the vicinity of the area involved.

BLM is closely cooperating with the State of Alaska in preparation of the DEIS and is coordinating all aspects of the renewal process within the purview of the inter-agency Joint Pipeline Office. BLM and the Alaska Department of Natural Resources will offer joint public hearings for the TAPS Renewal DEIS, ANILCA 810 Subsistence, and the State of Alaska Commissioner's Analysis and Proposed Determination. Although the meetings are being held jointly, commenters will be asked to state if they are addressing state or federal documents.

**DATES:** The DEIS will be available beginning July 5, 2002. The public will have 45 days to review and comment on the DEIS. The BLM will accept written comments on the DEIS postmarked by

August 20, 2002. Written comments may also be hand-delivered to the Joint Pipeline Office in Anchorage, Alaska, by 4 p.m. ADT on August 20, 2002.

**ADDRESSES:** Written comments should be mailed to BLM TAPS Renewal EIS, Argonne National Laboratory EAD/900, 9700 S. Cass Avenue, Argonne, IL 60439. As an alternative, written comments can be hand-delivered to BLM TAPS Renewal Team in Anchorage at the Joint Pipeline Office 411 W. 4th Avenue, Suite 2 [Do not mail comments to this address]. Comments also can be submitted through the ''Public Comment Form'' feature on the TAPS Renewal EIS Web site at *http://tapseis.anl.gov,* by fax toll free to 1–866–542–5904, or by voice message toll free at 1–866–542–5903.

**FOR FURTHER INFORMATION CONTACT:** Rob McWhorter at the Joint Pipeline Office, 411 W 4th Avenue, Suite 2, Anchorage, Alaska, phone 907–257–1355, e-mail *rmcwhort@jpo.doi.gov,* or visit the TAPS Renewal EIS Web site at *http://tapseis.anl.gov.*

*Withholding of Personal Information:* It is the BLM's practice to make comments, including names and addresses of commenters, available for public review during regular business hours. Individual commenters may request that we withhold their home address from the public comment record, and we will honor such requests to the extent allowable by law. Circumstances may also arise in which we would withhold from the public comment record a commenter's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**SUPPLEMENTARY INFORMATION:** The EIS is being prepared under authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321), as amended; the Council on Environmental Quality regulations (40 CFR parts 1500–1508); and the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended, including Title II—the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651). Argonne National Laboratory, Argonne, Illinois, is providing technical assistance and is preparing the DEIS under supervision and direction by BLM.

**DEIS Availability**

To obtain an electronic copy:

- visit the TAPS Renewal EIS Web site at *http://tapseis.anl.gov* (available as downloadable and searchable pdf files),
- order a CD through the TAPS Renewal EIS Web site at *http://tapseis.anl.gov*

Hard copies of this voluminous document will be available at the following public reading rooms or can be requested through the TAPS Renewal EIS Web site at *http://tapseis.anl.gov*

*Anchorage*

- Alaska Resources Library; 3150 C Street, Suite 100
- Z.J. Loussac Library, 3600 Denali Street
- Bureau of Land Management Public Room; 222 West 7th Avenue, #13
- State of Alaska, Department of Natural Resources Public Information Center; 550 West 7th Avenue, Suite 1260

*Barrow*

Tuzzy Consortium Library

Cordova Public Library

*Fairbanks*

- Fairbanks North Star Borough Public Library; 1215 Cowles Street
- Bureau of Land Management Public Room; 1150 University Avenue
- State of Alaska, Department of Natural Resources Public Information Center; 3700 Airport Way

*Glennallen*

Bureau of Land Management; Glennallen Field Office

*Juneau*

Alaska State Library
Valdez Public Library

*Washington, DC*

Department of the Interior Library; 1849 C Street, NW

**Meeting/Hearing Dates and Locations**

Oral or written comments can be made at one of the following locations on the dates specified:

- Friday, July 26, 2002, 7 p.m. ADT: Cordova; Moose Lodge, 514 2nd Street
- Tuesday, July 30, 2002, 7 p.m. ADT: Valdez; Valdez Convention and Civic Center, Ballroom 1, 110 Clifton Drive
- Wednesday, July 31, 2002, 7 p.m. ADT: Glennallen; Copper River High School auditorium, Mile 186, Glenn Highway
- Monday, August 5, 2002, 7 p.m. ADT: Anchorage; Anchorage Hilton Hotel, Denali Room, 500 West Third Avenue
- Tuesday, August 6, 2002, 7 p.m. ADT: Fairbanks; Chena River Convention Center, Conference Room/Main Hall A, 109 Clay Street
- Wednesday, August 7, 2002, 2 p.m. ADT: Minto, Minto Lodge
- Friday, August 9, 2002, 7 p.m. ADT: Barrow; Inupiat Heritage Center, multi-purpose room; 5421 Northstar Street (Inupiat translator)

The BLM seeks information and comments on the potential impacts discussed in the DEIS and additional data or information that would improve the analysis in the DEIS. BLM is also seeking comments on the subsistence evaluation in Appendix E of the DEIS.

**Linda S.C. Rundell,**

*Acting State Director.*

[FR Doc. 02–16236 Filed 7–3–02; 8:45 am]

BILLING CODE 4310–JA–P

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Agency Information Collection Activities: Proposed Collection, Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of an extension of a currently approved information collection (OMB Control Number 1010–0119).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled ''Royalty-in-Kind (RIK) Determination of Need.''

**DATES:** Submit written comments on or before September 3, 2002.

**ADDRESSES:** Submit written comments to Carol P. Shelby, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption.

If you do not receive a confirmation that we have received your e-mail, contact Ms. Shelby at (303) 231–3151.

**FOR FURTHER INFORMATION CONTACT:** Carol P. Shelby, telephone (303) 231–3151, FAX (303) 231–3385, e-mail *Carol.Shelby@mms.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Royalty-in-Kind (RIK) Determination of Need.

*OMB Control Number:* 1010–0119.

*Bureau Form Number:* None.

*Abstract:* The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

MMS, on behalf of the Secretary, also performs Determinations of Need prior to issuing a Notice of Availability of Sale in the **Federal Register** advising industry of a forthcoming RIK sale. The first step in this process is to issue a **Federal Register** notice requesting specific information from eligible refiners, such as: the location of their refinery; desirability of offshore versus onshore crude; type of crude desired (e.g., Wyoming Sweet); ability to obtain long-term supply of desired crude (with supporting documentation such as ''denial'' by major supplier); ability to obtain desired crude at fair market prices (with supporting documentation that desired oil was not available or equitably priced for the area or region in question); percentage of total refining capacity attributable to Federal oil versus other sources; etc. MMS uses feedback from refiners (or other interested parties, like lease owners or operators) to assess current marketplace conditions—*i.e.,* whether small, independent refiners have access to ongoing supplies of crude oil at equitable prices. If MMS determines that small refiners do not have adequate access to crude oil supplies, we will take the Government's royalty oil in kind and offer the oil for sale to small refiners.

MMS is requesting OMB's approval to continue to collect this information. Without feedback from interested refiners regarding their recent marketplace experience in obtaining adequate crude oil supplies and whether those supplies are fairly priced, MMS cannot perform a reasonable or meaningful Determination of Need. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

*Frequency:* On occasion.

*Estimated Number and Description of Respondents:* 25 small refiners.

*Estimated Annual Reporting and Recordkeeping ''Hour'' Burden:* 100 hours. The table below shows the breakdown of burden hours by CFR section and paragraph:

| 30 CFR section | Reporting requirement | Burden hours per response | Annual number of responses | Annual burden hours |
|---|---|---|---|---|
| 208.4(a) and (d) ..... | The Secretary may evaluate crude oil market conditions from time to time. * * * The Secretary will review these items [submitted by small refiners] and will determine whether eligible refiners have access to adequate supplies of cure oil * * * *Interim sales.* The potentially eligible refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase * * *. | 4 | 25 | 100 |

*Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden:* We have identified no ''non-hour'' cost burdens.

*Comments:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

*Public Comment Policy.* We will post all comments in response to this notice on our web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for

public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: June 26, 2002.

**Lucy Querques Denett,**

*Associate Director for Minerals Revenue Management.*

[FR Doc. 02–16890 Filed 7–3–02; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'')

Notice is hereby given that a proposed consent decree in *United States* v. *Acme Alloys et al.,* Civ. No. 02–2886 (WHW), was lodged with the United States District Court for the District of New Jersey on June 6, 2002, (''De Minimis Consent Decree''). The De Minimis Consent Decree will resolve the liability of eleven parties against whom the United States asserted a claim on behalf of the United States Environmental Protection Agency under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9606 and 9670(a), for injunctive relief and recovery of costs incurred by the United States in connection with the NL Industries Superfund Site in Pedricktown, New Jersey. The De Minimis Consent Decree requires 11 generators of hazardous substances to pay $460,000, which will be deposited into a special account to pay for response activities at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed De Minimis Consent Decree and Consent Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Acme Alloys, et al.,* DOJ Ref. #90–11–2–1075/2.

The proposed De Minimis Consent Decree may be examined at the office of the United States Attorney for the District of New Jersey, 502 Federal Building, 970 Broad Street (contact Assistant United States Attorney Susan Cassell); and the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866 (contact Assistant Regional Counsel, Damaris Cristiano). A copy of the proposed De Minimis Consent Decree may be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC. 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.00 (25 cents per page reproduction costs) for the De Minimis Consent Decree and Consent Order, payable to the U.S. Treasury.

**Ronald Gluck,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–16778 Filed 7–3–02; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, the Department of Justice gives notice that a proposed consent decree with Fort James Operating Company (''Fort James'') in the case captioned *United States and the State of Wisconsin* v. *Fort James Operating Company,* Civil Action No. 02–C–0602 (E.D. Wis.) was lodged with the United States District Court for the Eastern District of Wisconsin on June 20, 2002. The complaint filed in the case by the United States and the State of Wisconsin (the ''Plaintiffs'') alleges that Fort James is party liable for certain response costs associated with the release and threatened release of hazardous substances from facilities at or near the Fox River/Green Bay Site in northeastern Wisconsin (the ''Site''), pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*

The proposed consent decree sets forth the terms of a proposed settlement between the Plaintiffs and Fort James addressing both: (1) the claims for recovery of response costs that are included in the complaint; and (2) related claims for natural resource damages at the Site. The Oneida Tribe of Indians of Wisconsin and the Menominee Indian Tribe of Wisconsin are additional parties to the settlement, as Tribal trustees for injured natural resources at and near the Site.

Under the settlement, Fort James would agree to preserve more than 1000 acres of wildlife habitat in northeastern Wisconsin and pay an additional $8.5 million for other restoration projects as compensation for injuries to natural resources caused by widespread polychlorinated biphenyl (''PCB'') contamination at the Site. The Federal, State, and Tribal trustees that are parties to the Consent Decree have reviewed and approved the specific restoration projects described in an Appendix to the Consent Decree, and will jointly select future projects to be funded with additional money available under the settlement. In addition to its payments for restoration projects, Fort James would pay $1.6 million to help offset natural resource damage assessment costs and certain cleanup-related response costs incurred by the United States and the State.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States and the State of Wisconsin* v. *Fort James Operating Company,* Civil Action No. 02–C–0602 (E.D. Wis.), and DOJ Reference Number 90–11–2–1045/1. A copy of the proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Eastern District of Wisconsin, U.S. Courthouse and Federal Building—Room 530, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202 (contact Matthew Richmond (414–297–1700)); and (2) the U.S. Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604 (contact Peter Felitti (312–886–5114)). Copies of the proposed consent decree may also be

obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. In requesting copies, please refer to the above-referenced case name and DOJ Reference Number, and enclose a check made payable to the Consent Decree Library for $15.25 (61 pages at 25 cents per page reproduction cost).

**William D. Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–16779 Filed 7–3–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on June 17, 2002, a Consent Decree in *United States of America, Plaintiff, and Commonwealth of Pennsylvania, Plaintiff-Intervenor* v. *Borough of Indiana, Defendant,* Civil Action No. 02–CV–1079 was lodged with the United States District Court for the Western District of Pennsylvania.

In this action the United States sought injunctive relief and civil penalties under Section 301 of the Clean Water Act, 33 U.S.C. 1311 for the Borough of Indiana, Pennsylvania's wastewater treatment plant and sewer collection system. The Consent Decree addresses the Borough of Indiana's (1) discharge of pollutants from its wastewater treatment plan, (2) bypassing sewage from an outfall in violation of the bypass prohibition in its permit, and (3) discharge of sewage from two unpermitted sanitary sewer overflow points in its collection system. Pursuant to the settlement, the Borough of Indiana will also pay a civil penalty of $240,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General. Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America, Plaintiff, and Commonwealth of Pennsylvania, Plaintiff-Intervenor* v. *Borough of Indiana, Defendant,* D.J. Ref. 90–5–1–1–4475.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 United States Post Office & Courthouse, Pittsburgh, Pennsylvania 15219, and at U.S. EPA Region III Office, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $29.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Robert Brook,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–16777 Filed 7–3–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on June 24, 2002, a proposed consent decree in *United States* v. *Pennsylvania Industrial Development Authority, et al.*, Civ. Action No. 02–4038, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States is seeking response costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.*, in connection with the Franklin Smelting Site (''Site'') in Philadelphia, Pennsylvania. The decree will require defendants to pay $5,000 in partial reimbursement of the United States' past response costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and transmitted by one of the following methods: (1) via U.S. Mail to PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611; (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, c/o Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington DC 20005. Each communication should reference *United States* v. *Pennsylvania Industrial Development Authority, et al.*, D.J. Ref. No. 90–11–2–07622/1.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut St, Ste 1250, Philadelphia, PA 19106, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19013. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. When requesting a copy, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. Exhibits to the consent decree may be obtained for an additional charge.

**Robert Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–16782 Filed 7–3–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Amendment to Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed and agreed upon Amendment to Consent Decree Entered on May 18, 1995 in *United States* v. *Scovill, Inc.*, Civil Action No. 3:95CV159, was lodged with the United States District Court for the Eastern District of Virginia on June 6 2002.

The original Consent Decree involved the settlement of claims brought by the United States, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). It sought recovery of costs and injunctive relief for the Arrowhead Plating Superfund Site located in Montross, Westmoreland County, Virginia. The proposed and agreed upon Amendment would modify the Consent Decree by: (1) Conforming the groundwater remedy provisions of the 1995 Consent Decree to the requirements of the 2001 Record of Decision Amendment which replaced the pump and treat system selected as the remedy in the original ROD with a Permeable Reactive Subsurface Barrier (''PRSB'') and surface cap; (2) including an agreement where Saltire Industrial, Inc. (successor to Scovill, Inc.) agrees to undertake certain unanticipated work at the Site in exchange for a credit against future oversight costs incurred by the EPA; and (3) updating the representatives of the parties designated

to receive formal notices and submissions under the Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Each communication should refer on its face to *United States* v. *Scovill, Inc.*, DOJ #90–11–3–859.

The proposed Amendment to Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314; and at U.S. Environmental Protection Agency, Region III Office, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the proposed Amendment to Consent Decree may be obtained by (1) mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611; or by (2) faxing the request to Tonia Fleetwood, U.S. Department of Justice, fax number (202) 616–6584; phone confirmation (202) 514–1547. In requesting a copy, please forward the request and a check in the amount of $2.00 (25 cents per page reproduction cost), made payable to the U.S. Treasury.

**Robert Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–16781 Filed 7–3–02; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 21, 2002, a proposed consent decree in *United States* v. *South Jersey Clothing Company, Inc.* Civil Action No. 96–3166 (JBS), was lodged with the United States District Court for the District of New Jersey.

In this action, the United States alleged under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, that South Jersey Clothing Company, Inc., is liable for the costs in responding to the release or threatened release of hazardous substances at the South Jersey Clothing Company/Garden State Cleaners Superfund Sites in Minotola, New Jersey (the Sites). Under the terms of the proposed consent decree, the United States and the State of New Jersey will be paid $4,285,102.00 as reimbursement for past and future response costs with respect to the Sites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, U.S. Courthouse, One John F. Gerry Plaza, Camden, New Jersey, and at U.S. Environmental Protection Agency Region II, 290 Broadway, New York, New York. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed consent decree (without appendices), please so note and enclose a check in the amount of $11.00 (25 cent per page reproduction cost) payable to the U.S. Treasury.

**Ronald Gluck,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–16780 Filed 7–3–02; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

June 25, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail to King-Daring@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

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

*Agency:* Occupational Safety and Health Administration (OSHA).

*Type of Review:* Extension of a currently approved collection.

*Title:* Slings—29 CFR 1910.184.

*OMB Number:* 1218–0223.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

*Frequency:* On occasion and Annually.

*Type of Response:* Recordkeeping and Third-party disclosure.

*Number of Respondents:* 65,000.

| Requirement | Annual responses | Average response time (hours) | Annual burden hours |
|---|---|---|---|
| Alloy Steel Chain Slings—1910.184(e): | | | |
| Permanently affixed durable identification—1910.184(e)(1) | 98 | 0.50 | 49 |
| Periodic inspection—1910.184(e)(3)(i) | 68,250 | 0.25 | 17,063 |

| Requirement | Annual responses | Average response time (hours) | Annual burden hours |
|---|---|---|---|
| Cetificate of proof testing—1910.184(e)(4) | 24,375 | 0.05 | 1,219 |
| Wire Rope Slings—1910.184(f) | 48,750 | 0.05 | 2,438 |
| Metal Mesh Slings—1910.184(g): | | | |
| Permanently affixed durable marking—1910.184(g)(1) | 13 | 0.50 | 7 |
| Written records for repaired slings—1910.184(g)(8)(ii) | 1,300 | 0.05 | 65 |
| Synthetic Web Slings—1910.184(i): | | | |
| Marked or coded for rated capacities—1910.184(i)(1) | 52 | 0.50 | 26 |
| Certificate of proof testings—1910.184(i)(8)ii) | 13,000 | 0.05 | 650 |
| Grand Totals: | 155,838 | | 21,517 |

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The Standard specifies several collection-of-information (paperwork) requirements, depending on the type of sling. The purpose of each of these requirements is to prevent employees from using defective or deteriorated slings, thereby reducing their risk of death or serious injury caused by sling failure during material handling.

Paragraph (e) of the Standard covers alloy steel chain slings. Paragraph (e)(1) requires that alloy steel chain slings have permanently affixed durable identification stating size, grade, rated capacity, and reach. The information, supplied by the manufacturers, is typically marked on a metal tag and affixed to the sling.

Paragraph (e)(3)(i) requires the employer to make a thorough periodic inspection of alloy steel chain slings in use on a regular basis, but at least once a year. Paragraph (e)(3)(ii) requires the employer to make and maintain a record of the most recent month in which each alloy steel chain sling was thoroughly inspected, and make this record available for examination.

Paragraph (e)(4) requires the employer to retain certificates of proof testing. Employers must ensure that before use, each new, repaired, or reconditioned alloy steel chain sling, including all welded components in the sling assembly, has been proof tested by the sling manufacturer, or an equivalent entity. The certificates of proof testing must be retained and made available for examination.

Paragraph (f) of the Standard covers wire rope slings. Paragraph (f)(4)(ii) requires that all welded end attachments of wire rope slings be proof tested by the manufacturer at twice their rated capacity prior to initial use, and that the employer retain a certificate of the proof test and make it available for examination.

Paragraph (g) of the Standard covers metal mesh slings. Paragraph (g)(1) requires each metal mesh sling to have a durable marking permanently affixed that states the rated capacity for vertical basket hitch and choker hitch loadings.

Paragraph (g)(8)(ii) requires that once repaired, each metal mesh sling be permanently marked or tagged, or a written record maintained to indicate the date and nature of the repairs and the person or organization that performed the repairs. Records of the repairs shall be made available for examination.

Paragraph (i) of the Standard covers synthetic web slings. Paragraph (i)(1) requires that synthetic web slings be marked or coded to show the rated capacities for each type of hitch and type of synthetic web material.

Paragraph (i)(8)(i) prohibits the use of repaired synthetic web slings until they have been proof tested by the manufacturer or equivalent entity. Paragraph (i)(8)(ii) requires the employer to retain a certificate of the proof test and make it available for examination.

The information on the identification tags, markings or codings assist the employer in determining whether the sling can be used for the lifting task. The sling inspections enable early detection of faulty slings. The inspection and repair records provide employers with information about when the last inspection was made and about the nature of the repairs made. This information provides some assurance about the condition of the slings. These records also provide the most efficient means for an OSHA compliance officer to determine that an employer is complying with the Standard. Proof-testing certificates give employers, employees, and OSHA compliance officers assurance that slings are safe to use. The certificates also provide the compliance officers with an efficient means to assess employer compliance with the Standard.

*Agency:* Occupational Safety and Health Administration (OSHA).

*Type of Review:* Extension of a currently approved collection.

*Title:* Standard on Manlifts—29 CFR 1910.68(e)(3).

*OMB Number:* 1218–0226.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

*Frequency:* Monthly.

*Type of Response:* Recordkeeping and Third-party disclosure.

*Number of Respondents:* 3,000.

*Number of Annual Responses:* 36,000.

*Annual Burden Hours:* 41,400.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* 29 CFR 1910.68(e) requires that each manlift be inspected at least once every 30 days. Paragraph (e)(3) requires a certification record of the inspection must be made upon completion of the inspection. The record must contain the date of the inspection, the signature of the person who performed the inspection, and the serial number or other identifier of the inspected manlift. Employers are to maintain the certification record and make them available to OSHA compliance officers. This record provides assurance to employers, employees, and compliance officers that manlifts were inspected as required by the Standard. The inspections are made to keep equipment in safe operating condition, thereby preventing manlift failure while carrying employees to elevated worksites. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

*Agency:* Occupational Safety and health Administration (ISHA).

*Type of Review:* Revision of a currently approved collection.

*Title:* Consultation Agreements.

*OMB Number:* 1218–0110.

*Affected Public:* Business or other for-profit; Federal Government; and State, Local or Tribal Government.

*Frequency:* On occasion, Quarterly, biennially, and Annually.

*Type of Response:* Recordkeeping, Reporting, and Third-party disclosure.

*Number of Respondents:* 27,000.

| Requirement | Annual responses | Average response time (hours) | Annual burden hours |
|---|---|---|---|
| Burden Hours for State Consultation Projects: | | | |
| Safety and health Program Assessment Worksheet—1908.6(e)(3): | | | |
| Comprehensive Assistance | 2,700 | 0.50 | 1,350 |
| Safety and health Achievement Recognition Program (SHARP) | 400 | 0.50 | 200 |
| Inspection Deferral | 200 | 0.50 | 100 |
| Other visits | 23,700 | 0.17 | 3,950 |
| Referrals for Enforcement—1908.6(f)(1) and (4) | 10 | 0.050 | 5 |
| List of Serious Hazardous and Correction Due Dates—1908.6(g) | 27,000 | 0.08 | 2,250 |
| Compile and Transmit Statical Information—1908.9(c) | 1,680 | 0.50 | 840 |
| Prepare and Submit Cooperative Agreement—1908.10(c) | 48 | 40.00 | 1,920 |
| Sub-total | 55,738 | | 10,615 |
| Burden Hours for employers: | | | |
| Notifying the consultation project manager in writing when serious hazardous are correct—1908.6 | 27,000 | 0.25 | 6,750 |
| Informing OSHA or State Compliance Officer that a Consultation Visit is in Progress—1908.7 | 1,350 | 0.10 | 135 |
| Post notice of participation in Inspection Deferral and SHARP—1908.7(a)(4) | 600 | 0.05 | 30 |
| Sub-Total: | 28,950 | | 6,915 |
| Grant Total: | 84,688 | | 17,530 |

*Total Annualized Capital/Startup cost:* $0.

*Total Annual Cost (Operating/Maintaining System or Purchasing System or Purchasing Services):* $0.

*Description:* 29 CFR 1908 requires occupatiuonal safety and health consultation programs to collect, disclose, and report certain information. The purpose of these regulations is to establish and support cooperative agreements under which employers subject to the Occupational Safety and health Act of 1970 (and amendments) may consult with State personnel with respect to Occupational Safety and health Regulations as well as other voluntary compliance efforts.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 02–16807 Filed 7–3–02; 8:45 am]

**BILLING CODE 4510–26–M**

## DEPARTMENT OF LABOR

### Employment Standards Administration

### Wage and Hour Divisions; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determinations Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration date and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined in prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitted this data may be obtained by writing to the U.S. Department of Labor,

Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

**Modification to General Wage Determination Decisions**

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts,'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Connecticut
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CT020003 (Mar. 1, 2002)
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MA020001 (Mar. 1, 2002)
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MA020021 (Mar. 1, 2002)
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MD020001 (Mar. 1, 2002)
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Virginia
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Missouri
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MO020003 (Mar. 1, 2002)
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MO020005 (Mar. 1, 2002)
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New Mexico
NM020001 (Mar. 1, 2002)
Texas
TX020007 (Mar. 1, 2002)
TX020010 (Mar. 1, 2002)
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Alaska
AK020001 (Mar. 1, 2002)
AK020002 (Mar. 1, 2002)
AK020003 (Mar. 1, 2002)
AK020005 (Mar. 1, 2002)
AK020006 (Mar. 1, 2002)
AK020008 (Mar. 1, 2002)
Colorado
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CO020003 (Mar. 1, 2002)
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Idaho
ID020001 (Mar. 1, 2002)
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North Dakota
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Oregon
OR020001 (Mar. 1, 2002)
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OR020017 (Mar. 1, 2002)
Washington
WA020001 (Mar. 1, 2002)
WA020002 (Mar. 1, 2002)
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WA020008 (Mar. 1, 2002)
WA020011 (Mar. 1, 2002)
WA020013 (Mar. 1, 2002)
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California
CA020001 (Mar. 1, 2002)
CA020002 (Mar. 1, 2002)
CA020004 (Mar. 1, 2002)
CA020009 (Mar. 1, 2002)
CA020013 (Mar. 1, 2002)
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CA010036 (Mar. 1, 2002)
CA020037 (Mar. 1, 2002)
Hawaii
HI020001 (Mar. 1, 2002)

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 27th day of June, 2002.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 02–16729 Filed 7–3–02; 8:45 am]

BILLING CODE 4510–27–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (02–079)]**

## NASA Advisory Council, Biological and Physical Research Committee, Physical Science Advisory Subcommittee (SSUAS); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting location change.

**SUMMARY:** In accordance with the Federal Advisory Committee, Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a change of location for the meeting of the NASA Advisory Council, Biological and Physical Research Committee, Physical Science Advisory Subcommittee (SSUAS); Notice Number 02–077.

**DATES:** July 9, 2002, July 10, 2002, and July 12, 2002, 8 a.m. to 5 p.m.

*Previously Announced Locations:* Center for Advance Space Studies, 3600 Bay Boulevard, Houston, Texas.

*Change in the Meeting:* The meeting will now be held at the Courtyard Marriott, 3435 North Atlantic Avenue, Cocoa Beach, Florida.

**FOR FURTHER INFORMATION CONTACT:** Dr. Neal Pellis, Code U, Lyndon B. Johnson Space Center, Houston, Texas, (281) 483–2357

Dated: June 28, 2002.

**Sylvia K. Kraemer,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 02–16786 Filed 7–3–02; 8:45 am]

**BILLING CODE 7510–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 03–005980]**

### Consideration of Amendment Request for Sorting, Characterizing, and Repackaging Waste at the Safety Light Corporation Facility, Bloomsburg, PA, and Opportunity for a Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of consideration of amendment request for sorting, characterizing, and repackaging waste at the Safety Light Corporation facility, Bloomsburg, Pennsylvania, and opportunity for a hearing.

The U.S. Nuclear Regulatory Commission is considering issuance of a license amendment to By-Product Materials License No. 37–00030–02 (License No. 37–00030–02), issued to Safety Light Corporation (SLC), to authorize the sorting, characterizing, and repackaging of containerized waste located at the SLC facility in South Central Township, about five miles from Bloomsburg, Pennsylvania.

During 1999 and 2000, the licensee removed waste from two underground silos, as part of site remediation of the radiological contamination at the SLC facility, in accordance with the conditions described in License No. 37–00030–02. The waste is stored in two temporary waste storage areas, because additional sorting and characterization of the waste is required. The SLC facility is located adjacent to the Susquehanna River, so these storage areas potentially could flood during severe hurricane-type conditions. On February 6, 2002, the licensee submitted the ''Work Plan for SLC, Bloomsburg, PA, Radioactive Waste Repackaging'' (Work Plan) for NRC review and approval. The radioactive contamination in this waste, based on previous characterization data, consists primarily of tritium, Sr–90 and Cs–137 that is regulated by NRC, and Ra–226 that is regulated by the Commonwealth of Pennsylvania Department of Environmental (PADEP). There may also be some mixed waste (radioactive and hazardous waste) that is dually regulated by NRC and PADEP. The waste material had been placed within two underground silos during previous operations at the facility, which began during the late 1940s. These operations by United States Radium Corporation and later the SLC, involved the manufacturing and distributing of self-illuminating watch and instrument dials, and other uses of a variety of radioactive material until about 1968, when tritium was the only radionuclide used.

During all waste processing activities, the NRC will require the licensee to maintain effluents and doses within NRC requirements, and as low as reasonably achievable. Prior to approving the Work Plan and supporting information, the NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. Approval of the Work Plan at the SLC Bloomsburg, PA facility will be documented in an amendment to License No. 37–00030–02. The NRC has coordinated this NRC licensing action with PADEP and the United States Environmental Protection Agency Region III, which have separate jurisdictions related to this waste material and this facility.

The NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to 10 CFR 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with 10 CFR 2.1205(c). A request for hearing must be filed withing thirty (30) days of the date of publication of the **Federal Register** Notice.

The request for the hearing must be filed with the Office of the Secretary either:

1. By delivery to the Document Control Desk or may be delivered to the Commission's Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings & Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(g);

3. The requesters areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Safety Light Corporation, 4150–A Old Berwick Road, Bloomsburg, PA 17815, Attention: Larry Harmon, Plant Manager; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the Work Plan and supporting information dated February 6, April 25 and May 28, 2002 is available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD, and from *http://www.nrc.gov/reading-rm.html.*

Dated at King of Prussia, Pennsylvania, this 27th day of June 2002.

For the Nuclear Regulatory Commission.

**Francis M. Costello,**

*Deputy Director, Division of Nuclear Materials Safety, RI.*

[FR Doc. 02–16830 Filed 7–3–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on July 23, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

*Tuesday, July 23, 2002—8:30 a.m.–10:30 a.m.*

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Howard J. Larson (telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: June 27, 2002.

**Sher Bahadur,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 02–16831 Filed 7–3–02; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC—25643 ]**

## Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

June 28, 2002.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June, 2002. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St. NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 23, 2002, and should be accompanied by proof of service on the 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 Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

**Brazos Insurance Funds [File No. 811–9811]**

*Summary*: Applicant seeks an order declaring that it has ceased to be an investment company. On February 28, 2002, applicant's shareholders voluntarily redeemed their shares, based on net asset value. No expenses were incurred in connection with the liquidation.

*Filing Dates:* The application was filed on April 5, 2002, and amended on June 26, 2002.

*Applicant's Address:* 5949 Sherry Lane, Suite 1600, Dallas, TX 75225.

**Dreyfus Institutional Short Term Treasury Fund [File No. 811–7097]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On May 10, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $5,000 incurred in connection with the liquidation were paid by The Dreyfus Corporation, applicant's investment adviser.

*Filing Date:* The application was filed on June 17, 2002.

*Applicant's Address:* c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

**The Mallard Fund, Inc. [File No. 811–7861]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 27, 2002, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $5,509 incurred in connection with the liquidation were paid by applicant.

*Filing Date:* The application was filed on June 17, 2002.

*Applicant's Address:* 500 Grant St., Suite 2226, Pittsburgh, PA 15219.

**Merrill Lynch Intermediate Government Bond Fund [File No. 811–4839]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On December 15, 2000, applicant transferred its assets to Merrill Lynch Short Term U.S. Government Fund, Inc., based on net asset value. Expenses of $104,087 incurred in connection with the reorganization were paid by the surviving fund.

*Filing Dates:* The application was filed on May 7, 2002, and amended on June 18, 2002.

*Applicant's Address:* 800 Scudders Mill Rd., Plainsboro, NJ 08536.

**AmeriSen Funds [File No. 811–10285]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On March 27, 2002, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

*Filing Dates:* The application was filed on May 30, 2002, and amended on June 18, 2002.

*Applicant's Address:* 14340 Torrey Chase Blvd., Suite 170, Houston, TX 77014.

**Merrill Lynch Multi-State Limited Maturity Municipal Series Trust [File No. 811–4264]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 8, 2002, applicant transferred its assets to The Limited Maturity Portfolio of Merrill Lynch Municipal Bond Fund, Inc., based on net asset value. Expenses of approximately $166,531 incurred in connection with the reorganization were paid by the surviving fund.

*Filing Date:* The application was filed on June 4, 2002.

*Applicant's Address:* 800 Scudders Mill Rd., Plainsboro, NJ 08536.

**SIFE Trust Fund [File No. 811–987]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On February 25, 2002, applicant transferred its assets to Wells Fargo SIFE Financial Services Fund, based on net asset value. Applicant incurred no expenses in connection with the reorganization.

*Filing Date:* The application was filed on June 6, 2002.

*Applicant's Address:* 100 North Wiget Ln., Walnut Creek, CA 94598.

**Phillips Capital Investments, Inc. [File No. 811–5245]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On December 21, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

*Filing Date:* The application was filed on May 28, 2002.

*Applicant's Address:* 18007 Old Preston Court, Dallas, TX 75252.

**Questar Funds, Inc. [File No. 811–8655]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Applicant consists of three separate series: MacroTends Fund, Imperial Financial Services Fund and Excalibur Fund (formerly Phoenix Management Fund). By March 13, 2002, all of applicant's shareholders had redeemed their shares based on net asset value. Expenses of $8,690, $8,650 and $8,812 were incurred in connection with the liquidation and were paid, respectively, by each series of applicant.

*Filing Date:* The application was filed on May 28, 2002.

*Applicant's Address:* 1500 Forest Ave., Suite 223, Richmond, VA 23229.

**SHARCS Trust I [File No. 811–21025]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The application was filed on May 16, 2002, and amended on June 2, 2002.

*Applicant's Address:* c/o Salomon Smith Barney Inc., 388 Greenwich St., New York, NY 10013.

**American Municipal Term Trust Inc. II [File No. 811–6356]**

**Minnesota Municipal Term Trust Inc. [File No. 811–6359]**

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On April 10, 2002, each applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $12,810 and $12,621, respectively, were incurred in connection with the liquidations and were paid by each applicant.

*Filing Dates:* The applications were filed on April 30, 2002, and amended on May 30, 2002.

*Applicants' Address:* 800 Nicollet Mall, Minneapolis, MN 55402.

**Mercury Target Select Equity Fund, Inc. [File No. 811–10037]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On November 26, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $4,500 incurred in connection with the liquidation were paid by Merrill Lynch Investment Managers, parent of applicant's sub-adviser.

*Filing Dates:* The application was filed on January 30, 2002, and amended on May 30, 2002.

*Applicant's Address:* 800 Scudders Mill Rd., Plainsboro, NJ 08536.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02–16846 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 25642 ; 812–12498]**

## Vision Group of Funds, *et al.*; Notice of Application June 28, 2002.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

*Summary of the Application*: The order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

*Applicants*: Vision Group of Funds (the ''Trust'') and Manufacturers and Traders Trust Company (''M&T'').

*Filing Dates*: The application was filed on April 4, 2001 and amended on June 27, 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 the 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 23, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, c/o C. Grant Anderson, Esq., Federated Services Company, Federated Investors Tower, 1001 Liberty Avenue, Pittsburgh, PA 15222–3779.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

### Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust currently offers eighteen series (''Funds''), each of which has its own investment objectives, policies and restrictions. M&T Asset Management (the ''Adviser''), a department of M&T, is registered under the Investment Advisers Act of 1940 (the ''Advisers Act''), and serves as the investment adviser to the Funds. M&T is a national banking association and is wholly owned by M&T Bank Corporation, a bank holding company.

2. Applicants also request relief with respect to any existing or future registered open-end management investment company or series thereof that (a) is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser; (b) uses the adviser/subadviser structure that is described in the application; and (c) complies with the terms and conditions in the application (together with any current or future series of the Trust, the ''Funds'').

3. The Adviser serves as the investment adviser to each Fund pursuant to an investment advisory agreement with the Trust (''Advisory Agreement'') that was approved by the board of trustees of the Trust (the

''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and the shareholders of each Fund. Under the terms of the Advisory Agreement, the Adviser manages the investment of assets of each Fund and may, subject to oversight by the Board, hire one or more subadvisers (''Subadvisers'') to provide portfolio management services to each of the Funds pursuant to separate investment advisory agreements (''Subadvisory Agreements''). Each Subadviser is an investment adviser registered under the Advisers Act. Subadvisers are recommended to the Board by the Adviser and selected and approved by the Board, including a majority of the Independent Trustees. Each Subadviser's fees are paid by the Adviser out of the management fees received by the Adviser from the respective Fund.[1]

4. The Adviser monitors the Funds and the Subadvisers and makes recommendations to the Board regarding allocation, and reallocation, of assets between Subadvisers and is responsible for recommending the hiring, termination and replacement of Subadvisers. The Adviser recommends Subadvisers based on a number of factors used to evaluate their skills in managing assets pursuant to particular investment objectives.

5. Applicants request relief to permit the Adviser, subject to the Board's approval, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief would not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (an ''Affiliated Subadviser'').

## Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, to the extent that 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. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Funds' shareholders rely on the Adviser to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants submit that the requested relief will reduce the Funds' expenses associated with shareholder meetings and proxy solicitations, and enable the Funds to operate more efficiently. Applicants also note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

## Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund, as described in the application, will be approved by the vote of a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholders before offering shares of that Fund to the public.

2. Each Fund relying on the requested relief will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility, subject to review of the Board, to monitor and evaluate Subadvisers and recommend their hiring, termination and replacement.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with an Affiliated Subadviser without that agreement, including the compensation to be paid under it, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's Board minutes, that the change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of a new Subadviser, the Adviser will furnish shareholders of the affected Fund with the information about the Subadviser that would be included in a proxy statement. The information will include any changes caused by the addition of the new Subadviser. The Adviser will meet this condition by providing shareholders of the applicable Fund 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.

7. The Adviser will provide general management services to the Funds including overall supervisory responsibility for the general management and investment of each Fund's securities portfolio and, subject to review and approval by the Board, will (a) set each Fund's overall investment strategies; (b) evaluate, select, and recommend Subadvisers to manage all or a part of a Fund's assets; (c) when appropriate, allocate and reallocate the Fund's assets among multiple Subadvisers; (d) monitor and evaluate the performance of the Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with the Fund's investment objectives, restrictions and policies.

8. No trustee or officer of the Trust or director or officer of the Adviser will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer), any interest in a Subadviser except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly traded company that is either

[1] The Trust is the only existing investment company that currently intends to rely on the order. Applicants represent that if the name of any Fund contains the name of a Subadviser that is not an Affiliated Subadviser as defined below, it will also contain the name of the Adviser, which will appear before the name of the Subadviser.

a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02–16845 Filed 7–3–02; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46139; File No. S7–24–89]**

## Joint Industry Plan; Notice of Filing and Partial Summary Effectiveness of Amendment No. 13 to the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, the Pacific Exchange, the American Stock Exchange LLC, and the Philadelphia Stock Exchange, Inc.

June 28, 2001.

### I. Introduction

Pursuant to Rule 11Aa3–2 [1] and Rule 11Aa3–1 [2] under the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''), notice is hereby given that on May 31, 2002, the Cincinnati Stock Exchange Inc. (''CSE'') on behalf of itself and the National Association of Securities Dealers, Inc. (''NASD''), the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''PHLX'') (hereinafter referred to as ''Participants''),[3] as members of the operating committee (''Operating Committee'' or ''Committee'') [4] of the Plan submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposal to amend the Plan. The proposal represents the 13th amendment (''13th Amendment'') made to the Plan and reflects several changes unanimously adopted by the Committee. The Commission is putting into effect summarily part of the 13th Amendment, granting an exemption under Rule 11Aa3–2(f) [5] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d),[6] and publishing this notice to solicit comments from interested persons on the 13th Amendment generally.

### II. Background

The Plan governs the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq/National Market (''Nasdaq/NM'') and Nasdaq SmallCap securities listed on Nasdaq or traded on an exchange pursuant to unlisted trading privileges (''UTP'').[7] The Plan provides for the collection from Plan Participants, and the consolidation and dissemination to vendors, subscribers and others, of quotation and transaction information in ''eligible securities.''[8] The Plan contains various provisions concerning its operation, including: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access; Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer (''BBO''); Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.

The Commission originally approved the Plan on a pilot basis on June 26, 1990.[9] The parties did not begin trading until July 12, 1993, accordingly, the pilot period commenced on July 12, 1993. The Plan has since been in operation on an extended pilot basis.[10]

### III. Description and Purpose of the Amendment

The complete text of the Plan, as amended, is attached as Exhibit A. The following is a summary of the proposed changes to the Plan prepared by the Participants. Each category of amendments listed below will have distinct effectiveness dates as noted by each category title and as discussed in Section IV below.

*Category 1: Effective Upon Nasdaq's Exchange Registration*

1. Section I.A.8. of the Plan has been added to reflect the addition of The Nasdaq Stock Market, Inc. as a new and separate signatory to the Plan.

2. Section III.B. of the Plan, which defines ''Eligible Security,'' is amended to reflect that such securities will be listed on a national securities exchange and to clarify that Eligible Security under the Plan shall not include any security that is an ''Eligible Security'' within the Consolidated Tape Association Plan. Finally, Section III.B. is amended to reflect that securities will cease to be Eligible Securities based upon a suspension from trading, and to establish a procedure for determining

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[1] 17 CFR 240.11Aa3–2.

[2] 17 CFR 240.11Aa3–1.

[3] The CSE was elected chair of the Operating Committee for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq UTP Plan'' or ''Plan'') by the Participants.

[4] Among other things, the 13th Amendment shall add the Nasdaq Stock Market, Inc. (''Nasdaq'') as a Participant. The Committee is made up of all the Participants.

[5] 17 CFR 240.11Aa3–2(f).

[6] 17 CFR 240.11Aa3–2(d).

[7] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits UTP under certain circumstances. For example, Section 12(f) of the Act, among other things, permits exchanges to trade certain securities that are traded over-the-counter (''OTC/UTP''), but only pursuant to a Commission order or rule. For a more complete discussion of the Section 12(f) requirement, *see* November 1995 Extension Order, *infra* note .

[8] Pursuant to the 13th Amendment, the Plan defines ''Eligible Securities'' as any Nasdaq/NM or Nasdaq SmallCap listed security, as defined in Nasdaq Rule 4200: (i) As to which UTP have been granted to a national securities exchange pursuant to Section 12(f) of the Act; or (ii) which also is listed on a national securities exchange other than Nasdaq. Moreover, the definition states that ''Eligible Securities'' shall not include any security that is defined as an ''Eligible Security'' within Section VII of the Consolidated Tape Association Plan.

[9] *See* Securities Exchange Act Release No. 28146, 55 FR 27917 (July 6, 1990) (''1990 Plan Approval Order'').

[10] *See* Securities Exchange Act Release Nos. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995) (''November 1995 Extension Order''); 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); 38794 (June 30, 1997) 62 FR 36586 (July 8, 1997); 39505 (December 31, 1997) 63 FR 1515 (January 9, 1998); 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998); 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) (''May 1999 Approval Order''); 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000); 43005 (June 30, 2000), 65 FR 42411 (July 10, 2000); 44099 (March 23, 2001), 66 FR 17457 (March 30, 2001); 44348 (May 24, 2001), 66 FR 29610 (May 31, 2001); 44552 (July 13, 2001), 66 FR 37712 (July 19, 2001); 44694 (August 14, 2001), 66 FR 43598 (August 20, 2001); 44804 (September 17, 2001), 66 FR 48299 (September 19, 2001); 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001).

which market may suspend an issue under the Plan.

3. Section III.E. of the Plan, which defines ''Market,'' is amended to reflect that Nasdaq will be participating in the Plan as an independent national securities exchange and that the NASD will continue to participate as a national securities association.

4. Section III.G. of the Plan, which defines ''NASD Participant,'' is added to reflect that the NASD will participate in the Plan as a national securities association separate and apart from Nasdaq.

5. Section III.H. of the Plan, which defines ''Transaction Reporting System,'' is amended to reflect that, due to Nasdaq's registration as a national securities exchange, the governing Transaction Reporting Plan filed with and approved by the Commission pursuant to SEC Rule 11Aa3–1, shall no longer be referred to as the NASD Transaction Reporting Plan. The Plan Participants anticipate further amending this Section of the Plan to clarify the status of the Plan under the Exchange Act.

6. Section III.I. and III.J, regarding Nasdaq Level 2 and Level 3 Services, will be eliminated when Nasdaq registers as a national securities exchange.

7. Section III.N. of the Plan, which defines ''OTC Montage Data Feed,'' is amended to reflect that, as a result of Nasdaq's registration as a national securities exchange, the Processor will no longer disseminate the NQDS Service.

8. Section III.R. of the Plan, which defines ''Quotation Information'' is amended to reflect that Nasdaq will no longer send individual market participant information to the Processor. It is also amended to clarify that only displayed quotation sizes are included in the definition and that market center identifiers are also included.

9. Section VIII.A. (Quotation Information) is amended to reflect that as an exchange, Nasdaq will submit a Best Bid and Offer in compliance with the SEC Quote Rule.

10. Section VIII.C. is amended to reflect that Nasdaq and the NASD will both be participating in the Plan as separate and independent entities.

11. Section IX. (Market Access) is amended to reflect that Nasdaq will no longer participate in the Plan as a national securities association.

12. Section X. (Regulatory Halts) is amended to reflect that the Listing Market, rather than the Primary Market, shall have authority to call a Regulatory Halt, and a definition of Listing Market is established.

13. Section XI.D. is amended to eliminate reference to individual Nasdaq Participants, and also to change a reference from ''best bid and offer'' to ''national best bid and offer.''

14. Section XVIII (Operational Issues) is amended to substitute ''Participant'' for ''Exchange Participant'' and to substitute ''Processor'' for ''Nasdaq.''

15. The 13th Amendment to the Plan also amends Plan Exhibit 1, which governs the distribution of revenue attributable to the sale of market data collected pursuant to the Plan. Specifically, Paragraph 3 of Plan Exhibit 1 is amended to reflect the change in definition of the UTP Quote, UTP Trade, and OTC Montage Data Feeds contained in Sections III.I., III.J., and III.N. of the Plan. Paragraph 3 of Plan Exhibit 1 is also amended to change certain aspects of the allocation of Securities Information Processor (''SIP'' or ''Processor'') costs attributable to collecting, consolidating, validating, generating, and disseminating the Data Feeds. Finally, Paragraph 3 is amended to limit the applicability of the definition of ''quote engine'' and ''trade engine'' to the period when Nasdaq serves as the Processor for the Plan. Paragraph 4 of Plan Exhibit 1 is amended to eliminate reference to computer-to-computer interfaces.

*Category 2: Effective Upon Launch of the Internal SIP*[11]

1. Section III.I. of the Plan, which defines ''UTP Quote Data Feed,'' is amended to reflect that the Processor will replace the Level 1 Service as it currently exists. In its place, the Processor will disseminate a data feed containing the National Best Bid and Offer quotations, size and market center identifier, as well as the Best Bid and Offer quotations, size and market center identifier from each individual Participant in Eligible Securities. While this change is effective upon launch of the Internal SIP, the Processor will continue to disseminate the current Level 1 service for a three-month parallel period (''Legacy SIP'') to enable market data vendors to have a smooth transition to the new feed.

2. Section III.N. of the Plan defines the ''OTC Montage Data Feed,'' which will be launched as a new data feed for the dissemination of NASD ADF Participant quotations with the launch of the Internal SIP. However, as stated above in Category 1.7, NQDS will not be fully eliminated as a data feed disseminated by the Processor until Nasdaq is registered as an exchange.

3. Section III.K. of the Plan changes the name of the Nasdaq Last Sale Information Service to ''UTP Trade Data Feed,'' but makes no changes to the data elements contained in that data feed. While this change is effective upon launch of the Internal SIP, the Processor will continue to disseminate the current Nasdaq Last Sale Information Service for a three-month parallel period to enable market data vendors to have a smooth transition to the new feed.

4. Section III.R. of the Plan, which defines ''Quotation Information'' is amended to reflect that the NASD ADF will send individual market participant information to the Processor. It is also amended to clarify that only displayed quotation sizes are included in the definition and that market center identifiers are also included.

5. Section VI.B. (Collection and Consolidation of Information) has been amended to clarify the devices available for sending information to the Processor and the data feeds which the Processor shall disseminate, for as long as Nasdaq remains the Processor. While this change is effective upon launch of the Internal SIP, the Processor will continue to disseminate the current data feeds for a three-month parallel period to enable market data vendors to have a smooth transition to the new feed. In addition, the Processor will continue to disseminate NQDS until Nasdaq registers as an exchange.

6. Section VI.C. (Dissemination of Information) has been amended to identify the data feeds that the Processor shall disseminate. While this change is effective upon launch of the Internal SIP, the Processor will continue to disseminate the current data feeds for a three-month parallel period to enable market data vendors to have a smooth transition to the new feed. In addition, the Processor will continue to disseminate NQDS until Nasdaq registers as an exchange.

7. Section VI.C.1. (Best Bid and Offer) is amended to change the method of calculating the national best bid and offer from price/time/size to price/size/time and to establish a precise methodology for calculation.

8. Section VI.C.3. is renamed ''Quotation Data Stream,'' and amended to reflect the change in definition of the UTP Quote Data Feed contained in Section III.I. of the Plan.

9. Section VI.C.4. (Transaction Reports) is amended to reflect the change in name of the UTP Trade Data

[11] In November of 2001, Nasdaq began implementing the ''Internal SIP'' project. The Internal SIP is a separate technology infrastructure within Nasdaq that will perform the functions of the SIP for Nasdaq-listed securities. When the Internal SIP is in place, Nasdaq will be able to separate its functions as a stock market from its functions as a SIP for the Plan.

Feed contained in Section III.K. of the Plan.

10. Section XI (Hours of Operation) has been amended to change the reporting procedures for Participants that execute transactions in Eligible Securities outside of the normal trading hours of 9:30 a.m. to 4 p.m. EST.

*Category 3: Effective Upon End of Parallel Period—Elimination of the Legacy SIP*

1. Section VI.C.1. is amended to reflect that the Processor shall no longer carry quotation information from one trading day to the next, and that the Processor shall not calculate the best bid and offer for any individual Participant, including the NASD.

2. Section VI.C.1. is also amended to reflect that the Processor shall disseminate an internally locked or crossed quotation submitted by a single Participant.

3. Section XVIII.D.3, regarding Price Checks, is eliminated to reflect the Operating Committee's agreement that the Processor should no longer perform these functions.

4. Plan Exhibit 1, Paragraph 3(d)(5) is eliminated to reflect that MarketWatch costs are no longer eligible Processor Operating Costs, contingent upon the elimination of the Processor's ability to perform price checks on Participant's trade reports.

*Category 4: Timing Not An Issue*

1. Section III.S. of the Plan, which defines ''Regulatory Halt,'' is amended to include halts that are called for regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue.

2. Section IV.A. (Operating Committee: Composition) has been amended to permit entities that are actively pursuing registration as a national securities exchange to participate in Operating Committee meetings in limited capacities.

3. Section IV.C. (Operating Committee: Voting) has been amended to eliminate references to events and contingencies that occurred when the Plan was first adopted. It also is clarified to reflect the Participants' agreement that neither the Plan nor the Operating Committee shall have authority in any respect over any Participant's proprietary systems.

4. Section IV.D. (Operating Committee: Meetings) will permit the Operating Committee to waive the advance notice requirement contained therein.

5. Section IV.E. has been added to establish an Advisory Committee and to define its composition and authority.

6. Section V.A. (Selection and Evaluation of the Processor: Generally) has been amended to eliminate references to events and contingencies that occurred when the Plan was first adopted.

7. Section VI.C. is amended to eliminate references to agreements between the NASD and certain foreign exchanges.

8. Section VI.D. (Immediate Hard Copy Confirmations) is eliminated and the remaining subsections of Section VI. are re-lettered.

9. Section VIII.B. (Transaction Reports) is amended to clarify that this Section applies only to transactions between Plan Participants pursuant to the Plan, and to eliminate reference to shared computer-to-computer interfaces.

10. Section X. is amended to include halts that are called for regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue and to state that during a halt the Processor shall collect and disseminate Transaction Information but shall cease collection and dissemination of all Quotation Information.

11. Section XI.C. is amended to reflect that late trades can be reported between the hours of 8 a.m. and 6:30 p.m. on the same trading day that the transaction occurred.

12. Section XI.E. governing changes to operating hours, is eliminated.

13. Section XIII (Undertakings by NASD) is eliminated, and subsequent sections re-numbered.

14. Section XXI (Depth of Book Display) is added to reflect the Operating Committee's determination that the entity that succeeds Nasdaq as the Processor, upon certain specific conditions being met through a further Plan amendment should have the ability to collect, consolidate, and disseminate quotations at multiple price levels beyond the best bid and best offer from any Participant that voluntarily chooses to submit such quotations. Section XXI states that implementing the depth of book display functionality will require a plan amendment that addresses all pertinent issues.

15. Within the body of the 13th Amendment, there are numerous ''house-keeping'' corrections, including punctuation and renumbering changes. These changes are reflected in Exhibit A hereto.

## IV. Date of Effectiveness of the Proposed Amendment

The Commission has determined, pursuant to Rule 11Aa3–2(c)(4) under the Act,[12] that the amendments detailed above in Category 2, which generally cover the creation of new data feeds associated with the launch of the Internal SIP, will be effective summarily upon publication of this notice of amendment in the **Federal Register** on a temporary basis not to exceed 120 days. The Commission believes that it is appropriate to put into effect summarily the Category 2 amendments because they deal with the creation of data feeds associated with the Internal SIP and should remove impediments to, and, perfect the mechanism of, a national market system. By granting temporary summary effectiveness, the July 1, 2002 target launch date for the new Internal SIP data feeds may be met.

Moreover, the Commission approved Nasdaq's Order Display Facility, Order Collector Facility, and Trading Platform (collectively, ''SuperMontage''),[13] contingent upon the NASD offering a quote and trade reporting alternative thereto, subsequently named the Alternative Display Facility (''ADF''). In addition, the SuperMontage approval order required, as a condition for extension of the Plan, that the Participants develop an alternative SIP for all Nasdaq securities to provide an alternative to participation in SuperMontage.[14]

The result of these two contingencies is that, with concurrent operation of SuperMontage and the ADF, Nasdaq and the NASD need to submit distinct BBOs to the Internal SIP—one representing the SuperMontage execution facility, and the other representing Participants outside of SuperMontage. While both Nasdaq and the NASD operate under the umbrella of a single Plan Participant, the submission of two distinct BBOs could be deemed inconsistent with Section VI.C.1 of the Plan.[15] Pursuant to the 13th Amendment of the Plan and Rule 11Aa3–2(a),[16] Nasdaq cannot be granted Plan Participant status until it is registered as a national securities exchange. While Nasdaq submits a distinct BBO from the NASD and until

[12] 17 CFR 240.11Aa3–2(c)(4).

[13] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[14] *Id.*

[15] Section VI.C.1. of the Plan, as approved by the Operating Committee in the 13th Amendment, states that ''[t]he Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the NASD * * *.''

[16] 17 CFR 240.11Aa3–2(a).

Nasdaq is registered as a national securities exchange, the NASD will submit quotes to the Internal SIP in a manner different than specified in Section VI.C.1. of the Plan.

To relieve this inherent conflict among the SuperMontage approval order,[17] Rule 11Aa3–2,[18] and the Plan, the Commission has determined to grant the NASD an exemption under Rule 11Aa3–2(f)[19] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d)[20] until such time as Nasdaq is registered as a national securities exchange.

## V. Solicitation of Comments

The Commission seeks general comments on the 13th Amendment. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the proposal 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. The 13th Amendment is being published as Exhibit A to this proposal. Copies of the amendment will also be available for inspection and copying at the office of the Secretary of the Committee, currently located at the CSE, One Financial Place, 440 South LaSalle St., Suite 2600, Chicago, IL 60126. All submissions should refer to File No S7–24–89 and be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

**Margaret H. McFarland,**

*Deputy Secretary.*

## Exhibit A

*Amendment No. 13—Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges of an Unlisted Trading Privilege Basis*

The undersigned registered national securities association and national securities exchanges (collectively referred to as the ''Participants''), have jointly developed and hereby enter into this Nasdaq Unlisted Trading Privileges Plan (''Nasdaq UTP Plan'' or ''Plan'').

## I. Participants.

The Participants include the following:

*A. Participants*

1. American Stock Exchange, LLC, 86 Trinity Place, New York, New York 10006
2. Boston Stock Exchange, 100 Franklin Street, Boston, Massachusetts 02110
3. Chicago Stock Exchange, 440 South LaSalle Street, Chicago, Illinois 60605
4. Cincinnati Stock Exchange, 440 South LaSalle Street, 26th Floor, Chicago, Illinois 60605
5. National Association of Securities, Dealers, Inc., 1735 K Street, NW, Washington, DC 20006
6. Pacific Exchange, Inc., 301 Pine Street, San Francisco, CA 94104
7. Philadelphia Stock Exchange, 1900 Market Street, Philadelphia, Pennsylvania 19103
8. Nasdaq Stock Market, Inc., 1 Liberty Plaza, New York, New York 10006

*B. Additional Participants*

Any other national securities association or national securities exchange, in whose market Eligible Securities become traded, may become a Participant, provided that said organization executes a copy of this Plan and pays its share of development costs as specified in Section XIII.

## II. Purpose of Plan

The purpose of this Plan is to provide for the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities from the Participants in a manner consistent with the Exchange Act.

It is expressly understood that each Participant shall be responsible for the collection of Quotation Information and Transaction Reports within its market and that nothing in this Plan shall be deemed to govern or apply to the manner in which each Participant does so.

## III. Definitions

A. *Current* means, with respect to Transaction Reports or Quotation Information, such Transaction Reports or Quotation Information during the fifteen (15) minute period immediately following the initial transmission thereof by the Processor.

B. *Eligible Security* means any Nasdaq National Market or Nasdaq SmallCap listed security, as defined in Nasdaq Rule 4200: (i) As to which unlisted trading privileges have been granted to a national securities exchange pursuant to Section 12(f) of the Exchange Act; or (ii) which also is listed on a national securities exchange other than Nasdaq. Eligible Securities under this Nasdaq UTP Plan shall not include any security that is defined as an ''Eligible Security'' within Section VII of the Consolidated Tape Association Plan.

A security shall cease to be an Eligible Security for purposes of this Plan if: (i) The security does not substantially meet the requirements from time to time in effect for continued listing on Nasdaq, and thus is suspended from trading; or (ii) the security has been suspended from trading because the issuer thereof is in liquidation, bankruptcy or other similar type proceedings. The determination as to whether a security substantially meets the criteria of the definition of Eligible Security shall be made by the exchange on which such security is listed provided, however, that if such security is listed on more than one exchange, then such determination shall be made by the exchange on which the greatest number of the transactions in such security were effected during the previous twelve-month period.

C. *Commission* and *SEC* shall mean the U.S. Securities and Exchange Commission.

D. *Exchange Act* means the Securities Exchange Act of 1934.

E. *Market* shall mean (i) when used with respect to Quotation Information, the NASD in the case of an NASD Participant, or the Participant on whose floor or through whose facilities the quotation was disseminated; and (ii) when used with respect to Transaction Reports, the Participant through whose facilities the transaction took place or is reported, or the Participant to whose facilities the order was sent for execution.

[17] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[18] 17 CFR 240.11Aa3–2.

[19] 17 CFR 240.11Aa3–2(f).

[20] 17 CFR 240.11Aa3–2(d).

[21] 17 CFR 200.30–3(a)(27).

F. *NASD* means the National Association of Securities Dealers, Inc.

G. *NASD Participant* means an NASD member that is registered as a market maker or an electronic communications network or otherwise utilizes the facilities of the NASD pursuant to applicable NASD rules.

H. *Transaction Reporting System* means the System provided for in the Transaction Reporting Plan filed with and approved by the Commission pursuant to SEC Rule11Aa3–1, governing the reporting of transactions in Nasdaq securities.

I. *UTP Quote Data Feed* means the service that provides Subscribers with the National Best Bid and Offer quotations, size and market center identifier, as well as the Best Bid and Offer quotations, size and market center identifier from each individual Participant in Eligible Securities.

J. *Nasdaq System* means the automated quotation system operated by Nasdaq.

K. *UTP Trade Data Feed* means the service that provides Vendors and Subscribers with Transaction Reports.

L. *Nasdaq Security* or *Nasdaq-listed Security* means any security listed on the Nasdaq National Market or Nasdaq SmallCap Market.

M. *News Service* means a person that receives Transaction Reports or Quotation Information provided by the Systems or provided by a Vendor, on a Current basis, in connection with such person's business of furnishing such information to newspapers, radio and television stations and other news media, for publication at least fifteen (15) minutes following the time when the information first has been published by the Processor.

N. *OTC Montage Data Feed* means the data stream of information that provides Vendors and Subscribers with quotations and sizes from each NASD Participant.

O. *Participant* means a registered national securities exchange or national securities association that is a signatory to this Plan.

P. *Plan* means this Nasdaq UTP Plan, as from time to time amended according to its provisions, governing the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities.

Q. *Processor* means the entity selected by the Participants to perform the processing functions set forth in the Plan.

R. *Quotation Information* means all bids, offers, displayed quotation sizes, market center identifiers and, in the case of NASD, the NASD market participant that entered the quotation, withdrawals and other information pertaining to quotations in Eligible Securities required to be collected and made available to the Processor pursuant to this Plan.

S. *Regulatory Halt* means a trade suspension or halt called for the purpose of dissemination of material news, as described at Section X hereof or that is called for where there are regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue.

T. *Subscriber* means a person that receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor for its own use or for distribution on a non-Current basis, other than in connection with its activities as a Vendor.

U. *Transaction Reports* means reports required to be collected and made available pursuant to this Plan containing the stock symbol, price, and size of the transaction executed, the Market in which the transaction was executed, and related information, including a buy/sell/cross indicator and trade modifiers, reflecting completed transactions in Eligible Securities.

V. *Upon Effectiveness of the Plan* means July 12, 1993, the date on which the Participants commenced publication of Quotation Information and Transaction Reports on Eligible Securities as contemplated by this Plan.

W. *Vendor* means a person that receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor, in connection with such person's business of distributing, publishing, or otherwise furnishing such information on a Current basis to Subscribers, News Services or other Vendors.

## IV. Administration of Plan

### *A. Operating Committee: Composition*

The Plan shall be administered by the Participants through an operating committee (''Operating Committee''), which shall be composed of one representative designated by each Participant. Each Participant may designate an alternate representative or representatives who shall be authorized to act on behalf of the Participant in the absence of the designated representative. Within the areas of its responsibilities and authority, decisions made or actions taken by the Operating Committee, directly or by duly delegated individuals, committees as may be established from time to time, or others, shall be binding upon each Participant, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to Rule 11Aa3–2 under the Exchange Act or in any other appropriate forum.

An Electronic Communications Network, Alternative Trading System, Broker-Dealer or other securities organization (''Organization'') which is not a Participant, but has an actively pending Form 1 Application on file with the Commission to become a national securities exchange, will be permitted to appoint one representative and one alternate representative to attend regularly scheduled Operating Committee meetings in the capacity of an observer/advisor. If the Organization's Form 1 petition is withdrawn, returned, or is otherwise not actively pending with the Commission for any reason, then the Organization will no longer be eligible to be represented in the Operating Committee meetings. The Operating Committee shall have the discretion, in limited instances, to deviate from this policy if, as indicated by majority vote, the Operating Committee agrees that circumstances so warrant.

Nothing in this section or elsewhere within the Plan shall authorize any person or organization other than Participants and their representatives to participate on the Operating Committee in any manner other than as an advisor or observer, or in any Executive Session of the Operating Committee.

### *B. Operating Committee: Authority*

The Operating Committee shall be responsible for:

1. Overseeing the consolidation of Quotation Information and Transaction Reports in Eligible Securities from the Participants for dissemination to Vendors, Subscribers, News Services and others in accordance with the provisions of the Plan;

2. Periodically evaluating the Processor;

3. Setting the level of fees to be paid by Vendors, Subscribers, News Services or others for services relating to Quotation Information or Transaction Reports in Eligible Securities, and taking action in respect thereto in accordance with the provisions of the Plan;

4. Determining matters involving the interpretation of the provisions of the Plan;

5. Determining matters relating to the Plan's provisions for cost allocation and revenue-sharing; and

6. Carrying out such other specific responsibilities as provided under the Plan.

*C. Operating Committee: Voting*

Each Participant shall have one vote on all matters considered by the Operating Committee.

1. The affirmative and unanimous vote of all Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Amendments to the Plan;

b. Amendments to contracts between the Processor and Vendors, Subscribers, News Services and others receiving Quotation Information and Transaction Reports in Eligible Securities;

c. Replacement of the Processor, except for termination for cause, which shall be governed by Section V(B) hereof;

d. Reductions in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities; and

e. Except as provided under Section IV(C)(3) hereof, requests for system changes; and

f. All other matters not specifically addressed by the Plan.

2. With respect to the establishment of new fees or increases in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities, the affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee.

3. The affirmative vote of a majority of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Requests for system changes reasonably related to the function of the Processor as defined under the Plan. All other requests for system changes shall be governed by Section IV(C)(1)(e) hereof.

b. Interpretive matters and decisions of the Operating Committee arising under, or specifically required to be taken by, the provisions of the Plan as written;

c. Interpretive matters arising under Exchange Act Rules 11Aa3–1 and 11Acl–1; and

d. Denials of access (other than for breach of contract, which shall be handled by the Processor),

4. It is expressly agreed and understood that neither this Plan nor the Operating Committee shall have authority in any respect over any Participant's proprietary systems. Nor shall the Plan or the Operating Committee have any authority over the collection and dissemination of quotation or transaction information in Eligible Securities in any Participant's marketplace or, in the case of the NASD, from NASD Participants.

*D. Operating Committee: Meetings*

Regular meetings of the Operating Committee may be attended by each Participant's designated representative and/or its alternate representative(s), and may be attended by one or more other representatives of the parties. Meetings shall be held at such times and locations as shall from time to time be determined by the Operating Committee.

Quorum: Any action requiring a vote only can be taken at a meeting in which a quorum of all Participants is present. For actions requiring a simple majority vote of all Participants, a quorum of greater than 50% of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a 2/3rd majority vote of all Participants, a quorum of at least 2/3rd of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a unanimous vote of all Participants, a quorum of all Participants entitled to vote must be present at the meeting before such a vote may be taken.

A Participant is considered present at a meeting only if a Participant's designated representative or alternate representative(s) is either in physical attendance at the meeting or is participating by conference telephone, or other acceptable electronic means.

Any action sought to be resolved at a meeting must be sent to each Participant entitled to vote on such matter at least one week prior to the meeting via electronic mail, regular U.S. or private mail, or facsimile transmission, provided however that this requirement may be waived by the vote of the percentage of the Committee required to vote on any particular matter, under Section C above.

Any action may be taken without a meeting if consent in writing, setting forth the action so taken, is sent to and signed by all Participant representatives entitled to vote with respect to the subject matter thereof. All the approvals evidencing the consent shall be delivered to the Chairman of the Operating Committee to be filed in the Operating Committee records. The action taken shall be effective when the minimum number of Participants entitled to vote have approved the action, unless the consent specifies a different effective date.

The Chairman of the Operating Committee shall be elected annually by and from among the Participants by a majority vote of all Participants entitled to vote. The Chairman shall designate a person to act as Secretary to record the minutes of each meeting. The location of meetings shall be rotated among the locations of the principal offices of the Participants, or such other locations as may from time to time be determined by the Operating Committee. Meetings may be held by conference telephone and action may be taken without a meeting if the representatives of all Participants entitled to vote consent thereto in writing or other means the Operating Committee deems acceptable.

*A. Advisory Committee*

1. Composition

a. Each Plan Participant may designate three representatives to participate in the Advisory Committee. The representatives shall each be an employee of a member of that Participant, a professor or other academic involved in the scholarly study of the securities industry, or an expert in one or more areas of the securities industry.

b. Each representative shall serve a one-year term on the Advisory Committee.

2. Authority

The Advisory Committee shall have the opportunity to:

a. Meet twice yearly, each meeting to occur one day prior to a meeting of the Operating Committee.

b. Discuss any matter related to the operation of the Plan.

c. Present written comments or inquiries to the Operating Committee regarding matters related to the operation of the Plan.

d. Respond to written inquiries from the Operating Committee seeking comment from the Advisory Committee on matters related to the operation of the Plan.

**V. Selection and Evaluation of the Processor**

*A. Generally*

The Processor's performance of its functions under the Plan shall be subject to review by the Operating Committee at least every two years, or from time to time upon the request of any two Participants but not more frequently than once each year. Based on this review, the Operating Committee may choose to make a recommendation to the Participants with respect to the continuing operation of the Processor. The Operating Committee shall notify the SEC of any recommendations the Operating Committee shall make pursuant to the Operating Committee's review of the Processor and shall supply

the Commission with a copy of any reports that may be prepared in connection therewith.

*B. Termination of the Processor for Cause*

If the Operating Committee determines that the Processor has failed to perform its functions in a reasonably acceptable manner in accordance with the provisions of the Plan or that its reimbursable expenses have become excessive and are not justified on a cost basis, the Processor may be terminated at such time as may be determined by a majority vote of the Operating Committee.

*C. Factors To Be Considered in Termination for Cause*

Among the factors to be considered in evaluating whether the Processor has performed its functions in a reasonably acceptable manner in accordance with the provisions of the Plan shall be the reasonableness of its response to requests from Participants for technological changes or enhancements pursuant to Section IV(C)(3) hereof. The reasonableness of the Processor's response to such requests shall be evaluated by the Operating Committee in terms of the cost to the Processor of purchasing the same service from a third party and integrating such service into the Processor's existing systems and operations as well as the extent to which the requested change would adversely impact the then current technical (as opposed to business or competitive) operations of the Processor.

*D. Processor's Right To Appeal Termination for Cause*

The Processor shall have the right to appeal to the SEC a determination of the Operating Committee terminating the Processor for cause and no action shall become final until the SEC has ruled on the matter and all legal appeals of right therefrom have been exhausted.

*E. Process for Selecting New Processor*

At any time following effectiveness of the Plan, but no later than upon the termination of the Processor, whether for cause pursuant to Section IV(C)(1)(c) or V(B) of the Plan or upon the Processor's resignation, the Operating Committee shall establish procedures for selecting a new Processor (the ''Selection Procedures''). The Operating Committee, as part of the process of establishing Selection Procedures, may solicit and consider the timely comment of any entity affected by the operation of this Plan. The Selection Procedures shall be established by a two-thirds majority vote of the Plan Participants, and shall set forth, at a minimum:

1. The entity that will:

a. Draft the Operating Committee's request for proposal for bids on a new processor;

b. Assist the Operating Committee in evaluating bids for the new processor; and

c. Otherwise provide assistance and guidance to the Operating Committee in the selection process.

2. The minimum technical and operational requirements to be fulfilled by the Processor;

3. The criteria to be considered in selecting the Processor; and

4. The entities (other than Plan Participants) that are eligible to comment on the selection of the Processor.

Nothing in this provision shall be interpreted as limiting Participants' rights under Section IV or Section V of the Plan or other Commission order.

**VI. Functions of the Processor**

*A. Generally*

The Processor shall collect from the Participants, and consolidate and disseminate to Vendors, Subscribers and News Services, Quotation Information and Transaction Reports in Eligible Securities in a manner designed to assure the prompt, accurate and reliable collection, processing and dissemination of information with respect to all Eligible Securities in a fair and non-discriminatory manner. The Processor shall commence operations upon the Processor's notification to the Participants that it is ready and able to commence such operations.

*B. Collection and Consolidation of Information*

For as long as Nasdaq is the Processor, the Processor shall be capable of receiving Quotation Information and Transaction Reports in Eligible Securities from Participants by the Plan-approved, Processor sponsored interface, and shall consolidate and disseminate such information via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to Vendors, Subscribers and News Services.

*C. Dissemination of Information*

The Processor shall disseminate consolidated Quotation Information and Transaction Reports in Eligible Securities via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to authorized Vendors, Subscribers and News Services in a fair and non-discriminatory manner. The Processor shall specifically be permitted to enter into agreements with Vendors, Subscribers and News Services for the dissemination of quotation or transaction information on Eligible Securities to foreign (non-U.S.) marketplaces or in foreign countries.

The Processor shall, in such instance, disseminate consolidated quotation or transaction information on Eligible Securities from all Participants.

Nothing herein shall be construed so as to prohibit or restrict in any way the right of any Participant to distribute quotation, transaction or other information with respect to Eligible Securities quoted on or traded in its marketplace to a marketplace outside the United States solely for the purpose of supporting an intermarket linkage, or to distribute information within its own marketplace concerning Eligible Securities in accordance with its own format. If a Participant requests, the Processor shall make information about Eligible Securities in the Participant's marketplace available to a foreign marketplace on behalf of the requesting Participant, in which event the cost shall be borne by that Participant.

1. Best Bid and Offer

The Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the NASD, and shall also calculate and disseminate on the UTP Quote Data Feed a national best bid and asked quotation with size based upon Quotation Information for Eligible Securities received from Participants. The Processor shall not calculate the best bid and offer for any individual Participant, including the NASD.

The Participant responsible for each side of the best bid and asked quotation making up the national best bid and offer shall be identified by an appropriate symbol. If the quotations of more than one Participant shall be the same best price, the largest displayed size among those shall be deemed to be the best. If the quotations of more than one Participant are the same best price and best displayed size, the earliest among those measured by the time reported shall be deemed to be the best. A reduction of only bid size and/or ask size will not change the time priority of a Participant's quote for the purposes of determining time reported, whereas an increase of the bid size and/or ask size will result in a new time reported. The consolidated size shall be the size of the Participant that is at the best.

If the best bid/best offer results in a locked or crossed quotation, the Processor shall forward that locked or crossed quote on the appropriate output

lines (*i.e.,* a crossed quote of bid 12, ask 11.87 shall be disseminated). The Processor shall normally cease the calculation of the best bid/best offer after 6:30 p.m., Eastern Time.

2. Eligible Securities

a. Number of Eligible Securities—If the Commission by order expands the number of Eligible Securities beyond 1,000, the number of Eligible Securities that Participants may trade shall be phased in (added) according to the schedule set out below:

(i) At the end of the first calendar quarter following the Commission's order expanding the number of Eligible Securities beyond 1,000 but in no case before September 30, 2001, Participants may commence trading 500 additional securities;

(ii) At the end of each of the four calendar quarters following the date established under provision VI.C(2)(a)(i) of the Plan, Participants may commence trading an additional 500 securities, and at the end of the fifth calendar quarter following the date established under provision VI.C(2)(a)(i) of the Plan, Participants shall be permitted to trade all Eligible Securities.

(iii) In no case shall the number of Eligible Securities exceed the number of securities that the Commission deems are eligible for trading pursuant to this Plan.

(iv) After each of the aforementioned phase in periods (*i.e.,* calendar quarters), the Processor shall evaluate its performance to determine whether it is prudent, in light of system capacity and any other operational factors, to continue to add additional securities pursuant to the phase in schedule. If the Processor determines, in light of system capacity and any other operational factors, that it is not prudent to continue to expand the number of Eligible Securities, the Processor upon notice to the Participants immediately may suspend the phase-in schedule and delay the expansion of the number of Eligible Securities that may be traded under the Plan. The Processor shall commence adding securities pursuant to a revised phase-in schedule, when the Processor determines it is prudent to do so, in light of system capacity and any other operational factors.

(v) This provision shall not apply to The Nasdaq Stock Market, Inc., or Nasdaq market participants acting in such capacity, nor shall it apply to any Participant that does not engage in auto-quoting, as described in paragraph VI.C.(2)(b) below.

b. Limitation on Auto-Quoting—Except as provided in sub-paragraph VI.C(2)(c) of this Plan, Participants shall be prohibited from the practice of ''auto-quoting.'' ''Auto-quoting'' means the practice of tracking, by automated means, the changes to the best bid or best ask quotation and responding by generating another quote change to keep that Participant away from the best bid or ask quotation, but for purposes of this Plan, shall not include:

(i) An update that is in response to an execution in the security by that Participant;

(ii) An update that requires a physical entry;

(iii) An update that is to reflect the receipt, execution, or cancellation of a customer limit order; or

(iv) The practice of automatically generating quote changes at a rate of less than 35% of all price changes to the national best bid or ask quotation. The Processor shall calculate this rate using quoting activity during the preceding calendar month.

c. Applicability of Auto-Quoting Limitation—The Limitation on Auto-Quoting contained in subparagraph VI.C(2)(b) of this Plan shall only apply if the Processor deems it necessary to maintain adequate capacity for the normal and efficient operation of the Processor and the Processor provides at least 30 calendar days notice to the Participants and the basis thereof of such determination. The Processor shall lift the limitation on auto-quoting when the Processor determines it is prudent to do so, in light of system capacity and any other operational factors. Additionally, the Limitation on Auto-Quoting set forth in subparagraph VI.C(2)(b) of this Plan will not apply to a Participant whose aggregated quoting activity in eligible Nasdaq securities does not exceed 1% of the total quotation traffic across all Nasdaq securities by all Nasdaq market participants and Exchange Participants. The Processor shall calculate this rate using quoting activity during the preceding calendar month.

d. Obligations of Participants Regarding Capacity—Each Participant shall exercise due diligence to promote quotation generation practices that mitigate quotation traffic so as to ensure prudential excess capacity within the Processor. The Operating Committee shall periodically review the performance of Participants and take such action as necessary to maintain prudential excess capacity.

e. Procedures for Ensuring Acceptable Quote Generation Practices—The following procedures shall apply if, in accordance with Section VI.C.2(c) of the Plan, the Processor determines that a capacity concern exists.

(i) On a monthly basis, each Participant shall provide the Processor with a good faith estimate of the Participant's previous month's daily average number of aggregate quote updates to permit the Processor to determine compliance with the auto-quoting limitation referenced in Section VI.C.2.(b) of the Plan.

(ii) If the Processor determines, from the Participant's data or otherwise, that the Participant has not complied with the limitations of Section VI.C.2.(b), the Processor shall give the Participant written notice of such condition. The Participant shall have 30 calendar days after receipt of the written notice to remedy the condition.

(iii) If, after the aforementioned 30-day period has expired, the condition has not been remedied to the reasonable satisfaction of the Processor, then the Processor shall submit to the Operating Committee a written request for relief together with supporting documentation evidencing the alleged condition (i.e., failure to comply with the limitations of Section VI.C.2.(b)) and quantifying the impact of the violation on overall capacity of the Processor. The Processor's request for relief shall be limited to such remedial action (including but not limited to the termination of service to the subject Participant) as is necessary to modify the subject Participant's quote generation practices on a prospective basis, for such period as is necessary to resolve the condition that gave rise to the Processor's request for relief. The Participant shall have 15 calendar days to respond in writing to the Processor's request for relief.

(iv) The Operating Committee, following written notice to the Participant and the Processor, shall conduct a hearing within five (5) business days after expiration of the 15-day response period to determine whether to grant or deny the Processor's claim for remedial action. At the hearing, the Operating Committee may consider, among other information, the request of the Processor, the response (if any) of the Participant and any other evidence (written or oral) that is presented at the hearing. At the conclusion of the hearing, the Operating Committee shall grant or deny the Processor's request. An affirmative vote of two-thirds of the Operating Committee members entitled to vote (excluding the subject Participant) shall be required for any decision of the Operating Committee. The decision of the Operating Committee shall be final and therefore reviewable by the Commission; *provided, however,* that any decision of the Operating

Committee shall not become effective until five business days after the date of the decision.

f. Limitation on Applicability of Rule—The phase-in schedule contained in VI.C(2)(a) and the Limitation on Auto-Quoting contained in VI.C(2)(c) shall not apply:

(i) To any Participant upon the designation and the operation of a new Processor; and

(ii) To a Participant for the number of securities that the Participant quoted as of May 1, 2001; provided, however the exemption contained herein shall expire a year from the end-date of the phase-in schedule contained in VI.C(2)(a).

3. Quotation Data Streams

The Processor shall disseminate on the UTP Quote Data Feed a data stream of all Quotation Information regarding Eligible Securities received from Participants. Each quotation shall be designated with a symbol identifying the Participant from which the quotation emanates. Quotation Information from individual NASD Participants will not be disseminated on the UTP Quote Data Feed. The Processor shall separately distribute on the OTC Montage Data Feed the Quotation Information regarding Eligible Securities from all NASD Participants from which quotations emanate.

4. Transaction Reports

The Processor shall disseminate on the UTP Trade Data Feed a data stream of all Transaction Reports in Eligible Securities received from Participants. Each transaction report shall be designated with a symbol identifying the Participant in whose Market the transaction took place.

*D. Closing Reports*

At the conclusion of each trading day, the Processor shall disseminate a ''closing price'' for each Eligible Security. Such ''closing price'' shall be the price of the last Transaction Report in such security received prior to dissemination. The Processor shall also tabulate and disseminate at the conclusion of each trading day the aggregate volume reflected by all Transaction Reports in Eligible Securities reported by the Participants.

*E. Statistics*

The Processor shall maintain quarterly, semi-annual and annual transaction and volume statistical counts. The Processor shall, at cost to the user Participant(s), make such statistics available in a form agreed upon by the Operating Committee, such as a secure website.

**VII. Administrative Functions of the Processor**

Subject to the general direction of the Operating Committee, the Processor shall be responsible for carrying out all administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in this Plan, including, but not limited to, record keeping, billing, contract administration, and the preparation of financial reports.

**VIII. Transmission of Information to Processor by Participants**

*A. Quotation Information*

Each Participant shall, during the time it is open for trading be responsible promptly to collect and transmit to the Processor accurate Quotation Information in Eligible Securities through any means prescribed herein.

Quotation Information shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;
2. The priced bid and offer, together with size;
3. The NASD Participant along with that NASD Participant's market participant identification; or Participant from which the quotation emanates;
4. Identification of quotations that are not firm; and
5. Through appropriate codes and messages, withdrawals and similar matters.

*B. Transaction Reports*

Each Participant shall, during the time it is open for trading, be responsible promptly to collect and transmit to the Processor Transaction Reports in Eligible Securities executed in its Market by means prescribed herein. With respect to orders sent by one Participant Market to another Participant Market for execution, each Participant shall adopt procedures governing the reporting of transactions in Eligible Securities specifying that the transaction will be reported by the Participant whose member sold the security. This provision shall apply only to transactions between Plan Participants.

Transaction Reports shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;
2. The number of shares in the transaction;
3. The price at which the shares were purchased or sold;
4. The buy/sell/cross indicator;
5. The Market of execution; and,
6. Through appropriate codes and messages, late or out-of-sequence trades, corrections and similar matters.

All such Transaction Reports shall be transmitted to the Processor within 90 seconds after the time of execution of the transaction. Transaction Reports transmitted beyond the 90-second period shall be designated as ''late'' by the appropriate code or message.

The following types of transactions are not required to be reported to the Processor pursuant to the Plan:

1. Transactions that are part of a primary distribution by an issuer or of a registered secondary distribution or of an unregistered secondary distribution;
2. Transactions made in reliance on Section 4(2) of the Securities Act of 1933;
3. Transactions in which the buyer and the seller have agreed to trade at a price unrelated to the Current Market for the security, e.g., to enable the seller to make a gift;
4. Odd-lot transactions;
5. The acquisition of securities by a broker-dealer as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;
6. Purchases of securities pursuant to a tender offer; and
7. Purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the Current Market.

*C. Symbols for Market Identification for Quotation Information and Transaction Reports*

The following symbols shall be used to denote the Participant marketplaces:

| Code | Participant |
|---|---|
| A | American Stock Exchange |
| B | Boston Stock Exchange |
| C | Cincinnati Stock Exchange |
| M | Chicago Stock Exchange |
| D | NASD |
| Q | Nasdaq |
| P | Pacific Exchange |
| X | Philadelphia Stock Exchange |

D. Whenever a Participant determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information or Transaction Reports to the Processor, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Participant shall promptly notify the Processor of such condition or event and shall resume collecting and transmitting Quotation Information and Transaction Reports to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Participant or its

members to transmit Quotation Information or Transaction Reports to the Processor, the Participant shall promptly notify the Processor of such event or condition. Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.

**IX. Market Access**

A. Each Participant shall permit each NASD market participant, acting in its capacity as such, direct telephone access to the specialist, trading post, market maker and supervisory center in each Eligible Security in which such NASD market participant is registered as a market maker or electronic communications network/alternative trading system with NASD. Such access shall include appropriate procedures or requirements by each Participant or employee to assure the timely response to communications received through telephonic access. No Participant shall permit the imposition of any access or execution fee, or any other fee or charge, with respect to transactions in Eligible Securities effected with NASD market participants which are communicated to the floor by telephone pursuant to the provisions of this Plan. A Participant shall be free to charge for other types of access to its floor or facilities.

B. The NASD shall assure that each Participant, and its members shall have direct telephone access to the trading desk of each NASD market participant in each Eligible Security in which the Participant displays quotations, and to the NASD Supervisory Center. Such access shall include appropriate procedures or requirements to assure the timely response of each NASD market participant to communications received through telephone access. No NASD market participant shall impose any access or execution fee, or any other fee or charge, with respect to transactions in Eligible Securities effected with a member of a Participant which are communicated by telephone pursuant to the provisions of this Plan.

**X. Regulatory Halts**

A. Whenever, in the exercise of its regulatory functions, the Listing Market for an Eligible Security determines that a Regulatory Halt is appropriate, all other Participants shall also halt or suspend trading in that security until notification that the halt or suspension is no longer in effect. The Listing Market shall immediately notify the Processor of such Regulatory Halt as well as notice of the lifting of a Regulatory Halt. The Processor, in turn, shall disseminate to Participants notice of the Regulatory Halt (as well as notice of the lifting of a regulatory halt) through the UTP Quote Data Feed. This notice shall serve as official notice of a regulatory halt for purposes of the Plan only, and shall not substitute or otherwise supplant notice that a Participant may recognize or require under its own rules. Nothing in this provision shall be read so as to supplant or be inconsistent with a Participant's own rules on trade halts, which rules apply to the Participant's own members. The Processor will reject any quotation information and monitor for transaction reports received from any Participant on an Eligible Security that has a Regulatory Halt in effect.

B. Whenever the Listing Market determines that an adequate publication or dissemination of information has occurred or the regulatory problem has been addressed so as to permit the termination of the Regulatory Halt then in effect, the Listing Market shall promptly notify the Processor and each of the other Participants that conducts trading in such security. Except in extraordinary circumstances, adequate publication or dissemination shall be presumed by the Listing Market to have occurred upon the expiration of one hour after initial publication in a national news dissemination service of the information that gave rise to the Regulatory Halt.

C. Except in the case of a Regulatory Halt, the Processor shall not cease the dissemination of quotation or transaction information regarding any Eligible Security. In particular, it shall not cease dissemination of such information because of a delayed opening, imbalance of orders or other market-related problems involving such security. During a regulatory halt, the Processor shall collect and disseminate Transaction Information but shall cease collection and dissemination of all Quotation Information.

D. For purposes of this Section X, ''Listing Market'' for an Eligible Security means the Participant's Market on which the Eligible Security is listed. If an Eligible Security is dually listed, Listing Market shall mean the Participant's Market on which the Eligible Security is listed that also has the highest number of the average of the reported transactions and reported share volume for the preceding 12-month period. The Listing Market for dually-listed Eligible Securities shall be determined at the beginning of each calendar quarter.

**XI. Hours of Operation**

A. Quotation Information may be entered by Participants as to all Eligible Securities in which they make a market between 9:30 a.m. and 4 p.m. Eastern Time (''ET'') on all days the Processor is in operation. Transaction Reports shall be entered between 9:30 a.m. and 4:01:30 p.m. ET by Participants as to all Eligible Securities in which they execute transactions between 9:30 a.m. and 4 p.m. ET on all days the Processor is in operation.

B. Participants that execute transactions in Eligible Securities outside the hours of 9:30 a.m. ET and 4 p.m., ET, shall be reported as follows:

(i) Transactions in Eligible Securities executed between 8 a.m. and 9:29:59 a.m. ET and between 4:00:01 and 6:30 p.m. ET, shall be designated as ''.T'' trades to denote their execution outside normal market hours;

(ii) Transactions in Eligible Securities executed after 6:30 p.m. and before 12 a.m. (midnight) shall be reported to the Processor between the hours of 8 a.m. and 6:30 p.m. ET on the next business day (T+1), and shall be designated ''as/of'' trades to denote their execution on a prior day, and be accompanied by the time of execution;

(iii) Transactions in Eligible Securities executed between 12 a.m. (midnight) and 8 a.m. ET shall be transmitted to the Processor between 8 a.m. and 9:30 a.m. ET, on trade date, shall be designated as ''.T'' trades to denote their execution outside normal market hours, and shall be accompanied by the time of execution;

(iv) Transactions reported pursuant to this provision of the Plan shall be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but shall not be included in the calculation of the daily high, low, or last sale.

C. Late trades shall be reported in accordance with the rules of the Participant in whose Market the transaction occurred and can be reported between the hours of 8 a.m. and 6:30 p.m.

D. The Processor shall collect, process and disseminate Quotation Information in Eligible Securities between 8 a.m. and 9:30 a.m. ET, and after 4 p.m. ET, when any Participant or NASD Participant is open for trading, until 6:30 p.m. ET (the ''Additional Period''); provided, however, that the national best bid and offer quotation will not be disseminated before 9:30 a.m. or after 6:30 p.m. ET. Participants that enter Quotation Information or Transaction Reports to the Processor during the Additional Period shall do so for all Eligible Securities in which they enter quotations.

**XII. Undertaking by All Participants**

The filing with and approval by the Commission of this Plan shall obligate each Participant to enforce compliance by its members with the provisions thereof. In all other respects not inconsistent herewith, the rules of each Participant shall apply to the actions of its members in effecting, reporting, honoring and settling transactions executed through its facilities, and the entry, maintenance and firmness of quotations to ensure that such occurs in a manner consistent with just and equitable principles of trade.

**XIII. Financial Matters**

*A. Development Costs*

Any Participant becoming a signatory to this Plan after June 26, 1990, shall, as a condition to becoming a Participant, pay to the other Plan Participants a proportionate share of the aggregate development costs previously paid by Plan Participants to the Processor, which aggregate development costs totaled $439,530, with the result that each Participant's share of all development costs is the same.

Each Participant shall bear the cost of implementation of any technical enhancements to the Processor system made at its request and solely for its use, subject to reapportionment should any other Participant subsequently make use of the enhancement, or the development thereof.

*B. Cost Allocation and Revenue Sharing*

The provision governing cost allocation and revenue sharing among the Participants are set forth in Exhibit 1 to the Plan.

*C. Maintenance of Financial Records*

The Processor shall maintain records of revenues generated and development and operating expenditures incurred in connection with the Plan. In addition, the Processor shall provide the Participants with: (a) A statement of financial and operational condition on a quarterly basis; and (b) an audited statement of financial and operational condition on an annual basis.

**XIV. Indemnification**

Each Participant agrees, severally and not jointly, to indemnify and hold harmless each other Participant, Nasdaq, and each of its directors, officers, employees and agents (including the Operating Committee and its employees and agents) from and against any and all loss, liability, claim, damage and expense whatsoever incurred or threatened against such persons as a result of any Transaction Reports, Quotation Information or other information reported to the Processor by such Participant and disseminated by the Processor to Vendors. This indemnity agreement shall be in addition to any liability that the indemnifying Participant may otherwise have.

Promptly after receipt by an indemnified Participant of notice of the commencement of any action, such indemnified Participant will, if a claim in respect thereof is to be made against an indemnifying Participant, notify the indemnifying Participant in writing of the commencement thereof; but the omission to so notify the indemnifying Participant will not relieve the indemnifying Participant from any liability which it may have to any indemnified Participant. In case any such action is brought against any indemnified Participant and it promptly notifies an indemnifying Participant of the commencement thereof, the indemnifying Participant will be entitled to participate in, and, to the extent that it may wish, jointly with any other indemnifying Participant similarly notified, to assume and control the defense thereof with counsel chosen by it. After notice from the indemnifying Participant of its election to assume the defense thereof, the indemnifying Participant will not be liable to such indemnified Participant for any legal or other expenses subsequently incurred by such indemnified Participant in connection with the defense thereof but the indemnified Participant may, at its own expense, participate in such defense by counsel chosen by it without, however, impairing the indemnifying Participant's control of the defense. The indemnifying Participant may negotiate a compromise or settlement of any such action, provided that such compromise or settlement does not require a contribution by the indemnified Participant.

**XV. Withdrawal**

Any Participant may withdraw from the Plan at any time on not less than 30 days prior written notice to each of the other Participants. Any Participant withdrawing from the Plan shall remain liable for, and shall pay upon demand, any fees for equipment or services being provided to such Participant pursuant to the contract executed by it or an agreement or schedule of fees covering such then in effect.

A withdrawing Participant shall also remain liable for its proportionate share, without any right of recovery, of administrative and operating expenses, including start-up costs and other sums for which it may be responsible pursuant to Section XIII hereof. Except as aforesaid, a withdrawing Participant shall have no further obligation under the Plan or to any of the other Participants with respect to the period following the effectiveness of its withdrawal.

**XVI. Modifications to Plan**

The Plan may be modified from time to time when authorized by the agreement of all of the Participants, subject to the approval of the SEC.

**XVII. Applicability of Securities Exchange Act of 1934**

The rights and obligations of the Participants and of Vendors, News Services, Subscribers and other persons contracting with Participants in respect of the matters covered by the Plan shall at all times be subject to any applicable provisions of the Act, as amended, and any rules and regulations promulgated thereunder.

**XVIII. Operational Issues**

A. Each Participant shall be responsible for collecting and validating quotes and last sale reports within their own system prior to transmitting this data to the Processor.

B. Each Participant may utilize a dedicated Participant line into the Processor to transmit trade and quote information in Eligible Securities to the Processor. The Processor shall accept from Participants input for only those issues that are deemed Eligible Securities.

C. The Processor shall consolidate trade and quote information from each Participant and disseminate this information on the Processor's existing vendor lines.

D. The Processor shall perform gross validation processing for quotes and last sale messages in addition to the collection and dissemination functions, as follows:

1. Basic Message Validation

(a) The Processor may validate format for each type of message, and reject non-conforming messages.

(b) Input must be for an Eligible Security.

2. Logging Function—The Processor shall return all Participant input messages that do not pass the validation checks (described above) to the inputting Participant, on the entering Participant line, with an appropriate reject notation. For all accepted Participant input messages (*i.e.,* those that pass the validation check), the information shall be retained for

immediate processing in the Processor system.

**XIX. Headings**

The section and other headings contained in this Plan are for reference purposes only and shall not be deemed to be a part of this Plan or to affect the meaning or interpretation of any provisions of this Plan.

**XX. Counterparts**

This Plan may be executed by the Participants in any number of counterparts, no one of which need contain the signature of all Participants. As many such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

**XXI. Depth of Book Display**

The Operating Committee has determined that the entity that succeeds Nasdaq as the Processor should have the ability to collect, consolidate, and disseminate quotations at multiple price levels beyond the best bid and best offer from any Participant that voluntarily chooses to submit such quotations while determining that no Participant shall be required to submit such information. The Operating Committee has further determined that the costs of developing, collecting, processing, and disseminating such depth of book data shall be borne exclusively by those Participants that choose to submit this information to the Processor, by whatever allocation those Participants may choose among themselves. The Operating Committee has determined further that the primary purpose of the Processor is the collection, processing and dissemination of best bid, best offer and last sale information (''core data''), and as such, the Participants will adopt procedures to ensure that such functionality in no way hinders the collecting, processing and dissemination of this core data.

Therefore, implementing the depth of book display functionality will require a plan amendment that addresses all pertinent issues, including:

(1) Procedures for ensuring that the fully-loaded cost of the collection, processing, and dissemination of depth-of-book information will be tracked and invoiced directly to those Plan Participants that voluntarily choose to send that data, voluntarily, to the Processor allocating in whatever manner those Participants might agree; and

(2) Necessary safeguards the Processor will take to ensure that its processing of depth-of-book data will not impede or hamper, in any way, its core Processor functionality of collecting, consolidating, and disseminating National Best Bid and Offer data, exchange best bid and offer data, and consolidated last sale data.

Upon approval of a Plan amendment implementing depth of book display, this article of the Plan shall be automatically deleted.

*In witness whereof,* this Plan has been executed as of the ____ day of , 2002, by each of the Signatories hereto.

American Stock Exchange, Inc.

By: _____

Boston Stock Exchange, Inc.

By: _____

Cincinnati Stock Exchange, Inc.

By: _____

Pacific Exchange, Inc.

By: _____

Nasdaq Stock Market, Inc

By: _____

Chicago Stock Exchange, Inc.

By _____

National Association of Securities Dealers, Inc.

By _____

Philadelphia Stock Exchange

By: _____

**Exhibit 1**

1. Each Participant eligible to receive revenue under the Plan will receive an annual payment for each calendar year to be determined by multiplying (i) that Participant's percentage of total volume in Nasdaq securities reported to the Processor and disseminated to Vendors for that calendar year by (ii) the total distributable net operating income (as defined below) for that calendar year, provided, however, that for the implementation year (as defined in Paragraph 4 below), a Participant's payment shall be multiplied by the number of months during the implementation year the interface was in operation divided by twelve. In the event that total distributable net operating income is negative, each Participant eligible to receive revenue under the Plan will receive an annual bill for each calendar year to be determined according to the same formula (described in this paragraph) for determining annual payments to eligible Participants.

2. A Participant's percentage of total volume in Nasdaq securities will be calculated by taking the average of (i) the Participant's percentage of total trades in Nasdaq securities reported to the Processor and disseminated to Vendors for the year and (ii) the Participant's percentage of total share volume in Nasdaq securities reported to the Processor and disseminated to Vendors for the year (trade/volume average). For any given year, a Participant's percentage of total trades shall be calculated by dividing the total number of trades that that Participant reports to the Processor as the selling party for that year by the total number of trades in Nasdaq securities reported to the Processor and disseminated to Vendors for the year. A Participant's total share volume shall be calculated by multiplying the total number of trades in Nasdaq securities in that year that that Participant reports to the Processor as the selling party multiplied by the number of shares for each such trade. Unless otherwise stated in this agreement, a year shall run from January 1 to December 31.

3. For purposes of this Exhibit 1, net distributable operating income for any particular calendar year shall be calculated by adding all revenues from the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed, including revenues from the dissemination of information of Eligible Securities to foreign marketplaces (collectively, ''the Data Feeds''), and subtracting from such revenues the costs incurred by the Processor, set forth below, in collecting, consolidating, validating, generating, and disseminating the Data Feeds. These costs include, but are not limited to, the following:

a. The Processor costs directly attributable to creating OTC Montage Data Feed, including:

1. Cost of collecting Participant quotes into the Processor's quote engine;

2. Cost of processing quotes and creating OTC Montage Data Feed messages within the Processor's quote engine;

3. Cost of the Processor's communication management subsystem that distributes OTC Montage Data Feed to the market data vendor network for further distribution.

b. The costs directly attributable to creating the UTP Quote Data Feed, including:

1. The costs of collecting each Participant's best bid, best offer, and aggregate volume into the Processor's quote engine;

2. Cost of calculating the national best bid and offer price within the Processor's quote engine;

3. Cost of creating the UTP Quote Data Feed message within the Processor's quote engine;

4. Cost of the Processor's communication management subsystem that distributes the UTP Quote Data Feed to the marker data vendors' networks for further distribution.

c. The costs directly attributable to creating the UTP Trade Data Feed, including:

1. The costs of collecting each Participant's last sale and volume amount into the Processor's quote engine;

2. Cost of determining the appropriate last sale price and volume amount within the Processor's trade engine;

3. Cost of utilizing the Processor's trade engine to distribute the UTP Trade Data Feed for distribution to the market data vendors.

4. Cost of the Processor's communication management subsystem that distributes the UTP Trade Data Feed to the marker data vendors' networks for further distribution.

d. The additional costs that are shared across all Data Feeds, including:

1. Telecommunication Operations costs of supporting the Participant lines into the Processor's facilities;

2. Telecommunications Operations costs of supporting the external market data vendor network;

3. Data Products account management and auditing function with the market data vendors;

4. Market Operations costs to support symbol maintenance, and other data integrity issues;

5. Overhead costs, including management support of the Processor, Human Resources, Finance, Legal, and Administrative Services.

e. Processor costs excluded from the calculation of net distributable operating income include trade execution costs for transactions executed using a Nasdaq service and trade report collection costs reported through a Nasdaq service, as such services are market functions for which Participants electing to use such services pay market rate.

f. For the purposes of this provision, so long as Nasdaq is the Processor, the following definitions shall apply:

1. ''Quote engine'' shall mean the Nasdaq's UNISYS or Tandem system that is operated by Nasdaq to collect quotation information for Eligible Securities;

2. ''Trade engine'' shall mean the Nasdaq Tandem system that is operated by Nasdaq for the purpose of collecting last sale information in Eligible Securities.

4. At the time a Participant implements a Processor-approved electronic interface with the Processor, the Participant will become eligible to receive revenue for the year in which the interface is implemented (implementation year).

5. From the date a Participant is eligible to receive revenue (implementation date) until December 31 of the implementation year, Nasdaq shall pay the Participant a pro rata amount of its payment or bill the Participant for a pro rata amount of its losses for the implementation year (as calculated in Paragraph 1 above). This calculation and resultant payment (or bill) will be made (or due) within ninety (90) days after the twelfth month following the implementation date.

6. For the calendar year subsequent to the implementation year, and continuing thereafter, the calculation of the Participant's annual payment or loss will be performed and the payment made or bill delivered by March 31 of the following year. Estimated quarterly payments or billings shall be made to each eligible Participant within 45 days following the end of each calendar quarter in which the Participant is eligible to receive revenue, provided that the total of such estimated payments or billings shall be reconciled at the end of each calendar year and, if necessary, adjusted by March 31st of the following year. Interest shall be included in quarterly payments and in adjusted payments made on March 31st of the following year. Such interest shall accrue monthly during the period in which revenue was earned and not yet paid and will be based on the 90-day Treasury bill rate in effect at the end of the quarter in which the payment is made. Interest shall not accrue during the period of up to 45 days between the end of each calendar quarter and the date on which an estimated quarterly payment or billing is made.

In conjunction with calculating estimated quarterly and reconciled annual payments under this Exhibit 1, the Processor shall submit to the Participants an itemized statement setting forth the basis upon which net operating income was calculated, including an itemized statement of the Processor costs set forth in Paragraph 3 of this Exhibit. Such Processor costs shall be reconciled annually based solely on the Processor's audited annual financial information. By majority vote of the Operating Committee, the Processor shall engage an independent auditor to audit the Processor's costs or other calculation(s), the cost of which audit shall be shared equally by all Participants. The Processor agrees to cooperate fully in providing the information necessary to complete such audit.

[FR Doc. 02–16769 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46131; File No. SR–Amex–2002–38]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Proposing To Designate the New Trading Floor on the Ground Floor of the Exchange as a ''Separate Trading Area''

June 27, 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 23, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 6, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to designate the new trading floor on the ground floor of the Exchange (''Harry's'') as a ''separate trading area.''

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 5, 2002 (''Amendment No. 1''). In Amendment No. 1, the Amex confirmed that it currently permits the trading of options on both listed and non-Amex-listed stocks on the ''Harry's'' trading floor.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange filed this proposed rule change in connection with its proposal to trade Nasdaq securities on an unlisted basis (''Nasdaq UTP Program'').[4] This proposed rule change would designate Harry's as a ''separate trading area.''

In 1988, the Exchange received Commission approval to trade options on Amex-listed stocks.[5] The approval was based upon, among other things, the Amex's trading floors for equities and options on those equities [6] being sufficiently separated such that there could be no time and place advantage derived from the physical proximity of the two floors which could be exploited. The Amex currently has five designated trading locations: (1) The main trading floor (''Main Trading Floor'' or ''Designated Stock Area''); (2) the mezzanine trading level, which is located above the Main Trading Floor (''Mezzanine'') (options Amex-listed stocks may not trade on that part of the Mezzanine visible from the Main Trading Floor); (3) a separate room connected by a hallway to the Main Trading Floor (the ''Red Room'' or ''Designated Options Area''); [7] (4) the back row of the west side of the Main Trading Floor referred to as the west side of the Exchange Posts 12, 13 and 15 (''Back Row''), and (5) ''Harry's''. In addition, the Main Trading Floor, the Red Room, the Mezzanine and the Back Row are considered physically separate for purposes of stocks and related options.[8]

In 2001, the Exchange opened its new trading facility, Harry's, located in a separate area on the ground floor of the Exchange. Harry's is on a separate level of the Amex and may only be accessed from the Exchange's other trading locations by an escalator. Accordingly, Harry's is physically separate from the other trading areas at the Exchange, and therefore, is not visible from the Exchange's other trading locations. The Exchange submits that Harry's is a ''separate trading area.''[9]

In the 1998 Order, the Commission granted approval to permit options trading on Amex-listed stocks in two locations of the Exchange in addition to the Red Room: (1) The Mezzanine and (2) the Back Row.[10] Since the 1998 approval was granted, the trading of options on Amex-listed securities has continued to occur on the Exchange at locations that are deemed physically separate from locations where the trading of Amex-listed securities occurs. The Exchange maintains that Harry's is a physically separate trading location, and therefore, trading of options on Amex-listed stocks is permissible based on the 1988 and 1998 Orders. In addition, the absence of a ''line of sight'' with respect to options trading on Harry's and any underlying stock of such option reinforces the Exchange's belief that Harry's is a separate trading area and, therefore, no time or place advantage exists.[11] The Exchange believes that it is consistent with both the 1988 and 1998 Orders, as well as the Index Order, to permit the trading of options on both Amex-listed and non-Amex-listed stocks on Harry's.[12] The Exchange believes that the Commission should approve the designation of Harry's as a ''separate trading area.''

2. Statutory Basis

The Exchange believes the basis for the proposed rule change is the requirement under section 6(b)(5) of the Act [13] that an exchange have rules that are 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, to protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities

[4] *See* Securities Exchange Act Release Nos. 45365 (January 30, 2002), 67 FR 5626 (February 6, 2002) (proposing to admit trading on the Amex of Nasdaq National Market Securities pursuant to unlisted trading privileges); 45698 (April 5, 2002), 67 FR 18051 (April 12, 2002) (approving proposal to adopt Amex Rule 28 to establish allocation procedures for securities admitted to dealings on an unlisted trading privilege basis).

[5] Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988) (''1988 Order'').

[6] For purposes of this proposal, the terms stock(s), equity and equities are used interchangeably.

[7] Amex-listed stocks, options on non-Amex-listed stocks and options on indices (excluding options on indices where Amex-listed stocks comprise more than ten percent of the index value by weight) trade on the Main Trading Floor. Options on indices where Amex-listed stocks comprise more than ten percent of the index value by weight and options on non-Amex-listed stocks trade on the Mezzanine. Options on Amex-listed stocks, non-Amex-listed stocks and indices where Amex-listed stocks comprise more than ten percent of the index value by weight trade in the Red Room. *See* Securities Exchange Act Release No. 34359 (July 12, 1994), 59 FR 36799 (July 19, 1994) (''Index Order'').

[8] *See* 1988 Order, *supra* note 4; Securities Exchange Act Release No. 39631 (February 9, 1998), 63 FR 8229 (February 18, 1998) (''1998 Order'').

[9] The Exchange currently permits the trading of options on both listed and non-Amex-listed stocks on Harry's.

[10] *See* 1998 Order, *supra* note 7.

[11] The Exchange represents that it maintains adequate surveillance systems designed to prevent trading abuses and manipulation as well as to ensure compliance with the relevant Exchange rules consistent with the 1988, 1998 and Index Orders. Telephone Conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Christopher Solgan, Law Clerk, Division, Commission, on May 17, 2002.

[12] The Exchange notes that it has filed a companion proposal to expand designated trading locations to permit the ability to trade an Amex-listed stock and its underlying options on Harry's provided that an intervening post or physical structure sufficient to block a ''line of sight'' between the appropriate trading crowds existed. *See* File No. SR–Amex–2002–37. Accordingly, if approved, the Exchange may determine to trade Amex-listed stocks on Harry's provided a ''line of sight'' does not exist between the trading crowds of the underlying stock and its related option. Telephone Conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and, Kelly Riley, Senior Special Counsel, Division, Commission, on June 6, 2002. *See also* Amendment No. 1, *supra* note 3.

[13] 15 U.S.C. 78f(b)(5).

and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–38 and should be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16771 Filed 7–3–02; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46146; File No. SR–Amex–2002–51]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Amending Exchange Rules 576 and 585, and Sections 722 and 725 of the Amex Company Guide

June 28, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on June 3, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rules 576 and 585, and Sections 722 and 725 of the *Amex Company Guide*. The proposed changes would implement the same fee structure governing the reimbursement of member organizations for costs incurred in the transmission of proxy and other shareholder communications that was recently adopted by the New York Stock Exchange, Inc. (''NYSE'').

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deleted language is [bracketed].

* * * * *

**Transmission of Proxy Material to Customers**

Rule 576. (a). No change.

(b) Such member organization shall transmit with such material either:

(1) A request for voting instructions and, as to matters which may be voted without instructions under Rule 577, a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of record of the stock; provided, however, that such statement may be made only when the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser, at least fifteen days before the meeting. When the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock; or

(2) A signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records of such member organization, and also a letter informing the beneficial owner or the beneficial owner's designated investment adviser, of the necessity for completing the proxy form and forwarding it to the person soliciting proxies in order that the shares may be represented at the meeting.

*This rule shall not apply to beneficial owners outside the United States.*

*** * * Commentary**

.10 through .70 No change.

.80 Schedule of approved charges by member organization in connection with proxy solicitations.—The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to Rule 576 and in mailing interim reports or other material pursuant to Rule 585. *In addition to the charges specified in this schedule, member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.*[:]

**Charges for Initial Proxy and/or Annual Report Mailings**

[60¢] *40¢* for each set of proxy material, i.e. proxy statement, form of proxy and annual report when mailed as a unit, *unless an opposition proxy statement has been furnished to security holders* [for those meetings that do not include a proposal which requires beneficial owner instructions, plus postage], with a minimum of $5.00 for all sets mailed;

[70¢] *$1.00* for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, *for a meeting for which an opposition proxy statement has been furnished to security holders* [for those meetings which include a proposal requiring beneficial owner instructions, plus postage], with a minimum of $5.00 for all sets mailed;

[20¢] *15¢* for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies, with a minimum charge of $3.00 for all sets mailed.

*The Exchange has approved, as fair and reasonable, the following supplemental proxy fees for intermediaries that coordinate multiple nominees:* $20.00 per nominee plus (i) 10¢ for each set of proxy material, with respect to issuers whose shares are held in fewer than 200,000 nominee accounts, or (ii) 5¢ for each set of proxy material, with respect to issuers whose shares are held in at least 200,000 nominee accounts.

**Charges for Proxy Follow-up Mailings**

40¢ for each set of follow-up materials, plus postage. [, when the follow-up material is mailed to all beneficial owners;]

[60¢ for each set of follow-up materials, plus postage, when the follow-up material is mailed only to beneficial owners who have not responded to the initial mailing;]

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**Charges for Interim Report Mailings**

[20¢] *15¢* for each copy, plus postage, for interim reports, *annual reports if mailed separately*, post meeting reports or other material, with a minimum of $2.00 for all sets mailed[;]. Member organizations may charge for envelopes, provided they are not furnished by the person soliciting proxies.

**Incentive Fees**

*An ''Incentive Fee'' (as defined below) for proxy material mailings, including the annual report, and 10¢ for interim report mailings, with respect to each account where the member organization has eliminated the need to send materials in paper format through the mails (such as by including multiple proxy ballots or forms in one envelope with one set of material mailed to the same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically.)*

*With respect to issuers whose shares are held in at least 200,000 nominee accounts, the Incentive Fee shall be 25¢.*

*With respect to issuers whose shares are held in fewer than 200,000 nominee accounts, the Incentive Fee shall be 50¢.*

[Member organizations are required to mail out such material as provided by Rules 576 and 585 when satisfactory assurance is received of reimbursement of expenses at such rates; provided that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.]

.90 No change

.91 No change

.92 No change

*.93 Member organizations are required to mail out such material as provided by Rules 576 and 585 when satisfactory assurance is received of reimbursement of expenses at such rates: provided that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.*

*.94 ''Householding'' of Reports. Rules 576 and 585 require member organizations to transmit issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Member organizations are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC Rule 14b-1 under the Securities Exchange Act of 1934).*

* * * * *

**Transmission of Interim Reports and Other Material**

Rule 585. No change.

*** * * Commentary**

.10 No change.

.20 Mailing charges by member organizations.—These charges are set forth at [Commentary] *Commentaries .80, .90, .91, .93 and .94* to Rule 576.

* * * * *

**Amex Company Guide**

*Sec. 722. Transmission of Proxy Material to Customers (See Exchange Rule 576)*

(a) and (b) No change.

*** * * Commentary**

.10 through .70 No change.

.80 Schedule of approved charges by member organization in connection with proxy solicitations.—The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to Rule 576 and in mailing interim reports or other material pursuant to Rule 585. *In addition to the charges specified in this schedule, member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.*[:]

**Charges for Initial Proxy and/or Annual Report Mailings**

[60¢] *40¢* for each set of proxy material, i.e. proxy statement, form of proxy and annual report when mailed as a unit, *unless an opposition proxy statement has been furnished to security holders* [for those meetings that do not include a proposal which requires beneficial owner instructions, plus postage], with a minimum of $5.00 for all sets mailed;

[70¢] *$1.00* for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, *for a meeting for which an opposition proxy statement has been furnished to security holders* [for those meetings which include a proposal requiring beneficial owner instructions, plus postage], with a minimum of $5.00 for all sets mailed;

[20¢] *15¢* for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies, with a minimum charge of $3.00 for all sets mailed.

*The Exchange has approved, as fair and reasonable, the following supplemental proxy fees for intermediaries that coordinate multiple nominees:*

*$20.00 per nominee plus (i) 10¢ for each set of proxy material, with respect to issuers whose shares are held in fewer than 200,000 nominee accounts, or (ii) 5¢ for each set of proxy material, with respect to issuers whose shares are held in at least 200,000 nominee accounts.*

**Charges for Proxy Follow-up Mailings**

40¢ for each set of follow-up materials, plus postage. [, when the follow-up material is mailed to all beneficial owners;]

[60¢ for each set of follow-up materials, plus postage, when the follow-up material is mailed only to beneficial owners who have not responded to the initial mailing;]

**Charges for Interim Report Mailings**

[20¢] *15¢* for each copy, plus postage, for interim reports, *annual reports if mailed separately*, post meeting reports or other material, with a minimum of $2.00 for all sets mailed[;]. Member organizations may charge for envelopes, provided they are not furnished by the person soliciting proxies.

**Incentive Fees**

*An ''Incentive Fee'' (as defined below) for proxy material mailings, including the annual report, and 10¢ for interim report mailings, with respect to each account where the member organization has eliminated the need to send materials in paper format through the mails (such as by including multiple proxy ballots or forms in one envelope with one set of material mailed to the*

*same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically.)*

*With respect to issuers whose shares are held in at least 200,000 nominee accounts, the Incentive Fee shall be 25¢.*

*With respect to issuers whose shares are held in fewer than 200,000 nominee accounts, the Incentive Fee shall be 50¢.*

[Member organizations are required to mail out such material as provided by Rules 576 and 585 when satisfactory assurance is received of reimbursement of expenses at such rates; provided that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.]

*.90* No change

*.91* No change

*.92 Rescinded* [Form of bill to be used by member organizations-The form of bill to be used by member organizations is set forth at Commentary .30 to Rule 585.]

*.93* Member organizations are required to mail out such material as provided by Rules 576 and 585 when satisfactory assurance is received of reimbursement of expenses at such rates: provided that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.

*.94* ''Householding'' of Reports. Rules 576 and 585 require member organizations to transmit issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Member organizations are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC Rule 14b–1 under the Securities Exchange Act of 1934).

* * * * *

**Transmission of Interim Reports and Other Material**

**(See Exchange Rule 585)**

*Section 725.* No change.

**Commentary**

* * *

.10 No change.

.20 Mailing charges by member organizations. '' These charges are set forth at [Commentary] *Commentaries .80,* .90, *.91, .93 and .94* to Rule 576.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Commission recently approved changes to the NYSE's rules regarding the reimbursement of member organizations for costs incurred in the transmission of proxy and other shareholder communications.[3] In light of these changes, the Amex is proposing to amend its rules regarding the reimbursement of these costs to conform them to those of the NYSE. The Amex also is amending its rules to permit the ''householding'' of reports and annual mailings if done in compliance with Rule 14b–1 under the Act.[4] The Amex believes that these changes will facilitate compliance by members with applicable self-regulatory organization rules by establishing consistent fees and rules for shareholder communications between the Amex and NYSE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(5) of the Act[6] in particular in that 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 a national market system, and, in general, to protect investor and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The proposed rule change also furthers the objectives of section 6(b)(4) of the Act[7] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its member, issuers and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) Does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior

[3] *See* Securities Exchange Act Release No. 45644 (March 25, 2002), 67 FR 15440 (April 1, 2002) (order approving File No. SR–NYSE–2001–53).

[4] *See* Securities Exchange Act Release No. 7912 (October 27, 2000), 65 FR 65736 (November 2, 2000) (amending proxy rules under Act relating to householding of materials); and 43993 (February 22, 2001), 66 FR 13364 (March 5, 2001) (File No. SR–NYSE–01–03) (amending NYSE rules to conform to the Commission's rules on householding of materials).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

to the filing date of the proposed rule change.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Amex has requested that the Commission waive the 30-day pre-operative waiting period. The Amex believes that acceleration of the operative date will permit the immediate harmonization of exchange fee schedules for the transmission of shareholder communications and, thus, will ease member firm compliance burdens. In addition, the Amex believes that the Commission has recently considered all issues raised by the Amex's filing in connection with its approval of the NYSE's proposal.

The Commission, consistent with the protection of investors and the public interest, has waived the thirty-day operative date requirement for this proposed rule change, and has determined to designate the proposed rule change as operative as of the date of filing to allow the Amex to implement its revised proxy fee schedule immediately.[12] The Commission notes that it has already considered and addressed issues that may be raised by this proposal when it approved similar proposals by the NYSE.[13] The Commission further notes that this proposal will allow for consistency in proxy fees between the Amex and the NYSE. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–51 and should be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02–16848 Filed 7–3–02; 8:45 am]

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[10] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

[13] *See* Securities Exchange Act Release Nos. 45644 (March 25, 2002), 67 FR 15440 (April 1, 2002) (order approving File No. SR–NYSE–2001–53); and 43993 (February 22, 2001), 66 FR 13364 (March 5, 2001) (order approving File No. SR–NYSE–01–03).

[14] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46129; File No. SR–ISE–2002–17]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. To Extend Its Enhanced Size Pilot

June 26, 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 June 19, 2002, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its ''Enhanced Size Pilot'' (the ''Pilot'') until October 31, 2002. The Exchange also proposes to add 17 new options to the Pilot and to amend the definition of ''deep-in-the-money'' options that are excluded from the Pilot. The text of the rule change is available at the Office of the Secretary of the Exchange and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE 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 ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to extend and expand the Exchange's Enhanced Size Pilot. On April 25, 2002, the Commission approved the Pilot, requiring market makers to quote in larger size for 19 of the 25 most-actively-traded options.[3] This is currently a three-month Pilot scheduled to expire on July 25, 2002. The initial analysis of trading pursuant to the Pilot indicates: the average size of the ISE's quotations in these options has increased; there has been no adverse effect on quotation spreads; and ISE market share has increased in these options.

Based on these initial, though limited results, the Exchange proposes to extend the Pilot for an additional three months, through October 31, 2002. ISE also proposes to increase the Pilot to include 17 additional options out of the 50 most-active options: Banc of America; Ciena; Dell; Fannie Mae; Motorola; Merrill Lynch; Nvidia; Xilinx; Amazon.com; Halliburton; Nextel Communications; J.P. Morgan Chase; ADC Telecommunication; Best Buy; Calpine; General Motors; and Hewlett

[3] Securities Exchange Act Release No. 34–45823 (April 25, 2002); 67 FR 22143 (May 2, 2002) (File No. SR–ISE–20010–23).

Packard. We have determined to include these particular options in the Pilot based on recommendations by our market makers.

In all other respects, except one, the Pilot will remain unchanged. For Primary Market Makers (''PMMs''), the minimum size for quotes will continue to be 100 contracts for customers and 50 contracts for broker-dealers, although this enhanced quotation size requirement will not affect the PMM's obligation under ISE Rule 803(c)(1) to disseminate a quotation of at least 10 contracts when the quotation consists, in part, of a customer order for less than 10 contracts. For Competitive Market Makers, the size requirements will continue to be half of the PMM requirement: 50 contracts for customers, 25 contracts for broker-dealers. The enhanced broker-dealer size will not apply to executions against other market makers, where the minimum size would continue to be one contract.

These enhanced size requirements will apply only to the options series in the three months closest to expiration. Moreover, the pilot will not apply to ''deep-in-the-money'' options, or an option in the last three days of that option's trading (that is, the pilot will not apply for the last three days of trading during an option series' expiry week). In the one change to the Pilot, ISE proposes to amend the definition of ''deep-in-the-money.'' Currently, the rule excludes options that are deep-in-the-money, with the definition based on the number of pricing intervals a strike is from the at-the-money strike. ISE proposes to change this by defining ''deep-in-the-money'' to mean options with strike prices that are in the money by 12 percent or more in relation to the price of the underlying stock. This change to the definition is based on market makers' experience trading under the Pilot today, and ISE believes that this amended definition will reduce market makers' exposure to risk, while continuing to apply the Pilot to options representing over two-thirds of all trading volume.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [4] that an exchange have rules that are designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

[4] 15 U.S.C. 78f(b)(5).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) does not become operative for 30 days from the date of filing; and (iv) the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [5] and Rule 19b–4(f)(6) [6] thereunder.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2002–17 and should be submitted by July 26, 2002.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16772 Filed 7–3–02; 8:45 am]

**BILLING CODE 8010–01–P**

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46141; File No. SR–NASD–2002–01]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Automatic Refreshing of Quotations in Nasdaq's SuperMontage System and the Withdrawal of Market Makers That Fail to Maintain a Clearing Relationship

June 28, 2002.

On January 3, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rules 4710(b)(5) and 4619(c) to modify the procedures for refreshing exhausted market maker quotes in, and withdrawing market makers that fail to maintain proper clearing arrangements from, Nasdaq's future Order Display and Collector Facility (''NNMS'' or ''SuperMontage'').

Specifically, Nasdaq proposes to reduce from 3 minutes to 30 seconds the amount of time that a market maker can leave its bid or offer quotation at zero before SuperMontage begins its automatic quote refresh process. The process would only operate against the single bid or offer side of a quotation that has been reduced to zero through executions. If there are no available quotes from which to determine a refresh price, SuperMontage would refresh the exhausted side of a quote to a normal unit of trading at a price level that is one penny inferior to the lesser of either: (a) The last valid displayed inside bid/offer in the security before all

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

such bids/offers were exhausted, or (b) the market maker's last displayed bid/offer. If the resulting bid/offer quote would create a locked or crossed market, NNMS would instead re-open the market maker's bid/offer quote at a price that is one penny inferior to the unexchanged contra side of the market. Finally, Nasdaq proposes to suspend from trading on SuperMontage market makers that fail to maintain a clearing relationship. Once the market maker regains a clearing relationship, the suspend status would be lifted, and the market maker would be free to participate again.

Nasdaq submitted Amendment No. 1 on March 5, 2002.[3] The proposed rule change and Amendment No. 1 thereto were published for comment in the **Federal Register** on April 8, 2002.[4] The Commission received no comments on the proposal. Nasdaq submitted Amendment No. 2 on June 13, 2002.[5]

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[6] and, in particular, the requirements of section 15A of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with section 15A(b)(6) of the Act,[8] which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, as amended, should assist market makers in maintaining two-sided quotes and facilitate their continued participation in Nasdaq. By reducing the amount of time, from 3 minutes to 30 seconds, that a quote is in a closed state and by only closing out the side of the quote that has been zeroed out, the revised procedures should help ensure the presence of liquidity providers, while preserving priority for orders that may be represented by the unexhausted side of the quote. Further, Nasdaq, by establishing procedures for refreshing an exhausted quote where there are no available quotes, has addressed any potential instance in which trading interest is not being displayed. This should ensure that quotes may be refreshed in all instances. Finally, Nasdaq's proposal to suspend market makers who fail to maintain clearing relationships from participating in the SuperMontage should encourage market makers to maintain appropriate clearing relationships at all times.

The Commission finds good cause for accelerating approval of Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**, pursuant to section 19(b)(2) of the Act.[9] The Commission finds that Amendment No. 2 merely clarifies the proposed rule change by explaining that references to automatic adjustment of quotes at ''inferior'' prices refer to both bid and offer prices, with an inferior price adjustment on the bid side of the quote resulting in a higher offer price, and that references to a ''clearing relationship'' refer to a clearing relationship between a firm and a registered clearing agency or, alternatively, with a member of such an agency. Accordingly, the Commission believes that granting accelerated approval of Amendment No. 2 is appropriate and consistent with section 15A(b)(6)[10] and 19(b)(2) of the Act[11] in that it should prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest.

As stated previously in the order approving SuperMontage, the Commission wishes to again emphasize that it fully expects that the NASD will monitor the use of the system defaults by market makers to ensure that they do not become a surrogate for meaningful market making, and that the NASD will reevaluate the penalties against market makers for failure to properly maintain two-sided quotes if there is a decline in the overall quality of market making, particularly during market volatility.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change, as amended (File No. SR–NASD–2002–01) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02–16847 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 4, 2002 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 45671 (March 28, 2002), 67 FR 16784.

[5] *See* Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Marc F. McKayle, Special Counsel, Division, Commission, dated June 13, 2002 (''Amendment No. 2''). In Amendment No. 2, Nasdaq made two points of clarification: (1) References to automatic adjustment of quotes at ''inferior'' prices refer to both bid and offer prices, with an inferior price adjustment on the bid side of the quote resulting in a lower bid price, and an inferior price adjustment on the offer price resulting in a higher offer price, (2) references to a ''clearing relationship'' refer to a clearing relationship between a firm and a registered clearing agency or, alternatively, with a member of such an agency.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3 (b)(6).

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46144; File No. SR–NASD–2002–46]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Rule 6200 Series or the TRACE Rules

June 28, 2002

### I. Introduction

On April 3, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to amend the Rule 6200 Series of the Rules of the NASD, which provides for the reporting and dissemination of transaction information in eligible corporate debt securities (''TRACE Rules''). The NASD submitted Amendment No. 1 to the proposed rule change on May 13, 2002.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the NASD revised the language of the proposed rule change regarding the time frame in which the managing underwriter must deliver CUSIP information to the TRACE Operations Center, and a member's obligations in instances in which the member is not required to report yield data to the NASD. *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 13, 2002 (''Amendment No. 1'').

Notice of the proposed rule change and Amendment No. 1 thereto was published for comment in the **Federal Register** on May 22, 2002.[4] The Commission received one comment letter, from The Bond Market Association (''TBMA''), regarding the proposal.[5]

On June 25, 2002, the NASD filed Amendment No. 2 to the proposed rule change and a response to TBMA's Letter.[6] On June 26, 2002, the NASD filed Amendment No. 3 to the proposed rule change. This order approves the proposed rule change, as amended by Amendment No. 1, accelerates approval of Amendment Nos. 2 and 3, and solicits comments from interested persons on Amendment Nos. 2 and 3.

## II. Background

On January 23, 2001, the Commission approved the TRACE Rules to establish a corporate bond trade reporting and transaction dissemination facility and to eliminate Nasdaq's Fixed Income Pricing System (''FIPS'').[7] Subsequently, on March 5, 2001, the Commission approved amendments to the TRACE Rules requiring trade reports in transactions between two NASD members to be filed by each member.[8] In addition, on January 3, 2002, the Commission issued a notice stating that certain other amendments to the TRACE Rules had become effective on filing.[9] Finally, on May 6, 2002, the NASD filed a proposed rule change to establish fees for the use of TRACE.[10] On June 26, 2002, the NASD amended that filing to implement the TRACE fee structure on a pilot basis. The Commission is approving the TRACE fee filing, and granting accelerated approval of the amendment regarding pilot status, concurrently with approval of this proposal.[11]

The TRACE Rules will become effective on July 1, 2002. On that day, members must begin to report transactions in TRACE-eligible securities, and the TRACE system will begin the dissemination of certain reported information.

## III. Description of the Proposal

The proposed amendments to the TRACE Rules are intended to make technical changes to the TRACE Rules and clarify certain provisions of those Rules prior to implementation of TRACE. Specifically, the proposed amendments: extend the reporting period from one hour to one hour and 15 minutes; incorporate certain FIPS standards in Rule 6250; require members to provide new CUSIP numbers to TRACE at an earlier time under Rule 6260; clarify existing provisions in the Rule 6200 Series, especially Rule 6210(a) regarding ''TRACE-eligible securities'' and certain reporting provisions in Rule 6230(c) and (d); and make other minor modifications to the existing requirements. These amendments are discussed in greater detail in the Commission's notice soliciting public comment on this proposal.[12]

In Amendment No. 1, the NASD proposed to amend Rule 6260 to require that the managing underwriter of any newly issued TRACE-eligible security provide CUSIP data to the TRACE Operations Center by 5:00 p.m. on the business day preceding the day the registration statement will become effective or, if registration is not required, the day the securities will be priced initially (''prior day CUSIP notification'').

In Amendment No. 2, the NASD proposed an exception to prior day CUSIP notification for underwriters that offer securities on an intra-day basis under Rule 415 under the Securities Act of 1933 (''Securities Act'') or Rule 144A under the Securities Act. In such offerings, the managing underwriter must obtain the CUSIP number and provide it to the TRACE Operations Center by 5:00 p.m. on the day the securities are priced and offered. The NASD also proposes to require the underwriter to provide the following descriptive information relating to the security to the TRACE Operations Center in addition to the CUSIP number: (1) Issuer name; (2) coupon rate; (3) maturity; (4) whether Rule 144A applies; and (5) a brief description of the issue. The NASD represents that the additional information will enable it to verify the accuracy of the CUSIP numbers provided by the underwriters.

In Amendment No. 3, the NASD proposed to amend the text of Rule 6260(b) as submitted in Amendment No. 2. When an intra-day offering occurs at or after 5:00 p.m., the underwriter will be required to provide the CUSIP number and additional information to the TRACE Operations Center not later than 5:00 p.m. on the next business day. In addition, the NASD proposed to allow the underwriter to provide NASD with information other than the six listed items in Rule 6260(b) to comply with the notification requirement, because industry participants have stated that some of the required information, such as coupon rate and maturity, may not have been fixed at the time the underwriter obtains the CUSIP number for the security and would provide it to the NASD. In light of this, the NASD proposed to allow underwriters to submit alternative types of information, as specified by the NASD, if necessary.

## IV. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended by Amendments Nos. 1, 2, and 3, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a registered securities association and, in particular, with the requirements of section 15A(b)(6).[13] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(6) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest.[14] The TRACE Rules, as originally approved by the Commission on January 23, 2001 and as further amended, dramatically improve the transparency of the corporate bond market. The Commission believes that the NASD's clarification of the TRACE Rules in this proposed rule change will enable it to implement TRACE more effectively, thus enhancing investor

[4] *See* Securities Exchange Act Release No. 45943 (May 16, 2002), 67 FR 36049.

[5] *See* letter from Michel de Konkoly Thege, Vice President and Associate General Counsel, TBMA, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated June 12, 2002 (''TBMA's Letter''). TBMA's Letter is described in Section IV, *infra.*

[6] Amendment No. 2 is described in Section III, *infra.*

[7] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (File No. SR–NASD–1999–65). FIPS, which was operated by Nasdaq, collected transaction and quotation information on domestic, registered, non-convertible high-yield corporate bonds.

[8] *See* Securities Exchange Act Release No. 44039 (March 5, 2001), 66 FR 14234 (March 9, 2001) (File No. SR–NASD–2001–04).

[9] *See* Securities Exchange Act Release No. 45229 (January 3, 2002), 67 FR 1255 (January 9, 2002) (File No. SR–NASD–2001–91).

[10] *See* Securities Exchange Act Release No. 45960 (May 17, 2002), 67 FR 36654 (May 24, 2002) (Commission notice seeking public comment on NASD proposal).

[11] *See* Securities Exchange Act Release No. [ ], (June 28, 2002).

[12] *See supra,* note 4.

[13] 15 U.S.C. 78o–3(b)(6).

[14] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

protection by facilitating the availability of TRACE.

As previously noted, the Commission received one comment letter, from TBMA, on the proposed rule change.[15] Although TBMA's Letter generally supported the latest amendments, it raised a number of specific concerns. As a result, the NASD entered into discussions with TBMA aimed at responding to its comments. On June 25, 2002, the NASD filed Amendment No. 2 to the proposal to address the concerns articulated in TBMA's Letter.

TBMA's Letter noted that the proposed rule change contained a number of useful clarifications concerning the workings of the TRACE Rules and reflected certain suggestions that TBMA had made in previous comment letters on the TRACE Rules and in discussions with the staff of the NASD. Nonetheless, TBMA urged further changes to the requirement applicable to managing underwriters to provide CUSIPs for new issues, requested further clarification and guidance on definitional matters, and requested the NASD to resolve pending legal, operational and technology matters relating to implementation.

Rule 6260 as originally adopted stated that the lead underwriter of any newly issued TRACE-eligible security was required to provide a CUSIP number to the TRACE Operations Center ''no later than on the effective date of the offering.'' As initially filed, this proposed rule change revised that requirement to require the managing underwriter to provide the CUSIP ''not later than 5:00 p.m. on the first business day following the day that the registration statement becomes effective, or, if registration is not required, the day that the securities are first priced.'' Amendment No. 1 required the CUSIP to be provided to the TRACE Operations Center not later than 5:00 p.m. on the business day preceding such day.

TBMA stated that frequently an issuer's decision to take advantage of a market window and the pricing of an offering occur within the same day. TBMA stated that Rule 6260 as amended by Amendment No. 1 would prevent the issuer from pricing such a transaction until the next business day. TBMA suggested that Rule 6260 should be further revised to deal with the case of same-day takedowns under shelf registration statements and Rule 144A documentation. In such cases, TBMA suggested that Rule 6260 should require a managing underwriter to make reasonable efforts to provide the CUSIP by the end of the same business day on which the takedown occurs.

The NASD noted in its response that the deadline for providing CUSIPs was moved back to immediately precede the actual offering day to address regulatory concerns that the audit trail, especially for those bonds that trade infrequently after the initial offering, would contain substantial gaps if the underwriter was not required to provide the CUSIP until the end of the first day of trading, with the result that all first day trading would not be reported. In addition, price transparency would be reduced because the first day of trading in a debt security is often its most active day.

In response to TBMA's comments, the NASD proposed Amendment No. 2 providing for an exception to the prior day CUSIP notification in Rule 6260 for intra-day offerings. (These offerings are generally referred to as ''off-the-shelf'' or ''shelf'' offerings.) The NASD stated that when securities are previously registered under Rule 415 of the Securities Act or are unregistered securities that may be resold pursuant to Rule 144A of the Securities Act,[16] an issuer and an underwriter may decide to take advantage of favorable market conditions and offer the issuer's debt securities on that day. The NASD stated that when such intra-day offerings occur, it would be impossible for an underwriter to price, offer and sell such securities and comply with the prior day CUSIP notification. The NASD noted that it was not its intent to inhibit same-day access to the capital markets. Therefore, the NASD proposed to except from the prior day CUSIP notification intra-day unregistered offerings for Rule 144A resales and shelf offerings. In such offerings, the underwriter must obtain the CUSIP number and provide it to the TRACE Operations Center not later than 5:00 p.m. on the business day that the securities are priced and offered.

In Amendment No. 2, the NASD also proposed to amend Rule 6260 to require the underwriter to provide information in addition to the CUSIP number to the TRACE Operations Center. The additional information is the issuer's name, the coupon rate of the security, the maturity, Rule 144A applicability, and a brief description of the issue (*e.g.,* senior subordinated note, senior note). The NASD represented that this information will allow the TRACE Operations Center to compare the CUSIP and related information about the security with information available from vendors, and verify that the CUSIP numbers are accurate before the NASD disseminates the CUSIP numbers to the industry that night. The NASD stated that it will make the final determination whether a debt security is TRACE-eligible.

In Amendment No. 3, the NASD proposed to amend the text of Rule 6260(b) as submitted in Amendment No. 2. When an intra-day offering occurs on or after 5:00 p.m., the underwriter will be required to provide the CUSIP number and additional information to the TRACE Operations Center not later than 5:00 p.m. on the next business day. In addition, the NASD proposed to allow the underwriter to provide the NASD with information other than the six listed items in Rule 6260(b) to comply with the notification requirement, because industry participants have stated that some of the required information, such as coupon rate and maturity, may not have been fixed at the time the underwriter obtains the CUSIP number for the security and would provide it to the NASD. In light of this, the NASD proposed to allow underwriters to submit alternative types of information, as specified by the NASD, if necessary.

The Commission believes that Amendment Nos. 2 and 3 address the primary concerns of TBMA with respect to certain intra-day offerings. The proposed changes will allow the NASD to balance the interests of issuers in obtaining expedited, well-timed access to the capital markets and those of investors in enabling the NASD to collect a more complete audit trail (and, when dissemination occurs, obtaining more complete price information).

TBMA's Letter also requested further clarification and guidance on various definitional matters under the TRACE Rules and items to be submitted in trade reports. TBMA noted that the term ''money market instrument'' is important because it defines one category of instruments that are excluded from the definition of TRACE-eligible security. For the purpose of the proposed exclusion, Rule 6210(a) of the TRACE Rules defines a money market instrument as a debt instrument that ''at issuance has a maturity of one year or less.'' TBMA recommended that the definition of money market instrument in Rule 6210(a) track the definition of Eligible Security contained in Rule 2a–7(a)(10) under the Investment Company Act of 1940.

In its response, the NASD stated that it did not believe that it is appropriate to revise the definition of money market instrument in the TRACE Rules to track the definition of ''Eligible Security'' under Rule 2a–7(a)(10). First, the NASD noted that the definition of ''Eligible Security'' is quite complex, and that

[15] *See supra,* note 5.

[16] 17 CFR 230.415; 17 CFR 230.144A.

making use of the definition is inconsistent with the NASD's goal to clearly delineate those securities subject to the TRACE Rules. In addition, the NASD said that, with respect to a particular security, Rule 2a–7(a)(10) applies differently over time. The NASD noted that the definition in Rule 2a–7(a)(10) may apply to long and medium term securities as they approach maturity. Under the definition proposed by the NASD, eligibility under TRACE requires a single determination for the life of the security. Thus, the NASD stated that applying the definition in Rule 2a–7 would not clarify or simplify a determination of whether a debt instrument is TRACE-eligible or excluded as a money market instrument and would not make it consistent with instruments that are eligible for money market funds. In addition, the NASD noted that the term ''Eligible Security'' in the Investment Company Act and the term ''TRACE-eligible security'' in the TRACE Rules are applied in different contexts. The Commission agrees, and does not believe that the definition of money market instrument in the TRACE Rules should be revised.

TBMA stated that the NASD's exclusion of clearing brokers from the defined term ''parties to the transaction'' is unclear. In response, the NASD stated that it excluded ''clearing broker'' from the definition to indicate that a broker that merely clears a transaction does not have a reporting obligation under the TRACE Rules. The NASD represented that for purposes of TRACE, a broker that performs only a clearing function is not considered a party to the transaction and should not submit a transaction report, unless the broker has also performed the executing function, or the clearing broker is reporting a transaction for an actual party to the transaction pursuant to an agreement to do so (*e.g.*, where a clearing broker, pursuant to a privately negotiated agreement with a correspondent, reports on behalf of the correspondent whenever the correspondent has a reporting obligation under TRACE).

TBMA stated that requiring a party to report the lower of yield to call or yield to maturity is confusing. The NASD responded that it believes that requiring the reporting of the lower of these two yields is appropriate and necessary for the protection of investors and the integrity of the debt markets. The Commission agrees. The Commission believes that the data reported for each trade as ''yield'' must be comparable to the data to: (1) Inform buyers and sellers, including public investors, of the price and yield of comparable debt securities; and (2) create an audit trail in which the price and yield of all transactions can be compared. The Commission believes that the NASD is correct in requiring that a party report the lower of yield to call or yield to maturity because such yields are the benchmarks for comparing bonds.

TBMA expressed concern that the NASD's proposal forces reporting firms to incur unnecessary expenses by requiring that transactions, including the two transactions that occur in an ''agency cross,'' must be reported separately. The NASD responded that the TRACE Rules require the reporting of each transaction and that the requirement that both transactions be reported individually is in furtherance of a regulatory goal. The NASD stated that the TRACE system was so designed based on input from market surveillance and market regulation personnel, and that it was determined that, in some instances, ''single'' trade reporting may raise issues, and creates gaps in the regulatory audit trail. The NASD represented that in creating a new bond reporting system, it determined not to incorporate certain features that may hinder the creation of a complete audit trail and therefore hinder efficient oversight of the market. For these reasons, the NASD determined that the agency cross transaction should be reported as two transactions. The Commission believes that the NASD's decision is reasonable, and is consistent with the Act.

TBMA also asked that the NASD address and clarify certain interpretive issues, which include TRACE eligibility questions, the trade reporting obligations of broker-dealers that are alternative trading systems (''ATSs''), the identification of transactions that do not reflect secondary market pricing, and others. The NASD responded that these and other interpretive issues will be addressed in NASD Notices to Members. In addition, TBMA requested that the NASD address several operational and technical issues, and respond to contractual and testing issues in a manner that would notify the entire industry. The NASD responded that it addresses the operational, technical and testing issues raised in TBMA's Letter on the TRACE website, which is *http://www.nasd.com/trace.asp,* and that it has responded to issues raised in agreements by revising its agreements.[17]

## V. Accelerated Approval of Amendment Nos. 2 and 3

The Commission finds good cause to approve Amendment Nos. 2 and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Rule 6260 would require most but not all underwriters to provide CUSIP numbers to the NASD by 5 p.m. Eastern Time on the business day prior to the initial sale of securities. This prior day CUSIP notification was previously published and subject to comment. The proposed exception to the prior day CUSIP notification provides that underwriters that are offering securities on an intra-day basis shall provide CUSIP numbers to the NASD not later than 5 p.m. Eastern Time on the same day that pricing and sales occur, provided that if such securities are priced and offered on or after 5 p.m., the member shall provide the information not later than 5 p.m. on the next business day. Although not previously published, the proposal is an appropriate and narrowly drafted exception to the previously published proposal and responds to the concerns that Rule 6260 would negatively impact issues that are offered and sold in the market on an intra-day basis.

Amendment No. 2 also requires that an underwriter supply to the TRACE Operations Center, in addition to the CUSIP number for each newly issued security, the issuer's name, the coupon rate, the maturity, a brief description of the security and whether the issue is being resold pursuant to Rule 144A. Amendment No. 3 allows the underwriter to provide the TRACE Operations Center alternative types of information, as specified by the NASD, if necessary. The NASD believes, and the Commission agrees, that the acceleration of the approval of these provisions are necessary to protect customers and the integrity of the audit trail. The NASD will use the information to promptly determine if the CUSIP numbers submitted are accurate before the NASD loads the new CUSIP numbers in the TRACE system and transmits such numbers to the industry. If the CUSIP numbers are inaccurate, transaction activity will be incorrect either because a report reflects the wrong security or a report was rejected by the TRACE system.

For these reasons, the Commission finds good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act, to accelerate approval of

[17] In this connection the Commission emphasizes its statement in the original TRACE approval order, Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001), that members that provide data to TRACE are ''free to sell or give the same information to information vendors.'' The NASD may not, by contract or otherwise, restrict a member's ability to distribute data that is has reported to TRACE to information vendors.

Amendment Nos. 2 and 3 to the proposed rule change.

## VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–46 and should be submitted by July 26, 2002.

## VII. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with 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 (SR-NASD–2002–46), as amended, be and hereby is approved, and that Amendment Nos. 2 and 3 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 02–16850 Filed 7–3–02; 8:45 am]

**BILLING CODE 8010–01–P**

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46145; File No. SR–NASD–2002–63]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto, by the National Association of Securities Dealers, Inc., Relating to Proposed Fees for the Trade Reporting and Compliance Engine (TRACE) for Corporate Bonds

June 28, 2002.

## I. Introduction

On May 6, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder [2] to establish fees for use of TRACE. TRACE provides for the reporting and dissemination of transaction information in eligible corporate debt securities. The NASD submitted Amendment No. 1 to the proposed rule change on May 16, 2002.[3] Notice of the proposed rule change was published for comment in the **Federal Register** on May 24, 2002.[4] The NASD submitted Amendment No. 2 to the proposed rule change on May 28, 2002.[5] The Commission received one comment letter, from The Bond Market Association (''TBMA''), regarding the proposal.[6]

On June 25, 2002, the NASD filed Amendment No. 3 to the proposed rule change and a response to TBMA's Letter. This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2, accelerates approval of Amendment No. 3, and solicits comments from interested persons on Amendment No. 3.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), dated May 16, 2002. Amendment No. 1 corrected a typographical error in the filing.

[4] *See* Securities Exchange Act Release No. 45960 (May 17, 2002), 67 FR 36654.

[5] *See* letter from T. Grant Callery, Senior Vice President and General Counsel, NASD, to Katherine England, Assistant Director, Division, dated May 24, 2002. Amendment No. 2 made the language of the rule internally consistent and corrected certain typographical errors.

[6] *See* letter from Michel de Konkoly Thege, Vice President and Associate General Counsel, TBMA, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated June 14, 2002 (''TBMA's Letter''). TBMA's Letter is described in Section IV, *infra*.

## II. Background

On January 23, 2001, the Commission approved the Rule 6200 Series providing for reporting and dissemination of transaction information in eligible debt securities (''TRACE rules'').[7] Subsequently, on March 5, 2001, the Commission approved additional amendments to the TRACE rules requiring trade reports in transactions between two NASD members to be filed by each member.[8] In addition, on January 3, 2002, the Commission issued a notice stating that certain other amendments to the TRACE rules had become effective on filing.[9] Finally, on April 3, 2002, the NASD filed a proposed rule change to make certain technical changes to the TRACE rules. The NASD subsequently submitted Amendment No. 1 to that filing, and the Commission published notice of the proposal and Amendment No. 1 thereto.[10] The NASD subsequently submitted Amendment Nos. 2 and 3 to that filing. The Commission is approving that filing, and granting accelerated approval of Amendment Nos. 2 and 3, concurrently with approval of this proposal.[11]

The TRACE rules will become effective on July 1, 2002. On that day, members must begin to report transactions in TRACE-eligible securities, and the TRACE system will begin the dissemination of certain reported information.

## III. Description of the Proposal

The proposed rule change establishes fees for participants and users of the TRACE facility and rescinds the FIPS fees. The proposed fees are divided into three general categories: (1) System fees paid by member firms based on the method chosen by the member to report corporate bond transactions to the NASD (members will have several options on how to report trades and the fees will vary accordingly); (2) transaction reporting fees paid by members to file trade reports and cancel or correct trade reports; and (3) market data fees paid by members and non-

[7] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (File No. SR–NASD–1999–65).

[8] *See* Securities Exchange Act Release No. 44039 (March 5, 2001), 66 FR 14234 (March 9, 2001) (File No. SR–NASD–2001–04).

[9] *See* Securities Exchange Act Release No. 45229 (January 3, 2002), 67 FR 1255 (January 9, 2002) (File No. SR–NASD–2001–91).

[10] *See* Securities Exchange Act Release No. 45943 (May 16, 2002), 67 FR 36049 (May 22, 2002).

[11] *See* Securities Exchange Act Release No. 46144, (June 28, 2002).

members that use or distribute the data collected through the TRACE system and disseminated by the NASD.

*System Fees.* The NASD proposes to charge fees to members who use the TRACE system based on the method the member selects to input transaction information to the NASD. Under the proposed rules, members will have three means by which to input transaction information directly to the NASD: (1) A web browser through the Internet, which will be useful primarily for low-volume firms; (2) a web browser using a private data network (''PDN''); or (3) a computer-to-computer interface (''CTCI''), which the Association anticipates will be used primarily by high volume firms. Members may also choose to report transactions indirectly to the NASD through third parties, such as vendors, service bureaus, clearing firms, or the National Securities Clearing Corporation (''NSCC''), which will in turn report to the NASD through one of the approved methods described above.

Members may report transaction information manually through a web browser using their own Internet provider. Members using a web browser will be charged a monthly access fee as follows: for the first user ID registered, a charge of $85 per month; for the next two through nine user IDs registered, a charge of $75 per month, per such additional user ID; and for ten or more user IDs registered, a charge of $70 per month, per user ID from two to ten or more. Members reporting through a web browser may elect to report transaction information through a PDN that is owned and operated by Nasdaq's designated network provider, which is currently WorldCom, Inc. Members choosing to report transaction information directly to the NASD using a PDN will be charged a $100 per line administration fee per month by the NASD. Members should be aware that this fee does not include fees that will be charged by Nasdaq for services provided by its designated network provider that will be billed directly by Nasdaq.

Members also may report transaction data through the CTCI operated by Nasdaq for most of its transaction reporting facilities. Nasdaq currently leases dedicated lines from WorldCom, Inc. and provides direct connection from a member firm to the NASD. The NASD monthly charge for reporting through a CTCI is $25 per month, per line, whether or not such line is used exclusively for TRACE, and does not include Nasdaq charges for its designated network provider.

*Transaction Reporting Fees.* Members will be charged fees to file transaction reports and cancel or correct transaction reports. The NASD proposes to charge a trade reporting fee using a sliding scale, based upon the size of the transaction reported. A member will be charged a Trade Reporting Fee on a sliding scale ranging from $0.50 to $2.50 per trade based on the size of the reported transaction. For trades up to and including $200,000 par value, members will be charged a fee of $0.50 per trade; for trades between $201,000 par value and $999,000 par value, members will be charged a fee of $0.0025 multiplied by the number of bonds traded; and for trades of $1,000,000 par value or more, members will be charged a fee of $2.50 per trade.

The NASD proposes to charge a cancel or correct trade fee of $3.00 per trade. The NASD also proposes to charge an ''as/of'' trade late fee of $3.00 per trade. Under proposed rule 6230(a)(2), SR–NASD–2002–46, a transaction that is executed after 6:30 p.m. must be reported within the first 1 hour and 15 minutes after the open of the market on the following business day to be reported on time ''as/of.'' [12] A member shall be charged an ''as/of'' trade late fee of $3.00 per transaction for those transactions reported beyond such time frame. To provide firms time to adjust to the new reporting system, the cancel or correct trade fee and ''as/of'' trade late fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE. In addition, NASD proposes a browse and query fee of $0.05 for each returned page of query beyond the first page. This feature will allow members to review their own previously reported data.

In order to standardize corporate bond reporting obligations and minimize industry technology burdens, NASD has proposed (as part of the TRACE filing with the Commission) the elimination of the separate FIPS system and its related rules and costs. The TRACE trade reporting fee will replace the flat fee of $1.00 per trade currently charged to report corporate bonds through FIPS.

*Market Data Fees.* The NASD proposes to charge market professionals who subscribe to receive real-time market data as follows: (i) Bond Trade Dissemination Service (''BTDS'') Professional Display Fee of $60 per month per terminal for each interrogation or display device receiving real-time TRACE transaction data; (ii) BTDS Internal Usage Authorization Fee of $500 per month per organization for internal dissemination of real-time TRACE transaction data used in one or more of the following ways: internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to purchase/sale or other trading decisions, and other related activities; [13] (iii) BTDS External Usage Authorization Fee of $1,000 per month per organization for dissemination of real-time TRACE transaction data used in one or more of the following ways: repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products.[14] Non-professionals that subscribe to receive real-time TRACE transaction data will be charged $1.00 per month, per terminal. In addition, the NASD proposes a fee of $15.00 per month, per subscriber for the daily list fax service that will contain all of the daily additions, deletions, modifications to the list of TRACE-eligible securities.

Market participants and others who wish to receive real-time TRACE data directly from the NASD will be required to enter into agreements with the NASD. For example, a vendor or broker/dealer firm that wishes to distribute TRACE real-time data externally will be required to enter into a vendor agreement, which among other things will standardize display facilities and require the vendor to collect specified dissemination fees from its end users for remittance to the NASD. Vendors or broker/dealer firms that wish to receive real-time TRACE data directly from the NASD and subsequently disseminate real-time TRACE data only internally will also be required to execute agreements with the NASD, which among other things, will require firms to represent that the TRACE real-time data will not be disseminated externally.

## IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a registered securities

[12] The NASD has proposed generally to amend the reporting period from 1 hour to 1 hour and 15 minutes, and this period would apply to transactions executed after 6:30 p.m. and reported the next morning. That proposal is being approved concurrently with this proposal.

[13] Under this service, real-time TRACE transaction data may not be used in any interrogation display devices, any systems that permit end users to determine individual transaction pricing in real-time, or disseminated to any external source.

[14] Under this service, real-time TRACE transaction data may not be used in any interrogation display devices or any systems that permit end users to determine individual transaction pricing in real-time.

association. In particular, the Commission believes that the proposed rule change is consistent with the requirement of section 15A(b)(5)[15] that the rules of an association provide for the equitable allocation of reasonable fees, dues, and other charges among its members and issuers and other persons using its facilities; and the requirement of section 15A(b)(6)[16] that the rules of the association are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[17] The Commission believes that the fees allow users great flexibility in how they will interact with the system, and are scaled according to objective criteria applied across-the-board to all categories of users.

*1. Equitable Allocation and Unfair Discrimination*

The Commission believes that the proposal provides for the equitable allocation of reasonable fees, dues, and other charges, and does not permit unfair discrimination between customers, issuers, brokers, or dealers. For example, in several instances, the TRACE fee structure adopts a sliding scale approach. The Commission believes that this sliding scale structure promotes an equitable distribution of the relevant fees while reducing the possibility of unfair discrimination between customers, issuers, brokers, or dealers.[18] For example, transaction reporting fees vary depending on the size of the transaction reported by the member, with fees ranging from $0.50 per trade (for the smallest trades) to $2.50 per trade (for the largest trades). Similarly, system fees for members who report to TRACE through a web browser are scaled so that the amount of the fee decreases in proportion to the number of user identification members registered to the member. This permits members to take advantage of economies of scale.

In other instances, the TRACE fees vary according to the way in which the user intends to use the disseminated TRACE data. For example, market data fees are lower for users who limit their use of the information to internal distribution, and relatively higher for users who repackage the data for delivery outside of the organization. The Commission believes that this use-based approach is consistent with equitable distribution of fees.

*2. Reasonableness*

The Commission believes that the TRACE fee structure is reasonable under the Act. In its initial filing, the NASD represented that it believes the TRACE fees are reasonably related to the costs of developing the new facility and to meeting the estimated operating expenses of the TRACE system. Specifically, the NASD represented that developmental costs of TRACE, to date, were roughly $7.2 million. In addition, the NASD represented that total operating costs for TRACE are estimated to be approximately $6 million annually. The NASD represented that the proposed fees are intended to help the NASD recover the developmental costs of the new system, fund ongoing operational costs, and fund the regulatory activities necessary for surveillance of the market, with a view towards making TRACE financially self-sustaining. The NASD also represented that the various levels of market data fees are intended to provide market participants with the flexibility to select the usage level that best meets their needs. In determining the proposed market data fees, the NASD represented that its staff reviewed comparable industry fees for market data. Finally, recognizing that the TRACE system is new and that participants will need time to adjust to the requirements of the TRACE Rules, the NASD proposed that the ''cancel and correct'' and ''as/of'' late fee not be charged until the later of October 1, 2002 or 90 days from the effective date of TRACE.

*3. TBMA's Letter*

TBMA stated that the NASD has not provided sufficient basis to determine whether the TRACE fees meet the requirements of the Act regarding equitable allocation and reasonableness. TBMA stated that the NASD failed to: (1) Reasonably substantiate its costs; (2) match revenue streams from the various fees with the costs it seeks to recover; (3) explain the relative allocation of the different categories of fees on a total revenue basis; and (4) recognize that historical trade information should be distributed and commercialized separately from real-time data. TBMA further suggested that the TRACE fees be reassessed as soon as possible after TRACE becomes effective and that the proposal be amended to reflect a pilot status.

*4. NASD Amendment No. 3 and Response to TBMA's Letter*

In response, the NASD submitted Amendment No. 3 establishing the TRACE fees as a six-month pilot program; the NASD also agreed to reassess the fees within six months or less after the effective date of TRACE.

In addition, the NASD addressed the issue of whether the TRACE fees meet the standards set forth in the Act. With respect to equitable allocation and unfair discrimination, the NASD noted that it has adopted a sliding scale to more equitably allocate transaction reporting fees. It noted that its fee structure allows participants to report required information according to the method that best meets their requirements based on volume, cost, and other individual needs. In addition, the NASD noted that its market data fees permit users to select the level of real-time TRACE data that they would like to receive and set up a system accordingly. Finally, the NASD provided additional justification for the reasonableness of its fees. It stated that its staff has determined the fee structure based on the best available information regarding the number of participants, debt securities transaction volume, potential use of data, etc. It represented that a number of analyses have been conducted to estimate revenue, including requesting a sample of NASD members to estimate transaction volumes and consulting market data vendors about appropriate pricing levels for market data distribution. Finally, it stated that the only development costs included in its cost estimates are those specifically related to the operation of the current TRACE system; and that, in preparing its estimates, it has projected to recover developmental costs related to TRACE over a four-year period.

The Commission believes that the NASD has adequately addressed TBMA's concerns regarding whether the TRACE fees satisfy the statutory standards regarding equitable allocation, unfair discrimination, and reasonableness. In any event, because the NASD proposes to implement the TRACE fees on a six-month pilot basis, the Commission will be able to address any concerns that arise regarding consistency with the Act at the end of the pilot program. Moreover, the NASD itself has agreed to revisit these issues prior to the expiration of the pilot.

## V. Accelerated Approval of Amendment No. 3

For these reasons, the Commission finds good cause, consistent with sections 15A(b)(6) and 19(b)(2) of the

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(5).

[17] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] As vendors and other market participants who review transaction information could be considered customers of TRACE, the Commission believes that the statutory provision prohibiting unfair discrimination against customers prohibits the NASD from unfairly discriminating against those vendors and market participants.

Act, to accelerate approval of Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 provides that TRACE fees will operate as a six-month pilot program. Conversion of the fee filing to a pilot program will enable the Commission to re-evaluate issues relating to consistency with the Act at the end of the pilot program and recommend any needed changes to the NASD at the end of that time.

## VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–63 and should be submitted by July 26, 2002.

## VII. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with 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 (SR–NASD–2002–63), as amended, be and hereby is approved, and that Amendment No. 3 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 02–16851 Filed 7–3–02; 8:45 am]

**BILLING CODE 8010–01–P**

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46155; File No. SR–NASD–2002–92]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Day and Good-Till-Cancelled Order Designations for Non-Directed Orders and Establishing Time Priority in Nasdaq's Future Order Display and Collector Facility (''NNMS'' or ''SuperMontage'')

July 1, 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 July 1, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish ''Good-till-Cancelled'' (''GTC'') and ''Day'' designations for Non-Directed Orders and clarify the processing of such orders when held in Nasdaq's future Order Display and Collector Facility (''NNMS'' or ''SuperMontage''). In addition, to clarify the SuperMontage capability to accept, retain, display, and execute orders at multiple price levels, Nasdaq also proposes to remove the term ''marketable'' from the text of Rule 4706(a)(1)(B). If approved, Nasdaq will implement this rule change within 30 days after successful completion of SuperMontage user acceptance testing.

Proposed new language is italicized and deleted text is bracketed.

4701. Definitions

(a) through (hh) No Change.

*(ii) The term ''Good-till-Cancelled'' shall mean, for orders so designated, that if after entry into NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until cancelled by the entering party, or until 1 year after entry, whichever comes first.*

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) No Change.

(B) A Non-Directed Order must be a market or [marketable] limit order, must be a round lot or a mixed lot, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and if entered by a Quoting Market Participant may be designated as ''Immediate or Cancel''[.]*, or as a ''Day'' or a ''Good-till-Cancelled'' order. If a priced order designated as ''Immediate or Cancel'' (''IOC'') is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender. If a priced order designated as a ''Day'' order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by NNMS and remain available for potential display/execution until it is cancelled by the entering party, or until 4:00 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will returned to the sender. If the order is designated as ''Good-till-Cancelled'' (''GTC''), the order (or unexecuted portion thereof) will be retained by NNMS and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. Starting at 7:30 a.m., until the 4:00 p.m. market close, IOC and Day Non-Directed Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time. Exception: Non-Directed Day and GTC orders may be executed prior to market open if required under Rule 4710(b)(3)(B).*

(C) through (E) No Change.

(F)(2) No Change.

(b) through (f) No Change.

* * * * *

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(1) No Change.

(A) No Change.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)–(iii) of this rule), and shall deliver an execution to Quoting Market Participants that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system; provided however, that the system always shall deliver an order (in lieu of an execution) to the Quoting Market Participant next in queue when the participant that entered the Non-Directed Order into the system is a UTP Exchange that does not provide automatic execution against its Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' Displayed Quotes/Orders and Reserve Size in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule. *The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry.*

(i) through (iv) No Change.

(C) through (E) No Change.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Under the proposal, SuperMontage will accept, retain, display, and execute orders at multiple price levels. The system will allow Quoting Market Participants [3] to enter Non-Directed Orders and designate that those orders should be: (1) returned to them if they are not immediately executed (*i.e.,* an Immediate or Cancel or IOC order),[4] (2) if not immediately executed or thereafter cancelled, held in the SuperMontage system for potential display and/or execution until the 4:00 p.m., Nasdaq market close, and then returned to them (*i.e.,* a Day order), or (3) if not immediately executed or thereafter cancelled, held in the SuperMontage system for potential display (if non-marketable) and/or execution for up to one year and then to be purged by Nasdaq (*i.e.,* a Good-till-Cancelled or GTC order).[5] In this filing, Nasdaq seeks to establish both the GTC and Day order designations for Non-Directed Orders, and clarify for market participants how the time priority among those orders is established and how such orders will, or will not, be executed during the trading day.

a. Retention and Processing of Non-Directed Orders Designated as Day or GTC Orders

As currently contemplated, SuperMontage will have four distinct time periods over the course of the trading day: (1) the Pre-Market Session (7:30 to 9:29:29 Eastern Time), (2) the Pre-Open Unlocking/Uncrossing Process (9:29:30 a.m. to 9:29:59 Eastern Time),[6] (3) Normal Market Day (9:30 a.m. to 4:00 p.m. Eastern Time), and (4) the After-Hours Session (4:00 to 6:30 p.m. Eastern Time). [7] During these time periods, Non-Directed Orders that are designated Day or GTC will be processed as follows:

1. Pre-Market Session

The Pre-Market Session runs from 7:30:00 to 9:29:29 a.m. Eastern Time. During this time, users may enter and cancel GTC and Day Non-Directed Orders. Day Orders entered into the system in the pre-market period, or GTC orders entered into the system in the pre-market period or carried over from a previous day, though displayable, will not be available for execution until the Pre-Open Unlocking/Uncrossing Process set forth in proposed Rule 4710(b)(3)(B) commences at 9:29:30 a.m. Eastern Time, if approved by the Commission.[8]

2. Pre-Open Unlocking/Uncrossing Process

If approved, the Pre-Open Unlocking/Uncrossing Process will run from 9:29:30 to 9:29:59 Eastern Time.[9] During the Pre-Market Unlocking/Uncrossing Process, GTC and Day orders will continue to be displayable and, starting at 9:29:30 a.m., be automatically executed if necessary to cure a locked/crossed market condition. Quotes and orders from automatic execution participants will receive execution reports, and SuperMontage delivery participants will have the execution delivered to them for acceptance, partial acceptance, or decline. [10] Once this unlocking/uncrossing is completed, the system will resume processing incoming quotes, orders, and cancels until the 9:30 a.m. market open. If a Day or GTC order arrives during this period, it will be executed if it would lock or cross the market. If the new Day or GTC order does not lock/cross the market, it will be retained by SuperMontage for display and/or execution during the remainder of the trading day for Day orders and for GTC orders, and for GTC orders each day thereafter starting at 9:29:30 a.m. until the 4:00 p.m. normal market close.

3. Normal Market Session

The Normal Market Session runs from 9:30 a.m. to 4:00 p.m. Eastern Time. During this period Day and GTC orders may be entered by Quoting Market

[3] The term ''Quoting Market Participants'' refers to NNMS Market Makers, NNMS Electronic Communication Networks (''ECNs''), and Unlisted Trading Privilege Exchange Specialists. See Rule 4701(cc).

[4] If no designation is selected by the entering party, SuperMontage will automatically designate such orders as IOC.

[5] GTC orders that remain in the system for 1 year will be purged after the close on the anniversary date of their entry. If this anniversary date falls on a date when the Nasdaq market is closed, the order will be purged after the close on the next business day.

[6] Nasdaq recently filed with the Commission a proposal seeking to establish a Pre-Open Unlocking/Uncrossing Process for SuperMontage. See Securities Exchange Act Release No. 45965 (May 20, 2002), 67 FR 36659 (May 28, 2002) (Notice of File No. NASD–2002–42).

[7] Nasdaq will soon formally file with the Commission a proposal clarifying that the After-Hours session in a SuperMontage environment will operate in a manner similar to Nasdaq's current after-hours program.

[8] During the Pre-Market Session executions can only occur through the SuperMontage Directed Order process. Telephone conversation between Thomas Moran, Office of the General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division of Market Regulation, Commission, on July 1, 2002.

[9] See note 6, supra.

[10] Once dispatched to an order delivery market participant, an execution/order may not be cancelled.

Participants at any time and will be retained by the system until they are executed or cancelled. Each GTC and Day order will, like all other representations of trading interest in SuperMontage, be individually time-stamped and executed if appropriate. Remainders of quote/orders reduced by execution, and retained by the system, will retain the time priority of their original entry.

4. After-Hours Session

If approved, the After-Hours Session in a SuperMontage environment will run from 4:00 p.m. (Market close) to 6:30 p.m. Eastern Time.[11] At market close, SuperMontage Non-Directed Order Processing ends for the day, and all Day orders expire and are returned to the entering party. GTC orders that have not been executed or cancelled will be retained by the system for the next trading session. Such orders will not, however, be available for execution in the after-hours session. During the after-hours session, Quoting Market Participants may continue to enter new GTC orders and cancel any previously entered GTC order. GTC orders are not displayed during the after-hours session. Day orders may not be entered during the after-hours session.

b. Time Priority in SuperMontage

The default priority for executing Non-Directed Orders in SuperMontage is price/time. As such, the system, unless requested otherwise by the party entering the Non-Directed Order,[12] will access the highest buy prices or the lowest sell prices residing in the system.[13] Generally, among equally priced buying interest, or equally priced selling or market-priced interest, the system is programmed to automatically access the quotes/orders that were entered first into the system.[14] This time priority attaches to a quote/order based upon the date and time it was entered into NNMS and remains until the quote/order is executed in full or it is cancelled by the entering party or by NNMS. The ability to execute against a particular quote/order will not impact its time priority. For example, a GTC order entered at 7:45 a.m. is not executable, but such an order will have time priority over all other orders entered after that time. Similarly, that GTC order would retain its time priority over all other orders entered on days after that GTC order was entered into NNMS. In short, if NNMS allows the entry of the quote/order at a particular point in the trading day, the quote/order's time priority is established at that time.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[15] in general, and with Section 15A(b)(6) of the Act,[16] in particular, in that the proposals are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.[17]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 USC 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–92 and should be submitted by July 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02–17000 Filed 7–3–02; 8:45 am]

**BILLING CODE 8010–01–P**

[11] *See* note 7, *supra.*

[12] A party entering a Non-Directed Order may also elect to have it order interact in the system on a price/time basis that takes into account access fees or on a price/size/time basis. *See* Rule 4710(b)(1)(B)(i), (ii) and (iii).

[13] If a Non-Directed Order is entered by a NNMS Market Maker or ECN, NNMS will, before sending it to a Quoting Market Participant, first attempt to match the order off against the entering party's own quote/order, if that quote/order is at the best price in Nasdaq. See Rule 4710(b)(1)(B)(iv)(a).

[14] Parties entering Non-Directed Orders also have an option to preference such orders to a particular market participant. See Rule 4710(b)(1)(B)(iv)(b).

[15] 15 U.S.C. 78*o*–3.

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] Nasdaq has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act to approve the proposed rule change prior to the 30th day of publication in the **Federal Register**.

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46143 ; File No. SR–NYSE–2002–22]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through August 31, 2002

June 28, 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 June 26,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend, until August 31, 2002, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a ''broadly-based'' stock option plan, which were approved by the Commission on a pilot basis (the ''Pilot'') on June 4, 1999.[3] The Pilot was subsequently amended and extended on March 30, 2001 until September 30, 2001.[4] The Pilot has since been extended until January 11, 2002,[5] March 11, 2002,[6] May 13, 2002,[7] and June 30, 2002.[8]

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.[9] Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of ''broadly based'' under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.[10] On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.[11] The Exchange's 2001 Extension Request became effective on September 28, 2001, on a pilot basis, and extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.[12] The Pilot was again extended until March 11, 2002, May 13, 2002, and June 30, 2002 for the same reasons.[13]

The Exchange proposes to further extend the effectiveness of the Pilot until August 31, 2002 to provide additional time to evaluate the issues presented by the Pilot, in light of recently adopted requirements relating to disclosure of equity compensation plan information.[14] In addition, on June 6, 2002, the Exchange's special Committee on Corporate Accountability and Listing Standards (''Committee'') recommended to the Exchange's Board of Directors that shareholders ''be given the opportunity to vote on all equity-compensation plans.''[15] The NYSE represents that its Board of Directors is expected to vote at its August 2002 Board meeting on the final recommendations from the Committee and on rule changes to implement them. The Exchange requests an extension of the Pilot until August 31, 2002 to provide time within which to file such rule changes as are approved by its Board of Directors in August. The Exchange believes that, upon filing of such rule changes, further extension of the Pilot will likely be necessary to provide time for notice, comment and approval of such rule changes.[16]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[17] which requires, among other things, that an Exchange have rules 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.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR–NYSE–98–32) (''Original Pilot Approval Order'').

[4] Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR–NYSE–00–32).

[5] Securities Exchange Act Release No. 44886 (September 28, 2001), 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–37) (''2001 Extension Request'').

[6] *See* Securities Exchange Act Release No. 45275 (January 14, 2002), 67 FR 2718 (January 18, 2002) (File No. SR–NYSE–2002–03).

[7] *See* Securities Exchange Act Release No. 45546 (March 12, 2002), 67 FR 10272 (March 18, 2002) (File No. SR–NYSE–2002–14).

[8] *See* Securities Exchange Act Release No. 45918 (May 13, 2002), 67 FR 35174 (May 17, 2002) (File No. SR–NYSE–2002–18).

[9] Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR–NYSE–00–32) (''2000 Extension Request'').

[10] *See* Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–04).

[11] *See* note 4 supra.

[12] *See* note 5 *supra.* One comment letter was received regarding the extension of the Pilot by the 2001 Extension Request. *See* letter from Sarah A.B. Teslick, Executive Director, Council of Institutional Investors (''CII'') to Jonathan G. Katz, Secretary, Office of the Secretary, Commission, dated October 16, 2001. The CII commented that the 2001 Extension Request should have been released for public comment prior to the Commission approving another extension to the Pilot and that any future proposed extensions should be released for prior public comment, that the Pilot not be extended after January 11, 2002, that the NYSE should be required to submit a dilution standard for approval which should be in place before the 2002 proxy season, and that the Commission act on the proposed disclosure standards for stock option plans. The Commission notes that the disclosure standards were approved by it on December 21, 2001. *See* note 14 *infra* below.

[13] *See* notes 6 through 8 *supra.*

[14] Release Nos. 33–8048 and 34–45189 (December 21, 2001), 67 FR 232 (January 2, 2002).

[15] *Report of Corporate Accountability and Listing Standards Committee,* June 6, 2002, p. 17.

[16] Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on June 26, 2002.

[17] 15 U.S.C. 78f(b)(5).

*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**

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) [19] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative on or before June 30, 2002, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission waived the five-day pre-notice and thirty-day operative date requirements for this proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change to extend the Pilot through August 31, 2002, become operative on June 30, 2002. The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

The Commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of ''broadly-based'' stock option plans under the Pilot.[22] The Commission also notes that many commenters were critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the rules prior to the Pilot will go into effect. The proposed rule change merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself.

Based on these reasons, the Commission has determined that it is consistent with the protection of investors and the public interest that the proposed rule change to extend the Pilot through August 31, 2002, become operative on June 30, 2002.[23] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule 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 above-mentioned self-regulatory organization. All submissions should refer to the File No. SR–NYSE–2002–22 and should be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02–16849 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] *Id.*

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] *See* Original Pilot Approval Order, note 3 *supra.*

[23] For purposes only of accelerating the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46138; File No. SR–PCX–2002–32]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees

June 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2002, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PCX is proposing to change its marketing fee for certain options and to adopt new marketing fees for recently listed options. The text of the proposed rule change is available at the PCX and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from $0 to $1.00 per contract on a per-issue basis.[3] The PCX segregates the funds from this fee by trading post and makes the funds available to lead market makers for their use in attracting orders in the options traded at the posts. The PCX charges the marketing fees as set forth in the Schedule of Rates.

The PCX is proposing to change the marketing fee for certain options as set forth in the Schedule of Rates beginning at the commencement of the June trade month and continuing until further notice. The PCX proposes to change only the amounts of the fees that it charges for transactions in the options that are included in the proposed Schedule of Rates. Any fees currently being charged for transactions in options that are not listed in this amendment to the Schedule of Rates would not be affected by the proposed rule change. The PCX believes that its proposed rule change is reasonable and equitable because it is designed to enable the PCX to compete with other markets in attracting options business. Only the amount of the fee is being changed.

The PCX believes that the proposal is consistent with section 6(b) of the Act,[4] in general, and section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The PCX neither solicited nor received written comments on the proposed rule change.

[3] *See* Securities Exchange Act Release No. 44830 (September 21, 2001), 66 FR 49728 (September 28, 2001) (SR–PCX–2001–37).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)[7] because it changes a PCX fee. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule 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 PCX. All submissions should refer to File No. SR–PCX–2002–32 and should be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16770 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3427]**

### State of Alaska; Disaster Loan Areas

As a result of the President's major disaster declaration on June 26, 2002, I find that Fairbanks North Star Borough, McGrath and Lime Village in the Iditarod Regional Education Attendance Areas (REAA), Aniak, Crooked Creek, Red Devil and Sleetmute in the Kuspuk REAA, Kwethluk in the Lower Kuskokwim REAA and Ekwok and New Stuyahok in the Southwest Region REAA in the State of Alaska constitute a disaster area due to damages caused by flooding occurring on April 27, 2002 through May 30, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 25, 2002 and for economic injury until the close of business on March 26, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795

In addition, applications for economic injury loans from small businesses located in the following areas and jurisdictions in Alaska may be filed until the specified date at the above location: Alaska Gateway REAA, Delta/Greely REAA, Iditarod REAA, Kahsunamiut (Chevak) REAA, Lower Kuskokwim REAA, Lower Yukon REAA, Southwest Region REAA, Yupiit (Akiachak, Akiak and Tulusak) REAA, Lake & Peninsula Borough, Yukon Flats REAA, Denali Borough and Yukon-Koyukuk REAA.

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 |
| Busineses 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 342706. For economic injury the number is 9Q3700 for Alaska.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 27, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02–16787 Filed 7–3–02; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Economic Injury Disaster #9Q36]**

### Commonwealth of Massachusetts; Disaster Loan Areas

Suffolk County and the contiguous counties of Essex, Middlesex and Norfolk constitute an economic injury disaster loan area as a result of a fire that occurred in the Roxbury section of Boston, MA on June 9, 2002. The fire destroyed commercial buildings in Dudley Square. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on March 27, 2003, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303

The interest rate for eligible small businesses and small agricultural cooperatives is 3.5 percent. The number assigned for economic injury for this disaster is 9Q3600 for Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: June 27, 2002.

**Melanie R. Sabelhaus,**

*Acting Administrator.*

[FR Doc. 02–16788 Filed 7–3–02; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Federal Assistance for Women's Business Centers (WBC) To Provide Financial Counseling and Other Technical Assistance to Women

**AGENCY:** Small Business Administration.

**ACTION:** Program Announcement No. OWBO–2002–018.

**SUMMARY:** The U.S. Small Business Administration (SBA) plans to issue program announcement No. OWBO–2002–018 to invite applications from eligible nonprofit organizations to conduct Women's Business Center (WBC) projects. The successful applicant will receive a cooperative agreement to provide counseling, training and other technical assistance to women who want to start or expand businesses. The authorizing legislation is the Small Business Act, §§ 2(h) and 29, 15 U.S.C. 631(h) and 656. Approximately three (3) grants will be awarded.

A Women's Business Center is a 5-year community-based project that is funded by the U.S. Small Business Administration through a matching grant. The project is a planned scope of activities that provide business skills services targeted to women. The project must operate as a distinct unit of the recipient's organization having its own budget for facilities, equipment and resources to carry out project activities. The WBC services must include long-term training and counseling pertaining to financial, management and marketing assistance to benefit small business concerns owned and controlled by women. SBA Headquarters must receive applications/proposals by 4:00 p.m., Eastern Standard Time, on the closing date of August 12, 2002. SBA will select successful applicants using a competitive technical evaluation process. Applicants from states and territories without an SBA-funded Women's Business Center will receive special consideration. States and U.S. territories without a center are Delaware, Guam, Ohio, South Carolina and West Virginia.

Service and assistance areas must include financial, management, marketing, loan packaging, eCommerce, government procurement/certification assistance and training on the business uses of the Internet. Applicants must plan to include women who are socially and economically disadvantaged in the target group. The applicant may propose specialized services that will assist women in Empowerment Zones, agribusiness, rural or urban areas, etc. The applicant may propose to serve women who are veterans, women with home-based businesses, women with disabilities, etc. SBA will request award recipients to provide content and support activities to the SBA Online Women's Business Center, *www.onlinewbc,gov.*

The applicants' technical proposal must contain information about its current status and past performance. Also, the applicant must provide a 5-year plan for service delivery, fund-raising, training and technical assistance activities. The grant will be issued annually through a 5-year term without re-competition. The non-Federal match requirement is one non-Federal dollar for each two Federal dollars in years 1 and 2; and one non-Federal dollar for each Federal dollar in years 3, 4, and 5. Up to one-half of the non-Federal match funds may be in the form of in-kind contributions (i.e., 50% of match must be in cash).

**DATES:** The opening date of the application period is July 15, 2002 and the closing date is August 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Sally Murrell, (202) 205–6673 or Sharon Gurley (202) 205–6622.

**Wilma Goldstein,**

*Assistant Administrator, SBA/Office of Women's Business Ownership.*

[FR Doc. 02–16785 Filed 7–3–02; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice #4036]**

### Request for Comments; United States Privatization of Intergovernmental Satellite

The Department of State requests comments regarding the effects of the privatization of Inmarsat and INTELSAT on the United States industry, United States jobs, and United States industry access to the to the global marketplace. The Department notes that Inmarsat privatized on April 15, 1999 and INTELSAT privatized on July 18, 2001.

On March 17, 2000, the President signed into law the Open-Market Reorganization for the Betterment of International Telecommunications (ORBIT) Act, Public Law No. 106–180. This legislation seeks to ''promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat.'' *Id.* at sec. 2. In addition, the ORBIT Act requires the President to provide an annual report to Congress on the progress of privatization in relation to the objectives, purposes, and provisions of the Act, including the ''[v]iews of the industry and consumers on privatization'' and the ''[i]mpact privatization has had on United States industry, United States jobs, and United States industry's access to the global marketplace.'' *See id.* at sec. 646(b)(3) and (4). The first such report was released on February 27, 2001.[1] By this public notice and RFC, we are soliciting the views of the industry and consumers on the privatizations.

**DATES:** Comments must be received by July 19, 2002.

**ADDRESSES:** The Department invites the public to submit written comments in

[1] *See* Department of State, Report to Congress, *Report Pursuant to Section 646(a) of Section 3 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (Pub. L. 106–180)*, (Feb. 2001) [''ORBIT Report'']

paper or electronic form. Comments may be mailed to Deepti Rohatgi, Office of the Coordinator—International Communications and Information Policy Mail Code EB/CIP, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520–5820. Paper submissions should include a version on diskette in ASCII, Word Perfect (please specify version), or Microsoft Word (please specify version) format.

Comments submitted in electronic form may be sent to *ebcipsatellites@state.gov*. Electronic comments should be submitted in the formats specified above.

Comments submitted electronically will be posted on the Department's Web site at *http://www.state.gov/e/eb/cip.*

**FOR FURTHER INFORMATION CONTACT:** Deepti Rohatgi (202) 647–5832.

**SUPPLEMENTARY INFORMATION:**

## Background

INTELSAT was created as an intergovernmental organization (with final charter entering into force on February 12, 1973) to enhance global communications and to spread the risks of creating a global satellite system across operating companies and agencies from many countries.[2] On July 18, 2001, INTELSAT was fully privatized by transferring all of its operating assets to Intelsat LLC, a Bermuda corporation that enjoys no privileges or immunities. Inmarsat was created as an intergovernmental organization (with its final charter entering into force on July 16, 1979) to improve global maritime communications through a satellite system that would provide distress and safety communications services to seafaring nations in a cooperative, cost-sharing entity. On April 15, 1999, Inmarsat was fully privatized by transferring its assets and operations to Inmarsat Ltd., a U.K. corporation that enjoys no privileges or immunities. Previously, INTELSAT had divested some of its satellites in 1998 to New Skies Satellites, NV, a Netherlands corporation.[3]

[2] *See* Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.

[3] Although both ISOs are fully privatized, two small residual intergovernmental organizations, ITSO from INTELSAT, and IMSO (International Mobile Satellite Organization) from Inmarsat, will remain to monitor the performance of certain public services.

Dated: June 11, 2002.

**Steven W. Lett,**

*Deputy U.S. Coordinator, International, Communications Information Policy, Department of State.*

[FR Doc. 02–15974 Filed 7–3–02; 8:45 am]

BILLING CODE 4710–45–P

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## DEPARTMENT OF STATE

**[Public Notice 4040]**

## U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The Department of State announces the meeting of the U.S. Advisory Commission on Public Diplomacy on Friday, July 19 in Room 1406 of the U.S. Department of State at 2201 C Street, NW, Washington, DC. The meeting will take place from 10 a.m. to 11 a.m.

The Commission, reauthorized pursuant to Pub. L. 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will hear from experts who are launching a global initiative designed to ensure that health becomes an important component of U.S. foreign policy and is used to improve America's image abroad, defuse anger and resentment by people in the Middle East and other regions against the United States, and attack some of the root causes of terrorism.

Dr. Kenneth L. Shine, who recently joined the new RAND Center for Domestic and International Health Security as its first director, will be the principal speaker at the session. Dr. Shine is one of the nation's leading physicians and was the president of the Institute of Medicine at the National Academy of Sciences. Dr. C. Ross Anthony, associate center director for international health, will also speak. Dr. Anthony is the former director of development resources for USAID/Europe and an international health expert.

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current commission members include Harold Pachios of Maine, who is the chairman; Charles Dolan of Virginia, who is the vice chairman; Penne Percy Korth of Washington, DC; Lewis Manilow of Illinois; and Maria Elena Torano of Florida.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees.

To attend the meeting, please contact Matt Lauer at (202) 619–4463 and provide date of birth and Social Security number. For more information visit *www.state.gov/r/adcompd.*

Dated: June 28, 2002.

**Matthew Lauer,**

*Executive Director, Department of State.*

[FR Doc. 02–16887 Filed 7–3–02; 8:45 am]

BILLING CODE 4710–11–P

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## STATE JUSTICE INSTITUTE

## Sunshine Act Meeting

**DATE:** Saturday, July 27, 2002, 9 a.m.–5 p.m.

**PLACE:** The Samoset Resort, Rockport, ME.

**MATTERS TO BE CONSIDERED:** Consideration of proposals submitted for Institute funding and internal Institute business.

**PORTIONS OPEN TO THE PUBLIC:** Consideration of proposals submitted for Institute funding and internal Institute business other than personnel matters.

**PORTIONS CLOSED TO THE PUBLIC:** Discussion of internal personnel matters.

**CONTACT PERSON:** David Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, (703) 684–6100.

**David I. Tevelin,**

*Executive Director.*

[FR Doc. 02–17037 Filed 7–2–02; 3:40 pm]

BILLING CODE 6820–SC–M

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## DEPARTMENT OF TRANSPORTATION

## Office of the Secretary

**[Dockets OST–01–11164 and OST–01–11198]**

## Application of Caribbean Star Airlines, Inc. for Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order to Show Cause (Order 2002–6–16)

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Caribbean Star Airlines, Inc., fit, willing, and able, and awarding it certificates of public

convenience and necessity to engage in interstate and foreign scheduled air transportation of persons, property and mail.

**DATES:** Persons wishing to file objections should do so no later than July 11, 2002.

**ADDRESSES:** Objections and answers to objections should be filed in Dockets OST–01–11164 and OST–01–11198 and addressed to the Department of Transportation Dockets (SVC–124, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Mr. Howard Serig, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4822.

Dated: June 27, 2002.

**Read C. Van de Water,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 02–16897 Filed 7–3–02; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Shasta and Trinity Counties, CA

**AGENCY:** Federal Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The Federal Highway Administration (FHWA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed State Route 299 (SR 299) project in Shasta and Trinity Counties, California.

**FOR FURTHER INFORMATION CONTACT:** Harry Khani, Transportation Engineer, Federal Highway Administration, 980 Ninth Street, Suite 400, Sacramento, California 95814, telephone: (916) 498–5056, e-mail: *Harry.Khani@fhwa.dot.gov.* Chris Cummings, California Department of Transportation Project Manager, 1657 Riverside Drive, Redding, CA 96049, telephone: (530) 225–3495, e-mail: *chris_cummings@dot.ca.gov.*

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an EIS for a proposed highway improvement project of SR 299 in Shasta and Trinity Counties, California.

SR 299 is the principal arterial between Interstate 5 and Highway 101 and is designated as a high emphasis route in he Interregional Roadway System. SR 299 is of economic importance to the region as it provides access to a vast recreational area and links the upper Sacramento Valley with the deepwater port in Eureka. The project portion of the highway, the Buckhorn Grade, represents the only obstacle preventing interstate trucks and oversize permit loads from utilizing this direct access to the coast.

The proposed project limits extends approximately 7.5 miles from the boundary of the Whiskeytown-Shasta-Trinity National Recreation Area to west of the Shasta-Trinity-County line. the existing SR 299 corridor within these limits consists of a two-lane highway with limited passing lanes at various locations. The road closely follows the extremely rugged terrain forming a steep, twisted alignment with a design speed of 25 mph.

The proposed project would construct a new two-lane alignment, with truck climbing lanes, standard shoulders, 50 mph design speed, and maximum 7% grade. Possible alignment variations includes bridges, viaducts, and a possible tunnel at the Buckhorn Summit. The replaced SR 299 alignment would be relinquished or reclaimed (all or part).

Caltrans has been investigating Buckhorn Grade realignment designs of over 40 years. Since the early 1990's four Project Study Reports have been completed. Since 2000, Caltrans has conducted over 11 meetings with the public, with local governmental officials, and with jurisdictional agencies.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. In addition, a public workshop will be held, with public notice given of the time and location. The draft EIS will be available for public and agency review and comment prior to the public workshop.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 2, 2002.

**David Nicol,**

*Assistant Division Administrator-California Division, Federal Highway Administration.*

[FR Doc. 02–16877 Filed 7–3–02; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Brownsville/South Padre Island International Airport Brownsville, TX

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

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Brownsville for Brownsville/South Padre Island International Airport under the provisions of Title 49 U.S.C., Chapter 475 (hereinafter referred to as ''Title 49'') and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Brownsville/South Padre Island International Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before December 22, 2002.

**DATES:** The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is June 25, 2002. The public comment period ends August 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nan L. Terry, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193–0650, (817) 222–5607. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Brownsville/South Padre Island International Airport are in compliance with applicable requirements of part 150, effective June 25, 2002. Further, the FAA is reviewing a proposed noise compatibility program for that airport

which will be approved or disapproved on or before December 22, 2002. This notice also announces the availability of this program for public review and comment.

Under Title 49, an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Brownsville submitted to the FAA on June 17, 2002, noise exposure maps, descriptions and other documentation which were produced during the Federal Aviation Regulations (FAR) Part 150 Airport Noise Compatibility Planning Study for Brownsville/South Padre Island International Airport beginning on September 25, 1998. It was requested that the FAA review this material as the noise exposure maps, as described in Title 49, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Title 49.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Brownsville. The specific maps under consideration are: 1999 Noise Exposure Map Existing Condition Noise Exposure Map, Exhibit 4.6 and 2004 Future Condition Noise Exposure Map with Existing Runway Configuration, Exhibit 5.2a in the submission.

The FAA has determined that these maps for Brownsville/South Padre Island International Airport are in compliance with applicable requirements. This determination is effective on June 25, 2002. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Title 49. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Title 49. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Brownsville/South Padre Island International Airport, also effective on June 25, 2002. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 22, 2002.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137.

Department of Aviation, City of Brownsville, 700 S. Minnesota Avenue, Brownsville, Texas 75821.

Questions may be directed to the individual named above under the heading, for further information contact.

Issued in Fort Worth, Texas, June 25, 2002.

**Naomi L. Saunders,**

*Manager, Airports Division.*

[FR Doc. 02–16891 Filed 7–3–02; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Approval of Noise Compatibility Program; Seattle-Tacoma International Airport, Seattle, WA

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

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program, submitted by the manager of the airfield line of business for Seattle-Tacoma International Airport, under the provisions of 49 U.S.C., Sec. 47504(b), and 14 CFR part 150. These findings are made in recognition of the description of federal and non-federal responsibilities in Senate Report No. 96–52 (1980).

On December 3, 2001, the FAA determined that the noise exposure maps submitted, under part 150, by the manager of the airfield line of business for Seattle-Tacoma International Airport, were in compliance with applicable requirements. On June 3, 2002, the Associate Administrator for Airports approved the Seattle-Tacoma International Airport noise compatibility program. Program measures 1, 9, 12, 13, 14, 15, 16, 17, 18, and 19 received outright approval. Measures 5 and 6 were approved as voluntary. Measures 3, 4 and 10 were disapproved, pending submission of additional information. Measures 7 and

11 were disapproved outright, 2 was disapproved, in part, pending submission of additional information. Measure 8 required no FAA action.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Seattle-Tacoma International Airport noise compatibility program is June 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Dennis G. Ossenkop; Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM–611; 1601 Lind Avenue, SW., Renton, Washington, 98055–4056. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for Seattle-Tacoma International Airport, effective June 3, 2002. Under 49 U.S.C., Sec. 27504(a), an airport operator, who has previously submitted a noise exposure map, may submit to the FAA a noise compatibile program that sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatibility land uses, and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The 49 U.S.C., Sec. 27503(a)(1), requires such a program to be developed in consultation with interested and affected parties, including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR), part 150, is a local, not federal, program. The FAA does not substitute its judgment for that of the airport proprietor, with respect to which measures should be recommended for action. The FAA's approval or disapproval of the FAR, part 150, program recommendations is measured according to the standards expressed in part 150 and the Aviation Safety and Noise Abatement Act of 1979, and it is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR, part 150.

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport, and preventing the introduction of additional noncompatible land uses.

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government.

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and airport traffic control systems, or adversely affecting other powers and responsibilities of the Administrator, as prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR, part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program, or a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the Seattle Airports District Office.

The manager of the airfield line of business for Seattle-Tacoma International Airport submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study contacted at Seattle-Tacoma International Airport. The Seattle-Tacoma International Airport noise exposure maps were determined by the FAA, on December 3, 2001, to be in compliance with applicable requirements. Notice of this determination was published in the **Federal Register** on December 10, 2001.

The proposed Seattle-Tacoma International Airport noise compatibility program is comprised of actions designed for phased implementation by airport management and adjacent jurisdictions, from the date of study completion to the year 2004. It was requested that the FAA evaluate and approve this material as a noise compatibility program, as described in 49 U.S.C., Sec. 47504(a). The FAA began its review of the program on December 3, 2001, and was required by a provision of 49 U.S.C., Sec. 47504(b), to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program. The FAA completed its review and determined that the procedural and substantive requirements of 49 U.S.C., Sec. 47504(b), and FAR 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports, effective June 3, 2002.

These determinations are set forth in detail in a Record of Approval, endorsed by the Associate Administrator for Airports on June 3, 2002. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal are available for review at the FAA office listed above and at the administrative offices of the Seattle-Tacoma International Airport.

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

**Lowell H. Johnson,**

*Manager, Airports Division, Northwest Mountain Region.*

[FR Doc. 02–16895 Filed 7–3–02; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Third Party War Risk Liability Insurance

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

**ACTION:** Notice of Issuance of New FAA Third Party War Risk Liability Insurance.

**SUMMARY:** The Federal Aviation Administration has issued a new Third Party War Risk Liability Insurance Policy to replace the policies that terminated on June 18, 2002. The new Policy changes the amount and basis of the premium to be charged, incorporates interim amendments made since the issuance of the premium policies, and adds actions in the event of default by the insured due to failure to pay premiums. The premium is based upon the extent to which the Insured conducts passenger or (dedicated) air cargo operations, or a combination of both. There are four classes of premiums based upon the coverage limit held by the carrier.

| | |
|---|---|
| *Class I: Coverage less than One Billion U.S. Dollars—* | |
| $0.03 × _____ enplanements + ($0.03 × _____ RPMs ÷ 1000) + $0.17 × RTMs ÷ 1000 | $_____ |
| *Class II: Coverage One Billion U.S. Dollars or more, but less than Two Billion U.S. Dollars—* | |
| $0.04 × _____ enplanements + ($0.04 × _____ RPMs ÷ 1000) + $0.25 × RTMs ÷ 1000 | $_____ |
| *Class III: Coverage Two Billion U.S. Dollars or more, but less than Three Billion U.S. Dollars—* | |
| $0.05 × _____ enplanements + ($0.05 × _____ RPMs ÷ 1000) + $0.30 × RTMs ÷ 1000 | $_____ |
| *Class IV: Coverage Three Billion U.S. Dollars or more—* | |
| $0.05 × _____ enplanements + ($0.05 × _____ RPMs ÷ 1000) + $0.33 × RTMs ÷ 1000 | $_____ |
| Total Premium | $_____ |

**DATES:** New Policy in Effect: 23:59 GMT (7:59 pm EDT) June 18, 2002 until 23:59 GMT (7:59 pm EDT) August 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Helen Kish, Program Analyst, APO–3, or Eric Nelson, Program Analyst, APO–3, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, telephone 202–267–9943 or 202–267–3090. To obtain copy of the new policy go to FAA Insurance Web site: *http://api.hq.faa.gov/911policies/inscover.html.*

**SUPPLEMENTARY INFORMATION:** On June 13, 2002, the Secretary of Transportation authorized a 60-day extension of aviation insurance provided by the Federal Aviation Administration as follows:

MEMORANDUM TO THE PRESIDENT

''Pursuant to the authority delegated to me in paragraph (3) of Presidential Determination No. 01–29 of September 23, 2001, I hereby extend that determination to allow for the provision of aviation insurance and reinsurance coverage for U.S. Flag commercial air carrier service in domestic and international operations for an additional 60 days.

Pursuant to section 44306(c) of chapter 443 of 49 U.S.C.—Aviation Insurance, the period for provision of insurance shall be extended from June 18, 2002, through August 17, 2002.''

/s/ Norman Y. Mineta

*Affected Public:* U.S. domestic airline industry—Air Carriers who previously were insured under the Third Party War-Risk Liability Insurance Policies with the Federal Aviation Administration or Air Carriers who are interested in obtaining insurance.

Issued in Washington, DC on June 26, 2002.

**Nan Shellabarger,**

*Deputy Director, Office of Aviation Policy and Plans.*

[FR Doc. 02–16893 Filed 7–3–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Air Traffic Procedures Advisory Committee

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

**SUMMARY:** The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices or standardization, clarification, and upgrading of terminology and procedures.

**DATES:** The meting will be held from July 15–18, 2002, from 9 a.m. to 4 p.m. each day.

**ADDRESSES:** The meeting will be held at the Department of Transportation, NASSIF Building, 400 7th Street, SW., Room 3328, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. David W. Madison, Acting Executive Director, ATPAC, Air Traffic Planning and Procedures 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held July 15 through July 18, 2002, at the Department of Transportation, NASSIF Building 400 7th Street, SW., Room 3328, Washington, DC 20590.

The agenda for this meeting will cover; a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 12, 2001. The next quarterly meeting of the FAA ATPAC is planned to be held from October 7–10, 2002, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

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

**David W. Madison,**

*Acting Executive Dirctor, Air Traffic Procedures Advisory Committee.*

[FR Doc. 02–16997 Filed 7–2–02; 1:56 pm]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Luis Obispo County Regional Airport, San Luis Obispo, CA

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Luis Obispo County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before August 5, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Hawthorne, CA 90250, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In

addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Martin Pehl, Assistant Airports Manager, County of San Luis Obispo, at the following address: 903–5 Airport Drive, San Luis Obispo, CA 93401. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of San Luis Obispo under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, telephone: (650) 876–2806. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Luis Obispo County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 20, 2002, the FAA determined that the application to impose and use a PFC submitted by the County of San Luis Obispo was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 26, 2002.

The following is a brief overview of the impose and use application No. 02–07–C–00–SBP:

*Level of proposed PFC:* $4.50.

*Proposed charge effective date:* July 1, 2015.

*Proposed charge expiration date:* July 1, 2019.

*Total estimated PFC revenue:* $1,790,380.

*Brief description of the proposed projects:* Construction of Hangar Taxiways, Construction of Runway 11–29 Blast Pads, Construction of Airport Service Road, Construction of Northeast Access Road, Construction of ''EPA/National Discharge Elimination System'' Pollution Control Facility, Runway 11–29 & Taxiway A Extension (Phase I), Runway 11–29 & Taxiway A Extension (Phase II), Safety Area Grading and Drainage, Construction of Southwest Apron, Rehabilitation/Reconstruction of Taxiway A, Construction of Taxiway D, Construction of Taxiway H, Construction of Taxiway M, Acquisition of Runway Sweeping Equipment, Airfield Lighting Improvements, Update of Airport Master Plan, Install Omni-Directional Approach Lighting System for Runway 29, Relocate Threshold for Runway 25, Construction of Aircraft Rescue and Firefighting Facility, Construction of Taxiway L, Construction of Taxiway N.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the San Luis Obispo County Airport.

Issued in Hawthorne, California, on June 20, 2002.

**Herman C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 02–16892 Filed 7–3–02; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number: MARAD–2002–12684]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JEANNE PIERRE II.

**SUMMARY:** As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before August 5, 2002.

**ADDRESSES:** Comments should refer to docket number MARAD–2002–12684. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

**SUPPLEMENTARY INFORMATION:** Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

### Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

*Name of vessel*: JEANNE PIERRE II. *Owner*: James K. Pearson and Sarah Peck Pearson.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''LOA 44′3″; *Beam:* 13′10″; *Draft*: 5′9″; Displacement *Tonnage*: 23,550 lbs; *Capacity:* Maximum of 6 passengers

plus 2 crew or total of 8 persons on board.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''* * * uninspected vessel engaged in crewed sight seeing charters on the inside coastal waters of Washington State—specifically Puget Sound, the San Juan Islands, and Straits of Juan DeFuca as far west as Cape Flattery; crewed charters to British Columbia from the coastal waters of Washington State; crewed charters from British Columbia to the coastal waters of Washington State; and crewed charters on the Inside Passage to and including the coastal waters of Southeast Alaska.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction*: 1993. *Place of construction*: St. Hilaire, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''We would not compete with any commercial ferry services which transport persons from one location to another for a fee. Most of our charters would leave from and return to the same location, although some would be point to point. There are a few small, individual, independent operators in both Washington and Southeast Alaska that take guests on crewed sailing charters or crewed sailing vacations as we propose to do. With baby boomers and retirees, the market is large and the variation in charter specialties (ie. Sport fishing, diving, nature educations, gourmet meals, learn to sail cruises, etc.) great enough that we don't believe our sight seeing cruises would adversely affect existing operators.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''We don't believe this application will have any impact on US Shipyards.''

Dated: June 28, 2002.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 02–16773 Filed 7–3–02; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF TRANSPORTATON

### Maritime Administration

**[Docket Number: MARAD–2002–12686]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SPINDRIFT.

**SUMMARY:** As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before August 5, 2002.

**ADDRESSES:** Comments should refer to docket number MARAD–2002–12686. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http*://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

**SUPPLEMENTARY INFORMATION:** Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

**Vessel Proposed for Waiver of the U.S.-Build Requirement**

(1) Name of vessel and owner for which waiver is requested.

*Name of vessel:* SPINDRIFT. *Owner*: Mark I. and Monique Davies.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Length-over-all (LOA): 43 feet 2 inches; *Beam:* 12 feet 7 inches; *Draft:* 6 feet; 6 berths; *Diesel auxiliary Power:* 63 HP; *Tonnage:* 11 NRT pursuant to 46 U.S.C. 14502''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: If the waiver be granted, the vessel would be engaged in crewed charter operations (owners as captain and crew) along the East Coast of the United States, primarily in Maine waters; and possibly in the U.S. Virgin Islands and Puerto Rico as well.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1991. *Place of construction:* Manila, The Philippines.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''We do not believe this intended use of our sailboat will have any significant adverse impact on other commercial passenger vessel operators. We intend to provide only crewed charters, serving as captain and crew ourselves, and to do so only on an occasional basis rather than as a source of livelihood. We anticipate that most of the chartering will be done in Maine waters, where almost all of the crewed charters are much larger vessels in the Windjammer (schooner) fleet in Bothbay, Camden and other points East, for which we present virtually no competition. Our base of operations would be in Harpswell, ME (New Meadows River, NE Casco Bay), and we are aware of only one or possibly two other owners of sailing vessels who offer crewed charters in this immediate area of the coast * * * We anticipate that our use of this vessel for crewed charter elsewhere on the East Coast of the U.S. will be only occasional and seasonal, as we sail southward in the fall and

northward from the Caribbean in the spring.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''We chose our vessel SPINDRIFT precisely because of her unique features that we could not find in any U.S.-built sailboat of the same size and configuration. The boats now built in the U.S. * * * did and do not meet our needs or specifications, and we were not able to afford a custom design either in the U.S. or abroad. In short, we believe that the impact of the waiver requested for this vessel would be negligible.''

Dated: June 28, 2002.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 02–16775 Filed 7–3–02; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number: MARAD–2002–12685]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TAI–PAN.

**SUMMARY:** As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before August 5, 2002.

**ADDRESSES:** Comments should refer to docket number MARAD–2002–12685. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

**SUPPLEMENTARY INFORMATION:** Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

### Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

*Name of vessel:* TAI–PAN. Owner: Tai-Pan Inc.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''The length is 67.0, breadth 19 and depth 4.6. Her tonnage is 29 gross, 26 net * * *

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''We would like to be able to charter the vessel in the United States and possibly occasional trips to the Bahamas. The vast majority of the charters would center in the southwest section of Florida as she is based in Punta Gorda, Florida. Punta Gorda is approximately 60 miles south of Sarasota and 30 miles north of Ft. Myers, Florida.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1987. *Place of construction:* Kowloon, Hong Kong.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''We do not know of another vessel of this type operating in our area of Southwest Florida. There is a commercial operator in Punta Gorda who takes out head boat cruises for sight seeing tours. However that is an entirely different operation from our occasional private live aboard 7 day charters that our guests usually prefer.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''Since our vessel is 15 years old and lightly used in the occasional charter trade we can not see any adverse affect on US Shipyards. Rather we would expect a positive effect on the local maintenance yards if we are able to get more use out of the vessel.''

Dated: June 28, 2002.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 02–16774 Filed 7–3–02; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34054]**

### Morristown & Erie Railway, Inc.—Modified Rail Certificate

On June 5, 2002, as amended by facsimile on June 24, 2002, Morristown & Erie Railway, Inc. (M&E), filed an application for a modified certificate of public convenience and necessity under 49 CFR 1150, subpart C, *Modified Certificate of Public Convenience and Necessity,* to operate certain railroad lines in New Jersey. Based on M&E's representations, the following lines will be activated for service in four phases: (1) The former line of the Staten Island Railway Corporation (Staten Island Railway) from milepost 7.4 immediately west of the New Jersey Turnpike in Linden to milepost 9.8 immediately east of St. Georges Avenue in Linden; (2) the former line of the Staten Island Railway from milepost 9.8 to milepost 12.09 at the junction of the Staten Island Railway and the New Jersey Transit (NJ Transit) (Raritan Valley Line) in Cranford, exclusive of the portion of the line immediately west of milepost 9.8 to milepost 11.5 at the municipal boundary of the Borough of Roselle and

the Township of Cranford; (3) the former Rahway Valley Railroad Company (Rahway Valley) main line from milepost 0 at the junction with the NJ Transit (Raritan Valley Line) in Cranford to milepost 3.9 immediately southeast of the Rahway River Bridge in Union, inclusive of the branch line from the junction at milepost 3.1 and extending northeast approximately 1.1 miles, and the branch line from the junction at milepost 1.1 and extending southeast approximately .50 miles; and (4) the former Rahway Valley main line from milepost 3.9 immediately southeast of the Rahway River Bridge in Union to milepost 7.1 at the junction of the Rahway Valley Line and the NJ Transit (Morris and Essex Line) in Summit, NJ.[1] These lines are currently in the custody of the County of Union, NJ (the County).

On May 9, 2002, the County and M&E entered into a 10-year operating agreement commencing on May 15, 2002.[2] Under the agreement, which contemplates rehabilitation of the lines, M&E will complete all rehabilitation of the lines specified in Phases I and II, except for the limitation specified in Phase II, and be ready to initiate rail services over these segments within 6 months. M&E will not proceed with the rehabilitation of Phase III lines and the commencement of rail services until it receives the written concurrence of the County. Upon receiving such concurrence, M&E agrees to proceed with the rehabilitation of Phase III lines and initiate service over this portion within 9 months. Phase IV lines will be rehabilitated only upon the mutual consent of the County and M&E.

M&E states that it will interline freight with Consolidated Rail Corporation (Conrail), Norfolk Southern Railway Company (NS) and CSX Transportation, Inc. (CSXT), at Cranford, Bayway (Linden), and Bound Brook, NJ. In addition, M&E states that it will be able to operate through service by using its rights to operate over NJ Transit at Cranford Junction, NJ.[3]

The rail lines qualify for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions*, Finance Docket No. 28990F (ICC served July 16, 1981).

M&E indicates that, even though rehabilitation subsidies are being provided, the lines will operate without any operating subsidies. M&E also indicates that there are no preconditions for shippers to meet in order to receive rail service, and that it has obtained liability insurance coverage.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 1120 G Street NW., Suite 520, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*''

Decided: June 27, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 02–16844 Filed 7–3–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Abandonment of the lines was previously authorized in *Staten Island Railway Corporation-Abandonment*, Docket No. AB–263 (Sub-No. 3) (ICC served Dec. 5, 1991), and *Rahway Valley Railroad Company-Abandonment-Between Aldene and Summit in Union County, NJ*, Docket No. AB–211 (ICC served Aug. 27, 1992). According to M&E, line segments of the Staten Island Railway and the entire line of Rahway Valley were subsequently conveyed to the State of New Jersey.

[2] Pursuant to the agreement, M&E will have the option to extend the 10-year period for two additional 5-year periods.

[3] On June 13, 2002, Conrail filed comments in this proceeding. Conrail states that no interchange and/or operating arrangements have been made between Conrail, M&E, CSXT, and NS in conjunction with M&E's proposal to operate the subject lines. Moreover, it states that there is no connection between the former Rahway Valley and Staten Island Railway lines. Conrail contends that the connection M&E seeks to create is over the Raritan Valley line now owned by NJ Transit and over which exclusive freight rights were granted to Conrail by agreement effective on October 1, 1984. Conrail reserves the right to make comments at a later date once M&E is ready to activate rail service and in the event that reasonable interchange and/or operating arrangements cannot be reached between Conrail and M&E.

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Surety Companies Acceptable on Federal Bonds: Termination—Sorema North America Reinsurance Company

**AGENCY:** Financial Management Service, Fiscal Service, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** This is Supplement No. 27 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) 874–6915.

**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 9304–9308, 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 35055, 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, 24 2002.

**Judith R. Tillman,**

*Assistant Commissioner, Financial Operations, Financial Management Service.*

[FR Doc. 02–16791 Filed 7–3–02; 8:45 am]

BILLING CODE 4810–35–M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Surety Companies Acceptable on Federal Bonds: Termination—Universal Bonding Insurance Company

**AGENCY:** Financial Management Service, Fiscal Service, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** This is Supplement No. 28 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) 874–7116.

**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

9304–9308, 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 35059, 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 Service Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: June 24, 2002.

**Judith R. Tillman,**

*Assistant Commissioner, Financial Operations, Financial Management Service.*

[FR Doc. 02–16790 Filed 7–3–02; 8:45 am]

BILLING CODE 4810–35–M

# Corrections

Federal Register

Vol. 67, No. 129

Friday, July 5, 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.

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 4

**RIN 3038–AB60**

### Profile Documents for Commodity Pools; Correction

*Correction*

In rule document 02–15994 beginning on page 42709 in the issue of Tuesday, June 25, 2002, make the following corrections:

1. On page 42709, in the third column, under **SUPPLEMENTARY INFORMATION:** in the ninth line ''COP'' should read ''CPO''.

2. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION:** in the second paragraph, in the fourth line, ''comment'' should read ''document''.

3. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION:** in the third paragraph, in the first line, ''commission'' should read ''Commission''.

[FR Doc. C2–15994 Filed 7–3–02; 8:45 am]

**BILLING CODE 1505–01–D**

## GENERAL SERVICES ADMINISTRATION

### Submission for Public Comments: General Services Administration (GSA) Household Goods Tender of Service (HTOS); Conversion of Flat Industrial Funding Fee (IFF) to a Percentage IFF

*Correction*

In notice document 02–15736 beginning on page 42259, in the issue of Friday, June 21, 2002 make the following corrections:

On page 42262, the table should read as set forth below:

**Examples:**

*(1) Domestic:*

| A | B | C | D | E | F | G | H | I | J | K | L |
|---|---|---|---|---|---|---|---|---|---|---|---|
| S | GSAA | GD | HHG | RXPG8TY43 | Q794912349XXXXX | 19990612 | S12345XX | V | 19990105 | 19990312 | 007 |

| M | N | O | P | Q | R | S | T | U | T | U |
|---|---|---|---|---|---|---|---|---|---|---|
| MO00 | 64131 | OK00 | 71222 | 10030 | 0400 | 056 | 12500 | 05500 | SMITH-BATTSONXX | 103777444 |

* * * * *

[FR Doc. C2–15736 Filed 7–3–02; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 312

**[Docket No. 00N–1663]**

**RIN 0910–AA61**

### Investigational New Drugs: Export Requirements for Unapproved New Drug Products

*Correction*

In proposed rule document 02–15358 beginning on page 14642 in the issue of Wednesday, June 19, 2002, make the following corrections:

1. On page 41644, in the second column, in the first paragraph, in the eight and tenth lines from the bottom, ''802©'' should read ''802(c)''.

2. On page 41645, in the first column, in the last paragraph, in the first line, ''§312.110©'' should read ''§312.110(c)''.

3. On page 41646, in the first column, in the last paragraph, in the third, sixth, and 15th lines ''802©'' should read ''802(c)''.

4. On the same page, in the second column, in the first complete paragraph, in the 12th line, ''802©'' should read ''802(c)''.

[FR Doc. C2–15358 Filed 7–3–02; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Lincomycin

*Correction*

In rule document 02–13164 beginning on page 36512 in the issue of Friday, May 24, 2002, make the following correction:

On page 34514, in the first column, correct the signature to read as follows:

**Andrew J. Beaulieu,**

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

[FR Doc. C2–13164 Filed 7–3–02; 8:45 am]

**BILLING CODE 1505–01–D**

Federal Register

Friday,
July 5, 2002

# Part II

# Department of the Interior

## Fish and Wildlife

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List the Southwestern Washington/Columbia River Distinct Population Segment of the Coastal Cutthroat Trout as Threatened; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AF45**

## Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List the Southwestern Washington/Columbia River Distinct Population Segment of the Coastal Cutthroat Trout as Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule, published in the **Federal Register** on April 5, 1999, to list the southwestern Washington/Columbia River Distinct Population Segment (DPS) of coastal cutthroat trout as threatened. The DPS includes all coastal cutthroat trout in waters draining into Grays Harbor, Willapa Bay, and the Columbia River upstream to the Klickitat River in Washington and to Fifteen Mile Creek in Oregon, excluding the Willamette River above Willamette Falls. The coastal cutthroat trout inhabits streams, lakes, rivers, estuaries, and near-shore ocean habitats throughout the range of the DPS.

The change in forest management regulation, the latest information indicating relatively healthy-sized total populations in a large portion of the DPS, and our improved understanding of the ability of freshwater forms to produce anadromous progeny, lead us to conclude that this DPS does not meet the definition of a threatened species (in danger of becoming endangered in the foreseeable future) at this time.

**ADDRESSES:** The complete file for this withdrawal is available for inspection, by appointment, during normal business hours at the Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266.

**FOR FURTHER INFORMATION CONTACT:** Kemper McMaster, State Supervisor, Oregon Fish and Wildlife Office (*see* **ADDRESSES**) (telephone 503/231–6179; facsimile 503/231–6195).

**SUPPLEMENTARY INFORMATION:**

### Background

Coastal cutthroat trout (*Oncorhynchus clarki clarki*), one of 10 formally described subspecies of cutthroat trout (Behnke 1992), are distributed along the Pacific Coast of North America from Prince William Sound in Alaska to the Eel River in California (Behnke 1992, Trotter 1997) and inland from the Coast Range of Alaska to roughly the crest of the Cascades of Washington and Oregon (Trotter 1997). The southwestern Washington/Columbia River DPS proposed for listing as threatened includes the Columbia River and its tributaries from the mouth to the Klickitat River on the Washington side of the river and Fifteenmile Creek on the Oregon side; the Willamette River and its tributaries from its confluence with the Columbia upstream to Willamette Falls; Willapa Bay and its tributaries; and Grays Harbor and its tributaries.

The DPS inhabits portions of five Ecoregions, the Coast Range, Puget Lowland, Cascades, Willamette Valley, and Eastern Cascades. Most of the DPS occurs in the Coast Range, Puget Lowland, and Cascades Ecoregions. The Coast Range Ecoregion has a maritime climate, characterized by medium to high rainfall averaging 200 to 240 centimeters (cm) (80 to 90 inches (in) per year, which peaks in the winter months, with very little precipitation in July or August. Random events, such as strong storms with heavy rains can have damaging effects, especially on a disturbed landscape. Floods and landslides triggered by these events can significantly affect aquatic resources throughout the stream system. The Puget Lowland Ecoregion experiences reduced rainfall (50 to 120 cm (20 to 47 in)), with peak flows from December to June. The area tends to have groundwater resources from bordering mountain ranges that help sustain river flows during droughts. The Cascades Ecoregion includes headwater tributaries of many coastal cutthroat streams. Precipitation can average 280 cm (110 in) per year, much of it in the form of heavy snowfall. There is little storage capacity for long-term groundwater except where porous rock substrate exists. In these porous areas, streams receive 75 to 95 percent of their average discharge as groundwater and are able to maintain flows during dry periods. Surface water flow originating in the Cascade Range influences river flows throughout this region. A smaller portion of the DPS occurs in the Willamette Valley Ecoregion, which lies in the rainshadow of the Coast Ranges and typically experiences rainfall of 120 cm (47 in), with peak flows in December and January. A small portion of the DPS occurs in the Eastern Cascades Slopes and Foothills Ecoregion, which is marked by a transition between the high rainfall areas of the Cascades Ecoregion and the drier regions to the east. This Ecoregion receives 30 to 60 cm (10 to 20 in) of precipitation. Streamflow is often intermittent, especially during the summer (Johnson *et al.* 1999).

Coastal cutthroat trout differ in appearance from other subspecies by the numerous small to medium irregularly-shaped spots evenly covering virtually the entire sides of the body, often extending to the ventral surface and anal fin (Behnke 1992). Skin color on sea-run fish is often silvery, and may mask body spots, while freshwater residents are darker with a copper or brassy sheen.

Relatively little is known about the specific life history and habitat requirements of coastal cutthroat trout. Coastal cutthroat trout spend more time in the freshwater environment and make more extensive use of this habitat, particularly small streams, than do most other Pacific salmonids (Johnson *et al.* 1999). The life history of coastal cutthroat trout may be one of the most complex of any Pacific salmonid. Coastal cutthroat trout exhibit a variety of life history strategies across their range (Northcote 1997, Johnson *et al.* 1999) that include three basic variations: Resident or primarily non-migratory; freshwater migrants; and marine migrants. Residents may stay within the same stream segment their entire life. Freshwater migrants may make migrations from small tributaries to larger tributaries or rivers, or may migrate from tributary streams to lakes or reservoirs. Marine migrations (anadromy) are generally thought to be limited to near shore marine areas; individuals may not venture out of the estuary in some cases (Trotter 1997). There are numerous exceptions to these generalized behaviors and we lack observations of definitive genetic relationships between individual or population migratory strategies (Behnke 1997). In areas above long-standing barriers, coastal cutthroat trout are limited to resident or fresh-water migratory life history strategies. In areas accessible to the ocean, all three life history strategies (resident, freshwater migratory, and anadromous) are likely to be expressed in the same area.

Coastal cutthroat trout appear to exhibit very flexible life history strategies. The extent to which individuals expressing these various strategies are isolated from other life history forms is largely unknown, though there is growing evidence that individuals may express multiple life history behaviors in their life time (Johnson *et al.* 1999). For convenience we refer to individuals that migrate to marine waters as anadromous or anadromous life form. In doing so, we do not intend to imply that they represent a separate population from

freshwater forms. We are treating all forms as part of a single population in this analysis.

As a result of their wide distribution and variable life history behavior, coastal cutthroat trout are exposed to a wide range of water temperatures. Several studies concluded that cutthroat trout, like other salmonids, were not typically found in water temperatures higher than 22 degrees Celsius (C) (72 degrees Fahrenheit (F)) although they could tolerate temperatures as high as 26 to 28 degrees C (79 to 82 degrees F) for short periods. Optimum temperatures for coastal cutthroat trout spawning range from 6.1 to 17.2 degrees C (43 to 63 degrees F), and for egg incubation from 4.4 to 12.7 degrees C (40 to 55 degrees F) (Bell 1986). The preferred temperature range of adult coastal cutthroat is between 9 and 12 degrees C (48 and 54 degrees F) (Bell 1986). Giger (1972) reported that temperature was believed to be the most influential characteristic in the migration and distribution of coastal cutthroat in estuaries. Giger further states that high upper estuary temperatures (23.9 to 26.7 degrees C (75 to 80 degrees F)) probably prevent movement to cooler tributaries until later in the fall.

Coastal cutthroat trout spawn in a variety of gravel sizes from 0.6 to 30 cm (0.2 to 12 in) (Hooper 1973, Hanson 1977). Gravels free from fine sediment support higher egg to fry survival for salmonids (Irving and Bjornn 1984, Weaver and Fraley 1993). Anadromous coastal cutthroat trout spawn and complete early rearing in headwater stream sections, often above those used by other anadromous salmonids (Glova and Mason 1977, Michael 1983), and then migrate downstream eventually entering the estuary and near ocean environment to complete growth and maturation. By spawning higher in the watersheds than other salmonids, cutthroat trout may avoid competition for suitable spawning sites, reduce the likelihood of hybridization, and reduce competitive interactions between juvenile coastal cutthroat trout and other salmonids. Salmonids need water free from high levels of suspended sediment to feed and migrate. When very high sediment loads are present (greater than 4,000 parts per million (ppm)) salmonids cease movement or migration (Bjornn and Reiser 1991). Cutthroat trout are known to stop feeding and move to cover when turbidity is above 35 ppm (Pauley *et al.* 1989).

Coastal cutthroat trout are poorer swimmers than other anadromous salmonids, probably due to morphological characteristics, including their large heads and narrow caudal (tail) regions (Bisson *et al.* 1988, Hawkins and Quinn 1996). In laboratory tests of two different hatchery stocks of coastal cutthroat trout, Hawkins and Quinn (1996) found critical swimming speeds were between 5.58 to 6.69 body lengths per second, whereas steelhead (*Oncorhynchus mykiss*) had critical velocities of 7.69 body lengths per second. In field studies, two-to four-year old coastal cutthroat trout were found in streams with velocities of 0.14 to 0.20 meters per second (0.46 to 0.66 feet per second) (Hanson 1977). Coastal cutthroat trout juveniles were most often in streams where water velocities were between 0.25 and 0.50 meters per second (0.82 to 1.6 feet per second) (Pauley *et al.* 1989).

The timing of fish returns to estuary and freshwater habitat varies considerably across the range and within river basins (Trotter 1997, Behnke 1992). For example, return migrations of anadromous coastal cutthroat trout in the Columbia River system usually begin as early as late June and continue through October, with peaks in late September and October. Anadromous coastal cutthroat trout spawning typically starts in December and continues through June, with peak spawning in February.

Coastal cutthroat trout are repeat spawners. Some individuals have been documented to spawn each year for at least five years (Giger 1972), others may not spawn every year, and some do not return to seawater after spawning, remaining in fresh water for at least a year. Eggs begin to hatch within six to seven weeks of spawning, depending on temperature; fry emerge between March and June, with peak emergence in mid-April. At emergence, fry appear to seek refugia near channel margins and backwater habitats, although they may use fast water habitats (riffles and glides) when exposed to competitive interactions with other native salmonids (Johnson *et al.* 1999).

Coastal cutthroat trout juveniles generally remain in upper tributaries until they are one year of age, at which time they may begin moving more extensively throughout the river system. Juvenile salmonids on marine-directed migrations undergo physiological changes to adapt to salt water called smoltification. These individuals are called smolts. Downstream movement may begin with the first spring rains, usually in mid-April with peak movement in mid-May. Time of initial seawater entry generally begins as early as March, peaks in mid-May, and is essentially over by mid-June. Some juveniles may enter the estuary and remain there over the summer without smolting or migrating to the open ocean. Seaward migration of Columbia River smolts may occur to more protected areas at an earlier age and smaller size than migration to more exposed areas such as the outer Washington coast. Columbia River smolts generally make their first migration at age two, at a mean size of about 160 mm (6 in) (Johnson *et al.* 1999).

Upstream movement of juveniles appears to begin with the onset of winter freshets (overflows) during November and continues through the spring, frequently peaking during late winter and early spring. Many of these yearling fish may average less than 200 mm (8 in) in length and can be found in streams that run through ponds or sloughs (Hartman and Gill 1968, Garrett 1998). In winter, coastal cutthroat trout move to pool areas with dense cover such as near log jams or overhanging banks (Bustard and Narver 1975, Waters 1993).

Coastal cutthroat trout that enter nearshore marine waters reportedly move moderate distances along the shoreline. Individual marked fish have been reported to move 72 to 290 kilometers (km) (45 to 180 miles (mi)) off the Oregon Coast (Pearcy 1997). Sea-run cutthroat trout along the Oregon coast may swim or be transported with the prevailing currents long distances during the summer. It is unclear how far offshore coastal cutthroat trout migrate. Cutthroat trout have been routinely caught up to 6 km (4 mi) off the mouth of the Nestucca River (Sumner 1953, 1972). Coastal cutthroat trout have also been captured between 10 and 46 km (6 to 28 mi) offshore of the Columbia River, though it is unclear whether they were carried by the freshwater plume of the Columbia River or moved offshore in search of prey.

Resident (non-migratory) fish appear to mature earlier (two to three years) and are shorter-lived than the migratory form (Trotter 2000). Smoltification has been reported to occur from one to six years of age, most commonly at ages two through four (Trotter 1997), and at sizes of from 175 to 225 millimeters (mm) (7 to 9 in) (Behnke 1992). Sexual maturity rarely occurs before age four in anadromous coastal cutthroat trout (Johnson *et al.* 1999). Growth rates increase during the initial period of ocean residence, but decrease following the first spawning due to energy expenditures from migration and spawning (Giger 1972). Behnke (1992) reports the maximum age of sea-run cutthroat to be approximately 10 years.

The diverse life history strategies shown by coastal cutthroat trout are not well understood, but are thought to represent unique adaptations to local environments and the subspecies' response to environmental variability and unpredictability. The significance of the various life history strategies, the extent to which each strategy is controlled by genetic versus environmental factors, and the extent of isolation among individuals expressing these various strategies is largely unknown, though there is growing evidence that individuals may express multiple life history behaviors over time (Johnson *et al.* 1999). The few existing studies show that, although both allele frequencies and morphology may differ between populations above and below barriers, the portions of the population displaying different life history strategies are generally more closely related within a drainage than are populations from different drainages (Behnke 1997, Johnson *et al.* 1999). These results indicate that migratory and non-migratory portions of the population of cutthroat trout represent a single evolutionary lineage in which the various life history characteristics have arisen repeatedly in different geographic regions (Johnson *et al.* 1999).

Many coastal cutthroat populations are isolated above natural barriers. Recent studies have shown low levels of downstream migration over these natural barriers indicating that these isolated populations likely are contributing demographically and genetically to populations below them (Griswold 1996, Johnson *et al.* 1999). Furthermore, populations above natural barriers may represent genetic resources shared by populations below these barriers and therefore may constitute a significant component of diversity for the population (Johnson *et al.* 1999).

There is increasing evidence that coastal cutthroat trout isolated for long periods of time above impassable dams retain the capacity to produce marine migrants. The Washington Department of Fish and Wildlife (WDFW) (2001) reported that between 476 and 1,756 smolts were produced from the freshwater form of coastal cutthroat trout above Cowlitz Falls Dam on the Cowlitz River in 1997 and 1998. Tagging and otolith microchemistry analysis of one returning adult showed the tagged fish, originating from above the dam, migrated to salt water and returned. The report suggested that the resident portion of the population of cutthroat trout is making contributions to the anadromous portion of the population. The significance of marine migrant production from the freshwater coastal cutthroat trout, whether from above long-standing natural barriers or human-created barriers, likely varies according to river basin characteristics, the length of time barriers have been in place, and the genetic composition of coastal cutthroat trout within each basin (Johnson *et al.* 1999). In addition, the significance and long-term success of freshwater cutthroat trout contributing to the saltwater migrant cutthroat trout may be largely dependent upon the ability of downstream habitat conditions and near-shore environments to support the persistence of this life history strategy.

The effects of interspecific competition between coastal cutthroat trout and other salmonids, particularly coho salmon (*Oncorhynchus kisutch*), rainbow trout (*O. mykiss*), and steelhead (the anadromous form of rainbow trout) are well documented. In general, steelhead and coho are more commonly found in the larger river reaches and coastal cutthroat trout are more abundant in the headwater tributaries, reducing the potential for competition (Hartman and Gill 1968). However, when they do overlap, steelhead tend to dominate coastal cutthroat trout in the riffles and juvenile coho dominate cutthroat in pools and glides. As a result, coastal cutthroat trout are often displaced to less desirable habitats in the presence of other native salmonids (Griffith 1988). Coastal cutthroat trout evolved with these competitive interactions and competition with native salmonids is not anticipated to adversely affect this DPS of coastal cutthroat trout.

**Population Size**

Little data exist to determine the actual population size of cutthroat trout in the DPS. Most counts were conducted only in the area accessible to anadromous salmonids; include only coastal cutthroat trout moving up or down stream (mostly migrants); and were collected incidental to studies for other salmonid species using traps or collection facilities designed for salmon and steelhead. We lack information on the efficiency of these systems in capturing coastal cutthroat trout, therefore, data from most traps cannot be used to determine or estimate actual population size for coastal cutthroat trout. We have updated the population analyses using the latest data received from WDFW, as well as evaluating the accuracy of data in depicting actual coastal cutthroat trout population levels.

Two sets of data from the Grays Harbor tributaries provide some population information (WDFW 2001c). The number of migrating adult coastal cutthroat trout captured at Bingham Creek from 1983 to 2001 ranged from a low of zero to a high of 35 with a mean of eight. This trap measures all fish returning to an 8,250 hectare (ha) (20,386 acre (ac)) watershed and likely catches all coastal cutthroat trout migrating upstream. On the West Fork Hoquiam River, the number of migrating coastal cutthroat trout (wild and hatchery) captured from 1986 to 2000 ranged from 17 to 122 with a mean of 51. No hatchery cutthroat trout have been detected at this facility since 1995, and the mean number of fish since 1995 is 55. This trap measures almost all adult coastal cutthroat trout returning to a 2,166 ha (5,352 ac) watershed.

Catch data for coastal cutthroat trout were recorded incidental to creel surveys for salmon and steelhead in the Columbia River, though no data were collected on angler effort for coastal cutthroat trout. These data were collected from four points in Washington. No creel census data were received from Oregon. The number of coastal cutthroat trout recorded in the creel surveys for the lower Columbia River is likely to be strongly influenced by the change in cutthroat trout fishing regulations (WDFW 2001c). During the period when creel census data were collected, the general fishing regulation limits for coastal cutthroat trout in Washington decreased from 12 to 8 trout per angler in 1983, to 2 trout in the marine environment and 8 trout in freshwater in 1986, and finally to 2 trout in 1992. Minimum size limits also became more restrictive during this period. In addition, catch and release angling for wild cutthroat was implemented in some streams within the DPS's range starting in 1989 and expanded to all lower Columbia River streams below Portland and Vancouver in 1992 (Leider 1997). The lack of angling effort data make it impossible to determine if the decline in creel census numbers are the result of low populations or low angling effort for coastal cutthroat trout. Creel census personnel have noted reduced angler effort in traditional cutthroat trout angling areas and fewer anglers using traditional sea-run cutthroat trout gear (WDFW 2001c). Given the lack of angler effort with which to standardize the counts, we can no longer conclude that the creel census data indicate an extremely low number of anadromous cutthroat trout in the DPS as described in the proposed rule (64 FR 16397, April 5, 1999).

Trap data are similarly difficult to interpret. The Kalama River trap has detected low numbers of coastal cutthroat trout in all but four years since

1982. This trap is located above the natural, historic anadromous cutthroat trout zone, in an area blocked to upstream passage by a falls until a ladder was built in 1936. In addition, the trap is designed to catch and hold adult salmon, having a 3.8 cm (1.5 in) bar spacing. According to WDFW (2001), most adult sea-run cutthroat trout would pass through this trap undetected because of the wide bar spacing. Therefore, because the trap is above a previous natural migration barrier and has a large bar spacing, the trap likely significantly underestimates the actual number of adult cutthroat trout returning to this drainage, resulting in data that are unreliable for determining population level.

The number of adult coastal cutthroat trout trapped at the North Fork Toutle River rose from 1988 until 1995 and has declined since (WDFW 2001c). The maximum number trapped reached 153 in 1995. This increase likely tracks the recovery of the population following the eruption of Mount St. Helens in 1980 and the resulting massive mud and debris flows in the Toutle River. The recent decline in numbers of coastal cutthroat trout counted is likely a result of the continued failure of the Fish Collection Facility to handle the high sediment loads still common in this system. The trap has been closed during fall freshets in recent years due to high sediment loads, coinciding with the upstream migration of anadromous cutthroat (WDFW 2001c). A third trap was added at the Grist Mill Fish Ladder on Cedar Creek in 1998. Because adult cutthroat trout may bypass the ladder, this count is an underestimate of actual population size. The numbers of fish captured at the Grist Mill Fish Ladder ranged from 57 to 120.

Of the nine adult traps with population data in southwest Washington and the Columbia River tributaries below Bonneville Dam, four have total annual counts below 10 coastal cutthroat trout in recent years. In at least one case (Kalama River trap), this may well be due to the inefficiency of the trap in collecting adult coastal cutthroat trout as described above. Five of these traps have counts (averaged for the last five years) of 50 to 1,400 adult cutthroat trout per year. These data indicate higher numbers than previously described and we no longer conclude that the annual number of adults returning to these traps in the DPS are consistently below 10 fish as described in the proposed rule (64 FR 16407).

Many juvenile fish traps are monitored in tributaries of Grays Harbor. While juvenile counts are less reliable indicators of population size than adult counts, they do provide some information on the level of production. Numbers of total juveniles produced are available from 21 traps in the Grays Harbor system, based on either total counts or estimates derived using trap efficiency data provided by the WDFW (2001). Total numbers of juveniles produced is likely affected by the amount of habitat available in the system, which varies widely. We attempted to correct for this by calculating the number of downstream migrants per square kilometer (km\2\) of watershed above the trap. The number of downstream migrants per km\2\ of watershed area in the Grays Harbor tributaries varied widely from 0.04 to 10.4 per km\2\ (0.1 to 26.8 per square mi (mi\2\)), with some watersheds producing large numbers of downstream migrants. The total estimated number of juveniles produced from Columbia River tributaries below Bonneville Dam were available from eight traps. The number of downstream migrants per km\2\ of watershed area varied from 0.5 to 38.4 per km\2\ (1.4 to 99.4 per mi\2\), with most watersheds producing more than 6 outmigrants per km\2\ (15 per $mi^2$).

Mongillo and Hallock (2001) conducted extensive surveys of 156 locations within the Washington portion of the DPS's range for abundance of coastal cutthroat trout. Data were collected by single-pass electrofishing, a method which likely underestimates the actual abundance, and included areas used by resident and anadromous coastal cutthroat trout. Additional data were presented by the WDFW (2001) for surveys conducted by Weyerhaeuser Company in 1994 and 1995 and from one study in the Humptulips Basin in the 1970s. The relative density for all locations below Bonneville Dam ranged from 0.009 to 0.222 fish per square meter ($m^2$) (0.09 to 2.4 per $ft^2$). These values were compared to population densities from the 1970s in the Olympic Peninsula and Puget Sound (0.009 to 0.384 fish per $m^2$ (0.09 to 4.1 per $ft^2$)), which were considered healthy (in terms of abundance) during that period (WDFW 2001c) and were not considered likely to be in danger of extinction in the foreseeable future by the Status Review Team (Johnson *et al.* 1999). Densities recorded in southwest Washington by Mongillo and Hallock (2001) were not significantly different from densities recorded in the 1970s from the Olympic Peninsula and Puget Sound.

Densities measured in Washington above Bonneville Dam were lower (0.0003 fish per m\2\ (0.003 per ft\2\)), based on coastal cutthroat trout caught at a single location in Spring Creek. Densities were calculated for all sites, whether or not cutthroat were located. The Oregon Department of Fish and Wildlife (ODFW) provided information on densities of coastal cutthroat over 85 mm in size in the Hood River above the area accessible to anadromous salmonids (ODFW 1998). While cutthroat trout were not detected in all streams sampled, cutthroat trout densities where present were relatively high, ranging from 0.003 to 0.283 fish per m\2\ (0.03 to 3.0 per ft\2\). The watersheds above Bonneville Dam are ecologically very different from the remainder of the subspecies' range. These include the only watersheds where this subspecies is found east of the Cascade Mountain Divide. This area experiences a very different hydrologic and climatic environment that may influence the densities of cutthroat.

The National Marine Fisheries Service (NMFS) Status Review (Johnson *et al.* 1999) also cited concern over "* * * two near extinctions of anadromous runs in the Hood and Sandy Rivers" (64 FR 16407). The Sandy River basin occupies 4 percent of the DPS's range. Data on adult cutthroat trout numbers are derived from a trap that is located on a tributary approximately 34 km (21 mi) from the mouth of the Sandy River and 3 km (2 mi) up Cedar Creek from its confluence with the Sandy River. This trap historically captured two to three dozen anadromous coastal cutthroat trout, though none have been captured in recent years (Johnson *et al.* 1999). Trap data from this off-channel location may not accurately represent the number of anadromous cutthroat in the Sandy River. As a substantial portion of the historic anadromous-accessible habitat in the Sandy River has been isolated by dams and other barriers, the number of anadromous coastal cutthroat trout is likely depressed from historic levels. However, it is difficult to extrapolate data from one trap located on a tributary to the main river to a meaningful estimate of the anadromous component of the population for the basin as a whole. Resident cutthroat trout are considered well-distributed in the Sandy River basin, occurring above and below Marmot and Little Sandy Dams (PGE 2000). Much of the upper Sandy River Basin is under Federal land management which minimizes future threats of habitat degradation that would cause population declines (see Federal Land Management Section below). We conclude that the anadromous portion of the population

of coastal cutthroat trout in the Sandy River has declined from historic levels, though the limited data do not allow us to determine if they are nearly extinct in this small portion of the DPS, as described in the proposed rule. The resident portion of the population remains well distributed in the Sandy River.

Powerdale Dam, completed in 1922, lies 7.2 km (4.5 mi) up the Hood River from its confluence with the Columbia River. The area between the dam and the powerhouse (river mile (rmi) 1.5) was historically dewatered at times, though now has minimum required flows. The dam likely has affected the number of anadromous cutthroat trout using the Hood River, which comprises two percent of the DPS's range. Hood River lies upriver of Bonneville Pool and Dam, which may further impede anadromous cutthroat trout movements. Hood River lies near the eastern edge of the range of coastal cutthroat trout. No information is available as to anadromous cutthroat trout use and numbers prior to construction of Powerdale and Bonneville Dams, and only limited information exists on numbers in even recent times. Trap data from 1962 to 1971 shows variable, but significant numbers of adult cutthroat trout trapped (mean 61, range 8 to 177) followed by a gap in information until 1992. Very few adult fish have been trapped at the facility since 1992, with no fish captured in 6 of 10 years. However, in 2001, 11 adult coastal cutthroat trout returned to Powerdale Dam (Connolly *et al.* 2002). From 1994 to 1999, downstream smolt traps in the Hood River system continued to trap migrants, though at low numbers (mean of 24 fish). Given the location and long history of Powerdale Dam, it is not surprising that the anadromous portion of the population in Hood River is depressed. Resident forms within this system are in better condition, with relatively high densities (0.003 to 0.238 fish per m\2\ (0.03 to 2.56 fish per ft\2\) for fish greater than 85 mm (approximately 3 in) in length (ODFW 1998). We conclude that the anadromous portion the population of coastal cutthroat trout in the Hood River has declined severely from historic levels in this small portion of the DPS. The resident portion of the population remains well distributed at relatively high densities in the Hood River. Occasional upstream migrants continue to be trapped in some years, and in 2001, a total of 11 upstream migrants were captured (Connolly *et al.* 2002).

The proposed rule stated that NMFS was concerned about the extremely low population size of anadromous coastal cutthroat trout in lower Columbia River streams, indicated by low incidental catch of coastal cutthroat trout in salmon and steelhead recreational fisheries, and by low trap counts in a number of tributaries throughout the region and that numbers of adults returning to traps in the lower Columbia River tributaries were consistently below 10 fish in most streams over each of the past 6 years (64 FR 16407). Based on the information described in this section, we conclude that, while the anadromous portion of the population of coastal cutthroat trout is likely at lower-than-historic levels, there is little information available to determine the actual size of runs or to indicate that populations, or even the anadromous portion alone, are at extremely low levels in most areas of the DPS. The anadromous portion of the population may be at very low numbers in Hood and Sandy Rivers (6 percent of the DPS's range), though the location of the trap on the Sandy River makes it difficult to support the conclusion that anadromous coastal cutthroat trout are near extinction in this river as described in the proposed rule (64 FR 16407). Resident/freshwater forms remain well distributed and at reasonable densities in these same river systems. Coastal cutthroat trout in the southwest Washington portion of the DPS (75 percent of the land base) remain at comparable densities to other areas considered to have healthy-sized populations. Therefore, we conclude that the population of coastal cutthroat trout as a whole in the DPS is not extremely low in numbers or at levels that would lead to increased risk of extinction due to small population size in the foreseeable future.

**Population Trends Across the DPS**

The proposed rule stated that ''[t]rends in anadromous adults and outmigrating smolts in the southwestern Washington portion of this [DPS] are all declining'' (64 FR 16407) and that ''[r]eturns of both naturally and hatchery produced anadromous coastal cutthroat trout in almost all lower Columbia River streams have declined markedly over the last 10 to 15 years,'' with the only increase in the Toutle River (64 FR 16407).

During the public comment period we received new data from several of the fish traps operating in the DPS's range. Based on analyses of these new data, including further information on individual traps from WDFW (2001), we evaluated the trend in the population of coastal cutthroat trout in the DPS and the reliability of the trend information from each individual data set. Evaluating the reliability of the trend information is very important in determining the appropriate use of the information. The reliability of analyses in truly depicting any population trend could be affected by the collection method, length of data set, specific concerns for individual collection sites, and statistical reliability of the test results. In interpreting the results of the analyses, less weight was given to results with low statistical reliability, short data sets, and where the agency managing the trap/collection indicated specific problems that could bias or affect trend information.

Most information was collected in areas accessible to anadromous salmonids, incidental to studies for other salmonid species, using traps or collection facilities designed for other species. Information on the efficiency of these systems in detecting or collecting cutthroat trout is lacking. Therefore, these values do not represent the trends of all portions of the DPS. We carefully explored information on the individual traps or other information to ensure that potential biases that could affect use of these data as indices of population trend were minimized. Trends from short-term data sets are particularly suspect. There is naturally high variation in all adult and juvenile counts, with some apparent short-term cyclicity. The trend in a short data set is therefore more likely indicative of the particular time span of the data collection, and position in the ''cycle,'' than an indication of true long-term trend in the population. Only a few long-term data sets were available.

Data sets were analyzed for the percent annual decline using a regression of the natural log of the trap counts. Where data sets were longer than 11 years, analyses were conducted for entire data set (long term) and for the last 7 to 11 years (short term). These same methods were used by NMFS in the Status Review (Johnson *et al.* 1999). We used statistical analyses to determine the reliability of the observed trend. The accuracy of the observed trend is evaluated by the p value. A low p value indicates that the trend we calculated is likely to be an accurate representation of the true trend in the population. For example, a p value of 0.10 indicates a 90 percent probability that the observed trend is accurate, a p value of 0.5 indicates only a 50 percent probability that the observed trend is accurate. With regression statistics, we also report the r\2\ value which describes how well the straight trend line fits the observed population data. Low r\2\ values indicate that the straight trend line does not fit the data

well and lowers our confidence that the observed trend accurately represents the true trend. Highly variable data often result in a low r\2\ value.

The proposed rule stated that ''[t]rends in anadromous adults and outmigrating smolts in the southwestern Washington portion of this [DPS] are all declining'' (64 FR 16407) and that ''[r]eturns of both naturally and hatchery produced anadromous coastal cutthroat trout in almost all lower Columbia River streams have declined markedly over the last 10 to 15 years'' (64 FR 16407). The latest trend data, as described below, do not support this conclusion.

*Population Trends in Grays Harbor*

Trends in the counts of adult coastal cutthroat trout migrants from the Grays Harbor portion of the DPS were analyzed from three available data sets. Data used in the Status Review (Johnson *et al.* 1999) indicated a declining trend for the West Fork Hoquiam River (5 percent annual decline, data through 1995). In the latest analysis there is no reliable indication of a trend, increasing or decreasing ($p = 0.44$, $r^2 = 0.05$) in the West Fork Hoquiam River. Adult migrant counts from Bingham Creek were not used in the Status Review's assessment (Johnson *et al.* 1999). Analysis of data from 1983 through 2001 show an increasing long-term trend (7 percent annual increase) that is considered relatively reliable, though the straight trend line does not fit the data well ($p = 0.05$, $r^2 = 0.2$). Additional hook and line data were available from a single individual who kept very accurate catch records over 15 years (WDFW 2001c). Such data can be biased by changes in the individual's skill and effort over time, however, these data do generally support the conclusion of an increasing trend (4 percent annual increase, p less than 0.01, $r^2 = 0.58$). WDFW also concluded, based on angler data, that the percentage of repeat spawners or larger fish in the population has also recently increased, indicating an improvement in population condition (WDFW 2001c). Based on analysis of data from the West Fork Hoquiam River, Bingham Creek, and the angler data, there is no evidence that the adult portion of the population in the Grays Harbor tributaries, which comprises 18 percent of the DPS, is declining over the long term as described in the proposed rule (64 FR 16407), and there is some indication that the adult portion of the population may be stable or increasing, at least in Bingham Creek.

Juvenile (downstream migrant) count data were available from many locations within the Grays Harbor portion of the DPS. Most of the trend analyses from these data sets are not reliable due to short time series or poor statistical results. Only the Stevens Creek data were considered relatively reliable (p less than 0.001, $r^2 = 0.67$). This population was declining at a rate of 15 percent per year as of 1994 (Johnson *et al.* 1999) and there were no additional data available for this trap. New data were available from the Chehalis River trap. Hatchery releases in this area have declined significantly and no hatchery marked coastal cutthroat trout have been recorded at the trap in recent years. The number of total coastal cutthroat trout caught at the trap appears to have declined in recent years (11 percent annual decline, $p = 0.18$, $r^2 = 0.19$). However, when only unmarked (*i.e.,* naturally spawned) coastal cutthroat trout were counted, the number of fish counted appears to have increased over the long term (10 percent annual increase, $p = 0.18$, $r^2 = 0.14$). Given the moderate p values and poor $r^2$ values, these data have relatively poor reliability. Therefore, the Chehalis River trap provides no strong evidence of either a long-term positive or negative population trend.

*Population Trends in the Columbia River and Tributaries*

Trends in the numbers of migratory adult coastal cutthroat trout returning to traps in the lower Columbia River portion of the DPS were analyzed on five available data sets discussed below. These analyses provide some indication of decline in the numbers of adult anadromous coastal cutthroat trout, though there are concerns about the reliability and confidence in the magnitude of these trends for most of the data sets. These concerns are poor statistical reliability, lack of trap efficiency data, and consistency problems that likely bias the results. No data exist specific to trends in the resident portion of coastal cutthroat trout population in the DPS.

Two of the five data sets were from a limited time period and not considered reliable indicators of trend. In addition, the North Fork Toutle River trap was considered unreliable for determining trend due to recent continued failure of the Fish Collection Facility leading to closures coinciding with the upstream migration of anadromous cutthroat trout (WDFW 2001c). Trends for wild fish returns for the Elochoman River trap were difficult to fully analyze due to a significant gap in the data. There are only seven years of data following this gap, ending in 1995 when trapping was discontinued.

The Kalama River trap has detected low numbers of coastal cutthroat trout in all but four years since 1982. The Kalama River basin occupies 1.5 percent of the DPS's range. This trap is located above the traditional anadromous cutthroat trout zone, in an area blocked to upstream passage until a ladder was built at the falls in 1936. The trap is designed for adult salmon with a 3.8 cm (1.5 in) bar spacing. According to WDFW, most adult sea-run cutthroat trout would pass through undetected (WDFW 2001c). While these factors may affect total counts at this location, it is still potentially usable for trend analyses. The data indicate a long-term declining trend (10 percent annual decline, p less than 0.001, $r^2 = 0.62$). WDFW (2000) noted that after a sharp decline in the mid-1980s, counts at the Kalama facility have been low and stable, though our analysis of data since 1987 indicates that the number of cutthroat trapped has continued to decline at a similar rate.

Creel census data for coastal cutthroat trout from the lower Columbia River were collected incidentally to studies of salmon and steelhead fisheries, and no data were collected on angler effort for coastal cutthroat trout. Based on the latest creel census data, there is an indication of an 18 percent annual rate of decline over the long term. The number of cutthroat trout recorded in the creel surveys for the lower Columbia River, and thus the calculated trend, is likely to be strongly influenced by the change in cutthroat trout fishing regulations during this period (WDFW 2001c) with a decrease in limits and an increase in minimum size (see Population Size section), as well as changes in salmon and steelhead fisheries. The lack of angler effort data make it impossible to determine if the decline in creel census numbers is the result of declining populations or declining effort. Creel census personnel have noted reduced angler effort in traditional cutthroat trout areas and fewer anglers using traditional sea-run cutthroat trout gear (WDFW 2001c). The change in regulations likely changed fishing behavior, reducing the angler effort. With reduced effort, we would expect a lower catch and therefore the appearance of a decline. While it is likely that there has been some decline in the number of adult anadromous cutthroat trout, it is impossible to determine the rate of decline with any certainty in the absence of data on angling effort (WDFW 2001c). Given the lack of angler effort with which to standardize the counts, we can no longer conclude that the creel census

data indicates a specific level of decline in the anadromous portion of the cutthroat trout DPS as described in the proposed rule (64 FR 16397).

The NMFS Status Review also cited concern relative to two near extinctions of anadromous runs in the Hood and Sandy Rivers (6 percent of the DPS's range) (see Population Size section). There has been a decline in the number of anadromous cutthroat caught at the trap in the Sandy River, though it is difficult to extrapolate data from one trap located on a tributary to the main river to a meaningful population trend in this system. Captures have been very low at Powerdale Dam on the Hood River (see Population Size section). The data were insufficient to conduct any meaningful trend analysis. Given the long history of this dam, it is not surprising that the anadromous portion of the population in Hood River is severely depressed. The resident portion of the population within this system is in better condition, with relatively high densities (ODFW 1998), though no trend data exist for this portion of the population.

Data were available for the smolt to adult return rate at the Cowlitz River Hatchery. These rates have declined in the long-term (19 years) (6 percent decline per year, $p = 0.01$, $r^2 = 0.34$). In the short term (11 years), the data do not reliably show an increasing or decreasing trend ($p = 0.46$, $r^2 = 0.06$). The last return rate (1998 juveniles) was 4.1 percent, the highest value since 1988. These data are based on hatchery fish and likely underestimate natural survival rates of cutthroat in this system because of the higher levels of survival of wild over hatchery produced salmonids (Chilcote in prep).

Data on population trends for juveniles (downstream migrants) were very limited. Most data sets were short and trend could not be determined with any certainty. Trends varied from weak increases to weak declines. The Status Review noted a 16 percent decline in smolt abundance in the Kalama River. This was based on data from 7 years (1978–1984) followed by a gap of 8 years and 3 years of additional data (1992–1994). The gap and short nature of the end portion of the data make it difficult to interpret a reliable rate of decline.

*Summary of Trend Analysis*

Based on the above information, population trends of the DPS appear more variable than previously thought. The proposed rule stated that ''[t]rends in anadromous adults and outmigrating smolts in the southwestern Washington portion of this [DPS] are all declining'' (64 FR 16407). Based on the latest information, there is no reliable evidence that the adult population in the Grays Harbor tributaries is declining over the long term and some indication that the adult population may be stable or increasing in at least some areas. There is an indication from a single trap that juvenile outmigration may be declining, though we lack data for the past seven years. Therefore, we no longer conclude that trends of the adult anadromous portion of the population and outmigrating juveniles in the southwest Washington portion of the DPS are all declining markedly as described in the proposed rule (64 FR 16407).

The proposed rule stated that ''[r]eturns of both naturally and hatchery produced anadromous coastal cutthroat trout in almost all lower Columbia River streams have declined markedly over the last 10 to 15 years,'' with the only increase in the Toutle River (64 FR 16407). The petition to list sea-run cutthroat trout (ONRC 1998) stated that ''[i]f angler catch truly mirrors run size, * * * then the latest surveys suggest a decline of close to 99 percent in sea-run cutthroat trout numbers from historical levels in the lower Columbia River and its tributaries.'' As described above, due to changes in regulations and the lack of angler effort data, we conclude that angler catch data for the lower Columbia River is likely not a true representation of run size. Data for the lower Columbia River are limited and there are significant concerns about the reliability of the results. There are indications of declines in the anadromous component of the adult portion of the population in the Columbia River, though the rate of the decline is uncertain due to concerns over the reliability of the analyses and potential biases in the data sets. While the number of anadromous coastal cutthroat trout have likely declined in the Columbia River, we do not have sufficient data to determine a reliable rate of recent decline and, therefore, no longer conclude that returns of anadromous cutthroat trout in almost all lower Columbia River streams have ''declined markedly over the last 10 to 15 years'' as described in the proposed rule (64 FR 16407). There is little information on population trends for resident or freshwater forms of cutthroat trout in the DPS, though populations in the Washington portion of the DPS appear to remain at levels comparable to healthy-sized populations, indicating that large-scale, long-term declines have not occurred at a landscape level. Based on these data, we do not find that the population trends indicate that coastal cutthroat trout are likely to be extirpated from any significant portion of their range in the foreseeable future.

**Life History Diversity**

The proposed rule stated that ''[a] significant risk factor for coastal cutthroat trout in this [DPS] was a reduction of life-history diversity'' (64 FR 16407), based on serious declines in anadromous life history forms and near extirpation in at least two rivers on the Oregon side of the basin. The proposed rule does acknowledge that freshwater forms remained well distributed and in relative high abundance (64 FR 16407). The proposed rule indicated that habitat degradation in stream reaches accessible to anadromous cutthroat trout, and poor ocean and estuarine conditions, likely have combined to severely deplete the anadromous life history form throughout the lower Columbia River Basin. Finally, the proposed rule further stated that ''Reduced abundance in anadromous fish will tend to restrict connectivity of populations in different watersheds, which can increase genetic and demographic risks. * * * The significance of this reduction in life-history diversity to the [*sic*] both the integrity and the likelihood of this [DPS's] long-term persistence is a major concern to NMFS'' (64 FR 16407).

ODFW and WDFW presented preliminary evidence to the Status Review team that freshwater cutthroat trout could produce anadromous migrants, which could mitigate risks to the anadromous portion of the population. The proposed rule did note that the presence of well distributed freshwater forms in relatively high abundance, coupled with the possibility that freshwater forms could produce anadromous progeny ''* * * could act to mitigate risk to anadromous forms of coastal cutthroat trout,'' though the observation that sea-run coastal cutthroat trout population sizes remained consistently low remained a cause for concern (64 FR 16407).

Anadromous cutthroat trout, particularly in the lower Columbia River, are the most negatively affected portion of the DPS. The degree to which the reduced numbers of the anadromous portion of the population of coastal cutthroat trout represent a risk to the DPS as a whole depends, in part, on the importance of this life history strategy and the extent to which the expression of life history strategies are genetically versus environmentally controlled.

The anadromous life history strategy is likely important to the DPS for genetic mixing in the long-term and for potential recolonization after

catastrophic events. Genetic exchange can be important in evolutionary time scales to maintain diversity within populations, but requires that only a few individuals interbreed successfully over time. The Pacific Northwest is subject to periodic catastrophic events such as volcanic eruptions and stand replacement fires that can seriously depress, and even extirpate, local populations. These types of events occur on very long time scales and at watershed or sub-basin scales. Anadromous cutthroat represent one possible source of individuals for recolonization, the other being resident cutthroat trout above or outside the area of the catastrophic event. The ability of anadromous cutthroat trout to recolonize is limited by barriers and they cannot provide rescue to populations above large, natural barriers.

The extent to which each life history expression is partitioned or isolated among and within populations is largely unknown, though there is growing evidence that individuals may express multiple life history behaviors over time (Johnson *et al.* 1999). Coastal cutthroat trout that were believed to be freshwater forms one year may migrate to the sea another year; some individuals may not make their initial migration to sea until age six (Sumner 1962, Geiger 1972). Some sea-run cutthroat trout may not enter saltwater every year after their initial seaward migration (Tomasson 1978).

Both ODFW (1998) and WDFW (2001) presented information showing evidence of production of anadromous progeny by freshwater resident cutthroat trout. Studies of brown trout have demonstrated that non-anadromous adults can produce anadromous offspring, though at lower levels than anadromous adults. For other salmonids with multiple life history forms, Jonsson and Jonsson (1993) suggested that in a single mating, parents may produce offspring with different migratory strategies, though this has not been confirmed experimentally for coastal cutthroat trout (Johnson *et al.* 1999).

WDFW (2001) provided additional information on the production of downstream migrants by cutthroat trout entrained above dams on the Cowlitz River. A downstream migrant trap at Mayfield Dam recorded between 60 and 812 migrants per year from 1978 to 1999. There was a single release of hatchery-derived anadromous cutthroat trout above Mayfield Dam in 1981, but all cutthroat trout currently above the dam are considered to be freshwater forms (WDFW 2001c). Mayfield Dam was built in 1962, blocking upstream migration. WDFW has marked coastal cutthroat trout smolts produced by upstream freshwater fish at Cowlitz Falls, which lies above Mayfield Dam. Two adults returned from smolts tagged in 1997, one of which was sacrificed and microchemistry results confirmed it had migrated to salt water and returned. Eight fish from smolts tagged returned in 1998. While this portion of the DPS may contain residualized anadromous cutthroat trout trapped behind the dam, it has continued to produce downstream migrants for over 40 years (more than 10 generations). These results are consistent with the hypothesis that resident fish in anadromous fish zones are capable of producing migratory juveniles (*i.e.,* smolts) and ''sea-run'' adults.

The few existing studies show that, although both allele frequencies and morphology may differ between populations above barriers and populations below barriers with access to the sea, these different life history forms are generally more closely related within a drainage than are populations from different drainages (Behnke 1997, Johnson *et al.* 1999). These results indicate that the migratory and non-migratory portions of the population of cutthroat trout represent a single evolutionary lineage in which the various life history characteristics have arisen repeatedly in different geographic regions. These relationships for coastal cutthroat trout are similar to those for other salmonid fishes, particularly sockeye salmon (*Oncorhynchus nerka*) and its non-anadromous form, kokanee.

NMFS (Johnson *et al.* 1999) acknowledged that if freshwater coastal cutthroat trout can produce smolts, this could mitigate the risks to the anadromous portion of the population, though at the time they lacked information on the length of isolation of populations above Mayfield Dam to fully evaluate this phenomenon. They did note that even if smolts were being produced, the anadromous portion of the population remains consistently low in many areas which is cause for concern. Coastal cutthroat trout above Mayfield Dam have been isolated for over 40 years, representing many generations, and continue to produce appreciable numbers of downstream migrants. The fact that they continue to produce smolts after long isolation suggests that even if the anadromous portion of the population continues to experience low number and declines, smolts will be produced that can supplement the anadromous portion of the population and take advantage of any improvement in anadromous habitat (*e.g.*, ocean, estuary, mainstem rivers). In addition, there is no evidence at this time that coastal cutthroat trout pursuing the anadromous life history strategy are segregated from the remainder of the population. In fact, studies show that individuals above barriers and below barriers with access to the sea are more closely related within a drainage than are individuals from different drainages (Behnke 1997, Johnson *et al.* 1999). This further supports the conclusion that anadromous and non-anadromous individuals are not substantially separate subpopulations. Therefore, based on the evidence that freshwater and isolated portions of the population are capable of producing anadromous migrants, we now conclude that freshwater and isolated portions of the coastal cutthroat trout population are mitigating risks to anadromous forms to some degree. The ability for non-anadromous cutthroat trout to produce anadromous progeny reduces the risk of loss of the anadromous life history strategy in the foreseeable future.

**Distinct Population Segment**

The analysis for this listing determination is based on the DPS as described in the April 5, 1999, **Federal Register** proposed rule (64 FR 16397). In that proposed rule, the DPS was defined to include naturally spawned cutthroat trout below long-standing, naturally-impassable barriers. However, at that time we indicated that, prior to the final listing, we would examine the relationship between hatchery and naturally spawned cutthroat trout, and cutthroat trout above barriers to assess whether any of these populations warrant inclusion in the DPS. In the proposed rule, we indicated that this could result in the inclusion of specific hatchery populations or populations above barriers as part of the DPS.

Only one coastal cutthroat trout hatchery remains active in the DPS's range, the Cowlitz River Hatchery. We examined the relationship between this hatchery and unmarked fish from the DPS. Genetically, the remaining hatchery population appears more similar to other populations within the DPS than to populations from outside the DPS (Johnson *et al.* 1999). Stock for this hatchery came initially from the now closed Beaver Creek Hatchery, which in turn was initiated using a mixed stock of fish from within the DPS (Crawford 1979). We have no information that would lead us to exclude the Cowlitz River Hatchery stock from the DPS at this time. Therefore, all further analyses were conducted including the Cowlitz River Hatchery stock.

As described in the proposed rule, we indicated that populations above barriers that permit some one-way migration should generally be included in the DPS. Populations above such barriers may contribute demographically and genetically to populations below barriers. The genetic similarity observed between populations above and below barriers supports this interpretation (Johnson *et al.* 1999). Few, if any, natural barriers prevent some one-way migration. Therefore, we have included all above-barrier populations as part of the DPS for the following analysis. Therefore, the DPS analyzed in this listing determination includes all coastal cutthroat trout, whether naturally spawned, from hatcheries, or above barriers, within the area described above.

**Previous Federal Actions**

NMFS published a Status Review of coastal cutthroat trout in Washington, Oregon, and California in January 1999. On April 5, 1999, NMFS and the Service published a proposed rule in the **Federal Register** (64 FR 16397) proposing to list the coastal cutthroat trout population in southwestern Washington and the Columbia River, excluding the Willamette River above Willamette Falls, as threatened pursuant to the Endangered Species Act of 1973 (Act). We published a document in the **Federal Register** (65 FR 20123) on April 14, 2000, extending the deadline from April 5, 2000, to October 5, 2000 for the final action on the proposed rule to list this population in Washington and Oregon, and to provide a 30-day comment period. On April 21, 2000, NMFS and the Service published a notice of our assumption of jurisdiction for coastal cutthroat trout. We published a document on June 2, 2000 (65 FR 35315), reopening the public comment period and announcing a public hearing in Illwaco, WA, on June 20, 2000. On July 14, 2000, we published a proposed rule in the **Federal Register** (65 FR 43730) to clarify the take prohibitions for coastal cutthroat trout and provide for a 30-day public comment period. This proposed rule was necessary to answer questions we had received regarding the application of the take prohibitions of section 9 of the Act to the proposed listing of the coastal cutthroat trout as threatened. The comment period was again reopened September 6, 2000 (65 FR 53974), and a hearing was held September 21, 2000, in Aberdeen, WA, based on a request during the public comment period. In November 2000, we suspended work on the proposed listing of the coastal cutthroat trout due to budgetary limitations. On August 29, 2001, we issued a press release announcing that, as part of a settlement agreement with conservation groups, we would commence work on the final listing decision for the Southwestern Washington/Columbia River coastal cutthroat trout DPS (*Center for Biological Diversity, et al.* v. *Norton*, Civ. No. 01–2063 (JR) (D.D.C.)). This was followed by another proposed rule announcing an additional 30-day comment period, published in the **Federal Register** (66 FR 58706) on November 23, 2001. We requested any new information related to the status and biology of the coastal cutthroat trout population in southwestern Washington and the Columbia River, any threats to the species, and any efforts being made to protect native, naturally reproducing populations.

**Summary of Comments and Recommendations**

In the April 5, 1999, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Additional requests for public comment were published on April 14, 2000 (65 FR 20123); July 14, 2000 (65 FR 43730); September 6, 2000 (65 FR 53974); and November 23, 2001 (66 FR 58706). Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. During the five open comment periods, a total of 127 comments were received from 96 different government agencies, organizations, or individuals, including oral testimony at the four hearings held during the process. Many government agencies, organizations, and individuals provided comments during more than one public comment period or hearing.

*Issue 1:* Several commenters stated that coastal cutthroat trout should not be listed as a DPS, but should be considered for listing at the subspecies levels and then only if it is reasonably certain that it constitutes a separate subspecies based on significant characteristics.

*Service Response:* The Act defines species as ''any species of fish or wildlife or plants, and any DPS of any species of vertebrate fish or wildlife that interbreeds when mature.'' 16 U.S.C. 1532(15). A DPS is a population of a vertebrate species that is distinct from, and significant to, the remainder of the species or subspecies to which it belongs (61 FR 4721). This definition specifically allows for the recognition of DPSs at levels below taxonomically recognized species or subspecies. The coastal cutthroat trout is a recognized subspecies of cutthroat trout (Behnke 1992).

*Issue 2:* Two commenters suggested that all life history forms, including populations above long-standing, naturally-impassable barriers should be included in the DPS. Two commenters suggested that resident coastal cutthroat trout may contribute to anadromous smolt production, supporting the inclusion of resident fish in the DPS.

*Service Response:* We fully evaluated information on the relationship between populations above and below long-standing, naturally-impassable barriers and agree with the commenters (see Distinct Population Segment section). Based on the latest information provided by WDFW (2001), we concur that there are data showing that cutthroat trout above long-standing barriers produce offspring that migrate to the estuary or ocean and return. We have considered this information fully in the Life History Diversity section above. We have included all life history forms and populations above long-standing, naturally-impassable barriers in the final analysis of the DPS.

*Issue 3:* One commenter questioned the delineation of the DPS, suggesting that observed minor differences in genetic makeup, life history, phenotypic traits, and habitat characteristics did not support multiple DPSs for coastal cutthroat trout. Several commenters suggested the DPS did not meet the requirement for discreteness from other populations beyond the DPS.

*Service Response:* DPSs of vertebrate populations may be listed under the Act if they satisfy the following two elements: (1) discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) significance of the population segment to the species or subspecies to which it belongs (61 FR 4721).

To be considered discrete, a DPS must be markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation. Genetic tests of samples from coastal cutthroat trout in the DPS show that populations within the DPS are more closely related to each other than to populations in adjacent areas. This indicates some level of reproductive isolation. As it only requires interbreeding of a few individuals

between populations to effectively keep the population genetics from diverging significantly, the differences described in the Status Review (Johnson *et al.* 1999) demonstrate marked separation of the coastal cutthroat trout in the DPS from other adjacent areas.

The second requirement for DPS status is the biological and ecological significance of the population to the subspecies. Significance includes, but is not limited to the following: (1) persistence of the DPS in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; or (3) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics (61 FR 4721). The DPS has unique ecological characteristics that distinguish it from other portions of the range. The DPS occupies aquatic systems that feed three large estuaries with extensive intertidal mud and sandflats, very different from estuaries north and south of the DPS. Loss of coastal cutthroat in the DPS would result in a significant gap in the range of the taxon. Populations may be reproductively isolated because of limited migratory range and timing. The loss of these populations would negatively affect the genetic resources of coastal cutthroat.

Based on a review of available information, we concluded that the DPS meets the criteria for discreteness and significance. Available data demonstrate that both environmental and genetic factors indicate that the DPS is different from other populations of coastal cutthroat trout. Further, we concluded that the available information supports the conclusion that the southwest Washington/Columbia River DPS of coastal cutthroat is biologically and ecologically significant to the subspecies.

*Issue 4:* Several commenters recommended splitting the DPS into smaller segments. Most commenters suggested separating the Grays Harbor/Willapa Bay area from the Columbia River because of physical, geographic, and/or biological isolating mechanisms. One commenter provided an alternative genetic analysis that indicated the DPS should be split into three separate DPSs.

*Service Response:* There are significant ecological and genetic similarities between the Columbia River, Willapa Bay, and Grays Harbor portions of the DPS. All three occupy large estuary systems. One commenter pointed to the relatively long distances between the Willapa Bay and Columbia River tributaries (approximately 80 km (50 mi)), and the fact that coastal cutthroat trout are not thought to cross large open water as potential isolating factors that would support smaller DPSs. However, the same commenter did provide evidence that isolation between Grays Harbor, Willapa Bay and/or Lower Columbia coastal cutthroat is not complete, because hatchery marked coastal cutthroat are frequently observed at Willapa Bay salmon hatcheries. WDFW (2000) suggested that the hatchery marked fish originated from either Lower Columbia River or Grays Harbor because there were no hatchery plants of coastal cutthroat in Willapa Bay during this time period. Therefore, we conclude that the distance between Willapa Bay and Columbia River coastal cutthroat trout populations would not prevent anadromous cutthroat from interacting across these systems.

The alternative genetic analysis presented by WDFW (2001) actually revealed a slightly higher genetic similarity between Willapa Bay and Lower Columbia River populations than between the former populations and Grays Harbor. We agree that populations of coastal cutthroat trout in the DPS appear to be substructured according to major geographic areas. However, the magnitude of this substructuring, relative to the amount of genetic divergence among the six DPSs identified by NMFS (Johnson *et al.* 1999), does not warrant further partitioning into two or more separate DPSs. WDFW also presented observed differences regarding life history characteristics of juvenile anadromous coastal cutthroat (smoltification age) comparing a single stream in the Columbia River portion to a combined data set from three streams in Willapa Bay. While there were differences in the percentage of individuals making their first marine migration at age two (86 versus 61 percent), this may well be evidence of minor local adaptations to the specific conditions in these few individual streams. Without a more extensive study, it is impossible to determine if this difference is indicative of these portions of the DPS.

Based on the latest information, we conclude that the DPS as defined in the proposed rule (64 FR 16397) meets the requirements of a DPS, and that alternative smaller DPSs are not supported by the information available at this time.

*Issue 5:* Several commenters questioned the analysis and interpretation of genetic data based on sample size, limited collection period, lack of information on the resident portion of the population in the analysis, treatment of outliers and hybrids, analysis procedures (*e.g.,* measures of genetic distance), presence of hatchery and mixed origin stocks in the samples, and the potential effect of hatchery stock on local population genetics. WDFW provided an alternative analysis and conclusion of the genetic information.

*Service Response:* The principal purpose of genetic analyses for Endangered Species Act evaluations is to understand the magnitude of genetic diversity among populations throughout the range of the species considered for listing under the Act. The goal of such evaluations is not to identify every genetically isolated (or diverged) population, but rather to identify geographic subsets of the species conforming to the definition of a DPS (61 FR 4721). The pattern of genetic diversity throughout the range of the species is evaluated geographically to identify potential subsets for further evaluation as DPSs.

In the genetic analysis, Johnson *et al.* (1999) excluded some outlier populations from the statistical analysis. None of the populations within the DPS were excluded. Most of the excluded populations were from the Upper Willamette DPS, and only one was from an adjacent DPS with anadromous components. Therefore, the exclusion of outlier populations is unlikely to have significantly affected the interpretation of the genetic information relative to the DPS.

We recognize that exclusion of ''hybrids'' from the population genetic analyses conducted by the Status Review Team may be more problematic. NMFS used a qualitative, genotypic approach in their genetic analyses to classify each individual fish as either a cutthroat trout, a rainbow/steelhead trout, or a ''hybrid'' (Johnson *et al.* 1999). It is necessary to remove hybrids to accurately analyze regional genetic patterns for coastal cutthroat trout, especially where hybrids are common. We are currently re-analyzing the data with a more quantitative approach based on multivariate statistical analyses. These analyses are not yet complete, but preliminary analyses indicate that the quantitative and qualitative approaches are classifying most individuals consistently.

*Issue 6:* Several commenters reported that coastal cutthroat (especially resident forms) are distributed throughout the DPS and are locally abundant in most areas.

*Service Response:* Since obtaining sole jurisdiction for this subspecies (64 FR 21376), we have assembled an extensive database regarding

distribution (presence) of coastal cutthroat in the DPS. For example, in Washington, we have documented that coastal cutthroat occur in over 1,300 locations within the DPS. This data set includes the year 2001 sampling effort conducted by WDFW in Lower Columbia River streams. With this new distribution information, we now have a high degree of certainty that this subspecies is well distributed throughout suitable habitats in the DPS. From these data, it is now apparent that the historical distribution of coastal cutthroat has not contracted appreciably in the DPS (see Range and Distribution section below).

*Issue 7:* Several commenters suggested that the biological information presented in the Status Review and proposed rule was not adequate to proceed with a final listing. Several commenters requested that we extend the time for the decision on the proposed rule to list, in part to better assess or gather additional biological information.

*Service Response:* We are fully aware of limited data available for the coastal cutthroat trout in the DPS. The proposed rule (64 FR 16397) specifically addressed this issue in a section entitled, Data Limitations and Scientific Uncertainty. In the proposed rule and subsequent **Federal Register** proposed rules, we specifically requested additional information to aid us in acquiring the best scientific and commercial data available. In 2001, WDFW biologists, with some funding from the Service, sampled over 130 locations to determine presence/absence and relative abundance of coastal cutthroat in Lower Columbia River tributaries. They also compiled other fish survey data sets from the year 2000 to increase the sample size to over 150 locations. The data collected from these surveys were extremely valuable in assessing presence/absence and relative abundance, and in the analysis of the five threat factors for much of the DPS. In 2001 we also funded a study that helped resolve issues of hybridization with rainbow/steelhead trout in Washington. We have made every effort to gather all available information to complete this listing determination.

The Act requires us to complete a final listing decision within one year of the publication of a proposed listing, though it does allow for an extension of not more than six months if there is ''* * * substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination concerned* * *.'' On April 14, 2000, we invoked this provision to help resolve substantial scientific disagreement concerning above-barrier coastal cutthroat and hatchery populations of coastal cutthroat (65 FR 20123). In addition, the current listing decision is part of a settlement agreement with conservation groups that requires the final listing decision by June 23, 2002. Therefore, we are using the best available scientific and commercial information to reach a listing decision, as required by the Act, and by the court agreed deadline.

The Act requires that listing determinations be based on the best available commercial and scientific information. We have received new information since the proposed listing specific to coastal cutthroat trout in the DPS. While information on this species is not as rigorous and complete as is available for some other salmonids, we believe we have sufficient information and evidence to support a final listing determination at this time.

*Issue 8:* Several commenters requested that we provide specific numeric values for distribution and population thresholds. They stated that these values were essential to determine threatened status and future recovery for this subspecies.

*Service Response:* Distribution and population levels were evaluated in determining the status of the species in the context of the historic condition of the DPS, rather than in the context of predetermined specific numerical thresholds. We did not find any significant change in distribution of coastal cutthroat trout in this DPS. As with most species, actual population numbers were not available for most of the DPS. Indices of population levels and trends were used to evaluate these aspects of the DPS and are described in the Population Size section above. Perhaps of more value in determining current condition and threats to the DPS than actual numbers are the trends in these index values and in potential threats to the DPS, which were also used in this determination and described in the Population Trend section above.

*Issue 9:* One commenter suggested that because resident cutthroat trout populations are generally healthy-sized, one could conclude that human and natural factors resulting in adverse marine conditions, rather than freshwater conditions, are the cause of declines in anadromous forms.

*Service Response:* We agree that the latest information indicates that the resident portion of the population exists in range and densities comparable to populations that are thought to be healthy-sized outside the DPS. However, this does not prove that freshwater conditions have not contributed to declines in the anadromous portions of the coastal cutthroat trout population. Conditions in spawning areas used by anadromous individuals and barriers to historic anadromous spawning areas likely contributed to declines, as have changes in the migration corridors (large rivers), estuaries, and marine conditions.

*Issue 10:* Several commenters described the impact of continued effects of logging to coastal cutthroat trout populations, including effects on large woody debris availability, increased disease, altered timing of juvenile migrations, increased predation, smothering of eggs and fry in gravels, and adverse effects to benthic (bottom dwelling) invertebrates that provide food for cutthroat trout.

*Service Response:* We agree that logging activities may have adverse effects on coastal cutthroat trout and have fully evaluated the past, current, and future threats from these activities. Our analysis is described in the Forest Management section below. The completion of two large-scale forest HCPs and Washington Forest Practices Regulations have significantly reduced the threats to coastal cutthroat trout from logging in the DPS. Collectively, remnant high quality habitat, ongoing forest recovery, active efforts to identify and correct legacies of past management, improved standards for future management actions, and the ability of coastal cutthroat trout to survive for long periods in degraded aquatic and riparian systems provide the basis for maintenance of habitat for the DPS of coastal cutthroat trout. Therefore, forest management is not likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

*Issue 11:* One commenter expressed concern about the potential impacts of municipal discharges and its impact to water quality; instream and adjacent gravel pit operations and its effects on spawning gravels; water withdrawals reducing flows at critical periods; sedimentation as a result of road building near spawning beds; and development resulting in reduced riparian zones. Another commenter pointed out the potential effects of agriculture and urban/rural development on habitat conditions for coastal cutthroat trout.

*Service Response:* We agree that all of these activities may adversely affect coastal cutthroat trout. We have fully evaluated the past, current, and future threats from these activities (Agriculture

and Grazing Management, Mining, and Urban and Industrial Development sections below). While these activities have affected aquatic and riparian conditions in the DPS's range, they are generally localized in impact and do not affect the majority of the DPS. Under current regulations, continued impacts from these activities are not likely to lead to the endangerment of the coastal cutthroat trout in the foreseeable future.

*Issue 12:* Several commenters described the potential effects of barriers (dams and culverts) to anadromous cutthroat trout, including blockage of historic habitat and significant declines in all major tributaries above dams, with the likely extinction of populations in the Wind and Klickitat Rivers. One commenter pointed out that coastal cutthroat trout have generally not been included in the trucking efforts for other salmonids, increasing the impact of barriers to these fish.

*Service Response:* We agree that barriers can adversely affect migratory coastal cutthroat trout (see Dams and Barriers section below). Existing dams block upstream access in several portions of the DPS's range. The anadromous portion of the population is most likely affected by these large dams, while resident and some freshwater migratory portions are likely little affected as their habitat remains substantially intact above dams and diversions. Culverts are the most widespread potential barriers to upstream migration. Again, anadromous and migratory portions of the coastal cutthroat trout population are the most likely affected by these barriers, while the resident portion of the population likely remains extant above most barriers. Blockage of upstream migration is not likely to increase given current regulations, and some improvements are likely through dam removal and culvert improvements. Despite existing barriers, coastal cutthroat trout remain well distributed throughout the DPS's range and at levels apparently comparable to healthy-sized populations in many areas. Based on the current and likely future effects, existing dams and other barriers are not likely to result in endangerment of the DPS of coastal cutthroat trout in the foreseeable future.

*Issue 13:* Two commenters indicated that fishing pressure for anadromous coastal cutthroat has decreased under the current restricted regulations. Another commenter indicated that hooking mortality from steelhead and salmon fishing is a threat to coastal cutthroat trout.

*Service Response:* We are aware that increasing restrictions of harvest for coastal cutthroat trout in the DPS have likely decreased angler effort, in turn reducing direct and indirect mortality of coastal cutthroat trout in the DPS. Information obtained during the public comment periods supports the observation that angler effort has decreased over time (see Overutilization for Commercial, Recreational, Scientific, or Educational Purposes section below). We are aware that coastal cutthroat trout are susceptible to hook and handling mortality. While there are no studies that have specifically evaluated the hooking mortality from bycatch of cutthroat trout in steelhead and salmon fisheries, we anticipate that mortality from this bycatch would generally be small because of differences in the gear used and timing of these fisheries.

*Issue 14:* Several commenters expressed concern about the potential effects of the introduction of non-native predators, including brook trout (*Salvelinus fontinalis*), shad (*Alosa sapidissima*), largemouth bass (*Micropterus dolomieui*), smallmouth bass (*Micropterus salmoides*), and walleye (*Stizostedion vitreum*). Several commenters were also concerned about the potential effects of competition from hatchery-stocked cutthroat trout, coho, and steelhead; hybrid cutthroat/steelhead; and introduced non-native fish.

*Service Response:* We agree that introduced predators or competitors can adversely affect coastal cutthroat trout (see Disease and Predation section below). Some of the non-native fish species listed by the commenters are known to prey on, or compete with, salmonids in the DPS's range (Poe *et al.* 1994). However, no specific information exists regarding predation impacts by introduced predatory fishes on coastal cutthroat trout and we have no evidence that introduced predators represent a major threat to the DPS of coastal cutthroat trout at this time.

We agree that competition with hatchery salmonids or non-native fish could adversely affect cutthroat trout (see Disease and predation, Hatchery management, and Other Factors sections below). Only one hatchery still produces and stocks cutthroat trout within the DPS's range. This hatchery produces anadromous cutthroat trout in a system with several barrier dams that have reduced natural access to historic freshwater habitat for anadromous cutthroat trout which is considered part of the DPS. Hatchery steelhead and coho are stocked in several streams in the DPS's range. Cutthroat trout and coho are naturally sympatric and have likely evolved mechanisms to coexist. However, release of hatchery-raised steelhead and coho could affect cutthroat trout in localized areas, depending on the location and magnitude of the releases. Releases in areas outside of historic coho habitat or in numbers that greatly exceed natural levels could have negative effects on cutthroat trout in the area of the release. However, information demonstrating effects to the DPS from coho releases is limited and the extent to which hatchery management affects coastal cutthroat as a whole is uncertain.

Interactions with hybrid steelhead/cutthroat trout are likely limited. Hybrid fish are no longer stocked in the DPS's range. Cutthroat trout and steelhead are naturally sympatric and have likely evolved mechanisms to avoid hybridization. Recent genetic data indicate that high levels of hybridization are limited to a few areas. This is not currently considered a significant threat to the DPS of coastal cutthroat trout.

*Issue 15:* Several commenters suggested that we had not fully evaluated the contribution of existing conservation efforts and regulatory mechanisms to potential future conditions for the coastal cutthroat trout, including the Oregon Salmon Plan, the Healthy Streams Partnership, Oregon Land Use Planning regulations, Washington Growth Management Planning, Federal and State Clean Water laws, Federal listing of other species under the Act, recent changes in Oregon and Washington Forest Practices Regulations, changes in fishing regulations, and actions of local governments to protect and restore watersheds.

*Service Response:* We fully evaluated information on the most recent regulations and their implementation, including the State Forest Practices Regulations and Clean Water Act (CWA). There have been significant changes in the Washington Forest Practices Regulations since the publication of the proposed rule. We also evaluated all other conservation efforts for salmonids, many of which are non-regulatory in nature. In all cases, we evaluated the likelihood that the regulation or program would be implemented and would prove effective in reducing threats to the coastal cutthroat trout (see Inadequacy of Existing Regulatory Mechanisms and Foreseeable Conservation Measures sections below).

*Issue 16:* One commenter described the impacts from dredging, filling, and diking, all of which can affect important staging and feeding areas for outmigrating trout, and thus adversely affect populations. Another commenter

stated that current guidelines for permitting programs (dredging, wetland filling, etc.) lack a method for assessing cumulative impacts.

*Service Response:* We agree that dredging, filling, and diking can adversely affect coastal cutthroat trout (see Inadequacy of Existing Regulatory Mechanisms section below). However, based on the implementation of current laws and regulatory programs, we conclude that the regulation of dredge, fill, and in-water construction activities through the section 404 and section 10 permit processes and through State programs will provide some protection and support of aquatic resources, though they may not fully remove the risk of some losses to cumulative effects from small individual projects. The remaining risks from cumulative effects are likely to be small in the short term and we do not anticipate that cumulative effects of these small projects will reach a level at which they would be likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

*Issue 17:* One commenter requested that we propose critical habitat at the time of listing.

*Service Response:* When we list a species as threatened or endangered, the Act requires that the listing rule specify, ''* * * to the maximum extent prudent and determinable,'' the species' critical habitat. However, critical habitat is no longer an issue as we are withdrawing the proposed rule to list the coastal cutthroat trout.

*Issue 18:* Grays Harbor County suggested that we are required to complete an Environmental Impact Statement under the National Environmental Policy Act (NEPA) on the proposed listing and asked to be designated as the lead organization for writing the document.

*Service Response:* In regards to NEPA, we have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the NEPA of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

## Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal list of threatened and endangered species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). If, upon consideration of these five factors, the species is found to meet the definition of either a threatened or endangered species, then listing is called for. The proposed rule summarized the ''* * * findings regarding the principal factors for decline across the range of coastal cutthroat trout'' (64 FR 16402) (hereafter referred to as subspecies-wide review). These were generalized for the entire range of the six DPSs of the subspecies, and were not specific to the southwestern Washington/Columbia River DPS that was proposed for listing. The specific factors relevant to the proposed rule to list the Southwestern Washington/Columbia River DPS are described in a separate section of the proposed rule (64 FR 16407, 16408). These factors and their application to our decision to withdraw the proposed rule to list the coastal cutthroat trout in southwest Washington and the Columbia River are described below. The following specifically addresses conditions and threats within the DPS's range.

### *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.*

### Threats to Coastal Cutthroat Trout Habitat

Six types of activities or land use have potential to affect coastal cutthroat trout habitat, including forest management, agriculture and livestock management, dams and barriers, urban and industrial development, mining, and estuary degradation. Only forest management and estuary degradation were described as principal factors for declines across the range of coastal cutthroat trout in the subspecies-wide review in the proposed rule (64 FR 16402) and only estuary degradation was specifically mentioned specific to the southwestern Washington/Columbia River DPS (64 FR 16407).

Specific to the southwestern Washington/Columbia River DPS, the proposed rule stated that ''* * * severe habitat degradation throughout the lower Columbia River has contributed to dramatic declines in anadromous coastal cutthroat trout populations and two near extinctions of anadromous runs in the Hood and Sandy Rivers'' (64 FR 16407). The proposed rule also stated that ''[h]abitat degradation in stream reaches accessible to anadromous coastal cutthroat trout, and poor ocean and estuary conditions, likely combined to severely deplete this life-history form throughout the lower Columbia River Basin'' (64 FR 16407). While neither of these references specify habitat loss due to forest management, this is the principal factor for decline described in the proposed rule related to freshwater habitat loss.

#### *Forest Management*

The proposed rule to list the DPS as threatened stated that ''[h]abitat degradation and impacts associated with logging and related land management activities, in particular, have likely contributed to the decline of coastal cutthroat trout'' (64 FR 16402). The potential effects of logging and related practices described in the proposed rule included changes in water temperature leading to potential disease outbreaks, altered timing of migration, and accelerated maturation; changes in stream flow regimes potentially leading to adverse water velocities and depth characteristics; loss of potential for new large woody debris potentially increasing predation rates on cutthroat trout; loss of riparian areas leading to decreased invertebrate production and detritus sources, key components in the food chain; and siltation which may hinder fry emergence and production of benthic invertebrates. Indirect effects of logging could also reduce dissolved oxygen reducing egg and fry survival.

Past and current forest management is the most widespread source of modification of aquatic, riparian, and watershed conditions within the DPS's range, as forests cover 66 percent of the land base. Past timber management practices such as the use of splash dams (early 1900s), extensive riparian harvest, concentrated upland harvest, riparian and mid-slope roads, and sidecast road construction have modified aquatic and riparian conditions in many portions of the DPS's range. These practices have reduced current and future large woody debris, reduced pool quality, decreased stream shading resulting in increased water temperature, and increased the prevalence of landslides in some areas. This is of particular concern in areas where watersheds have been fully harvested in the past, such as some Grays Harbor tributaries (1940s and 1950s), and in areas where harvest did not peak until the late 1970s, such as some Willapa Bay tributaries. Most of these practices are no longer allowed under recent and current forest management regulations, and splash dams have not been used for many decades.

Despite the long-term, widespread impacts to aquatic and riparian conditions, coastal cutthroat trout have

survived in all portions of the DPS for many generations, and apparently remain at densities comparable to healthy-sized populations elsewhere (WDFW 2001), indicating that they are capable of surviving long periods under these conditions. There is no reason to believe that they will not continue to do so. We have no specific evidence of disease outbreaks, altered timing of migration, and accelerated maturation resulting from water temperature changes, or of significantly increased predation rates, which were described in the proposed rule as principal factors for declines across the range of coastal cutthroat trout (64 FR 16402) as the consequences of logging and related land management activities. Nor do we have any evidence of decreased invertebrate production in forested areas leading to decreases in available food or reduced egg or fry survival, also described in the proposed rule as the consequences of logging and related land management activities.

Conditions of the riparian and aquatic systems in some forest lands are actually in the long-term process of recovery from past forest management practices, though the total area of improvement is unrecorded. For example, some flow regimes are already beginning to improve as forest cover has increased and some riparian areas are revegetated with 40-year-old conifers that will provide large woody debris sources in the future. Some areas of high quality aquatic and riparian systems remain. Approximately eight percent of the DPS's range is in wilderness or National Parks and is in good condition. High quality aquatic and riparian areas remain on other lands, ranging from 13 percent in narrow valleys to 31 percent in wider, forested valleys.

Over time, aquatic and riparian habitats important to coastal cutthroat trout are likely to continue to improve. Federal forest management and Washington Forest Practices Regulations have been revised significantly in recent years so that habitat modification of the magnitude or type experienced over the past 70 years is no longer likely to occur. Current regulations, mainly aimed at improving stream habitat for salmon and steelhead, impose more restrictive standards for riparian harvest, harvest on unstable slopes, road construction, and road maintenance; and reduce the likelihood of large-scale removal of forest cover in a watershed on Federal lands, and State and private timberlands in Washington. These changes have greatly reduced the long-term risk of continued modification of aquatic and riparian habitats in 57 percent of the DPS's range (*see* Inadequacy of Existing Regulatory Mechanisms section). Collectively, remnant high quality habitat, ongoing forest recovery, active efforts to identify and correct legacies of past management, improved standards for future management actions (Inadequacy of Existing Regulatory Mechanisms section), and the ability of coastal cutthroat trout to survive for long periods in degraded aquatic and riparian systems provide the basis for maintenance of habitat for the DPS of coastal cutthroat trout. Therefore, forest management is not likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

*Agriculture and Livestock Management*

Agriculture and livestock management occur on at least 16 percent of the lands in the southwestern Washington/Columbia River DPS, with relatively greater representation in the Grays Harbor tributaries. Neither of these activities were identified as a threat to coastal cutthroat trout in the subspecies-wide review of listing factors (64 FR 16402) or the DPS-specific review for the southwestern Washington/Columbia River DPS (64 FR 16407). Some of the aquatic and riparian impacts associated with agriculture are locally severe and very long-term, such as diking, filling, riparian conversions, channelization, sediment and flow regime changes, and persistent toxic chemicals. In addition, agricultural areas are often located in the lowest stream sections which are often the most productive portions of the streams. Impacts to these stream sections have a proportionally greater effect on the anadromous and migratory portions of the DPS of coastal cutthroat trout, which use these sections for migration, overwintering, and rearing young, while much of the resident portion of the population resides in the upper watershed areas where agriculture is not generally prevalent.

Most lands suitable for agriculture and grazing management have already been converted and it is unlikely that there will be any significant increase in the amount of agricultural and grazing lands in the future. While agriculture and grazing management may have had significant localized and long-term effects to riparian and aquatic systems in the DPS's range, coastal cutthroat trout remain extant in all the affected watersheds. Based on the limited extent of agricultural lands, agriculture and grazing are not likely to result in the southwestern Washington/Columbia River DPS of coastal cutthroat trout becoming endangered in the foreseeable future. Agriculture and livestock management was not identified as a primary threat to the subspecies or the DPS in the proposed rule and is not considered a significant threat at this time.

*Dams and Barriers*

Within the DPS, migratory coastal cutthroat trout access and movements are blocked in some areas by dams, diversions, dikes, tide gates, poorly-designed culverts, and poor water quality, though dams and barriers were not identified as threats in the subspecies-wide review of listing factors (64 FR 16402) or the DPS-specific review for the southwestern Washington/Columbia River DPS (64 FR 16407). Existing dams have blocked access for upstream migration to several portions of the DPS. Even dams with fish passage structures result in some mortality and may delay migrations. The anadromous portion of the DPS is the most likely affected by dams and diversions, as these often limit access to historic spawning areas. Resident and some freshwater migratory portions of the DPS are likely little affected by large barriers, as their access to habitat remains intact above the dam. Road culverts, especially on forest roads, present widely-dispersed potential barriers to upstream movements of coastal cutthroat trout in the DPS, though most culverts allow for downstream movements, and some allow upstream movement seasonally. Existing information indicates that culverts have limited upstream access to a portion of historic habitat though the extent of this limitation is not fully documented. Again, anadromous and migratory portions of the coastal cutthroat trout population are the most likely affected by these barriers, while the resident portion of the population likely remains extant above most barriers.

Current Washington and Oregon State Forest Management Regulations and fish passage standards will minimize the threat that new culverts will block fish passage (see Inadequacy of Regulatory Mechanisms section). In addition, under the latest Washington Forest Practices Regulations, forest managers are required to develop road maintenance and management plans within 5 years and implement such plans within 15 years. Blockage of upstream migration is not likely to increase given current regulations. Despite existing barriers, coastal cutthroat trout remain well distributed throughout the DPS's range and at levels apparently comparable to healthy-sized populations in many areas. The greatest threat from barriers is interference with recolonization of

areas after catastrophic disturbances, though these are very long-term concerns. Floods and related events, in particular, tend to remove roads and barrier culverts. Based on the current and likely future effects, and the low potential for significant additional barriers to be created under current regulations, dams and barriers are not likely to result in endangerment of the DPS of coastal cutthroat trout in the foreseeable future. Dams and barriers, other than those potentially associated with logging practices, were not identified as a primary threat in the proposed rule and are not considered a significant threat at this time.

*Urban and Industrial Development*

Although the direct aquatic and riparian impacts of urbanization in the southwestern Washington/Columbia River DPS are not widespread, they are locally severe and essentially permanent. Urban and industrial development was not specifically identified as a threat in the subspecies-wide review of listing factors (64 FR 16402) or the DPS-specific review for the southwestern Washington/Columbia River DPS (64 FR 16407), although it was identified as a potential effect in the range of the species where it occurs within estuaries. ''Dredging, filling, and diking of estuarine areas for * * * commercial or municipal uses have resulted in loss of many estuary habitats'' (64 FR 16402). This element of development is addressed in the Estuary Degradation section. Many of the largest urban areas in this DPS lie above the estuaries, and therefore have not resulted in physical changes to the estuaries.

Urban areas are expected to expand in some areas as human populations increase, particularly in the Portland Metropolitan area. The long-term effects of urbanization include diking, filling, riparian conversion, channelization, sediment and flow regime changes, water storage, and persistent toxic chemicals. These urban areas are often located in the lowest stream sections where flood plains are wide and stream gradients are low, and therefore have a proportionally greater effect on the anadromous and migratory portions of the coastal cutthroat trout population that use these sections for migration, overwintering, and rearing. Much of the resident portion of the population resides in the upper watershed areas where urbanization is not prevalent. While urbanization and associated industrial development have potentially substantial effects on aquatic and riparian habitats in localized areas, these include only about three percent of the current land base in the DPS. Expansion of urban areas is likely to occur primarily within the areas already impacted and is not likely to substantially increase the impacts to the DPS. The vast majority of the DPS is not significantly affected by urbanization. Therefore, urbanization and industrial development are not likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

*Mining*

Gravel mining has degraded some stream channels in portions of the DPS's range as a result of past, unregulated removal. Mining was not identified as a threat in the subspecies-wide review of listing factors (64 FR 16402) or the DPS-specific review for the southwestern Washington/Columbia River DPS (64 FR 16407). Current regulations and permit requirements have reduced, though not totally eliminated, the impact of gravel mining (see Inadequacy of Existing Regulatory Mechanisms section). While some continued problems may occur, these will be fairly small and localized, and do not represent a major threat to the DPS of coastal cutthroat trout at this time. There is a single coal mine in the Skookumchuck basin (WSCC 2001) and no known plans for additional coal or hardrock mining in the DPS's range. Other mining activity in the DPS's range is very limited and does not represent a major threat to the coastal cutthroat trout. Mining was not identified as a primary threat in the proposed rule and is not considered a significant threat at this time.

*Estuary Degradation*

The proposed rule described the potential loss of important estuary habitat through the ''[d]redging, filling, and diking of estuarine areas for agricultural, commercial, or municipal uses'' (64 FR 16402) and stated that ''reductions in the quantity and quality of estuarine * * * habitat have probably contributed to declines, but the relative importance of these risks is not well understood'' (64 FR 16408).

Anadromous coastal cutthroat trout likely make use of estuaries for growth and development, though we have little information on how individual trout use the various portions of the estuary, especially the large estuaries included in this DPS. The Columbia River estuary has lost 12 percent of its area since 1868, including 65 to 75 percent of off-channel habitats. Thirty percent of the historical wetland habitat in Grays Harbor estuary has been lost, as well as 31 percent of the historical Willapa Bay estuary wetlands. Without information on how coastal cutthroat trout use the estuary habitats, we cannot predict the effect of this loss on the coastal cutthroat trout population. However, the loss of estuary habitat has likely contributed to the lower-than-historical numbers of the anadromous portion of the DPS, though anadromous cutthroat trout remain extant in all three major basins within the DPS. Resident and freshwater migratory portions of the population do not use, and therefore are not affected by changes in, the estuaries.

Given current laws and regulations on wetland dredge and fill (see Inadequacy of Existing Regulatory Mechanisms section), we do not anticipate additional large-scale conversion or loss of estuary or off-channel areas, though some small scale impacts are still likely, and the legacy of past actions will result in some continued changes. The only large-scale project currently proposed is the Columbia River Channel Improvement Project which will deepen 166 km (103 mi) of the already-dredged, narrow navigation channel. This project is anticipated to have limited short-term impacts to estuarine and riverine conditions, and will be monitored carefully in the future to minimize any impacts to known fish habitat (USFWS 2002). The resident portion of the population is completely unaffected by estuary conditions and changes. The current condition, limited likelihood of continued degradation or loss of estuary habitat, and remaining populations of cutthroat trout lead us to conclude that estuary conditions are not likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

The proposed rule described the potential loss of important estuary habitat and stated that reductions in the quantity and quality of estuarine habitat probably contributed to declines of anadromous cutthroat trout, but the relative importance of these risks was not well understood (64 FR 16402). This is further complicated by the lack of information on how coastal cutthroat trout use these large estuary systems. Significant portions of the estuarine wetlands remain intact in the Willapa Bay and Grays Harbor systems and, to a lesser degree, the Columbia River estuary. Given current regulations, we do not anticipate additional large-scale conversion or loss of estuary or off-channel areas. While past losses of estuaries may have contributed to a reduction in the anadromous portion of the coastal cutthroat trout population over historic levels, we do not have evidence that the past and potential future losses are likely to result in the DPS of coastal cutthroat trout as a whole

becoming endangered in the foreseeable future.

*Conclusion*

The proposed rule stated that ''* * * severe habitat degradation throughout the lower Columbia River has contributed to dramatic declines in anadromous coastal cutthroat trout populations and two near extinctions of anadromous runs in the Hood and Sandy Rivers,'' and that ''[h]abitat degradation in stream reaches accessible to anadromous coastal cutthroat trout, and poor ocean and estuary conditions, likely combined to severely deplete this life-history form throughout the lower Columbia River Basin'' (64 FR 16407). Based on analysis of the latest data, we now conclude that, while the anadromous portion of the population of coastal cutthroat trout is likely at lower-than-historic levels, there is little specific information indicating that populations, even of the anadromous portion of the DPS, are at extremely low levels in most areas of the DPS (see Population Size section). Relative to the two near extinctions cited in the proposed rule, the data do not support this conclusion (see Population Size section). The trap location on a side channel in the Sandy River system makes it impossible to extrapolate to the entire River system. Anadromous cutthroat trout are still occasionally trapped at Powerdale Dam on the Hood River, including 11 upstream migrants in 2001 (Connolly *et al.* 2002).

The proposed rule's conclusions assumed that the anadromous component of the population of coastal cutthroat trout is effectively isolated from other portions of the population and that the anadromous component represents a significant portion of the DPS. However, new data indicate that fish with these various life strategies do interact and that anadromous progeny may be produced by non-anadromous parents, even after many generations of isolation above barriers (see Life History Diversity section). Therefore, coastal cutthroat trout populations are more appropriately evaluated including all life history strategies, anadromous, migratory and resident. Resident/freshwater forms remain well distributed and at reasonable densities in the lower Columbia River, including areas accessible to anadromous fish, and in the Sandy and Hood Rivers where the anadromous portion of the population is low.

While aquatic and riparian systems have been heavily altered in some areas, the latest information does not support the conclusion that this has severely affected the habitat of the coastal cutthroat trout throughout the range of this DPS. Some areas have begun to recover from past forest practices and new regulations are in place that reduce the risk of continued adverse impacts to much of the DPS. Conditions in many parts of the DPS's range are expected to continue to improve over time and many of the most damaging past practices (*e.g.,* splash dams, large-scale wetland conversion) are not expected to occur in the future due to current laws and regulations. Given that coastal cutthroat trout have not only survived the long-term and widespread impacts of these past practices to aquatic and riparian conditions in large portions of the DPS's range for many generations, but apparently remain well distributed at densities comparable to healthy-sized populations elsewhere, the condition of aquatic and riparian systems is not likely to result in endangerment of the DPS of coastal cutthroat trout in the foreseeable future. Therefore, we no longer conclude that past habitat degradation has led to severe declines in the population of coastal cutthroat trout in the southwestern Washington/Columbia River DPS. In addition, current regulations (described in the Forest Management and State Land Use Practices sections) greatly reduce the risk that significant additional modification of habitat will occur in the foreseeable future.

Curtailment of Range

According to WDFW (2001), the southwestern Washington-lower Columbia River region historically supported healthy, highly productive coastal cutthroat trout populations. Coastal cutthroat trout, especially the freshwater forms, are still well distributed in most river basins in this geographic region, although probably in lower numbers relative to historical population sizes (Johnson *et al.* 1999). Based on over 1,300 locations from 5 data sources (WDFW 2001a (Resident Fish Database 1987–97), WDFW 2001b (Priority Habitat Species database 1989–90), Washington Department of Natural Resources (WDNR) 2001 (Last Fish, Last Fish Habitat Database 2001), Mongillo and Hallock 2001, U.S. Forest Service Watershed Analysis Documents 1995–2001), cutthroat trout remain extant throughout their historic range in the Washington portion of the DPS. Little systematic information is available for the Oregon portion of the DPS, though cutthroat trout, particularly resident forms, are known to occur throughout the DPS in Oregon (Hooton 1997).

Mongillo and Hallock (2001) conducted extensive surveys of 156 locations within the Washington portion of the DPS for presence and abundance of coastal cutthroat trout. Additional data were presented by WDFW (2001) for surveys conducted by Weyerhaeuser Company in 1994–95. The percentage of locations with cutthroat trout from both studies was compared to data collected in the 1970s from the Olympic Peninsula and Puget Sound areas. Populations in these areas were considered healthy-sized during this time period (WDFW 2001c). The percentage of sample sites with coastal cutthroat trout within the DPS's range below Bonneville Dam (Mongillo and Hallock 2001, WDFW 2001c) was not significantly different than the early data from the apparently healthy-sized populations in the Olympic Peninsula and Puget Sound DPSs, indicating that populations in the DPS are still well distributed.

The percentage of sites where cutthroat trout were found in the Washington portion of the DPS above Bonneville Dam was very low when compared to the rest of the DPS. No similar information was available for Oregon portions of the DPS. The area above the Bonneville Dam is ecologically very different from the remainder of the subspecies' range and is the only area within its range where the subspecies is found east of the Cascade Mountain Divide. This area experiences a very different hydrologic and climatic environment than the rest of the subspecies' range, which may influence the abundance of coastal cutthroat trout. In addition, many sample sites from the Mongillo and Hallock study (2001) in the Washington portion of the DPS above Bonneville Dam included areas outside the likely historic range of the species, which would have artificially depressed the percentage of locations with cutthroat trout. Based on these factors, the calculated percentage of sites with cutthroat trout from the Mongillo and Hallock study (2001) above Bonneville Dam likely under-represents the true density of coastal cutthroat trout in this area.

There has been a change in the accessibility of some areas to anadromous cutthroat trout due to barriers created by dams, diversions, culverts, dikes, tidegates, and water quality. Some streams within the DPS's range have been lost to development, such as streams in the more developed portions of Portland, Oregon. The total amount of currently inaccessible habitat is unknown, but it includes only a very small percentage of the total available habitat within the DPS's range and is interspersed with occupied habitat. Despite the long-term, widespread

impacts to aquatic and riparian conditions, coastal cutthroat trout have survived in these areas for many generations and remain well distributed at densities comparable to healthy-sized populations in large portions of the DPS's range. There is no reason to believe that they will not continue to do so. Based on the above information, there is no significant present or identifiable threat of curtailment of the range of the DPS.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.*

Cutthroat trout are not harvested commercially. Scientific and educational programs have probably had little or no impact on the DPS.

The proposed rule to list the Southwestern Washington/Columbia River coastal cutthroat trout DPS stated that ''* * * cutthroat trout are a popular gamefish throughout the Pacific Northwest, and available information indicates that recreational fishing may have contributed to the general decline of cutthroat trout populations (Gresswell and Harding 1997)'' (64 FR 16402). This information was not specific to coastal cutthroat trout, or to the southwestern Washington/Columbia River DPS, and the referenced paper does not indicate that angling is a direct cause of decline.

Cutthroat trout are among the salmonids most vulnerable to overharvest by angling (Gresswell and Harding 1997, Johnson *et al.* 1999), especially during post-spawning outmigrations to summer feeding areas. In many areas, coastal cutthroat trout harvest is primarily incidental in recreational fisheries for other species of salmonids. Because of harvest restrictions on naturally produced coastal cutthroat trout in many areas and the lack of targeted fisheries, direct mortality due to fishing pressure is thought to be relatively low, at least in recent years (Hooton 1997, Gerstung 1997, WDFW 1998a). In addition, fishing regulations establishing size and bag limits are relatively recent, and biologists familiar with coastal cutthroat trout feel that in some areas their abundance has begun to increase only recently due to imposition of these more restrictive fishing limits (WDFW 1998b).

The Washington and Oregon trout fishing regulations have become incrementally more restrictive in the past two decades. Several types of recreational fishing for coastal cutthroat trout are allowed under current fishing regulations in these States. However, catch and keep fisheries on wild coastal cutthroat trout are limited to some portions of the DPS in Washington. Washington's current fishing regulations, particularly the more restrictive ''special rules'' which affect nearly all of the DPS, provide protection to coastal cutthroat while allowing fishing opportunities that can promote conservation of this subspecies. We believe that carefully regulated fishing can promote awareness and conservation of coastal cutthroat trout by maintaining public support for its conservation. Continued recreational fishing conducted in a manner consistent with the conservation of the coastal cutthroat trout helps to maintain a broad support base for the conservation of aquatic resources, including coastal cutthroat trout.

Leider (1997) provided a summary of WDFW ''special regulation'' changes that were developed to protect coastal cutthroat in Washington. In the DPS's range, major special regulations occurred in 1983 (limit reduced from 12 to 8 trout per angler), 1986 (limit further reduced to 5 fish), 1992 (limit reduced to 2 fish). Minimum size limits also increased during this time. In addition, wild cutthroat release was required in some streams within the DPS's range starting in 1989 and expanded to all lower Columbia River streams below Portland/Vancouver in 1992 (Leider 1997). Currently, in the Chehalis River Basin, most streams allow a 2-fish daily limit with a 36 cm (14 in) minimum size limit and, in Willapa Bay and Lower Columbia tributaries, wild cutthroat release is generally required. The exceptions to this wild cutthroat release regulation are mainly in the mainstem Columbia River above Bonneville Dam, above the Cowlitz River Dams, and in the Toutle River Drainage (WDFW 2001d).

The proposed rule stated that ''* * * coastal cutthroat trout are especially susceptible to hooking mortality and incidental catch in recreational and commercial fisheries targeting Pacific salmon and steelhead'' (64 FR 16402). Studies of anadromous cutthroat trout show variable susceptibility to baited hook mortality, from 6 to 58 percent (Gresswell and Harding 1997). There is no current evidence that recreational harvest, whether targeted or incidental to other fisheries, is contributing to declines in the DPS. There is also no evidence that bycatch of coastal cutthroat trout in commercial salmon and steelhead fisheries is a significant source of mortality in this DPS.

The proposed rule stated that ''* * * poaching may pose a significant threat to depressed populations of cutthroat trout in some areas'' (64 FR 16402), though it did not indicate where this might occur and this was not identified as a specific threat in the southwestern Washington/Columbia River DPS (64 FR 16407). There is no evidence that poaching is a significant threat to the DPS of cutthroat trout.

There is no information to indicate that commercial or recreational fishing represents a threat to the DPS of coastal cutthroat trout. Overutilization, including recreational and commercial fishing, was not identified in the proposed rule as a threat to this DPS and is not considered a threat at this time. The States of Washington and Oregon have continued to modify regulations in response to changes in cutthroat trout populations.

*C. Disease or Predation*

The proposed rule stated that ''[d]isease may be a factor contributing to the decline of cutthroat trout populations,'' including the parasite *Ceratomyxa shasta* in the Columbia and Willamette Rivers (ODFW 1998), though the extent to which this and other diseases affect cutthroat trout populations was unknown (64 FR 16402). Disease or parasites were not listed as a specific threat to the majority of the DPS (64 FR 16407). Predation by non-native fish and pinnipeds (seals and sea lions) was also identified as a potential threat, though the extent to which this was a factor in coastal cutthroat trout declines was unknown (64 FR 16402) and predation was not listed as a specific threat to the DPS (64 FR 16407).

Coastal cutthroat trout in the Columbia and other large rivers with hydroelectric dams are potentially vulnerable to gas bubble disease caused by increased gas saturation levels associated with the spilling of water at dams. The disease's effects can range from temporary debilitation to mortality. Because of variability in water temperature, depth, flow, and other factors, the biological effects of a given level of dissolved gas saturation are likely to vary in different areas at various times of the year. Increased gas saturation levels have been identified at the Bonneville and Dalles dams, and can adversely affect fish downstream of these dams. In recent years, NMFS has proposed to balance the needs of juvenile salmonid migrants by increasing spill levels to reduce turbine-related mortalities, resulting in elevated gas supersaturation levels in the Columbia River. Spill levels of up to 120 percent of saturation at ambient temperature and pressure have occurred in recent years during managed spills, with involuntary spill episodes resulting in levels as high as 140 percent

at some sites (NMFS 2000). At levels of 120 percent, gas bubble disease affects a maximum of 0.7 percent of fish exposed, and near 140 percent, over 3 percent of fish exposed are affected (NMFS 2000). While this could cause the loss of some individuals, it is not considered a significant threat at this time.

*Ceratomyxa shasta,* a native parasite that can kill cutthroat trout when water temperatures are high, occurs in the lower Columbia River drainages (Hoffmaster *et al.* 1988) and has been a factor in the loss of cutthroat trout at hatcheries in this area. The effect of the parasite increases as water temperature increases. *Ceratomyxa shasta* is a native parasite in the Pacific Northwest and coastal cutthroat trout have likely developed strategies or life history adaptations to cope with this parasite. Parasites and diseases were not listed in the proposed rule as specific threats in the DPS (64 FR 16407) and are still not anticipated to threaten wild coastal cutthroat trout in the DPS. No introduced diseases have been documented in the DPS. There is no evidence of significant loss of wild cutthroat trout to parasites or disease in the DPS at this time.

Several non-native fish species are known to prey on, or compete with, salmonids within the DPS's range (Poe *et al.* 1991). However, no specific information exists regarding predation impacts by predatory fishes on cutthroat trout, though it is reasonable to assume some predation does occur. We have no evidence that aquatic predators have significantly reduced coastal cutthroat trout populations or represent a major threat to coastal cutthroat trout. Non-native predators were not identified in the proposed rule as a threat to this DPS (64 FR 16407) and are not considered a significant threat at this time.

The proposed rule stated that while pinniped populations are increasing on the West Coast, ''* * * the extent to which pinnipeds predation is a factor causing the decline of coastal cutthroat trout is unknown'' (64 FR 16402). Pinnipeds are potential natural predators of cutthroat trout that use the estuaries and near-shore marine environment (NMFS 1997, Beach *et al.* 1985). In addition, mustelids, such as otter and mink, and other mammals are natural predators in both salt and freshwater environments, though there are no studies of the level of predation by any mammals. Piscivorus birds, such as terns and cormorants, are also natural predators of coastal cutthroat trout. There is information indicating that terns and cormorants may take significant numbers of salmonids in the Columbia River estuary near artificial islands in the Columbia River, though there is no information on the vulnerability of cutthroat trout in this situation. There is no evidence that mammal or bird predation represents a significant threat to the DPS of coastal cutthroat trout at this time. Predation was not identified in the proposed rule as a specific threat to this DPS (64 FR 16407) and is not considered a threat at this time.

*D. The Inadequacy of Existing Regulatory Mechanisms.*

Federal Land Management Practices

The proposed rule indicated that the Northwest Forest Plan's management policy provided important benefits for salmonids, including coastal cutthroat trout, though its effectiveness in conserving cutthroat trout was limited by the extent and distribution of Federal land ownership (64 FR 16397).

Approximately 27 percent of the land base within the DPS's range is Federal land, managed by the Forest Service, Bureau of Land Management, National Park Service, and Fish and Wildlife Service. One percent of the DPS's range is in National Parks or National Wildlife Refuges, both of which are managed under laws and regulations that should provide adequate management for the conservation of the cutthroat trout. The remaining 26 percent is managed under the requirements of the Northwest Forest Plan. The Northwest Forest Plan contains important benefits to, and conservation measures for, salmonids, including cutthroat trout. The overall effectiveness of the Northwest Forest Plan in conserving the DPS of cutthroat trout is somewhat limited by the extent of Federal lands and by the fact that Federal land ownership is not uniformly distributed. Most of the lands in the DPS's range are located in the upper watersheds, providing habitat primarily for freshwater forms of the cutthroat trout. Two components of the Northwest Forest Plan provide conservation for salmonids, the Aquatic Conservation Strategy and land allocations with their associated standards and guidelines.

The Aquatic Conservation Strategy was developed to restore and maintain the ecological health of watersheds and aquatic ecosystems contained within lands administered by the Bureau of Land Management and Forest Service. It consists of four primary elements: (1) riparian reserves; (2) key watersheds; (3) watershed analyses; and (4) watershed restoration. All four of these components are designed to operate together to maintain and restore the productivity and resiliency of riparian and aquatic ecosystems.

Riparian reserves apply to all lands managed under the Northwest Forest Plan and are intended to maintain and restore riparian structures and functions. They occur at the margins of standing and flowing water, intermittent stream channels, ephemeral ponds, and wetlands, though they may also include upland areas necessary for maintaining ecological processes. Key watersheds serve as refugia for maintaining and recovering habitat for at-risk stocks of anadromous salmonids and resident fish species.

Watershed analyses are the principal tool for implementation of the Aquatic Conservation Strategy and play a critical role in providing for aquatic and riparian habitat protection. Watershed analyses should identify processes that are active within a watershed, how those processes are distributed in time and space, the current upland and riparian conditions of the watershed, and how all of these factors influence riparian habitat and other beneficial uses. Watershed analyses provide the contextual basis at the site level for decision makers to set appropriate boundaries of Riparian Reserves, plan land use activities compatible with disturbance patterns, design road transportation networks that pose minimal risk, identify high priority restoration activities, and establish specific parameters and activities to be monitored. Watershed restoration is also an integral part of a program to aid recovery of fish habitat, riparian habitat, and water quality, and is based on watershed analyses and planning.

All lands within the Northwest Forest Plan are placed into one of six land use allocations. These allocations dictate the type and standards for activities within the allocation. Congressionally Reserved Areas (*e.g.,* wilderness areas) constitute 22 percent of the Federal lands within the DPS's range and are the most protected type of allocation. Administratively Withdrawn Areas are designated for a variety of reasons and are generally fairly protective of aquatic and riparian systems. Administratively Withdrawn Areas constitute 5.7 percent of the Federal lands within the DPS's range. There is a low likelihood of short- or long-term adverse effects to cutthroat trout in Congressionally Reserved Areas or Administratively Withdrawn Areas due to the low likelihood of activities occurring that impact resident or anadromous coastal cutthroat trout or their habitat.

Late-Successional Reserves are intended to maintain a functional, interactive, late-successional and old

growth forest ecosystem. In the long term, Late-Successional Reserves and their associated Standards and Guidelines, will likely prove extremely beneficial to resident and anadromous fish by providing islands of functional reserves in late seral (older) forest condition with high water quality and habitat complexity. Late-Successional Reserves constitute 31.2 percent of the Federal land allocations in the DPS's range. Managed Late-Successional Areas are similar to Late-Successional Reserves, but constitute less than one percent of the Federal lands in the DPS's range. Management activities in both of these allocations may result in some latent impacts due to present baseline conditions (existing riparian and upslope roads, past timber management activity), silviculture, road-related impacts, and short-term impacts associated with restoration activities. However, these impacts will be reduced over time as Riparian Reserves and forests mature.

Adaptive Management Areas are landscape units designated to encourage the development and testing of technical and social approaches to achieving desired ecological, economic, and social objectives. Activities may vary greatly, depending on the individual management plans of these areas. Adaptive Management Areas comprise seven percent of the Federal land in the DPS's range. Matrix lands constitute 33.4 percent of the Federal land in the DPS's range. This allocation focuses on providing for timber harvest and commodity resources and will have the highest level of management activities. Riparian Reserve and other Aquatic Conservation Strategy requirements do apply to Matrix lands. Management activities on Matrix lands are expected to have somewhat greater impacts to aquatic systems than in reserve land allocations due to the latent effects of past management (existing riparian and upslope roads, past timber management activity), ongoing silvicultural activities, road-related impacts, and short-term impacts associated with restoration activities. However, impacts to aquatic and riparian systems will be reduced over time as Riparian Reserves mature. Some long-term indirect impacts from management activity may occur due to timber management and silvicultural activities in upslope areas. Both short- and long-term road-related impacts may result from new and existing roads used to implement management direction. We expect that the level of road-related impacts will be reduced over time through reduced road densities and correction of site-specific road impacts (culvert replacement, drainage problems, etc.).

Based on the Aquatic Conservation Strategy and management guidelines for the individual land allocations, Federal lands within the DPS's range (27 percent of the land base) should be managed in a manner that provides long-term improvement in aquatic habitat and limits short-term habitat quality declines. These lands should provide significant contributions to the conservation of the coastal cutthroat trout in the foreseeable future. These lands typically lie in the upper portions of the watersheds, above the areas generally used by the anadromous portion of the population.

State Land Use Practices

*Washington*

The proposed rule concluded that the Washington Forest Practices Regulations did "* * * not provide for properly functioning riparian and instream habitats," including failure to address large woody debris recruitment, tree retention to maintain stream band and channel integrity, and chronic and episodic inputs of coarse and fine sediments (64 FR 16402).

Washington's Growth Management Act requires counties and cities in the State to designate natural resource lands and to designate and protect critical areas (such as wetlands, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and aquifer recharge areas) consistent with overall State-level guidelines and objectives. The cities and counties are required to review and implement development regulations relative to these designations on a five-year cycle. Development regulations include a zoning code, subdivision ordinance, clearing and grading ordinance, critical areas ordinance and other regulations as necessary. Recent amendments to the Growth Management Act require the use of "best available science" and consideration of salmonid habitat in developing these regulations. However, recent reviews of Growth Management Act implementation (State of Washington 1998 and 1999) have indicated that protection of water quality and aquatic and riparian resources have not been prioritized in local planning, many cities and counties have not yet adopted the required designations and regulations, and most local plans have not yet incorporated the best available data. Additionally, the ability of the State to impose sanctions on the cities and counties for failure to comply with the Growth Management Act is limited, and minimum guidelines established by the State for designating natural resource lands and procedural criteria to guide the development of comprehensive plans are not mandatory for the cities and counties.

The Washington Forest Practices Act (WFPA) regulates timber management and related activities on most non-Federal forest lands in the Washington portion of the DPS's range (30 percent of DPS's range). The WFPA was improved in 2001 to address water quality concerns and conservation of listed salmonids which will also contribute to coastal cutthroat trout conservation. The new rules set standards for timber harvest activities in and around riparian areas and unstable slopes, and for road use, construction, and maintenance related to forest management. These rules include regulations requiring increased riparian buffer widths, reduced level of management activities within the buffers, and an increase in the percentage of the stream network subject to these buffers. Under the new regulations, virtually all perennial streams will receive some level of protection. Landowners will be required to develop plans for ensuring that existing forest roads meet improved standards for fish passage, protection of unstable slopes, minimization of sediment and runoff within 15 years. These new rules represent a substantial improvement over previous practices and should substantially reduce the adverse impacts of current and future management activities to aquatic and riparian systems supporting coastal cutthroat trout compared to those that would have occurred under previous standards. Revegetation and natural regeneration will result in the long-term process of recovery of these areas from past forest management practices. Standards for construction of new roads are also designed to meet water quality goals.

We and others have noted some uncertainty about the effects of portions of this regulatory program, especially as related to non-fish bearing streams, road practices, and management of cumulative watershed impacts. A comprehensive, long-term research, monitoring, and adaptive management program has been established to determine the validity of these and other concerns, and to remedy any identified shortfalls of the WFPA in a timely fashion. This adaptive management includes a formal, structured process with the Service as a participant. Specific questions and issues related to concerns raised during the development of these rules have

been identified and prioritized. Both Federal and State agencies have funded the adaptive management monitoring and research to date, and support for continued funding remains high.

Approximately 325,450 ha (804,202 ac) (8.7 percent of the DPS's range) within the Washington portion of the DPS are managed through the provisions of HCPs approved under section 10 of the Act. The most significant of these include those developed by Simpson Timber (61,638 ha (152,311 ac)) (USFWS and NMFS 2000) and the WDNR (263,812 ha (651,891 ac)) (WDNR 1997). These HCPs include riparian management standards somewhat different from those normally applied under the WFPA. The WDNR HCP was approved in 1997, though not fully addressed in the original listing proposal, and is scheduled to remain in effect through 2093. This HCP contains a Riparian Conservation Strategy designed to maintain the integrity and function of freshwater stream habitat necessary for the health and persistence of aquatic species, including coastal cutthroat trout. The strategy includes stream, lake, and wetland buffers of various widths managed under standards that must ''maintain or restore salmonid habitat'' (WDNR 1997). The HCP also includes road maintenance and network planning standards, protection of disturbance-sensitive sites, and overall landscape-level forest habitat condition standards. Collectively, these HCP measures should minimize the adverse effects to coastal cutthroat trout of future forest management activities on WDNR lands in the DPS's range. However, even with the HCP in place, ''adverse impacts to salmonid habitat will continue to occur because past forest management practices have left a legacy of degraded riparian ecosystems, deforested unstable slopes, and a poorly planned and maintained road network'' (WDNR 1997). While the HCP will address some of these legacy threats, implementation of the full suite of necessary corrective and restorative actions on WDNR land is subject to the WFPA and other State programs and policies.

The Simpson Timberlands HCP was approved in 2000 and is scheduled to remain in effect through 2050. It contains elements similar to those in the WDNR HCP, including a riparian conservation strategy; buffers for streams, lakes, wetlands, and other disturbance-sensitive sites; and road maintenance and network planning standards. The HCP is unique in that buffers and management standards for riparian resources are tailored to the geomorphology and hydrologic function of specific stream classes. This was designed to provide greater certainty that they would identify and conserve areas with direct and indirect influence on the streams and associated salmonids, including cutthroat trout. Overall, the HCP should result in stream protections similar to, or greater than, those required under Washington Forest Practices Regulations, and improved remediation or closure of problematic forest roads (USDI 2000). Collectively, the HCP measures should minimize the adverse effects of future forest management activities on Simpson Timberlands in the DPS.

Changes in the WFPA since the original proposed rule to list the coastal cutthroat trout as threatened in the southwestern Washington/Columbia River DPS (64 FR 16397) and provisions of two long-term forest HCPs completed in the Washington portion of the DPS should greatly reduce the risk of continued degradation of aquatic and riparian systems on forest lands in 30 percent of the DPS's range. The proposed rule concluded that the WFPA did ''* * * not provide for properly functioning riparian and instream habitats,'' with specific concerns about failure to address large woody debris recruitment, tree retention to maintain stream band and channel integrity, and chronic and episodic inputs of coarse and fine sediments (64 FR 16402). Based on the new provisions addressing: (1) Timber harvest activities in and around riparian areas and unstable slopes; (2) road use, construction, and maintenance related to forest management; and (3) increased riparian buffer widths, reduced level of management activities within the buffers and an increase in the percentage of the stream network subject to these buffers, we no longer conclude, as described in the proposed rule (64 FR 16402), that the Washington Forest Practices Regulations do not provide for the conservation of coastal cutthroat trout and their habitat. While some degradation of aquatic and riparian systems will continue as a legacy of past management activities, and some elements of the riparian/aquatic systems are naturally slow to recover, these conservation efforts should significantly improve the long-term conditions for coastal cutthroat trout in a significant portion of the DPS's range.

Within the Washington portion of the DPS, there are two additional regulatory programs that apply to all of the non-federal land use activities discussed above, the Shoreline Management Act and State Environmental Policy Act. The Shoreline Management Act applies statewide to all water bodies, except for small streams and lakes. Every local government with shorelines is required to adopt a local shoreline plan which must be reviewed and approved by the Department of Ecology for consistency with State-level Shoreline Management Act guidelines. Most of the local shoreline master programs in effect today were originally adopted in the mid-to late-1970s and are based on guidelines that do not reflect current scientific understanding or the current emphasis on salmonid conservation. Recent efforts by the Washington Department of Ecology to ensure that local plans were revised consistent with current science and priorities have been subject to litigation and have not been finalized. Thus, the extent to which the Shoreline Management Act can be used as a tool to support salmonid conservation is uncertain. Under the State Environmental Policy Act, an agency may deny permits or other approvals if the proposed rule would likely result in significant adverse environmental impacts and if mitigation measures would be insufficient to avoid or reduce those impacts. The use of the State Environmental Policy Act in this fashion by local and State agencies has been extremely limited and, as a result, has not effectively served as a conservation mechanism or to address the inadequacies of other regulatory programs (State of Washington 1999).

*Oregon*

The proposed rule stated that the Oregon Forest Practices Act did not adequately protect salmonid habitat, specifically including production and introduction of large woody debris into medium, small, and non-fish bearing streams; timber harvest and road construction on unstable slopes subject to mass wasting; and cumulative effects (64 FR 16403).

Oregon was the first State to adopt comprehensive land-use planning laws and these remain among the strongest in the nation. Under this regulatory program, the State's 36 counties and 240 municipalities were required to develop comprehensive plans that addressed applicable statewide planning goals, including several related to maintenance of natural resource lands (agriculture and forest), critical fish and wildlife habitats, and protection of water quality and supply. The planning goals themselves do not regulate individual land development decisions, but are implemented through county and local comprehensive plans, ordinances, and standards which, in turn, regulate individual land use and development decisions. The comprehensive plans typically involve

tradeoffs to balance numerous goals and objectives, some of which may conflict. Most local plans now in effect have not prioritized goals related to water quality and aquatic habitat protection, and have not been based on the best currently available data; therefore, they may not eliminate adverse effects to the riparian and aquatic environment and provide protection for some areas of cutthroat habitat (State of Oregon 2000a).

The Oregon Forest Practices Act (OFPA) regulates timber management and related activities on most non-Federal forest lands in the Oregon portion of the DPS (8 percent of DPS's range). The OFPA sets standards for timber harvest activities in and around riparian areas, and was improved in 1995 to better protect aquatic resources and address water quality concerns. Additional improvements were recently recommended to better support watershed health and conservation of listed salmonids (State of Oregon 2000b). While some of these recommendations may be implemented as regulations through the OFPA in the future, others will likely be implemented voluntarily and through various incentive-based programs. Even considering possible near-term improvements, there is substantial concern about whether the types and levels of management activities allowed within and adjacent to riparian zones under the regulatory component of the OFPA will adequately support riparian processes and conditions crucial to salmonid habitat. Specifically, there is concern for how well current OFPA regulations address tree retention to maintain stream bank integrity and channel networks within flood plains; chronic and episodic inputs of coarse and fine sediment processes; and the recruitment of large woody debris into the aquatic systems, all of which are critical to maintaining functioning habitat for all life stages of cutthroat trout. Much of the concern focuses on management standards for medium, small, and non-fish bearing streams. The OFPA does not adequately manage timber harvest and road construction on sensitive, unstable slopes subject to mass wasting, and the lack of consideration for cumulative effects is of concern, especially in light of current harvest rotation schedules (approximately 50 years).

While potential changes are on the horizon, we are still concerned that the OFPA may not adequately provide for large woody debris input into medium, small, and non-fish bearing streams; address timber harvest and road construction on unstable slopes subject to mass wasting; and cumulative effects, as described in the proposed rule (64 FR 16403). However, as the OFPA affects a relatively small portion of the DPS (8 percent of the land base), it is not likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

Dredge, Fill, and Inwater Construction Programs

The proposed rule described the potential protection of aquatic systems under section 404 of the CWA, though there was concern for the lack of a specific methodology to address cumulative effects and additive effects of continued development (64 FR 16403). Dredge, fill, and inwater construction programs were not listed as a specific threat to the DPS (64 FR 16407), though they may have contributed to some past habitat loss, particularly in the estuaries and large rivers.

A wide variety of instream and near-stream activities are regulated under section 404 of the CWA and section 10 of the Rivers and Harbors Act of 1899, which are administered by the U.S. Army Corps of Engineers (COE). Examples include wetland fills; channel dredging; bank stabilization; pipeline trenches; road and bridge construction; survey activities; outfall construction; and boat ramps, pilings and other structures. Section 404 of the CWA requires that the COE not permit such activities if they ''cause or contribute to significant degradation of the waters of the United States.'' The States also play a role in CWA implementation by reviewing and conditioning proposed section 404 permits relative to State water quality standards and State coastal zone management policies. These joint State/Federal CWA determinations focus primarily on water quality and pollution. COE guidelines do lack a specific methodology for assessing cumulative impacts in the decision-making process, or for minimizing and mitigating the additive effects of the continued development of waterfront, riverine, coastal, and wetland properties.

Many of the activities regulated under the CWA are also controlled by State-level regulatory programs. In Oregon, work which may modify the bed or banks of rivers, lakes, streams, estuaries and wetlands of the State must receive a permit under the Removal-Fill Law administered by the Division of State Lands. Permits are conditioned to reduce adverse impacts to water quality and aquatic resources or to mitigate those impacts. A standard condition stipulates that riparian vegetation removal be limited to the minimum amount needed to complete the project; and replacement, re-establishment and replanting riparian vegetation is an essential permit condition. As with CWA permits, removal-fill permits are also reviewed by the Department of Environmental Quality for consistency with State water quality standards. Protection and restoration of salmonid habitat has recently received increased emphasis in administration of this law. In Washington, similar activities are regulated under the State Hydraulics Code, which is administered by the WDFW through its Hydraulic Project Approval program. Hydraulic Project Approval program standards and guidelines are specifically focused on the protection of fish life and aquatic habitats, and are subject to review every five years to ensure consistency with these objectives.

Based on the implementation of current laws and regulatory programs, we conclude that the regulation of dredge, fill, and in-water construction activities through the section 404 and section 10 permit processes, and through State programs, will provide some protection and support of aquatic resources, though they may not fully remove the risk of some losses to cumulative effects from small individual projects. The remaining risks from cumulative effects are likely to be small in the short term, and we do not anticipate that the cumulative effects of these small projects will reach a level at which they would be likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future. Dredge, fill, and inwater construction programs were not identified in the proposed rule as a threat to this DPS (64 FR 16407) and are not considered a significant threat at this time.

Water Quality Programs

The proposed rule stated that ''* * * implementation [of the Federal CWA] has not been effective in adequately protecting fishery resources, particularly with respect to non-point sources of pollution''(64 FR 16403), though this was not listed as a specific threat to the DPS (64 FR 16407). The proposed rule did describe the long-term benefits of developing Total Maximum Daily Loads (TMDLs) and the ability of these to protect cutthroat trout in the long term, though they would be difficult to develop in the short term and their efficacy in protecting salmonid habitat would be unknown for years (64 FR 16403).

Under section 303(c) of the CWA, States are required to adopt water quality standards to restore and

maintain the chemical, physical and biological integrity of the nation's waters. As part of this process, the States develop standards for TMDLs of pollutants relative to particular water quality standards. TMDLs offer a method for quantitatively assessing environmental problems in a watershed and identifying pollution reductions needed to protect drinking water, aquatic life, recreation, and other uses of rivers, lakes, and streams. TMDLs address pollution sources, including such point sources as sewage or industrial plant discharges, and such non-point discharges as runoff from roads, farm fields, and forests. The CWA gives State governments the primary responsibility for establishing TMDLs. Section 303(d) of the CWA requires States to identify surface waters that do not meet State water quality standards.

The Oregon Department of Environmental Quality (ODEQ) submitted revised water quality standards to the U.S. Environmental Protection Agency (EPA) for review and approval on July 11, 1996. EPA considered approval of Oregon's water quality standards for dissolved oxygen, temperature, and pH as submitted, with the exception of the temperature criterion for the Willamette River from the river's mouth to river mile 50. Consideration of the temperature criterion for this reach of the Willamette River was deferred until a final action (approval of a revised State criterion or a new criterion promulgated by EPA) is proposed by EPA. ODEQ has recently finalized the 1998 303(d) list and submitted to EPA a schedule for completing TMDLs by the year 2007.

Unless specifically allowed under an ODEQ-approved surface water temperature management plan, no measurable surface water temperature increase resulting from anthropogenic activities is allowed in the following cases: (1) In a basin for which salmonid fish rearing is a designated beneficial use, and in which surface water temperatures exceed 17.8 degrees C (64 degrees F); (2) in waters and periods of the year determined by the ODEQ to support native salmonid spawning, egg incubation, and fry emergence from the egg and from the gravels in a basin which exceeds 12.8 degrees C (55.0 degrees F); (3) in waters determined by the ODEQ to be ecologically significant cold-water refugia; (4) in stream segments containing Federally-listed threatened or endangered species if the increase would impair the biological integrity of the threatened or endangered population; and (5) in Oregon waters when the dissolved oxygen levels are within 0.5 ppm or 10 percent saturation of the water column or intergravel dissolved oxygen criterion for a given stream reach or sub-basin, or in natural lakes. In addition to revising numeric standards, Oregon incorporated language to address water bodies exceeding the relevant numeric temperature criterion and included on the State's 303(d) list. Oregon rules require development and implementation of a surface water temperature management plan which describes the best management practices, measures, and/or control technologies which will be used to reverse the warming trend of the basin, watershed, or stream segment identified as water quality limited for temperature.

Washington has submitted, and is implementing, a TMDL schedule running through 2013. As of May 2000, TMDLs had been established for approximately 249 stream/water body segments and additional TMDLs are under development. A memorandum of agreement between EPA and the Washington Department of Ecology stipulates that time frames for meeting water quality standards, a plan to implement control actions, and a monitoring plan will be developed by 2003.

Inadequacy of water quality regulatory mechanisms was not identified in the proposed rule as a specific threat to this DPS (64 FR 16407) and is not considered a significant threat at this time. The current standards established by Oregon, and the ongoing efforts by both States, to establish TMDLs and rectify water quality problems should result in significant improvements in habitat conditions for cutthroat trout in the long term. However, until TMDLs are finalized and remediation efforts implemented for a period of time, adverse water quality may continue in some portions of the DPS's range. The ability of these TMDLs to protect cutthroat trout should be significant in the long term, and significant increases in water quality problems should not occur in the interim. Water quality regulations and programs should reduce the risk of continued habitat degradation, and water quality concerns are not likely to increase to a level at which they are likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

Hatchery Management

The proposed rule stated that "* * * the impact of [hatchery] programs on native, naturally spawned stocks are not well understood," but noted that "[c]ompetition, genetic introgression, and disease transmission resulting from hatchery introductions may significantly reduce the production and survival of native, naturally-spawned cutthroat trout" (64 FR 16403). The proposed rule described potential effects of introduction of rainbow/steelhead trout outside their historic range where cutthroat trout had not evolved in concert with these species (64 FR 16403) and discussed the past loss of interior strains of cutthroat trout to hybridization due to these hatchery releases. However, this is not true for the DPS or the coastal subspecies in general. This subspecies has evolved with rainbow/steelhead trout and has not suffered the impacts from hatchery introductions described for interior subspecies (see Hybridization section for more information).

Specific to this DPS, the proposed rule stated that "[n]egative effects of hatchery coastal cutthroat trout may be contributing to the risks facing naturally spawned coastal cutthroat trout in this [DPS]" (64 FR 16407). They noted that lower Columbia River tributaries were the only streams receiving hatchery-origin coastal cutthroat trout, and that the number of trout released has been substantially curtailed. The proposed rule stated that "[t]he ultimate effects of hatchery fish depend on the relative size of hatchery and naturally spawned populations, the spatial and temporal overlap of hatchery and naturally spawned fish throughout their life cycles and the actual extent to which hatchery fish spawn naturally and interbreed with naturally produced fish" (64 FR 16407), as well as the level of incidental harvest of naturally spawned fish in fisheries targeting hatchery salmonids. The proposed rule provided no estimate or evaluation of these factors.

In an attempt to mitigate the loss of habitat, hatchery programs were implemented by the States throughout the range of coastal cutthroat trout. Until recently, the transfer of hatchery stocks of coastal cutthroat trout between distant watersheds and facilities was a common management practice in Oregon and Washington watersheds (Crawford 1979, Kostow 1995). Growing concern about the genetic and ecological consequences of this practice prompted management agencies to institute policies to reduce the exchange of coastal cutthroat trout stocks among watersheds, primarily by terminating releases of fish in all but a few locations. Appendix A–1 of the Status Review (Johnson *et al.* 1999) contains detailed records of the stocking history of the DPS's range. Only the Cowlitz River Hatchery continues to produce and release coastal cutthroat trout within the

DPS, and this at substantially reduced levels. This hatchery produces anadromous cutthroat trout in a system with several barrier dams that have reduced natural access to historic freshwater habitat for anadromous cutthroat trout.

There is no evidence that competition, genetic introgression, or disease transmission from hatchery introductions which were described in the proposed rule as the potential consequences of the release of hatchery raised cutthroat trout (64 FR 16403) have significantly reduced the production and survival of native, naturally spawned cutthroat trout in the DPS. Coastal cutthroat trout production has been reduced to a single hatchery and there is no information at this time to indicate that the limited ongoing coastal cutthroat hatchery releases have an adverse effect on the DPS of coastal cutthroat trout. Therefore, we conclude that release of hatchery coastal cutthroat trout in this DPS does not represent a significant risk to naturally spawning cutthroat trout in this DPS.

The proposed rule also described the potential ''* * * negative consequences of interactions between coho salmon fry released from hatcheries and coastal cutthroat trout'' (64 FR 16403), though this was not identified as a specific threat to the DPS (64 FR 16407). Coho fry can compete with cutthroat trout for feeding and rearing habitat. Release of hatchery coho and steelhead may have adverse effects to local cutthroat trout populations, especially if they are stocked in headwater tributaries above traditional coho or steelhead habitat. Juvenile coho are dominant over juvenile cutthroat trout (Chapman 1962, Glova 1987, Rosenau and McPhail 1987, Trotter *et al.* 1993, Johnson *et al.* 1999) and coastal cutthroat trout are often displaced to less desirable habitats in the presence of other native salmonids (Hartman and Gill 1968, Griffith 1988). Coho and steelhead are natural competitors of cutthroat trout and cutthroat trout are likely adapted to some levels of competition from these species. The effect of coho and steelhead stocking is dependent on the location and magnitude of the releases. Releases in areas outside of historic coho habitat or in numbers that greatly exceed natural levels could have negative effects on cutthroat trout in the area of the release. Effects are likely to be limited to the stocked area and downstream migration habitats.

Hatchery coho and steelhead releases are likely to have a proportionally greater effect on the anadromous portion of the coastal cutthroat trout population because releases of these anadromous fish are likely to be concentrated in the anadromous-accessible areas. The resident portion of the population in the upper portions of the watersheds is not likely to be affected by these hatchery releases. However, information demonstrating effects from coho releases is limited within the DPS's range, and the extent to which hatchery management affects the DPS of coastal cutthroat as a whole is unknown. We have no evidence that coho releases in the DPS are producing competition above natural levels or represent a significant risk to the DPS. Competition from hatchery releases of coho salmon was not identified as a specific threat to the DPS (64 FR 16407) and is still not considered a significant threat to the DPS at this time.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

Climate and Catastrophic Natural Events

The proposed rule stated that ''[p]ersistent drought conditions have reduced the already limited spawning, rearing, and migration habitat'' (64 FR 16403), though this was not listed as a specific threat to the DPS (64 FR 16407). The proposed rule also stated that climate conditions appeared to have resulted in decreased ocean productivity, which might have compounded degraded freshwater habitat (64 FR 16403). Juvenile and adult anadromous cutthroat trout use tidal rivers and low-gradient estuarine sloughs and tributaries during spawning and feeding migrations (Kostow 1995). These nearshore areas can be influenced by ocean productivity. The El Niño-Southern Oscillation cycle (commonly known as El Nino), causes periodic declines in ocean productivity that could affect the survival and productivity of anadromous coastal cutthroat trout during low periods. During periods of warm ocean conditions, freshwater habitat conditions may also be affected due to reduced rainfall with associated impacts on streamflows and increasing river temperatures (Greenland 1998). These types of climate changes are natural, long-term cycles, and coastal cutthroat trout are likely adapted to this variation. Therefore, these climate cycles would not be expected to significantly threaten coastal cutthroat trout in the foreseeable future. There is no evidence that drought or other climate cycles have significantly reduced spawning, rearing, or migration habitat for the DPS. Climate change, specifically persistent drought, was not identified in the proposed rule as a specific threat to this DPS (64 FR 16407) and is not considered a significant threat at this time.

Fire events in Pacific northwest coastal zones are generally of low frequency (more than 200 years between disturbances) and high severity (*e.g.,* a high proportion of the trees are killed) (Agee 1993). Although fires can be large and intense, unburned patches and refugia often persist. These refugia provide a source of fish to recolonize other areas once the habitat recovers. The effects of fire are likely to be episodic, dispersed through time and space. Coastal cutthroat trout appear to be well adapted to such natural pulsed disturbances. This process historically may have posed little threat to most local and regional populations.

Coastal cutthroat trout are well distributed within the all three major drainage areas within the DPS's range. This wide distribution reduces the likelihood that catastrophic natural events would severely deplete populations throughout the DPS's range. Stochastic events such as fire, flood, and volcanic eruptions, are likely to impact coastal cutthroat trout at a watershed or sub-basin scale and would not affect all portions of the DPS concurrently. Therefore, even if portions of the DPS are depressed, the risk of a catastrophic event severely impacting the DPS as a whole is very limited and is not anticipated to significantly threaten coastal cutthroat trout in the foreseeable future.

Hybridization

The proposed rule stated that ''[h]ybridization between coastal cutthroat trout and *Oncorhynchus mykiss* may prose serious risks for this species'' (64 FR 16403), though it was not listed as a threat to the DPS (64 FR 16407). The proposed rule described the potential adverse effects of the widespread release of hatchery rainbow trout throughout the range of interior cutthroat trout; resulting hybridization between the species could pose serious risks for cutthroat trout (64 FR 16403). However, this is specific to interior subspecies that did not evolve in contact with rainbow/steelhead trout. The coastal cutthroat trout differs from these interior subspecies as they evolved with the presence of rainbow/steelhead trout and therefore have developed mechanisms to limit hybridization.

Hybridization of coastal cutthroat trout among subspecies and with other species of trout, particularly rainbow trout, is known to occur, and has long been implicated in the decline of other cutthroat subspecies (Busack and Gall 1981, Young 1995, Willers 1991). Unlike

interior subspecies of cutthroat trout that evolved in the absence of other salmonids, coastal cutthroat trout evolved in sympatry with a suite of other Pacific salmonids, their range closely overlapping with steelhead in coastal drainages of western North America. Behnke (1992) concluded that cutthroat and rainbow trout shared a common ancestor as recently as two million years ago. As a result, it is likely that the long evolutionary association of rainbow and coastal cutthroat trout would have led to isolating mechanisms that would minimize the occurrence of hybridization.

Recent information (Campton 1981, Campton and Utter 1985, Hawkins and Quinn 1996, Williams *et al.* 1997, Johnson *et al.* 1999) suggests that hybridization of coastal cutthroat trout with steelhead may be more prevalent in the Pacific Northwest than previously believed. Hybridization appears to occur in a mosaic pattern at naturally low levels in areas where coastal cutthroat trout and steelhead spawn in the same streams, but the conditions triggering this apparent interbreeding are unknown. Hubbs (1955) and Campton (1987) suggest that anthropogenic factors can cause or stimulate natural hybridization where it previously was rare or uncommon. However, biologists studying this issue cannot determine whether the observed occurrences of hybridization result from anthropogenic factors (*e.g.,* stocking of hatchery-origin steelhead, habitat modifications, etc.) or simply reflect a natural evolutionary process that has been ongoing for hundreds, perhaps thousands of years.

The most recent hybridization studies within southwest Washington and the Columbia River indicate that hybridization occurs in scattered locations, but generally at low levels throughout the range of coastal cutthroat. In 2000 and 2001, U.S. Geological Service-Biological Resources Division investigators analyzed a total of 230 coastal cutthroat tissue samples from coastal cutthroat trout captured within southwest Washington and the Columbia River (Carl Ostberg, U.S. Geologic Survey, pers. comm., 2001). Fourteen streams were sampled including six streams within the Grays Harbor drainage, three streams in the Willapa Bay drainage, and one stream each from the Lower Columbia, Upper Cowlitz, Kalama, East Fork Lewis, and Upper Washougal rivers. Only 1 of the 14 streams sampled contained hybrids (the Green Fork of the East Fork Lewis River (4 of 25 individuals) (USFWS 2001). Spruell *et al.* (1998) examined incidence of hybridization between coastal cutthroat trout and rainbow/steelhead trout in tributaries of the Columbia River and found hybridization to be common, though at low levels in most samples. Only a few isolated locations showed high levels of hybridization.

Although the data on hybridization between coastal cutthroat trout and rainbow/steelhead trout are limited, indications are that hybridization has likely been occurring for at least several decades at low levels where these two species co-exist. Much scientific uncertainty currently surrounds the causes of hybridization and its evolutionary consequences. In view of the limited nature of hybridization in the DPS and the natural co-occurrence of these species, hybridization between cutthroat trout and rainbow/steelhead trout is not currently considered a significant threat to the DPS of coastal cutthroat trout. Low levels of hybridization may represent natural interaction between rainbow/steelhead trout and coastal cutthroat trout. Populations with high levels of hybridization are few and isolated. Hybridization was not identified in the proposed rule as a specific threat in the DPS, and is not considered a significant threat at this time.

Foreseeable Conservation Measures

Numerous conservation efforts related to maintenance and protection of threatened salmonids, riparian and aquatic habitats, and overall watershed health are underway in Oregon and Washington. These are being driven by the overall salmonid recovery frameworks in place in the States and by specific growth management and Endangered Species Act considerations. Efforts range from broad scale application undertaken by State or regional authorities to site-specific projects implemented by individual landowners or local action groups such as watershed councils. These are generally non-regulatory in nature, relying on incentives or voluntary compliance, or are still in development. Therefore, while they may contribute to conservation of coastal cutthroat trout, we have not assumed any specific contribution in the listing determination.

Several factors make it difficult to predict the extent to which these efforts will result in improved implementation of the non-federal land use practices described above, or redress problems associated with past activities, including: (1) Many specific regulatory changes and on-ground projects have not yet been implemented either because related negotiation and rule-making are in the formative stages, or because specific proposals are subject to ongoing legal challenges; (2) the ecological effects of practices and projects that are implemented may not be realized for years or even decades; and (3) for some suites of activities, there is no readily available information regarding the nature or distribution of on-ground practices or projects.

The States' overall recovery frameworks are contained within the Oregon Plan for Salmon and Watersheds (Oregon Plan) and the Washington Statewide Strategy to Recover Salmon: ''Extinction is not an Option'' (Washington Strategy). Both of these frameworks emphasize improved implementation and enforcement of existing regulations, greater coordination and prioritization of conservation projects, and voluntary and incentive-based measures to provide greater site-specific protection. Based on recent implementation of these recovery frameworks, there will likely be some level of widespread effort to identify and correct existing fish passage problems (and to prevent future obstacles), and to restore previously degraded riparian and aquatic habitats on a site-specific basis. The Oregon Plan and the Washington Strategy also encourage or otherwise support a handful of larger, more comprehensive, restoration-oriented conservation projects within the DPS's range, such as the multi-stakeholder Sandy River Basin Agreement in Oregon. These projects will likely continue under the auspices of scientifically credible watershed assessments that minimize the likelihood of inappropriate ''fixes'' and undesirable adverse effects. Such restoration-oriented projects have the potential to substantially improve conditions for this species in many watersheds in the DPS's range. However, such improvements may not be sufficient, and in many cases may be negated, unless the broader suite of land-use activities occurring within the watersheds are modified to reduce future adverse effects.

The Washington Strategy targets a number of specific land-use regulatory programs for improvement, and in general supports consideration of improved regulatory standards, either through formal rule-making or through stakeholder negotiation processes. In addition to the previously mentioned Hydraulic Project Approval program revisions, examples include efforts to strengthen the Shoreline Management Act and State water policies, and to develop more consistent and reliable standards for agricultural practices and pesticide use. These efforts may lead to at least some improvement in statewide

standards for agricultural practices and urban and rural development, and redress some of the previously noted problems with these practices.

In limited portions of the DPS's range in both States, regional and local efforts to address growth management issues and Federal Endangered Species Act issues for other listed species may improve programmatic standards or landowner-specific practices beyond those likely under the broad State recovery frameworks. In the Washington portion of the DPS's range, several forestry and agricultural planning efforts are underway, including the Cowlitz Tree Farm HCP, Tagshinny Safe-Harbor and Candidate Conservation Agreement, Scatter Creek HCP, and Lewis County Family Forest Conservation project. In addition, Clark County has initiated an Endangered Species Act Response Program that will address water quality, aquatic and riparian habitat protection, and conservation of listed salmonids for a number of development and urban land-use activities under the county's purview. Ongoing and future components of this effort include assessments of biological resources and potential impacts of various activities; review and revision of development codes, ordinances, and operating procedures; and prioritization and implementation of restoration and acquisition projects.

In the Oregon portion of the DPS's range, a large number of municipalities and counties in the Portland metropolitan area have initiated efforts to revise comprehensive plans and address Endangered Species Act issues in a fashion similar to those described for Clark County, Washington. Primary examples include Clackamas County, the City of Lake Oswego, City of Gresham, the Metro regional government, and the City of Portland. These efforts are in various stages of development and are likely to evolve incrementally (*i.e.,* sets of measures to address road management followed by measures to address stormwater management or streamside development, etc.) over the next several years.

Notwithstanding the formative and uncertain nature of most of these local level planning efforts, we are encouraged by the efforts. Most of the sponsoring entities have continued to commit staff and financial resources to the projects despite recent budget limitations. The issues and approaches comprising many of the projects appear consistent with conservation objectives for cutthroat trout. Finally, the handful of projects that are more evolved show promise in terms of some of the measures under consideration. For example, under the City of Portland's ''Healthy Portland Streams'' program and Metro's Statewide Planning Goal 5 program, new rules are being developed to protect important streamside areas and vulnerable upslope habitats from inappropriate development and to facilitate restoration of some previously degraded areas. Similarly, the Portland Water Bureau's Bull Run Watershed Management program is close to finalizing proposals to more appropriately manage water quality, flow, temperature, and other impacts associated with the City's water supply and distribution operations. In these programs, the measures being considered represent improvements over previous practices, and could be an important contribution to ensuring that the activities of local governments and their constituents in the Portland metropolitan region are consistent with the conservation of this species. Once fully in force, these programs may also contribute significantly to the conservation of other sensitive species and help preclude the need to list them as threatened or endangered.

Continuation and successful implementation of conservation efforts such as those mentioned above, and expansion of these efforts to additional activities and areas will be necessary to fully address concerns associated with previous management legacies and with the existing regulatory framework. Such efforts will be a critical determinant of whether current cutthroat trout habitats and populations are maintained and improved in the long run to an extent that supports long-term conservation. As such, we will continue to monitor and review the progress of these efforts very carefully to determine their impact on the future status of the species. However, because these are non-regulatory programs or are still in development, we did not base our final listing determination on the assumption that these programs would be implemented.

## Finding and Withdrawal

As described in the proposed rule (64 FR 16407), some portions of the proposed coastal cutthroat trout DPS are likely at lower-than-historic levels and are probably still declining. However, new information and recent changes in regulations have changed our conclusion about the risk that the species may become endangered in the foreseeable future. This withdrawal is based on: (1) New data indicating that coastal cutthroat trout are more abundant in southwest Washington than previously thought and that population sizes are comparable to those of healthy populations in other areas; (2) new information and analyses calling into question past interpretation of the size of the anadromous portion of the population in the Columbia River and indicating higher numbers than previously described; (3) new data and analyses no longer showing declining adult populations in the Grays Harbor tributaries; (4) new analyses that call into question the past interpretation of trend data, and therefore the magnitude of the trend in the anadromous portion of the population in the Columbia River; (5) new information about the production of anadromous progeny by above-barrier cutthroat trout; and (6) two large-scale Habitat Conservation Plans (HCPs) and significant changes in Washington Forest Practices Regulations substantially reducing threats to aquatic and riparian habitat on forest lands in Washington.

The proposed rule stated that ''NMFS remains concerned about the extremely low population size of anadromous coastal cutthroat trout in lower Columbia River streams, indicated by low incidental catch of coastal cutthroat trout in salmon and steelhead recreational fisheries, and by low trap counts in a number of tributaries throughout the region,'' and that ''* * * numbers of adults returning to traps in the lower Columbia River tributaries were consistently below 10 fish in most streams over each of the past 6 years'' (64 FR 16407). Despite extensive changes to aquatic and riparian condition in many portions of the DPS's range, coastal cutthroat trout remain extant throughout their historic habitat and populations in a large portion of the DPS are found in densities comparable to populations considered to be healthy-sized. The anadromous portion of the DPS is likely depressed from historic levels, though it also appears to remain extant in all accessible portions of the DPS's range. There is little specific information indicating the actual size of the anadromous portion of the population or that these populations are extremely low. Coastal cutthroat trout as a whole, in the Washington portion of the DPS, remain at comparable densities to other areas considered to have healthy-sized populations. There is no information that leads us to conclude that coastal cutthroat trout populations in a significant portion of the DPS's range are at levels that would lead to risk of extinction due to small population size in the foreseeable future.

The proposed rule stated that ''[t]rends in anadromous adults and outmigrating smolts in the southwestern

Washington portion of this [DPS] are all declining'' (64 FR 16407) and that ''[r]eturns of both naturally and hatchery produced anadromous coastal cutthroat trout in almost all lower Columbia River streams have declined markedly over the last 10 to 15 years,'' with the only increase in the Toutle River (64 FR 16407). The most recent data indicate variable population trends throughout the DPS and do not support the conclusion that trends of anadromous adults and outmigrating smolts in the DPS are all declining, as described in the proposed rule. There is no evidence that the adult portion of the population in the Grays Harbor tributaries is declining over the long term, and some indication that the adult portion of the population may be stable or increasing. Therefore, we no longer conclude that trends in anadromous adults and outmigrating smolts in southwest Washington are all declining as described in the proposed rule. There are indications of declines in the adult portion of the population in the Columbia River tributaries, though the rate of the decline is uncertain due to concerns over the reliability of the analyses and potential biases in the data sets. Therefore, we no longer conclude that returns of anadromous cutthroat trout in ''almost all'' lower Columbia River streams have declined markedly over the last 10 to 15 years as described in the proposed rule (64 FR 16407). There is little information on population trends for the resident or freshwater portion of the population in the DPS, though populations in the Washington portion of the DPS appear to remain at levels comparable to healthy-sized populations, indicating that large-scale declines have not occurred at a landscape level. Based on these data, we do not find that population trends indicate that coastal cutthroat trout are likely to be extirpated from any significant portion of their range in the foreseeable future.

The degree to which the reductions in the anadromous portion of the coastal cutthroat trout population represent a risk to the population in the DPS as a whole depends, in part, on the extent to which various coastal cutthroat trout life history strategies are genetically versus environmentally controlled. The proposed rule stated that ''* * * a significant risk factor for coastal cutthroat trout in this [DPS] was a reduction of life-history diversity'' and that ''[r]educed abundance in anadromous fish will tend to restrict connectivity of populations in different watersheds, which can increase genetic and demographic risk'' (64 FR 16407). ''The significance of this reduction in life-history diversity to both the integrity and the likelihood of this [DPS's] long-term persistence is a major concern to NMFS'' (64 FR 16407). WDFW (2001) provided additional information demonstrating the capability of resident coastal cutthroat trout to produce anadromous progeny after long isolation (40 years), suggesting that even if the anadromous portion of the population continues to experience low number and declines, smolts will be produced that can supplement the anadromous portion of the population and take advantage of any improvement in anadromous habitat. There is no evidence at this time that coastal cutthroat trout pursuing the anadromous life history strategy are segregated from the remainder of the population. In fact, studies show that individuals above barriers and below barriers with access to the sea are more closely related within a drainage than are individuals from different drainages (Behnke 1997, Johnson *et al.* 1999). This further supports the conclusion that anadromous and non-anadromous individuals are not substantially separate subpopulations. Therefore, based on the evidence that freshwater and isolated portions of the population are capable of producing anadromous migrants, we now conclude that freshwater and isolated portions of the coastal cutthroat trout population are contributing to the anadromous portion of the population and mitigating risks to anadromous portion of the population to some degree. The ability for non-anadromous cutthroat trout to produce anadromous progeny reduces the risk of loss of the anadromous life history strategy in the foreseeable future.

Specific to the southwestern Washington/Columbia River DPS, the proposed rule stated that ''* * * severe habitat degradation throughout the lower Columbia River has contributed to dramatic declines in anadromous coastal cutthroat trout populations and two near extinctions of anadromous runs in the Hood and Sandy Rivers' (64 FR 16407). The proposed rule also stated that ''[h]abitat degradation in stream reaches accessible to anadromous coastal cutthroat trout, and poor ocean and estuary conditions, likely combined to severely deplete this life-history form throughout the lower Columbia River Basin'' (64 FR 16407). While aquatic and riparian systems have been heavily altered in some areas, the latest information does not support the conclusion that this has severely affected the habitat of the coastal cutthroat trout in this DPS as a whole. Some areas have begun to recover from past forest practices and new regulations are in place that reduce the risk of continued adverse impacts to much of the DPS. Conditions in many parts of the DPS's range are expected to continue to improve over time and many of the most damaging past practices (*e.g.,* splash dams, large-scale wetland conversion) are not expected to occur in the future due to current laws and regulations. Despite the long term, widespread impacts to aquatic and riparian conditions, coastal cutthroat trout have survived in these areas for many generations and remain at densities comparable to healthy-sized populations in large portions of the DPS's range. Therefore, there is no significant present or identifiable threat of curtailment of the range of the DPS. Given that coastal cutthroat trout have survived the long-term and widespread impacts of these past practices on aquatic and riparian conditions in large portions of the DPS's range for many generations, and apparently remain well distributed at densities comparable to healthy-sized populations elsewhere, the condition of aquatic and riparian systems is not likely to result in endangerment of the DPS of coastal cutthroat trout in the foreseeable future. Therefore, we no longer conclude that past habitat degradation has led to severe declines in the population of coastal cutthroat trout in the southwestern Washington/Columbia River DPS.

All Federal lands within the DPS's range (27 percent) are managed in a manner conducive to the conservation of coastal cutthroat trout. The proposed rule concluded that the Washington Forest Practices Regulations did ''* * * not provide for properly functioning riparian and instream habitats,'' including failure to address large woody debris recruitment, tree retention to maintain stream band and channel integrity, and chronic and episodic inputs of coarse and fine sediments (64 FR 16402). The Washington Forest Practices Regulations were updated since the proposed rule. These new regulations include improvements to: (1) Timber harvest activities in and around riparian areas and unstable slopes; (2) road use, construction, and maintenance related to forest management; and (3) increased riparian buffer widths, reduced level of management activities within the buffers, and an increase in the percentage of the stream network subject to these buffers. Given these improvements, we no longer conclude that the Washington Forest Practices

Regulations do not provide for the conservation of coastal cutthroat trout and their habitat. The lands affected by the WFPA and two long-term forest HCPs completed in the Washington portion of the DPS's range should greatly reduce the risk of continued cutthroat habitat degradation and loss in an additional 30 percent of the DPS's range. Therefore, 57 percent of the DPS's range is under management and regulations that should greatly reduce the rate of future habitat impacts and provide for long-term improvement of coastal cutthroat trout habitat in the DPS's range. Collectively, remnant high quality habitat, ongoing forest recovery, active efforts to identify and correct legacies of past management, improved standards for future management actions, and the ability of coastal cutthroat trout to survive for long periods in degraded aquatic and riparian systems provide the basis for maintenance of habitat for coastal cutthroat trout within the DPS's range. Therefore, forest management is not likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

The proposed rule described the potential loss of important estuarine habitat and stated that reductions in the quantity and quality of estuarine habitat probably contributed to declines of anadromous cutthroat trout, but the relative importance of these risks was not well understood (64 FR 16402). This is further complicated by the lack of information on how coastal cutthroat trout use large estuary systems. Significant portions of the estuarine wetlands in the Willapa Bay and Grays Harbor systems, and to a lesser degree in the Columbia River estuary, remain intact. Given current regulations, we do not anticipate additional large-scale conversion or loss of estuary or off-channel areas. While past losses of estuaries may have contributed to a reduction in the anadromous portion of the coastal cutthroat trout population over historic levels, we do not have evidence that the past and potential future losses are likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

Specific to this DPS, the proposed rule stated that ''[n]egative effects of hatchery coastal cutthroat trout may be contributing to the risks facing naturally spawned coastal cutthroat trout in this [DPS]'' (64 FR 16407), though the ultimate effects of hatchery practices depend on the relative size of the populations, the overlap of hatchery and naturally spawned fish, and the actual extent to which hatchery fish interbreed with naturally produced fish (64 FR 16407), as well as the level of incidental harvest of naturally spawned fish in fisheries targeting hatchery salmonids. The proposed rule provided no estimate or evaluation of these factors. Coastal cutthroat trout production has been reduced to a single hatchery. Analysis of the remaining hatchery stock history and genetics indicate that the hatchery stock is similar to the naturally spawned stock. There is no information at this time to indicate that the limited ongoing coastal cutthroat hatchery releases have an adverse effect on the DPS of coastal cutthroat trout. Therefore, we conclude that the release of hatchery coastal cutthroat trout in this DPS does not represent a significant risk to naturally spawning cutthroat trout in this DPS.

Several other potential threats were described in the Summary of Factors Affecting the Species section of the proposed rule (64 FR 16402) as principal factors for decline in the subspecies-wide review of listing factors (64 FR 16402), but were not identified as a specific threat to the southwestern Washington/Columbia River DPS (64 FR 16407). These include overutilization for commercial, recreational, scientific, or educational purposes (recreational angling, by catch in recreational and commercial harvest of other species, and scientific or educational uses); predation; some regulatory mechanisms (dredge, fill, and inwater construction programs and water quality programs); climate and catastrophic natural events, and hybridization. We evaluated the latest information on each of these potential threats and conclude that they are still not considered a threat at this time.

Cutthroat trout are not harvested commercially within the DPS. Scientific and educational programs likely have little impact on these populations and recreational fishing under current regulations does not represent a significant threat to the DPS of cutthroat trout. No introduced diseases have been documented in coastal cutthroat trout populations within the DPS and there is no evidence of significant, elevated loss of wild cutthroat trout to native disease in the DPS at this time. No specific information exists regarding predation impacts by predatory fishes on cutthroat trout, though it is reasonable to assume some predation does occur. We have no evidence that aquatic predators have significantly reduced coastal cutthroat trout populations or represent a major threat to coastal cutthroat trout at this time. There is no evidence that mammal or bird predation represents a significant threat to the DPS of cutthroat trout at this time.

While regulation of dredge, fill, and in-water construction activities through the section 404 permit process in the DPS's range may not eliminate all adverse effects to the riparian and aquatic environment, we conclude that it should provide significant protection for aquatic resources, and the ability for us to track continuing effects through the review of permit applications. The remaining risks from cumulative effects are likely to be small in the short term and we do not anticipate that the cumulative effects of these small projects will reach a level at which they would be likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future. Current standards established by Oregon under the CWA should result in significant improvements in habitat conditions for native fish.

The proposed rule stated that drought and climate condition resulting in decreased ocean productivity might have compounded degraded freshwater habitat (64 FR 16403). These types of climate changes are natural, long-term cycles and coastal cutthroat trout are likely adapted to this variation. Therefore, these climate cycles would not be expected to significantly threaten coastal cutthroat trout in the foreseeable future. There is no evidence that drought or other climate cycles have significantly reduced spawning, rearing, or migration habitat for the DPS.

Hybridization with other species could affect coastal cutthroat trout. The most recent hybridization studies within southwest Washington and the Columbia River indicate that hybridization occurs in scattered locations, but generally at low levels throughout the range of coastal cutthroat. Coastal cutthroat trout, unlike most other cutthroat trout subspecies, evolved in contact with rainbow/steelhead trout and it is likely that the long evolutionary association of rainbow and coastal cutthroat trout would have led to isolating mechanisms that would minimize the occurrence of hybridization. This means there is a low potential risk of hybridization significantly affecting coastal cutthroat trout. The few areas observed with high levels of hybridization are isolated and scattered, and do not appear to represent a widespread threat to coastal cutthroat trout at this time.

A few potential threats were not described in the subspecies-wide review of listing factors in the proposed rule (64 FR 16402) or identified as a DPS-specific threat to the southwestern Washington/Columbia River DPS. These include losses of habitat to agriculture and livestock management, dams and

barriers, urban and industrial development, and mining. We evaluated the latest information on each of these potential threats and concluded that they are still not a significant threat at this time.

While populations of some portions of the DPS of coastal cutthroat trout are likely at lower-than-historic levels and probably still declining, recent changes in regulations have reduced threats to the DPS as a whole. This, and the latest information indicating relatively healthy-sized total populations (all life history strategies) in a large portion (75 percent) of the DPS's range, and the production of anadromous trout from residents, lead us to conclude that the DPS of coastal cutthroat trout is not in danger of becoming endangered in the foreseeable future and, therefore, does not meet the definition of a threatened species at this time. Therefore, we withdraw the April 5, 1999, proposed rule (64 FR 16397) to list the coastal cutthroat trout population in southwestern Washington and the Columbia River, excluding the Willamette River above Willamette Falls, as threatened. We will continue to monitor the conditions of the coastal cutthroat trout in southwest Washington and the Columbia River. In the event that conditions or threats change and the species becomes imperiled, we could again propose to list the species as endangered or threatened under the Act. We will continue to provide technical assistance to Federal, State, and other entities and encourage them to address the conservation needs of the coastal cutthroat trout. We will continue to work with these agencies and entities to collect additional biological information, monitor the status of coastal cutthroat trout, and monitor the progress of conservation efforts for the DPS.

*References Cited*

A complete list of all references cited is available upon request from the Oregon Fish and Wildlife Office (*see* **ADDRESSES**).

*Authors*

The primary authors of this document are Robin Bown, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (*see* **ADDRESSES**) and Scott Craig, U.S. Fish and Wildlife Service, Western Washington Office, 510 Desmond Drive SE, Lacey, WA 98503.

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 24, 2002.

**Steve Williams,**

*Director, Fish and Wildlife Service.*

[FR Doc. 02–16579 Filed 7–3–02; 8:45 am]

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Federal Register

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# Part III

# Securities and Exchange Commission

**17 CFR Parts 210 and 229**

**Framework for Enhancing the Quality of Financial Information Through Improvement of Oversight of the Auditing Process; Proposed Rule**

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 210 and 229**

**[Release Nos. 33–8109; 34–46120; 35–27543; IA–2039; IC–25624; File No. S7–24–02]**

**RIN 3235–AI41**

## Framework for Enhancing the Quality of Financial Information Through Improvement of Oversight of the Auditing Process

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (''SEC'' or ''Commission'') is proposing rules designed to restore investors'' faith in the financial information that they rely on for their investment decisions. The proposed rules reform oversight and improve accountability of auditors of public companies, thereby enhancing the reliability and integrity of the auditing and financial reporting processes. Under the proposed rules, a registrant's financial statements will not comply with the requirements of the securities laws and Commission rules and regulations thereunder unless the registrant's independent accountant is a member of a Public Accountability Board (''PAB''), and the registrant engaging the accountant to audit or review financial statements or prepare attestation reports that are filed with the Commission is an adjunct member of the same PAB to which the accountant belongs.

To improve oversight of and investor confidence in the quality of financial reports filed with the Commission, the Commission will not recognize a PAB unless the PAB meets certain conditions and performs certain functions. A PAB must have a Board that is dominated by persons who are not members of the accounting profession and must be subject to the Commission's oversight. A PAB must be committed to improving the quality of financial statements relied on by investors and the professional conduct of accountants by, among other things, directing periodic reviews of accounting firms' quality controls over their accounting and auditing practices and, when appropriate, disciplining accountants. A PAB also would set, or rely on and oversee designated private sector bodies to set, audit, quality control, and ethics standards. Disclosure would be required in Commission filings if an executive officer, director, or director nominee of a registrant has been sanctioned as a member accountant by a PAB within the last five years and the sanction has not been reversed, suspended, or vacated.

**DATES:** Comments should be received on or before September 3, 2002.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following electronic mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–24–02. This file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet website (*http://www.sec.gov*).[1]

**FOR FURTHER INFORMATION CONTACT:** Samuel L. Burke, Associate Chief Accountant, Bert W. Mehrer, Assistant Chief Accountant, or Robert E. Burns, Chief Counsel, Office of the Chief Accountant, at (202) 942–4400, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1103.

**SUPPLEMENTARY INFORMATION:** We are proposing to amend rule 1–02 [2] and rule 2–01 [3] of Regulation S–X, add new rules 13–01 through 13–07 to Regulation S–X,[4] and amend item 401 [5] of Regulation S–K.

### I. Executive Summary

Congress, through the federal securities laws, imposed on public companies the obligation to disclose complete and accurate financial information. Cognizant of the lessons of history, however, Congress built into the securities laws a significant safeguard: requirements that a public company's financial information filed with the Commission be audited by certified or public accountants that are independent of that company.

The investing public and the Commission must rely on the competence, ethics, and independence of accountants who certify the financial statements of public companies. People invest their savings in the securities of public companies and thereby make capital allocation decisions in reliance on the financial statements of those companies. If investors lack confidence in the reliability of the information presented, the fundamental purposes of the federal securities laws—to protect investors and promote efficient markets—are thwarted.

Effective oversight of the accounting profession is critical to quality financial information and trust in and reliance on that information. By having effective oversight, investors are assured that skilled, disinterested professionals operating under high ethical standards and strict quality control procedures are auditing financial statements. Strong oversight helps to strengthen audit practice and to detect and deter weaknesses that could detract from an accountant's ability to fulfill the goal of having financial statements audited by competent, independent accountants. Further, when oversight is compromised, the quality of financial information can be affected, and investors' trust in the quality of financial information is compromised as well.

The current system of oversight has not produced a credible result. Flaws in the system have contributed to the confluence of several factors that have undermined investor confidence in financial information and market efficiency.[6] Those factors include:

- The dramatic and sometimes sudden reversals of public companies' financial conditions, with corresponding significant financial losses by investors and pensioners;
- Revelations of accounting irregularities at public companies, including large and seemingly well-regarded companies;
- The number of restatements of financial information by public companies;
- Increasing pressures on company management and auditors in today's economic environment;
- Continuing concerns about the oversight of the accounting profession, including issues regarding the independence and effectiveness of the current peer review and disciplinary processes; and
- The ineffectiveness of the Public Oversight Board (''POB'') that had overseen the peer review system of public accountants.

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] 17 CFR 210.1–02.

[3] 17 CFR 210.2–01.

[4] 17 CFR 210.13–01–13.07.

[5] 17 CFR 229.401.

[6] *See, e.g.,* Matt Krantz and Greg Farrell, *Fuzzy accounting raises flags,* USA Today, June 22, 2001, at 1B (quoting an individual investor, ''I almost don't believe any numbers I read anymore''); Rebecca Byrne, *Audit Business Nearing Crisis of Faith,* TheStreet.com, Dec. 10, 2001.

These factors highlight longstanding deficiencies in the regulatory system used to oversee the quality of the audits and reviews of financial statements that are filed with the Commission and relied on by investors and the Commission. These factors, among others, have contributed to a consequent decline in investor confidence, and provide the impetus for the Commission's proposals.

We are proposing a new system of independent private sector regulation designed to improve oversight of the auditing process and strengthen investor confidence in financial information. The accounting profession would not and could not control or dominate the proposed system. Rather, instead of a body that functions under the aegis of the American Institute of Certified Public Accountants (''AICPA''), which represents the accounting profession, we propose to create a framework for a new independent, private sector body (or bodies) that we have termed a ''Public Accountability Board'' (''PAB'').[7]

Among other things, a PAB would discipline accounting firms and individual accountants for unethical or incompetent conduct or other violations of professional standards. A PAB would also direct periodic reviews of accounting firms' quality controls for their accounting and auditing practices. A PAB would supplement, not supplant, our enforcement efforts. We would continue vigorously to investigate and pursue instances of accounting misconduct. The new system would expand the opportunities to detect and remedy ethical lapses or deficiencies in competence, or violations of professional standards, thereby complementing our enforcement efforts.

Based on public input we have received to date, and our own experience, we have identified certain key elements of a new framework to improve oversight of the accounting profession. We believe that these elements will promote investor confidence in the financial reporting process.[8] The following elements, as well as others discussed in more detail below, are the foundation of our proposals:

- Private Sector System of Regulatory Oversight. The accounting profession would be subject to a private sector system of regulatory oversight directed by representatives of investors and issuers, not self-regulation by the profession.
- Requirements as to Financial Statements. To assure that the benefits of the oversight process extend to investors in all public companies:
- An SEC registrant's financial statements would not comply with Commission requirements unless the registrant's accountants who audited or reviewed those statements were members of a PAB; and
- An SEC registrant's financial statements would not comply with Commission requirements unless the registrant were a member of, and thereby bound to cooperate in any review or proceeding commenced by, the same PAB as its accountants.[9]
- *Independent Board.* To ensure independence from the accounting profession that it would oversee, a PAB would be a diverse board, dominated by persons who are not associated with the accounting profession.
- *Independent and Dependable Funding Source.* To assure continuity and independence, a PAB would have a dependable, uninterrupted funding source and not be voluntarily or solely funded by members of the accounting profession. A PAB's operations would be funded through the assessment of fees on accounting firms who are members of the PAB and on the audit clients of those firms—a funding mechanism that is not controlled by the accounting profession.
- *SEC Oversight.* Because a PAB would serve an important public function, a private entity could not serve as a PAB unless it was recognized by the Commission after Commission review of, among other things, the entity's proposed structure, its charter, by-laws, budget, and proposed board members. Conditions of a PAB's recognition by the Commission would include a PAB's irrevocable consent to the continuous oversight function by the Commission.
- *Cooperation with a PAB.* To remain in ''good standing,'' accounting firms, individual accountants, companies, and companies' management would cooperate with PAB quality control reviews, supplemental reviews, and disciplinary proceedings.
- *PAB Quality Control Reviews.* A PAB would perform quality control reviews of audit procedures and practices. To maintain high standards of auditing, ethics, and quality control among its members, a PAB would perform periodic quality control reviews of its member accounting firms. In conducting reviews, a PAB would ensure that accounting firms have quality control policies and procedures regarding, among other things: (i) independence, integrity, and objectivity; (ii) personnel management; (iii) acceptance and continuation of clients; (iv) audit performance; (v) audit methodology; and (vi) consultation and resolution of differences of professional opinion. A PAB would perform annual reviews of large accounting firms.
- *PAB Disciplinary Powers.* A PAB would conduct public disciplinary proceedings and would have the ability to discipline accountants for unethical or incompetent conduct or other violations of professional standards. A PAB would be able to impose a wide range of disciplinary or remedial sanctions, including:
- Fines;
- Censures;
- Required remediation;
- Removal of an individual or termination of a firm from an audit engagement;
- Limitations on certain activities; and
- Suspension or disbarment from membership in a PAB.
- *Audit Standard Setting.* A PAB should have responsibility for assuring high standards of ethics, auditing, and quality controls for its members. A PAB should either set such standards or oversee any private sector bodies designated to set standards.

[7] Under our proposals, more than one PAB could be formed. For purposes of this release, however, we will refer to PABs in the singular.

[8] *See, e.g.,* Transcripts from the public Roundtables that the Commission sponsored on *Assuring Adequate Oversight of Auditing Function* held on March 4, and 6 and April 4, 2002, in New York, Washington, DC and Chicago, respectively (''SEC Roundtables''). Transcripts of the SEC Roundtables are available through the Commission's web site: www.sec.gov. Participants included: On March 4, Robert Mundheim (moderator), William Allen, Warren Buffet, James Copeland, David Shedlarz, Melvyn Weiss; on March 6, Judge Stanley Sporkin (Ret.) (moderator), Robert Glauber, Neil Lerner, Professor Jonathan Macey, Ted White; on April 4, J. Carter Beese, Jr. (moderator), Ken Bertsch, Davis Costello, Professor Dan Fischel, Barbara Franklin, and Edward Nusbaum. The Commission also held an Investor Summit (''Investor Summit'') at which it received valuable input. The webcast of the Investor Summit is available at www.connective.com/events/secsummits/.

[9] As we discuss in detail below, a PAB will require a registrant's cooperation only to the extent necessary to further a PAB's reviews or proceedings regarding the registrant's accountant. A PAB will not conduct ''roving'' investigation of registrants and will not sanction registrants.

## II. The Pressing Need To Improve Oversight of, and Restore Confidence in, the Auditing and Financial Reporting Processes

### *A. The Federal Securities Laws Contemplate, and Their Effective Application Depends Upon, the Existence of Mechanisms for Adequate Oversight of the Auditing Component of the Financial Disclosure Process*

It is no mystery what problem Congress intended to remedy—and believed it was remedying—by seeking to insure that issuers provide investors with ''complete information relative to the financial condition of the issuer.'' [10] As the Senate Report on the Securities Exchange Act of 1934 (''Exchange Act'') described:

> The committee has repeatedly heard testimony illustrating the evasions, suppressions, distortions, exaggerations, and outright misrepresentations practiced by corporations with intent to cloak their operations and to present to the investing public a false or misleading appearance as to financial condition. The chairman of the committee on stock list of the New York Stock Exchange testified that * * * [in one case] practically all the assets of the company consisted of notes receivable, good will, and licenses arbitrarily valued at grossly exaggerated figures. The testimony also established that within a period of a few days the assets of the company were written up 100 percent in value. In another case brought to the attention of the committee, the assets of a company were marked up from $4,000,000 to $24,000,000. A memorandum prepared by a corporate official was introduced in evidence which discussed the alternatives of preparing the corporation's annual report in either the 'standard' or the 'understandable'; form, the decision being in favor of the former. Many other instances of 'window dressing' were observed, where inexcusable methods were employed to inflate assets, obscure liabilities, and conceal deficits.[11]

We begin from the premise that, through the securities laws' requirements related to financial disclosure, Congress intended to address these issues directly and forcefully. Congress did so by prescribing certain general statutory requirements and delegating to the Commission the regulatory flexibility to implement those requirements and to adopt regulations in furtherance of the statutes' purposes.

Those statutory prescriptions include requirements that public companies' financial information filed with us be certified by independent public or certified public accountants.[12] Without an unqualified audit opinion from an accounting firm,[13] a Commission registrant or issuer in an initial public offering has not satisfied and cannot satisfy the statutory and regulatory requirements for audited financial statements, its filings are deficient under the securities laws, and it cannot sell securities to the public or file its annual reports in conformity with Commission rules. Furthermore, without an accounting firm's review of a registrant's quarterly financial statements,[14] a registrant cannot not file its quarterly reports in conformity with Commission rules.[15] Accounting firms also must prepare attestation reports related to the internal controls of certain broker dealers,[16] investment companies,[17] transfer agents,[18] and others.[19]

Under the statutory scheme, accountants are the only professionals that Commission registrants and issuers *must* engage before making a public offering of or having a public market for their securities. That alone is a significant indication of legislative intent concerning the critical role of the auditing process, but Congress did not stop by describing the required professionals merely as ''accountants.'' Rather, the securities laws qualify that term so that accountants auditing the financial statements of public companies are both subject to oversight intended to facilitate a high level of competence—reflected in the statutory requirement to be ''certified public'' or ''public''—and disinterested in any outcome of the audit process other than getting reliable information to the public—reflected in the statutory requirement to be ''independent.'' [20] The securities laws supplement those safeguards by giving the Commission significant flexibility to make rules and regulations bearing on public companies' financial disclosures, including the methods and forms employed in making those disclosures.

The Commission relies on certified financial statements, and consequently on the competence, ethics, and independence of accountants, to protect its processes and carry out its mandate.[21] While our staff reads and

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[10] S. Rep. No. 73–792, 1934 WL 1289 at *10 (Apr. 17, 1934) (Senate Report on Securities Exchange Act of 1934).

[11] *Id.* at 11.

[12] For example, Items 25 and 26 of Schedule A to the Securities Act of 1933 (''Securities Act''), 15 U.S.C. 77aa(25) and (26), and Section 17(e) of the Securities Exchange Act of 1934 (''Exchange Act''), 15 U.S.C. 78q(e), expressly require that financial statements be audited by independent public or certified accountants. Sections 12(b)(1)(J) and (K) and 13(a)(2) of the Exchange Act, 15 U.S.C. 78*l*(b) and 78m(a)(2), Sections 5(b)(2)(H) and (I), 10(a)(1)(G), and 14 of the Public Utility Holding Company Act of 1935 (''PUHCA''), 15 U.S.C. 79e(b), 79j(a)(1)(G), and 79n, Sections 8(b)(5) and 30(e) and (g) of the Investment Company Act of 1940 (''ICA''), 15 U.S.C. 80a–8(b)(5) and 80a–29, and Section 203(c)(1)(D) of the Investment Advisers Act of 1940 (''Advisers Act''), 15 U.S.C. 80b–3(c)(1)(D), authorize the Commission to require the filing of financial statements that have been audited by independent public accountants.

[13] ''An unqualified opinion states that the financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting principles.'' AICPA, Statements on Auditing Standards (''SAS'') No. 58, Codification of Statements on Auditing Standards (''AU'') § 508.10.

[14] The proposed rules would define ''review'' in this context to mean a review of financial statements in accordance with generally accepted auditing standards (''GAAS''), as may be modified or supplemented by the Commission. A review includes procedures that are less in scope than an audit, and consists generally of inquiries and analytical procedures, rather than research and verification procedures. *See,* SAS No. 71, AU § 722 (as revised by SAS No. 90).

[15] Rule 10–01(d) of Regulation S–X, 17 CFR 210.10–01(d), which states in part, ''Prior to filing, interim financial statements included in quarterly reports on Form 10–Q (17 CFR 249.308(a)) must be reviewed by an independent public accountant using professional standards and procedures for conducing such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission.''

[16] 17 CFR 240.17a–5(g), (h), and (j).

[17] Form N–SAR, item 77B; 17 CFR 274.101.

[18] 17 CFR 240.17Ad–13.

[19] *See, e.g.,* Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980) regarding clearing agencies and Exchange Act Release No. 24216 (Mar. 13, 1987), 52 FR 8998 (Mar. 20, 1987) regarding depository trust companies.

[20] The Supreme Court has recognized and underscored the significant and unique role in which the securities laws cast accountants that audit public companies. In declining to extend to accounting firms certain confidentiality protections available to attorneys representing a client and preparing for trial, the Court emphasized that:

> [a]n independent certified public accountant performs a different role. By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility transcending any employment relationship with the client * * * [and] owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public.

*United States* v. *Arthur Young & Co.*, 465 U.S. 805, 817–18 (1984). The Court further noted that, pursuant to the securities laws, ''The SEC requires the filing of audited financial statements in order to obviate the fear of loss from reliance on inaccurate information, thereby encouraging public investment in the Nation's industries.'' *Id.* at 819 n.15.

[21] In this regard, the Commission adopted Rule 102(e) of our Rules of Practice to protect the integrity of Commission processes. 17 CFR 201.102(e). *See, e.g., Touche Ross & Co.* v. *SEC,* 609 F.2d 570, 582 (2d Cir. 1979) (upholding the predecessor to Rule 102(e) as ''reasonably related'' to the purposes of the securities laws, in part because the rule ''provides the Commission with the means to ensure that those professionals, on whom the Commission relies heavily in the performance of its statutory duties, perform their tasks diligently and with a reasonable degree of competence'').

To protect its own processes, and by extension the investing public, the Commission vigorously pursues violations of professional standards. We have initiated Rule 102(e) proceedings when auditors failed to adhere to professional standards.

comments on a great many filings, it does not, cannot, and should not perform the extensive audit or review procedures that auditors must perform under GAAS. In addition, the volume of financial information filed with us far exceeds what the Commission staff can meaningfully review. We, therefore, must rely heavily on the accounting profession, as Congress intended, to ensure and enhance the integrity of the large volume of financial information that forms the cornerstone of our full disclosure system.[22]

In sum, investors and the Commission rely on accountants to assure disclosure of accurate and reliable financial information. As a result, ''[b]reaches of professional responsibility jeopardize the achievement of the objectives of the securities laws and can inflict great damage on public investors.'' [23] Effective oversight of the accounting profession therefore is critical to protecting the public interest and preventing this ''great damage'' to investors.

We are concerned that we are today facing some of the same problems that Congress sought to address in the 1930s when the federal securities laws were enacted. Certainly there is evidence of a public perception that these problems are recurring with disconcerting, and unacceptable, frequency.[24] It falls to the Commission to try to identify the causes of the problem, and, to the extent possible, craft solutions consistent with its statutory mandate.

We have carefully considered the causes. For the reasons described below, we believe that the oversight mechanism for insuring that public companies have their financial statements audited by skilled, disinterested professionals operating under high ethical standards and strict quality control procedures is not working as intended. We are concerned that the deficiencies in that mechanism frustrate the financial disclosure purpose of the securities laws, undermine investor confidence in financial disclosures, and contribute to inefficient capital allocation in the markets.

*B. Current Oversight Mechanisms Do Not Meet Their Objectives*

Several factors lead us to consider whether the accounting profession's self-regulatory oversight mechanisms, on which the markets and we have previously been willing to rely, do not meet the necessary objectives. For the reasons described below, we conclude that the self-regulatory mechanisms are not producing credible results, and that this failure may be linked to features that cannot realistically be expected to change through further self-regulation or minor changes to the current oversight mechanism.

The factors that concern us include the recent increases in the number of public companies restating their financials, revelations of serious financial difficulties at a variety of companies, a closed-door professional disciplinary process, and serious questions related to the current system of firm-on-firm ''peer reviews'' as a check on accountants' quality control processes.[25] The need for significant structural reforms in the oversight process to protect the public has been suggested by several people.[26]

As noted, one indication of the need for an enhanced regulatory structure is the increase in the number of restatements in recent years. According to a recent study, in the last three years more than 700 companies have restated earnings.[27] While there are many reasons for these restatements, we are concerned that they contribute to investor confusion and weaken investor confidence in the financial reporting process.

Through the 1990s, such restatements, as well as allegations of accounting irregularities at companies such as Miniscribe and Phar-Mor, and more recently at companies such as Rite-Aid, Cendant, MicroStrategy, Sunbeam, McKesson HBOC, Waste Management, and Xerox have caused increasing concern. The bankruptcy of Enron Corporation last year, which was the largest bankruptcy in history and resulted in substantial financial losses to investors and pensioners, has dramatically heightened the public attention given to those concerns, posing a critical threat to investor confidence in financial information generally.[28]

To the extent that restatements and accounting irregularities suggest a failure of those in the accounting profession to perform consistently with sufficient skill and competence,[29] we are concerned that inherent limitations in the existing oversight mechanism prevent that mechanism from doing all that is required to curb such lapses. For example, the existing self-regulatory mechanism has not through its system of peer review uncovered significant deficiencies in competence, and it does not, and probably cannot, include the power to suspend incompetent individuals altogether from providing audit, review, or attest services to public companies.

While some aspects of the existing system are plainly beneficial, including, for example some portions of the Quality Control Inquiry Committee (''QCIC'') process,[30] the profession's

For example, we sanctioned auditors under Rule 102(e) for not appropriately responding to warning signals pointing to client fraud (*see, e.g., In the Matter of Nanette Miller,* Accounting and Auditing Enforcement Release No. (''AAER'') 1241 (Mar. 29, 2000); *In the Matter of Laubscher and Griffin,* AAER 1082 (Sept. 29, 1998)), and when they have failed to obtain the specialized knowledge necessary to perform an audit (*see, e.g., In the Matter of Ruzicka,* AAER 1155 (Aug. 24, 1999).

[22] The courts have recognized this regulatory regime. *Touche Ross,* 609 F.2d at 581.

[23] *Id.*

[24] *See, e.g.,* Nanette Byrnes, *Accounting Failures Aren't New—Just More Frequent,* Bus. Wk., Jan. 28, 2002, at 46.

[25] During the initial stages of the Commission's consideration of these issues, the profession's vehicle for oversight of the peer review system was the POB, until it voted to disband, and as of April 30, 2002, ceased official operations. The AICPA's SEC Practice Section (for firms that audit financial statements filed with the Commission) (''SECPS'') has indicated that, notwithstanding the POB's decision to terminate operations, the SECPS will continue its peer review and QCIC programs until such time as a new regulatory model replaces them. The SECPS also has indicated that it will continue to fund the oversight operations of the POB staff (now called the Transition Oversight Staff, or TOS) during this transition period. Letter from Robert J. Kueppers, Chair, to Robert K. Herdman, Chief Accountant (Feb. 15, 2002). *See also* SEC Press Release No. 2002–40 (Mar. 19, 2002) regarding the TOS's continuing review of certain accounting firms' quality control systems for assuring compliance with auditor independence requirements.

[26] *See generally* Section II.C. below.

[27] One recent study identified 234 restatements in 1999, 258 restatements in 2000, and 305 restatements in 2001. Huron Consulting Group, *A Study of Restatement Matters: For the Five Years Ended December 31, 2001,* at 8 (June 11, 2002). *See also* Jim McTague, *Fixable Flaws,* Barron's, Jan. 7, 2002, at 16.

[28] During the 19909s, federal banking regulators reviewed the performance of accounting firms in relation to the savings and loan crisis of the late 1980s and early 1990s. Accounting firms' settlements of actions pending before the Office of Thrift Supervision included, among other things, increased training requirements for individuals working on audits of financial institutions, work paper retention requirements, additional consultation procedures within the firms, and the payment of significant restitution to the Federal Deposit Insurance Corporation and Resolution Trust Corporation. *See In the Matter of Ernst & Young,* OTS Order No. AP 92–127 (Nov. 23, 1992); *In the Matter of Deloitte & Touche,* OTS Order No. AP 94–13 (Mar. 14, 1994); *In the Matter of KPMG Peat Marwick,* OTS Order No. AP 94–37 (Aug. 9, 1994); *In the Matter of Grant Thornton, L.L.P.,* OTS Order No. AP 96–30 (Oct. 3, 1996).

[29] *See* Janet Whitman, *For Competence, Accounting Gets ''D'' in New Poll,* Wall St. J., Apr. 10, 2002, at A7; *Accounting Faces Crisis of Competence, Not Integrity; ''Andersen-itis'' Isn't What Ails the Industry,* Newstream.com, Apr. 10, 2002 (surveyed companies indicated accountants lack competence in certain technical areas).

[30] Under the membership requirements of the SECPS, after receiving service of a complaint in any litigation against the firm or its personnel, or the

Continued

ability to discipline or remedy incompetent or unethical conduct has been a persistent concern.[31] The profession's disciplinary program continues to suffer from several inherent weaknesses, including:

• *Peer reviews may not consistently be as thorough as necessary.* Peer review is the process by which other accountants assess and test compliance with quality control systems for the accounting and auditing practices of SEC Practice Section (''SECPS'') members. The objectives of peer review are to determine whether the reviewed firm: (i) designed its system to meet Quality Control Standards established by the AICPA; (ii) complied with its quality control system to provide reasonable assurance of complying with professional standards; and (iii) complied with SECPS membership requirements. Upon the completion of a review the peer reviewer prepares a report and a letter of comments, which may recommend improvements to the firm's system of compliance. On occasion, firms have received ''clean'' peer review reports despite well-publicized problems within a firm. For example, a report published by an independent consultant noted one firm had numerous violations of the auditor independence rules,[32] yet the next peer review report on the firm mentioned neither the need for improvements in the firm's quality controls in this area nor the efforts the reviewed firm had underway to make those improvements. Our staff has provided the POB with comments on peer reviews with the goal of improving the process and achieving more understandable communications to the public of peer reviewers' findings.[33] For many years, we had stated in our Annual Report that the peer review and QCIC processes resulted in accounting firms ''focusing on and achieving the important goal of maintaining and improving effective quality control systems.''[34] Because of our growing concerns, however, we intentionally did not include that statement in our 1999, 2000, and 2001 Annual Reports.

• *The disciplinary process is voluntary.* The disciplinary program is conducted within the auspices of the AICPA, which is a voluntary private sector organization dominated by accounting firms.

• *There is no independent and dependable funding source.* During discussions about the POB's reviews of the firms' systems of quality controls over auditor independence, the SECPS took the unprecedented step of threatening to halt the funding for the POB's reviews.

• *The disciplinary process relies solely on information gathered from accountants.* The process is generally limited to reviewing information obtained from the accountants and does not include obtaining information from third parties, such as management of the audit client. As Norman R. Walker, former chairman of an AICPA disciplinary panel has said, ''Basically we're confined to looking at the [public] record and the information that the [member] is able to provide and willing to provide.''[35]

• *Sanctions are weak.* The most stringent sanction in an AICPA proceeding is expulsion from the AICPA, which does not directly affect an accountant's ability to practice before the Commission or elsewhere.[36]

• *The disciplinary proceedings are not public.* AICPA disciplinary proceedings are conducted behind closed doors and, while improvements have been made in the public reporting of sanctions, limited information is available regarding the results of its proceedings.

### *C. The Need for Reform Is Widely Recognized*

Investor confidence in the quality of financial information is critical, and it is directly linked to investor confidence in the quality of audits.[37] As a participant in the Commission's Roundtables stated:

> [T]he public should have real confidence that their interest is being looked after in the mechanism for regulating the profession, and disciplining the members of the profession, setting professional standards. All of those. They want to know that the way that this is done is going to look after their interests, and not just the interests of the body of the individuals who practice in that profession.[38]

Because of the above-described concerns, calls for improved oversight of the accounting profession have become more urgent.

Congress, the Commission, and many others have questioned whether weaknesses inherent in the profession's self-regulatory process limit its ability to improve sufficiently the performance of audits of public companies. More generally, strong public sentiment has emerged calling for more effective oversight. The connection between that oversight and investor confidence has never been as pronounced as it is today.

The need for reform has been highlighted by President George W. Bush. On March 7, President Bush announced a ten-point plan to improve corporate disclosure, make corporate officers accountable, and develop a stronger and more independent audit system. In discussing the latter point, President Bush stated:

> An independent regulatory board should ensure that the accounting profession is held to the highest ethical standards. Under this proposal, an independent regulatory board would be established, under the supervision of the SEC, to develop standards of professional conduct and competence. This board would have the ability to monitor, investigate, and where needed, enforce its

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commencement of any publicly announced regulatory investigation, that alleges deficiencies in the conduct of an audit of the financial statements of a Commission registrant, the firm must not only review the engagement to evaluate the performance of senior personnel with respect to the specific issues contained in the complaint but also report the matter to the QCIC. SECPS, *Requirements of Members,* at k; SECPS, *Appendix M—Procedures in Connection with an Alleged Audit Failure,* SECPS § 1000.46. The QCIC will review the matter and, if appropriate, refer it to the AICPA Professional Ethics Division, which will evaluate whether the matter warrants investigation.

[31] *See, e.g.,* David S. Hilzenrath, *Auditors Face Scant Discipline,* Wash. Post, Dec. 6, 2001, at A01; *See, e.g.,* John C. Burton, *The Evolutionary Revolution in Public Accounting,* 52 Brook. L. Rev. 1041, 1046–47 (1987) (Mr. Burton, former Chief Accountant to the SEC, commenting on the POB, has stated that ''[w]hile the structure created was highly promising and the development of a regular process of peer review is very desirable, my own judgment is that the results have fallen short of expectations. In the first place, the emphasis on process and remedial actions has been too limiting. Peer reviews need to go beyond process to look at application of procedures and to develop a significant disciplinary process'').

[32] *See* SEC Press Release No. 2000–4 (Jan. 6, 2000).

[33] *See, e.g.,* SEC, *Annual Report 2001,* at 90; SEC, *Annual Report 1999,* at 91. The SEC staff oversees the peer review and QCIC processes by periodically selecting at random a sample of peer reviews and evaluating working papers and POB oversight files related to those reviews. Our staff also reviews QCIC closed case summaries and related POB oversight files.

[34] *See, e.g.,* SEC, *Annual Report 1998,* at 74.

[35] David S. Hilzenrath, *Auditors Face Scant Discipline, supra* note 31.

[36] *AICPA, Official Releases: Organizational Structure and Functions of the SEC Practice Section of the AICPA Division for CPA Firms,* J. Acct., Nov. 1977, at 113, 115.

[37] *See Relationships Between Registrants and Independent Accountants,* Accounting Series Release No. 296 (Aug. 20, 1981), 46 FR 43181 (Aug. 27, 1981), which states in part:

> [T]he capital formation process depends in large part on the confidence of investors in financial reporting. An investor's willingness to commit his capital to an impersonal market is dependent on the availability of accurate, material and timely information regarding the corporations in which he has invested or proposes to invest. The quality of information disseminated in the securities markets and the continuing conviction of individual investors that such information is reliable are thus key to the formation and effective allocation of capital. Accordingly, the audit function must be meaningfully performed and the accountant's independence not compromised.

[38] EC Roundtables, *supra* note 8, at 37 (Mar. 6, 2002) (statement of Neil Lerner, Head of Risk Management (U.K.), KPMG).

ethics principles by punishing individual offenders.[39]

In addition, the Commission recently held the SEC Roundtables to discuss a variety of issues relating to the financial reporting process, including auditor oversight and held an Investor Summit.[40] Participants in our Roundtables represented a variety of constituencies. Participants provided us with the benefit of extensive and diverse insights into the issues confronting the profession's self-regulatory programs and how those programs should be improved.[41] For example, Mr. Ken Bertsch, Director, Corporate Governance, at Teachers Insurance and Annuity Association College Retirement Equities Fund (''TIAA–CREF''), noted his organization's lack of confidence in the current peer review process. Others, such as Mr. David Shedlarz, Chief Financial Officer, Pfizer Inc., offered constructive outlines of the attributes and duties for a new regulatory body. While our proposals are not identical to any one participant's suggested approach, the discussions at the Roundtables were very valuable in helping us to identify issues, consider alternatives, and frame the positions contained in our proposed rules.

Beyond our Roundtables, others have voiced concerns with the current self-regulatory system and called for reform. For example, the Consumer Federation of America has called for a complete overhaul of the profession's self-regulatory system.[42] The Financial Executives International (''FEI'') also has recommended the creation of a new oversight body for the accounting profession.[43] The FEI has indicated that a majority of the new oversight body's board should be executives with knowledge in accounting and finance, but should not be drawn from the audit profession. FEI further has stated that the new body's principal tasks should be oversight of audits and discipline.[44]

Many other observers and members of the accounting profession have lost confidence in the efficacy of the SECPS programs overseen by the POB and have encouraged the development of a stronger body that plays a more active role in the oversight of quality control reviews and professional discipline. Former SEC Chairman Arthur Levitt also has called for a new oversight body. In his testimony before the Senate Committee on Governmental Affairs, he supported a ''truly independent'' non-governmental oversight body that has the power to conduct timely investigations and to discipline accountants. He also stated that the new body should operate in public—not behind closed doors—and, to preserve its integrity, the accounting profession should not fund the body.[45]

In addition, Harold Williams, who was the Chairman of the Commission at the time the SECPS and POB were created, stated in recent testimony before the Senate Committee on Banking, Housing, and Urban Affairs:

> Self-regulation, aggressively overseen, can be much more effective in enforcing the spirit of the rules than can a policing agency of government. However, it is evident that the existing structure is not adequate to the task and needs to be redesigned and strengthened * * *.
>
> The Public Oversight Board was created by the profession during my chairmanship as an effort at self-regulation. We expressed concern at the time whether the peer review process administered by the profession would be adequate. But, as believers in the principle of self-regulation, we concluded that the Board should have the opportunity to prove itself. In my opinion, the events over the intervening years have demonstrated that it does not meet the needs and is not adequate * * *. A system needs to be established which is independent of the accounting profession, transparent and able to serve both effective quality control and disciplinary functions.[46]

At the same hearing, former SEC Chairman David Ruder called for a new private sector regulatory system to oversee the accounting profession. In describing the deficiencies in the current system, he said:

> [A]lthough the POB's powers have been strengthened, it does not have sufficient budget to allow it to function effectively. It does not have the power to force accounting firms to provide the documents necessary to complete investigations * * *. It is forced to rely upon the accounting profession itself to engage in enforcement activities. Most important, its connection to the AICPA creates an appearance of control by that body.[47]

Former SEC Chief Accountants and other leaders of the accounting profession also have stated publicly that a new regulatory body is needed.[48] Mr. James Turley, Chairman of Ernst & Young LLP, recently stated in an op-ed article in The Wall Street Journal:

> [W]e should create a new regulatory body for the profession. It should have its own funding, offices and staff. It should have direct power over the profession's disciplinary and audit quality control programs, replacing the current ''peer review'' process in which firms review each other. To ensure maximum public credibility, this oversight should come from a body other than the American Institute of Certified Public Accountants, because many believe it has not maintained its historic focus on professional responsibility.[49]

Similarly, PricewaterhouseCoopers LLP, in letters to certain audit clients that are Commission registrants, stated, ''[T]here is no question that the current regulatory structure is in need of reform.'' [50] It stated that changes that are especially critical include having oversight come from outside the accounting profession and involve more participative reviews by staff that is independent of the accounting firms. It

[39] Specifics on the President's Ten-Point Plan (Mar. 7, 2002) are available at *http://www.whitehouse.gov/news/releases/2002/03/20020307.html.*

[40] *See supra* note 8 regarding the SEC Roundtables and Investor Summit.

[41] *Id.*

[42] *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs,* at 6 (Mar. 20, 2002) (statement of Senator Howard M. Metzenbaum (Ret.), Chairman, Consumer Federation of America).

[43] FEI, *FEI Observations and Recommendations: Improving Financial Management, Financial Reporting and Corporate Governance* (Mar. 2002).

[44] *Id.* at 3.

[45] *The Fall of Enron: How Could It Have Happened?: Hearing Before the Senate Comm. on Governmental Affairs* (Jan. 24, 2002) (statement of Arthur Levitt, Chairman, Securities and Exchange Commission, 1993–2000).

[46] *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Oversight Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs* (Feb. 12, 2002) (statement of The Honorable Harold M. Williams, Chairman, Securities and Exchange Commission, 1977–81).

[47] *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Oversight Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs,* at 8 (Feb. 12, 2002) (statement of David S. Ruder, Chairman, Securities and Exchange Commission, 1987–89)

[48] *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Oversight of the Accounting Profession, Audit Quality and Independence, and Formulation of Accounting Principles: Hearing Before the Senate Comm. on banking, Housing, and Urban Affairs* (Feb. 26, 2002) (statement of Michael H. Sutton, Chief Accountant, Securities and Exchange Commission, 1995–98) which states: ''Regulatory processes that will build confidence in the auditing profession will be truly independent; they will be open; they will actively engage, inform, and involve the public; they will be adequately resourced and empowered to accomplish their mission; and they will be amendable to change as events dictate. I believe that the critical ingredients of an effective regulatory process that can restore and maintain pubic trust include:

- Timely and thorough investigations of circumstances that may involve fraudulent financial reporting.
- Objective and fair assessments of the role and performance of the auditor.
- Timely and meaningful discipline of auditors and firms that violate acceptable norms of conduct.
- Regular oversight and periodic examinations of the policies and performance of independent auditors.
- Timely and responsive changes in professional standards and guidance when a need for improvements is identified.''

[49] James S. Turley, *How Accounting Can Get Back Its Good Name,* Wall St. J., Feb. 4, 2002, at A16.

[50] Letters from Samuel A. DiPiazza, Jr., Chief Executive Officer, PricewaterhouseCoopers LLP to selected audit clients (Jan. to Feb. 2002).

also stated that the regulatory structure ''needs teeth'' and, ''if an independent oversight body finds quality procedures lacking, it must have the right to revoke an individual's or firm's right to practice.'' [51]

Congress has introduced several bills that would create bodies similar to, but in some respects different than, a PAB. Numerous committees in both the Senate and House have held hearings to explore reform of the accounting regulatory structure. A common theme in these hearings was the need for improvements in the manner in which accountants are regulated, and, in particular, the need for effective private-sector regulation of the accounting profession.[52]

We intend to continue to work with Congress on these and other bills, and will monitor the progress of pending legislation. We will implement any legislation that is enacted. The Commission must proceed with its proposal under its existing statutory mandate, however, to strengthen investor confidence in the oversight of the auditing process and assure investors of comprehensive reform in the event that no legislation is passed.

*D. The History of Audit Oversight Mechanisms Suggests the Need for a Different Type of Oversight Mechanism*

Over the years the accounting profession has been subject to various forms of oversight with varying degrees of success. As a foundation for understanding the elements of the new oversight mechanism that we propose, we believe that it is useful to examine the history of the present system.

The current self-regulatory mechanism was developed as a result of concerns expressed during congressional hearings in the mid to late 1970s. These hearings investigated unexpected failures by major corporations and questioned why auditors failed to detect, and financial statements failed to reflect, illegal payments made by United States companies to foreign officials. During these hearings, the accounting profession's competence to detect and deter such problems was a significant issue. The question was asked, ''Where was the independent auditor?'[53] And bills were introduced that would have created a new regulatory structure for the profession.[54]

The hearings in the House of Representatives focused on how several federal agencies used the regulatory powers granted by Congress.[55] After considering the work of accounting firms that audit registrants' financial statements, the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce found that the ''SEC's reliance on the private accounting profession alone to assure that corporate records are examined by independent auditors has been insufficient to protect public investors and to accomplish the objectives of the Federal securities laws.''[56]

The Senate hearings began with a staff study prepared for the Subcommittee on Reports, Accounting, and Management that was critical of the accounting profession. The staff study stated, ''Reforms are needed to restore public confidence in the accuracy and reliability of financial and other information reported by publicly-owned companies.''[57] During the several months that followed, the Subcommittee gathered extensive information from accounting firms, the Commission, and others. At the conclusion of the hearings, the Senate Subcommittee Report stated, ''Self-initiated action by the private sector in cooperation with the SEC is the method of reform preferred by subcommittee members.''[58]

The Commission's involvement in issues related to the AICPA's self-regulatory processes, which included the establishment in 1977 of the POB, increased during and after these congressional hearings. The Commission undertook to oversee, and annually report to Congress on, the profession's response to Congressional concerns.[59] The 1977 self-regulatory system is described in more detail in Appendix A.

As concerns about the quality of financial reports has increased in recent years, the POB, the Commission and others began to call for an update to the governance mechanisms of the POB, which were adopted soon after it was formed in 1977. While intended to be autonomous (the POB could set its own budget, establish its own operating procedures, and appoint its own members, chairperson, and staff), the POB relied for its funding on voluntary dues paid by AICPA firms that audited public companies and belonged to the AICPA section composed of such firms—SECPS. In addition, the POB lacked the ability to organize and implement its own quality control reviews. And, the POB was not given any authority to sanction auditors for deficiencies or incompetence noted during quality control reviews.

[51] *Id.*

[52] *See H.R. 3763, the Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002: Hearing Before the House Comm. on Financial Services* (Apr. 9, 2002) (statement of Richard C. Breeden, Former Chairman, U.S. Securities and Exchange Commission 1989–93) (''[T]here is only one governmental 'regulator' for the accounting industry, and that regulator is now and should remain the SEC. The SEC has the history, the culture and the institutional strength to be able to stand up to any wrongdoer. However, private sector groups working under the SEC's aegis can extend the reach of supervision in a healthy fashion.''); *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs* (Feb. 14, 2002) (statement of Paul A. Volcker, Chairman of the Trustees of the International Accounting Standards Board and Former Chairman, Board of Governors of the Federal Reserve System) (''[E]xperience strongly suggests that governmental oversight, with investigation and enforcement powers, is necessary to assure discipline * * *. [T]his committee will want to explore means for providing more ''backbone'' for industry oversight, either through legislation or by encouraging exercise of SEC regulatory authority. Better means of identifying professional misconduct, with the possibility of meaningful fines and withdrawal of professional licenses, appears essential.''); *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs* (Mar. 5, 2002) (statement of Joel Seligman, Dean and Ethan A.H. Shepley University Professor, Washington University School of Law) (''I believe at this time a new auditing self-regulatory organization is necessary. It should replace not just the POB, but a byzantine structure of accounting disciplinary bodies which generally have lacked adequate and assured financial support; clear and undivided responsibility for discipline; and an effective system of SEC oversight.''); *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs* (Mar. 6, 2002) (statement of Shaun O'Malley, Chair of the 2000 Public Oversight Board Panel on Audit Effectiveness, and Former Chair, Price Waterhouse LLP) (''I am in favor of the creation of an organization to oversee the accounting profession, whether it is created by regulation or by legislation.'').

[53] Staff of Subcomm. on Reports, Accounting, and Management of the Senate Comm. on Government Operations, 95th Cong., *Report on the Accounting Establishment: A Staff Study,* 7 (Subcomm. Print Mar. 31, 1977).

[54] *See, e.g.,* H.R. 13175, 95th Cong. (1978).

[55] *See* Staff of Subcomm. on Oversight and Investigations of the House Comm. on Interstate and Foreign Commerce, 94th Cong., *Report on Federal Regulation and Regulatory Reform,* 1 (Subcomm. Print Oct. 1976). (also known as the ''Moss Report'').

[56] *Id.* at 38.

[57] Staff of Subcomm. on Reports, Accounting, and Management of the Senate Comm. on Government Operations, 95th Cong., *Report on the Accounting Establishment: A Staff Study,* 20 (Subcomm. Print Mar. 31, 1977).

[58] Staff of Subcomm. on Reports, Accounting, and Management of the Senate Comm. on Governmental Affairs, 95th Cong., *Report on Improving the Accountability of Publicly Owned Corporations and Their Auditors 4* (Subcomm. Print Nov. 4, 1977).

[59] *Accounting and Auditing Practices and Procedures: Hearing Before the Subcomm. on Reports, Accounting and Management of the Senate Comm. on Governmental Affairs* (June 13, 1977) (statement of Harold M. Williams, Chairman, U.S. Securities and Exchange Commission).

Discussions among the Commission staff, POB, SECPS, AICPA, accounting firms, and others, culminated in the adoption of a new POB charter in February 2001. The principal features of the new charter included:

- Oversight of the SECPS and, for the first time, oversight of the Auditing Standards Board and the now-defunct Independence Standards Board;
- Expanded responsibility for improving communications among various bodies involved in the profession's regulatory processes;
- Expanded responsibilities to undertake special reviews and projects; and
- Increased funding from the SECPS.[60]

Even under the new charter, however, the POB lacked the express authority to direct the review of a firm's quality control system or to discipline a firm, or persons in a firm, for noncompliance with professional standards or the SECPS membership requirements. The new charter also provided that the SECPS would continue to be the sole source for the POB's funding, and required the SECPS to approve funding for the POB's special or unanticipated projects and for any amount above the $5.2 million annual limit set forth in the charter.[61]

*E. A New System of Private Sector Oversight Will Address Current Problems and Increase Investor Confidence*

The private sector framework we are proposing would provide reasonable assurance to investors and to the Commission that accounting firms' audit, review, and attest procedures, which are required by the securities laws and Commission regulations, fulfill their statutory and regulatory purposes, and thereby will increase assurances that financial reporting, also required by the securities laws and Commission regulations, meet applicable legal and regulatory requirements. While no system of private sector or government regulation can ensure one hundred percent compliance with professional standards, we believe that this system would enhance investors' confidence that accounting firms are performing their public responsibilities and that, therefore, the financial information published by registrants and issuers is reliable.

After full consideration of the weaknesses of the present system and how it can be improved, we have based our proposed rules on the position that a PAB should reflect eight core principles:

1. A *PAB should be separate from, and independent of, the AICPA*—Despite the POB's oversight, significant failures in the auditing process continue to exist. In addition, there is a perceived conflict between the AICPA's dual roles of serving the best interests of its membership and serving investors. To restore confidence in the system, we believe that it is necessary for a new PAB to be established, operated, and overseen completely outside of the profession.

2. *Requirements as to financial statements*—To assure that the benefits of the oversight process extend to investors in all public companies, the financial statements of an SEC-registered company would not comply with Commission requirements unless the company's accountants were members of a PAB and the company was a member of, and thereby bound to cooperate in any review or proceeding commenced by, the same PAB as its accountants. In the Commission's view this is necessary to assure cooperation and access necessary to carry out its reviews, quality control, and disciplinary activities over the accounting profession.

3. *A PAB should operate under the SEC's oversight*—The SEC's relationship with the POB was based on the desire of the profession and the POB to provide assurance to Congress and to the public that the peer review process and related programs were working well. The SEC had limited ability to affect the work of the POB or the peer review program. Under the new framework, the Commission would recognize a PAB after reviewing, and being satisfied with, among other things, the entity's charter, by-laws, proposed budget, and proposed board members. The SEC would have the ability to review, alter, modify, or abrogate any PAB rule and to review any PAB disciplinary action.

4. *Public members should dominate a PAB*—To be credible, it must be clear that the PAB is an independent organization and places the public interest and the interest of investors above all else. A PAB would be a diverse board, dominated by persons who are not associated with the accounting profession and who are in the position to make all significant decisions on quality control and disciplinary issues.

5. *A PAB should have an independent and dependable funding source*—A PAB must have an independent and dependable funding source. The POB was funded by the AICPA, which called into question its ability to act totally separate from the profession. To assure continuity and independence, a PAB should be neither controlled nor principally funded by members of the accounting profession. A PAB's operations should be funded on a non-voluntary basis through the assessment of fees on accounting firms who are members of the PAB and on those firms' audit clients, the reliability of whose financial reporting would be presumptively benefited by the activities of the PAB.[62]

6. *For larger firms, annual PAB-directed reviews of firms' quality controls for accounting, auditing, and auditor independence should replace triennial firm-on-firm peer reviews*—While individuals within accounting firms generally regard firm-on-firm peer reviews as serious events that can affect their careers, investors and critics of the program often consider such reviews among the limited number of large firms to be a ''one hand washes the other'' approach to regulation.[63] In addition, the triennial reviews are too infrequent for large firms.[64]

7. *A PAB should have the ability to discipline firms and individuals and be able to impose a wide range of sanctions, including the ability to require an accountant to no longer audit a particular public company*—A primary criticism of the current system is that it does not include effective disciplinary proceedings. The strongest sanction issued by the AICPA is expulsion from that organization, which does not remove the individual or firm

[60] POB, *Annual Report 2000,* at 5. The POB charter is available at *http://www.publicoversightboard.org/charter.htm.*

[61] The new POB charter also fell short of instituting all of the recommendations of the Panel on Audit Effectiveness. For example, the Panel had recommended that the POB should approve all appointments to the Auditing Standards Board and SECPS Executive Committee, that the POB oversee the AICPA's evaluations, compensatory hiring and promotion decisions with respect to the staff of the AICPA committees it was to oversee, and the establishment of ''no strings attached'' funding for the POB. The Panel on Audit Effectiveness, *Report and Recommendations* 140 (Aug. 31, 2002).

[62] *See, e.g.,* SEC Roundtables, *supra* note , at 38 (Mar. 6, 2002) (statement of Ted White, Corporate Governance Director, California Public Employees' Retirement System) (''I would suggest some of the key tenets be * * * a board that consisted of independent members with solely independent funding'').

[63] *See, e.g.,*Editorial, Watching the Watchers, Wash. Post, May 21, 2002, at A16; SEC Roundtables, *supra* note , at 55–56 (Mar. 4, 2002) (statement of William Allen, New York University Law School) (suggesting that the public perception of the current peer review process is an ''I scratched your back, you scratch my back organization'').

[64] *See* Letter from Robert J. Kueppers, Chair, SECPS Executive Committee, to Managing Partners of SECPS Member Firms, (Mar. 21, 2002), which announces new requirements for member firms with more than 500 SEC clients to undergo annual review procedures during each of the years between triennial peer reviews.

from practice before the Commission. We believe that we should continue to pursue violations of the securities laws and disciplinary actions under Rule 102(e). We also believe, however, for a PAB's quality control system to have ''teeth'' the PAB should have the ability to discipline its member accountants for incompetent, unethical, or other deficient conduct discovered during a quality control review or that otherwise comes to its attention, and that it must be able to sanction accounting firms for deficient quality control systems. The public must be assured that a PAB would be expected to and able to take appropriate and meaningful action to address incompetent or unethical conduct and violations of professional standards.

8. *A PAB should issue public reports of its activities*—Although the POB issued an annual report, the SECPS has not issued a separate public report since 1997. To promote the understanding of its processes and to inform the public of the results of its programs and proceedings, a PAB should issue reports to the public at least annually and, to the extent possible, on a real time basis, that describe the PAB's quality control and disciplinary activities, contain the PAB's audited financial statements, explain the fees it has imposed on its members, and other information.

The Commission invites comments on these factors, including suggestions for alternative or additional factors that should lay the foundation for our rules. In addition, the Commission invites and encourages persons who would consider forming a PAB to begin a dialogue with the Commission as soon as possible. The Commission will make itself available for meaningful dialogue to further and facilitate the timely establishment of a PAB.

## III. Discussion of Proposed Rules

We are proposing to amend and add rules to Regulation S–X. To assure that the benefits of the oversight process extend to investors in all public companies:

- An SEC registrant's financial statements would not comply with Commission requirements unless the accountants who have audited or reviewed those statements are members of a PAB. Attest reports would not comply with Commission requirements unless prepared by outside accountants who are members of a PAB; and
- An SEC registrant's financial statements and attestation reports contained in or accompanying an SEC registrant's reports or registration statements would not comply with Commission requirements unless the registrant is a member of the same PAB as its accountants, and thereby is bound to cooperate in that PAB's reviews or proceedings regarding the registrant's accountant.

For the Commission to recognize a PAB, a PAB would have to meet certain conditions and perform certain functions. We also are proposing to require disclosure if an executive officer, director, or person nominated to become a director of a public company has been sanctioned as a member accountant by a PAB within the last five years.

### *A. Regulation S–X Definitions*

Rule 1–02 contains the general definitions for terms used throughout Regulation S–X.[65] Although the terms ''review'' and ''attest'' are common to accountants, they have never been defined within Regulation S–X. Because those terms are used in the rules we are proposing in this release, and in other rules within Regulation S–X,[66] we are proposing to define them in rule 1–02(d). Each proposed definition codifies the current common understanding of the term by referring to GAAS and to Statements on Standards for Attestation Agreements,[67] as may be modified by the Commission.

We solicit comments on the above definitions. Do the definitions of ''review'' and ''attest'' capture the understanding of the words common to accountants? Should the definitions differ from those in GAAS? If so, why and in what way? Are there reasons why we should not define ''review'' or ''attest'' in the rule? Should we narrow or broaden the definitions? If so, how?

### *B. Requirements for Financial Statements and Attestation Reports*

#### Qualifications of Accountants

Existing Commission regulations state that accountants are not qualified to practice before the Commission unless they are licensed under the laws of the place of their residence or principal office, and are independent from their audit clients.[68] As a practical matter, however, it has long been recognized that, in addition to these two qualifications, auditing a public company requires special expertise.[69] The foundation for that expertise has been developed over many generations of accountants practicing before us and is embodied in professional standards for auditing, attestations, quality controls, ethics, and other areas. These standards guide accountants in their daily work of examining the accuracy and completeness of financial information disclosed by management to investors. It is imperative, therefore, that auditors reach reasoned decisions that are well grounded in these professional standards.

Further, as we stated when we revised our auditor independence rules in 2000, auditor independence is instrumental to the financial reporting process and to investor confidence in financial statements.[70] Investors will commit their savings to an impersonal securities market only if they know that unbiased auditors take a critical look at managements' decisions and processes used to prepare the financial statements and that those auditors will place the concerns and interests of investors above not only the company's interests but above the accountant's self-interest as well.[71]

Strong oversight of the profession helps to (and one goal of a PAB is to) strengthen firms' audit practices and to detect and deter weaknesses that might detract from an accountant's ability to fulfill professional standards of ethics and competence and requirements of auditor independence. In performing quality control reviews and through the disciplinary process, a PAB would play an important role in identifying and addressing competency, ethics, independence, and other professional practice issues.[72]

In recognition of the critical importance in having auditors well-versed in professional standards operating under effective quality control systems, proposed rule 2–01(a)(2) would state that the Commission would not recognize any accountant to be a ''certified public accountant'' or ''public accountant,'' or as ''independent'' with respect to an audit client if, during the

[65] 17 CFR 210.1–02.

[66] *See e.g.*, Rule 10–01(d) of Regulation S–X, 17 CFR 210.10–01(d), which requires that quarterly financial statements in Forms 10–Q be reviewed by an independent accountant prior to a registrant filing its Form 10–Q with the Commission.

[67] *See generally* SAS No.71, AU § 722 (as revised by SAS No. 90). *See also* Attestation Standards: Revision and Recodification, Statement on Standards for Attestation Engagements No. 10 (Jan. 2001).

[68] 17 CFR 210.2–01.

[69] *See generally* SECPS membership requirements. *See also* SAS No. 1, § AU 210.

[70] *Revision of the Commission's Auditor Independence Requirements*, Securities Act Release No. 33–7919 (Nov. 21, 2000), 65 FR 76008 (Dec. 5, 2000).

[71] *Relationships Between Registrants and Independent Accountants*, Accounting Series Release No. 296 (Aug. 20, 1981), 46 FR 43181 (Aug. 27, 1981).

[72] The securities laws require, or authorize the Commission to require, that registration statements and reports include financial statements that have been audited by an independent public or certified public accountant. *See supra* note 12.

professional engagement period, that accountant is not a member in good standing of a PAB (*see* below for discussion of the definition of ''member accountant in good standing''). A PAB's oversight of accountants, particularly as to independence issues, will in some cases require a PAB to consider information that can be supplied only by the audit client. We therefore believe that the purposes of the statutory requirements will be advanced significantly if an audit client is a member of the same PAB as its accountant, and thereby agrees to supply information in connection with that PAB's reviews and proceedings regarding the accountant. Accordingly, the proposed rule contemplates that an audit client be an adjunct member of the same PAB of which its accountant is a member.

Registrants' Reports and Registration Statements

Under the same reasoning as discussed above, proposed rule 13–01(a) requires reports and registration statements filed with the Commission that contain financial statements [73] be audited or reviewed by an accountant that: (1) Is a member in good standing of a PAB of which the registrant [74] filing the report or statement is an adjunct member in good standing, and (2) satisfies all other requirements prescribed by the federal securities laws and the rules and regulations thereunder concerning an accountant that audits, reviews, or prepares such report or registration statement.

We request comment on proposed rules 2–01(a)(2) and 13–01(a), including the approach and structure of those rules for the filing with the Commission of financial statements and attestation reports. Are the definitions appropriate? Will they further the goals of enhanced oversight of the financial reporting process and enhanced quality of financial information? We request comment on the aspect of the proposed rule regarding registrant membership. Should registrants be adjunct members? Could our objectives be accomplished other than by having registrants be adjunct members—for example, by simply requiring registrants to participate in funding a PAB and to cooperate with a PAB's reviews and proceedings? Why or why not? We solicit comment on alternative frameworks to accomplish our goals. For example, if registrants can demonstrate that their accountants have an alternative system or process that meets the objectives of our rules (*e.g.*, through third-party reviews or other organizations), should the registrants be exempted from the operation of the rules, in particular Rules 2–01(a)(2) and 13–01? Should such systems or processes be required to operate with our approval and under our oversight? In addition, we solicit comment on what role, if any, exchanges and the National Association of Securities Dealers (''NASD'') should play with respect to a PAB.

Investment advisers, certain broker-dealers, transfer agents and certain other entities that file audited financial statements with us are not considered to be ''registrants'' under Regulation S–X because they are not issuers of securities and, therefore, would not fall within Article 13. Nonetheless, because the auditor independence rules discuss ''audit clients'' and not registrants, auditors of such entities' financial statements, and the entities, would be subject to the proposed rules. Is this appropriate? Should entities that are not registrants be outside the scope of the proposed rules? Should accountants that audit only entities that are not issuers of securities be outside the scope of the rules?

The proposals utilize the definition of ''audit client'' that is contained in Rule 2–01(f)(6) of Regulation S–X. That definition includes affiliates of the audit client. We request comment on the application of that definition to the rules proposed in this release. Should the definition of ''audit client'' include affiliates for purposes of the proposed rules? Why or why not? Are there special concerns in the investment company, investment adviser, or broker-dealer context that are raised because of the inclusion of affiliates?

*C. Definitions for Article 13*

In addition to providing definitions for use throughout Regulation S–X, the proposed rules would provide certain definitions of terms that would have a specific meaning for the purposes of Article 13 and a PAB.

*Accountant*. Proposed rule 13–02(a) would define ''accountant'' for the purposes of Article 13. This definition has two important characteristics. First, it encompasses both accounting firms and individual accountants. Second, it limits the term ''accountants'' to those public or certified public accountants and firms engaged in auditing or reviewing financial statements, or preparing attest reports, that are filed with the Commission. The definition is similar to the definition of ''accountant'' in our auditor independence rules.[75]

Is this definition appropriate? Is it appropriate for the definition to include both accounting firms and individual accountants? Would the goals of the proposed rules be better or more appropriately accomplished if only one or the other was required to be a PAB member? Does this definition raise practical problems for firms that have partners who specialize in tax or other non-audit services, but also may be consulted briefly during an audit? For example, a firm might wish to have a tax partner consult for a very brief time with an audit engagement partner about a company's tax accrual. Would requiring such partners to be members of a PAB pose an unnecessary burden on the partners or accounting firms? If there would be an unnecessary burden, what would that burden be and is there any empirical data that would quantify such a burden?

*Adjunct member in good standing*. Under proposed rule 13–02(b), an entity is an ''adjunct member in good standing,'' when the entity is an adjunct member of a PAB and is not delinquent (as defined in proposed rule 13–02(c)) in paying fees assessed by the PAB, or in appropriately responding to a PAB's request for documents and testimony relevant to a PAB quality control review, supplemental review, or disciplinary proceeding concerning the adjunct member's accountant. With respect to documents and testimony, the adjunct member's ''good standing'' would turn on whether it has produced documents that a PAB has requested from the adjunct member or its management, provided testimony that a PAB has requested from the adjunct member or its management, and used best efforts to cause its agents and non-management employees to supply any documents and testimony requested

[73] *See, e.g.*, Section 13(b)(1) of the Exchange Act, 15 U.S.C. 78m(b)(1), which states, ''The Commission may prescribe, in regard to reports made pursuant to this title, the form or forms in which the required information shall be set forth * * *. Regulation S–X, 17 CFR 210, prescribes the form and content of financial statements filed with the Commission.

[74] ''Registrant'' is defined in rule 1–02(t) of Regulation S–X, 17 CFR 210.1–02(t), to mean ''the issuer of the securities for which an application, a registration statement, or a report is filed.'' As discussed above, for purposes of proposed amendments to § 210.2–01, adjunct membership requirements would also extend to ''audit clients.'' Accordingly, throughout the discussion in this release, any reference to ''registrant'' should also be understood to encompass ''audit client'' where the context requires.

[75] Rule 2–01(f)(1) of Regulation S–X, 17 CFR 210.2–01(f)(1), which states, ''Accountant * * * means a certified public accountant or public accountant performing services in connection with an engagement for which independence is required. References to the accountant include any accounting firm with which the certified public accountant or public accountant is affiliated.''

from it by the PAB.[76] In defining ''good standing,'' the proposed rule provides only for ''best efforts'' by an adjunct member with respect to non-management employees and agents. While such employees may often have documents and knowledge relevant to a PAB review or disciplinary proceeding, we are concerned about making the good standing of every public company turn on its ability to preclude any single employee from refusing to cooperate with a PAB review or proceeding. Rather, an adjunct member will remain in good standing as long as it uses its best efforts to cause those employees and other agents to comply with PAB requests for testimony, and so long as the adjunct member and its management provide all requested documents and testimony and the adjunct member is timely in paying fees assessed by the PAB.

We invite comments on alternative approaches. Are there other, preferable, ways to define or condition an audit client's good standing that are sufficient to achieve the goals of PAB funding and PAB access to information relevant to its mission? Should the good standing of an adjunct member be contingent on willingness of management to testify? How should former management be treated? How, if at all, should ''management'' be defined for these purposes? Should more than management be covered by the requirement? For example, our auditor independence rules use the defined term ''accounting role or financial reporting oversight role.''[77] Should the proposed rule include all or any of the individuals covered by that definition? Should the rule cover directors? With respect to non-management employees and agents, is it appropriate for the rule to require only that the adjunct member make best efforts to secure from them any documents or testimony requested by the PAB, or should the adjunct member's good standing depend upon the adjunct member actually causing the employee or agent to supply the documents and testimony? Is there an appropriate intermediate approach to addressing that issue? Alternatively, should the standard be ''reasonable efforts'' instead of ''best efforts.''

*Delinquent.* Under proposed rule 13–02(c), a member or adjunct member of a PAB is ''delinquent'' when a PAB has provided public notice (consistent with proposed section 13–04(d)(11)) that the member or adjunct member has failed to pay the fees assessed by the PAB, or has failed to produce required documents or provide required testimony after any good faith legal objection to the request for documents or testimony has, in accordance with the PAB's rules, been resolved in the PAB's favor. An adjunct member may also be determined to be delinquent if it fails to use best efforts to cause its non-management employees and agents to supply requested documents or testimony.

A PAB's ability to obtain fees, documents, and testimony from members and adjunct members would be critical to the PAB's ability to carry out the purposes of the proposed rules. Accordingly, becoming delinquent in paying or responding to a PAB request, in accordance with a PAB's rules, automatically terminates the good standing of a member or adjunct member.

Under proposed rule 13–04(d)(11), discussed below, a PAB must devise a rule for advance public notice of the danger of a delinquency, sufficient to give audit clients an opportunity to prepare for such a delinquency and the consequent potential loss of good standing by their accounting firm.

In addition, proposed rules 13–04(d)(7) and 13–04(d)(11) condition a PAB's Commission recognition on the PAB having fair procedures for requesting documents and testimony and for resolving any disputes concerning those requests or concerning fees. We would expect a PAB to take seriously the need for full and fair procedures before making a delinquency determination as to a member or adjunct member asserting a good faith legal basis for objecting to any request for documents or testimony.[78]

We request comment on the proposed definition of delinquent. Are the proposed notice provisions appropriate? Are there other additional circumstances when a member or adjunct member of a PAB should be considered delinquent? What are they? Should the rule explicitly identify specific privileges or categories of privileges that a PAB may not invade? If so, what are they?

*Foreign Accountant.* We have proposed in rule 13–02(d) to define ''foreign accountant'' to mean an accountant:[79] (1) Having a place of residence and principal office outside the United States and its territories, and (2) not licensed in the United States or its territories. If an accountant resides, practices, or is licensed in the United States, that accountant would be subject to the proposed rules. In this regard, if a foreign-licensed accountant resides in the United States as a result of a temporary assignment to work at a U.S. firm, he or she might be subject to the proposed rules. We intend for the PAB, however, to consider such issues and the many variations of working relationships that may arise in the operation of the firms' international organizations and, if considered necessary or appropriate, to interpret this provision, adopt related rules, or request amendments to the Commission's definition.

Is the proposed definition of ''foreign accountant'' appropriate? Is the requirement that both the residence and principal place of business be outside the United States and its territories unduly restrictive, or not restrictive enough? Are there other factors that should be included in the definition? Is the intent to permit a PAB to consider this issue appropriate? Does the proposed definition provide sufficient flexibility for a PAB to consider these issues?

*Member accountant in good standing.* Proposed rule 13–02(e) describes the requirements that an accountant must satisfy to be a member accountant in good standing with a PAB. First, the accountant must be a member of the PAB, a status that would be obtained through enrollment procedures devised by a PAB pursuant to proposed rule 13–04(d)(1). In addition, status as a member

[76] As discussed with respect to the definition of ''delinquent,'' below, we expect that a PAB will adopt reasonable practices and procedures for dealing fairly with good faith assertions of legal objections to document and testimony requests.

[77] Rule 2–01(f)(3) of Regulation S–X, 17 CFR 210.2–01(f)(3).

[78] We would expect that, with respect to good faith assertions of privilege, a PAB would adopt a reasonable approach comparable to that of other private organizations or similarly situated private parties. *Cf. D.L. Cromwell Investments, Inc.* v. *NASD Regulation, Inc.*, 279 F.3d 155, 161–63 (2d Cir. 2002) (interview demand issued by private membership organization to a member lacked sufficient nexus to government inquiry to trigger Fifth Amendment protection, since organization was not state actor and interview demand was not result of collusion with government) (citing *Desiderio* v. *National Association of Securities Dealers, Inc.*, 191 F.3d 198, 206 (2d Cir. 1999), *cert. denied*, 531 U.S. 1069 (2001) (rejecting constitutional challenges to NASD action because ''NASD is a private actor, not a state actor'') and *United States* v. *Solomon*, 509 F.2d 863, 867–71 (2d Cir. 1975) (rejecting Fifth Amendment challenge to New York Stock Exchange inquiry of member because New York Stock Exchange is not government actor)). We would specifically expect, however, that a PAB would not honor any assertion of an accountant-client privilege. An accountant client privilege is not recognized under federal law. *See United States* v. *Arthur Young & Co.*, 465 U.S. 805 (1984); *Couch* v. *United States*, 409 U.S. 322 (1973). Further, the recognition of such privilege by a PAB would significantly impair its ability to further the goals and purposes of federal securities laws reflected in the proposed rules.

[79] As noted previously, under proposed rule 13–02, the term ''accountant'' includes both individuals and firms, but is limited to those auditing or reviewing financial statements or preparing attestation reports filed with the Commission.

accountant in good standing involves two further elements that must be satisfied. The first element is satisfied if the accountant has not been barred, suspended, or otherwise sanctioned by a PAB. Alternatively, if the accountant has been barred, suspended or otherwise sanctioned, the first element is satisfied if the accountant has been reinstated by the PAB after having been barred or suspended, or if the accountant has not been cited by the PAB in a public notice as being noncompliant with the terms and conditions of any other sanction imposed by the PAB. The second element is rooted in the need to ensure funding of, and cooperation with, a PAB, and so is similar to the requirements to be an adjunct member in good standing, described above. Specifically, an accountant satisfies the second element if the accountant is not delinquent in paying fees or supplying required documents and testimony. The documents and testimony that must be supplied at a PAB's request in order for the accountant to remain in good standing are the accountant's documents and testimony and the documents and testimony of any of the accountant's employees, or other agents.[80] Should the rule prescribe different limits on the documents and testimony that an accountant must provide to maintain good standing? Are there other factors that the rule should take into account for purposes of determining ''good standing?''

*Public Accountability Board.* Proposed rule 13–02(f) would define the term ''Public Accountability Board'' or ''PAB'' to mean an entity that is organized in accordance with, and for the purposes described in, proposed Article 13, and that is recognized by the Commission.

*Professional Engagement Period.* Both proposed rule 2–01(a)(2) and proposed rule 13–01 operate by reference to the ''professional engagement period.'' Under the operation of those rules, if either the accountant or the audit client is not a member in good standing with a PAB for any portion of the professional engagement period, the financial statements and attestation reports included in or accompanying that audit client's filings with the Commission will not be acceptable. We consider it important that any failure of good standing during the professional engagement period have significant consequences since auditors must be independent during the professional engagement period, and we do not want to permit any gamesmanship with respect to cooperating with the PAB.

The term ''professional engagement period'' is defined in proposed rule 13–02(g) to begin when an accountant either signs an engagement contract to review or audit financial statements or to prepare an attestation report, or begins audit, review, or attest procedures, whichever is earlier. The period ends when the registrant or accountant notifies the Commission that the registrant is no longer the accountant's audit client.[81] This definition parallels the definition of the same term in the auditor independence rules.[82]

Does the proposed definition capture the appropriate period? Is there a different beginning point that would be more appropriate? Would a different end point be appropriate?

*Professional Standards.* Proposed rule 13–02(h) defines ''professional standards'' to include accounting,[83] auditing,[84] and attestation standards,[85] the Commission's auditor independence regulations,[86] the standards of the Independence Standards Board, and any other standards related to the audit, review, or preparation of financial statements filed with the Commission. These standards would include those set, or designated as authoritative, by a PAB, including auditing, quality control, or ethics standards. Does this definition capture all of the standards and regulations that are needed and appropriate?

*SEC clients.* Proposed rule 13–03(i) defines the term ''SEC clients.'' We have defined this term, which is distinct from ''registrant,'' for the very limited purpose of identifying the dividing line (by reference to the number of ''SEC clients'') between those accounting firms that will be subject to an annual quality control review and those (with fewer SEC clients) that will be subject to a triennial quality control review. For consistency, we have incorporated into the proposed rule the definition of ''SEC clients'' that is found in the AICPA's bylaws and resolutions,[87] but we have provided a PAB with the ability to amend the definition to add entities that the PAB believes should be considered to be SEC clients for the purpose of this rule. Under the AICPA definition, SEC clients include issuers in initial public offerings and registrants filing periodic reports under the Exchange Act (except broker-dealers filing only because of section 15(a) of that Act[88]) or the Investment Company Act. With respect to SEC clients, should companies whose reporting obligations arise solely under Section 15(d) of the Exchange Act be included within the definition of SEC clients?

We also generally request comment on all of the definitions in the proposed rule, including the proposed scope of those definitions, and whether there are additional definitions that should be added or proposed definitions that should not be included in any final rules?

### *D. Commission Recognition of Public Accountability Boards*

A PAB must be an organization that places the interests of investors above all else. To assure the ability and desire of an entity to represent investors and promote high quality financial reporting, the Commission would study carefully each organization before determining whether to recognize it as a PAB under the proposed rules. In this regard, proposed rule 13–03(a) would require that each entity desiring to become a PAB make a submission to the Commission containing the representations and materials necessary for the Commission to determine the entity's ability to carry out the functions and to accomplish the purposes that are described in Article 13. As noted in proposed rule 13–03(b), the Commission may ask the entity to supplement its submission with additional information.

Proposed rule 13–03(b) also indicates that the Commission would, consistent

[80] As discussed above with respect to the definition of ''delinquent,'' we expect that a PAB will adopt reasonable practices and procedures for dealing fairly with good faith assertions of legal objections to document and testimony requests.

[81] Such notice may occur under item 4 of Form 8–K, 17 CFR 249.308.

[82] 17 CFR 210.2–01(f)(5)(ii)(A) and (B).

[83] The Financial Accounting Board (''FASB'') and other sources establish generally accepted accounting principles (''GAAP'') used to prepare financial statements filed with the Commission. For the ''hierarchy of GAAP,'' *see* SAS No. 69, AU § 411.

[84] The AICPA's Auditing Standards Board (''ASB'') issues SAS. Under Rule 202 of the AICPA's Rules of Professional Conduct, AICPA members must adhere to these standards or be prepared to justify any departures from them. The ASB's Audit Issues Task Force is assigned the responsibility to provide timely guidance on the application of the ASB's pronouncements.

[85] The AICPA's ASB issues Statements on Standards for Attestation Engagements, or SSAEs.

[86] 17 CFR 210.2–01.

[87] AICPA Bylaw section 230R, Implementing Resolutions Under Section 2.3.5 for Definition of ''SEC Client'' (As adopted by Council Jan. 8, 1990), which states:

That for purposes of section 2.3, an SEC Client is

- An issuer making an initial filing, including amendments, under the Securities Act of 1933.
- A registrant that files periodic reports (for example, forms N–SAR and 10–K) with the SEC under the Securities Exchange Act of 1934 (except brokers or dealers registered only because of Section 15(a) of that Act) or the Investment Company Act of 1940.

[88] 15 U.S.C. 78o(a).

with the public interest and for the protection of investors, decide whether to recognize an entity as a PAB based on the entity's commitment and capacity to carry out the functions and accomplish the purposes of the proposed rules. The Commission would make its determination by issuance of a Commission order.

We request comment on the procedures for Commission recognition of a PAB. In particular, is the standard for recognition of a PAB appropriate? Should we base our determination on factors other than or in addition to the entity's commitment and capacity to carry out the functions and to accomplish the purposes of the proposed rules? What other factors should the Commission consider?

Proposed rule 13–03(c) sets forth the information to be submitted to the Commission by an entity seeking recognition as a PAB. Under proposed rule 13–03(c)(1), the entity's submission must include its organizational structure, proposed budget, and proposed board members and terms of board membership. This information must be sufficient for the Commission to determine that the entity will satisfy the requirements set out in proposed section 13–04(b), and discussed below. Under proposed rule 13–03(c)(2), the proposed PAB must submit its charter and bylaws. Specific criteria that the charter and bylaws must satisfy are set out in proposed section 13–04(c) and discussed below. We solicit comment on the materials that a PAB should submit to the Commission when seeking recognition as a PAB. Are these materials appropriate for the Commission to require? Are there other materials regarding the organization of an entity seeking recognition as a PAB that the Commission should require or review to inform its determination of whether to recognize a PAB? For example, should we require an entity seeking to be recognized to submit its rules, membership requirements, and descriptions of its systems and procedures for our review before we make a determination about recognition?

In seeking recognition as a PAB, under proposed rule 13–03(c)(3), an entity would represent that it would pursue certain goals, such as to work to improve the quality of member firms' audits and reviews; work to improve member firms' quality controls and compliance with auditor independence and ethics requirements; enhance investor confidence in the audit process; and foster cooperation and coordination among private sector standard-setting bodies.

Proposed rule 13–03(c)(4) requires an entity seeking Commission recognition as a PAB to represent that it would establish rules, membership requirements, systems and procedures designed to further the goals described in proposed rule 13–03(c)(3) and sufficient to accomplish, at a minimum, the further objectives described in proposed section 13–04(d), and discussed below. With regard to proposed rules 13–03(c)(3) and (4), are these appropriate representations for the Commission to require? More generally, are there additional representations or information that an entity should be required to provide to aid the Commission's determination of whether to recognize the entity as a PAB?

Finally, proposed rule 13–03(c)(5) would require an entity seeking recognition as a PAB to represent that it would study and monitor quality control developments in other countries and report periodically to the Commission on whether the exemption for foreign accountants in proposed rule 13–07, discussed below, should be withdrawn. A PAB may recommend that the exemption be maintained, withdrawn in whole or part, or modified to place conditions on the receipt of the exemption. Although not stated in our proposed rules, a PAB also may choose to participate in efforts to develop and improve international or foreign national auditing, quality control or ethics standards. With regard to proposed rule 13–03(c)(5), is this an appropriate and useful study for a PAB to conduct? What should be the time frame of the study? Are there other areas that we should require a PAB to study and report on to the Commission?

*E. Conditions of Commission Recognition of Public Accountability Boards*

Proposed section 13–04 sets conditions to ongoing Commission recognition of a PAB. An entity seeking recognition as a PAB under proposed section 13–03 must meet certain of these requirements, specifically those contained in subsections (b) and (c), at the time of its initial request for recognition. For continued recognition by the Commission, the criteria in this section must be met on an ongoing basis. For the reasons described below, we believe that these conditions are necessary to ensure that a PAB acts in the public interest, consistently with the rules.

Organizational Structure, Board Membership, and Budget

To improve investor confidence in the integrity of the oversight process, a PAB must be, and must be perceived by investors to be, dominated by representatives of investors and issuers, or ''public members,'' as opposed to representatives of the accounting profession. Proposed rule 13–04(b) sets forth several requirements for the structure, membership, and budget of a PAB designed to ensure that public board members dominate all aspects of a PAB's activities. First, proposed rule 13–04(b)(1) would require that a PAB have a fixed number of board members, none of whom are, or have been at any time in the previous two years, an employee of an accountants' professional organization.[89] Additionally, no more than one-third of the members, and in no event more than three of the members, may be, or have been at any time in the ten year period preceding his or her PAB term: (1) An accountant; (2) a partner, principal, shareholder, or managerial employee of an accounting firm; or (3) a retired partner, principal, shareholder, or managerial employee of an accounting firm.

The proposed rule does not set the number of PAB board members, but rather leaves this to a PAB's discretion. In this regard, however, because of the variety of functions to be performed by the PAB, we suggest that a PAB consisting of nine members likely could meet the objectives of the rule.

We believe that having a small minority of accountants on a PAB would be appropriate because of the functions we anticipate a PAB would perform. Under the previous self-regulatory system, the POB had five members who had not been, or had not recently been, members of the accounting profession. That regulatory system also contained, however, the SECPS Executive Committee, the Peer Review Committee, and the QCIC, which were comprised entirely of active or retired accountants. We envision a PAB taking over the work of not only the prior POB but also much, if not all,

[89] One of our core principles for a PAB is that it be outside the auspices of the AICPA or similar association or organization that has a purpose of serving the interests of ''accountants,'' as defined in Article 13. If an employee of such an organization served on a PAB, he or she would be obligated to serve both accountants and investors. While the interests of accountants and investors often are the same, they also may differ at times. To avoid real conflicts and the appearance of conflicts of interest, we have proposed that no employee of such an association or organization be a PAB board member and that there be a two-year period between working for such an organization and serving on a PAB. Because members of state boards of accountancy, which are state governmental agencies assigned the mission of protecting the public, would not face such conflicts, being a member or employee of a state board would not disqualify an individual from serving on a PAB.

of the work of these committees. Because the PAB would be more involved than the POB had been in evaluating each review report, determining the appropriateness of attendant recommendations for improvements in quality controls, directing reviews of larger firms, and performing similar functions, we believe that some minimal professional representation on the PAB is appropriate. We have taken the added precaution, in proposed rule 13–04(g)(5), however, of stating that only public board members, and not any accountant or retired accountant board members, may participate in any vote on whether to institute a disciplinary proceeding, or any vote on the findings or sanctions to be imposed in any such proceeding.

Under the proposed rule, the remainder of the PAB board members would be public members. A PAB may have as many public members as it believes are appropriate and necessary to fulfill its duties under Article 13. Public members should represent the interests of individual investors, institutional investors, and issuers. We anticipate that the public members may include, among others, former public officials, lawyers, bankers, institutional investors, securities industry executives, academics, economists, and business executives.

Each public member should have a background that permits him or her to make a contribution to the operations of the PAB. Having been, at some point in his or her career, an accountant who audited or reviewed financial statements that were filed with the Commission, or a partner or employee of an accounting firm that performed those functions, would not necessarily preclude a person from being a public member. To assure that such a member is, and is perceived as a public member, the proposed rule would require that he or she not have practiced as an accountant or been a partner or employee of an accounting firm for at least the ten-year period immediately before joining the PAB. We believe that an individual with such a prolonged separation from practice and from accounting firms, and with the intervening experiences gained in other professional endeavors, should not be presume to be a representative of the accounting profession.

We request comment on the composition of the board. Should the proposed rule set the number of board members? If so, what number is appropriate to accomplish the goals of the rules? We also request comment on the board membership requirements. Should we revise the criteria or ratios set forth above? Is the two-year parameter regarding employees of an accountant's professional organization appropriate? Would revising the criteria result in a board dominated by public members? Is the rule setting the ten-year parameter appropriate to ensure that the board has appropriate representation to fulfill the goals of the proposals? Are there other qualifications or restrictions on board members that ought to be addressed by Commission rule?

Does the rule appropriately define accountant members and public members or is some other definition more appropriate? We have indicated a person may be a ''public'' member of a PAB if he or she has not been an accountant within the last ten years. Is ten years too long? If a different period is appropriate, what period should it be?

We solicit comment on allowing a small number of accountants to be on a PAB. Should we require, rather than permit, that a certain percentage of board members be accountants? Whether mandatory or permissive, is the one-third standard appropriate, too high, or too low? Why? Is it appropriate to limit the number of accountants to three, no matter how large the board? Should there be no accountants permitted to be on a PAB, or is their expertise necessary for a PAB to carry out its mission?

Under proposed rule 13–04(b)(2) members would serve staggered terms in order to ensure continuity of operations. The proposed rule does not set the duration of terms or impose term limits on members. While the proposed rule leaves these matters to the PAB's discretion, we believe that three-year terms with some term limit, perhaps nine years, is appropriate. Such a term limit would allow new members with fresh ideas to make a contribution. We solicit comment on board terms. Should terms be staggered? Why or why not? Should the rule specify term limits and length of terms? If so, what would be an appropriate term and limit. For example, would a three-year term and nine-year limit further the goals of the rules?

Serving on a PAB would be a serious and time-consuming task. We have proposed in rule 13–03(b)(3) that a PAB's Chairman and Vice Chairman would be selected from among the public members and that at least one of these individuals would serve on a full-time basis. We envision that the remaining PAB members would devote approximately 20 to 25 percent of their professional time to PAB activities. A PAB's rules could provide for additional full-time members.

We solicit comment on the proposal to require that the Chairman and the Vice-Chairman be public board members and that at least one of them serve on a full-time basis. Is this requirement appropriate? Is it appropriate to limit the chairmanship and vice-chairmanship to the public members? Is it necessary or appropriate to accomplishing the purposes of a PAB that the Chairman or the Vice-Chairman be required to serve full time? Should more than one board member be required to serve full time, and if so, does it matter which board member(s)? Should we require the PAB to monitor and report to us on the time spent by PAB board members on PAB matters? Should requirements short of full-time service be placed on the percentage of time some or all the remaining board members devote to a PAB?

Another essential attribute for any entity applying to be a PAB, as reflected in proposed rule 13–03(b)(4), would be adequate staff and facilities, and the ability to hire consultants or advisers, necessary to carry out the purposes of Article 13. We anticipate that the professional staff of a PAB would include accountants with extensive experience in auditing and in the structure and operation of firms' quality control systems. These individuals must be able to assess the quality of audits and detect flaws in complicated quality control systems. They must be able to structure plans for reviewing firms' quality controls, put those plans into action, and conduct or supervise reviews that yield tangible improvements in the audit process. We also envision a PAB having a sufficient legal staff to facilitate effective disciplinary proceedings and provide sound advice on legal, procedural, and regulatory matters.

We solicit comment on the proper make-up of a PAB's staff. Should the proposed rules provide additional requirements regarding a PAB's staff or the means, capacity, and plans to hire that staff? Should a PAB be required to report to the Commission with respect to staff resource issues? If so, how often, and what should the reports entail? We have designed the composition of the board to provide assurance that a PAB would administer competently the proposed rules and that the public members would dominate the activities of a PAB. We request comment on all aspects of our proposed structure for the composition of a PAB, and on whether a PAB, as proposed, would be able to carry out its mandate effectively.

During our Roundtable discussions, Neil Lerner, a partner in the United Kingdom (''U.K.'') KPMG accounting

firm, discussed the professional oversight system recently adopted in that country.[90] The UK system uses a series of boards, each having a majority of non-accountant members, to oversee the setting of professional standards and to discipline inappropriate professional conduct. We solicit comment on this and similar comprehensive regulatory approaches and the extent to which such systems may be the basis for the regulatory system used in the United States.

Charter and Bylaws

Proposed rule 13–04(c) sets certain requirements for a PAB's charter and bylaws. First, to limit the potential for excessive or unnecessary fees, proposed rule 13–04(c)(1) requires the charter and bylaws to provide that the entity will be a not-for-profit entity. Second, to assure that recusals, vacancies, or other factors do not result in a shift of voting power among the PAB members that would defeat public board member control of a PAB, proposed rule 13–04(c)(2) states that the entity's charter or bylaws must include quorum provisions ensuring that the public members can control the outcome of each vote by PAB members. Third, under proposed section 13–04(c)(3), in order to obtain Commission recognition, a PAB's charter and bylaws must provide that it will be subject to, and act in accordance with, Commission oversight as described in proposed section 13–04(i). Finally, proposed rule 13–04(c)(4) provides that a PAB's charter and bylaws must provide for immediate effectiveness of any changes that the Commission makes to the PAB's rules. As discussed below, proposed rule 13–04(i)(1) allows the Commission, by rule, to abrogate, add to, and delete from the rules of a PAB. In order for any such Commission rulemaking to operate efficiently, the PAB's charter or bylaws must make these changes effective with or without further action by the PAB.

We request comment on our proposals concerning a PAB's charter and bylaws. Should a PAB be required to be a not-for-profit entity? Could a for-profit entity achieve the purposes and goals of proposed Article 13 as well as, or better than, a not-for-profit entity? Are the other proposed requirements for a PAB's charter and bylaws necessary or appropriate to achieve the purposes and goals of proposed Article 13? Are there more appropriate and effective means for addressing these issues other than through a PAB's charter and bylaws? Are there other items that we should require a PAB to have in its charter and bylaws?

Rules, Membership Requirements, Systems, and Procedures

Proposed rule 13–04(d) describes certain rules, membership requirements, systems, and procedures that a PAB must have in place to be recognized by the Commission. A PAB would need to have these requirements in place, at a minimum, in order to achieve the goals set forth in proposed section 13–03(c). These rules, requirements, systems, and procedures would accomplish the following:

*Enrollment Procedures.* Proposed rule 13–04(d)(1) would require a PAB to provide for membership enrollment procedures that: (1) minimize the administrative burden on individual accountants by maximizing the extent to which an accounting firm could satisfy the requirements on behalf of its individual accountants, and (2) require members and adjunct members to agree to be bound by a PAB's rules and membership requirements. The proposed rule allows a PAB latitude to determine the best approach to enrolling accountant-members, consistent with our requirement to minimize any burden on individual accountants. We expect that a PAB could adopt enrollment procedures that allow an accounting firm to enroll automatically all of its individual accountants by providing a PAB with a list of their names. This would eliminate any administrative burden on individual accountants. The proposed rule also reflects our intention that all members and adjunct members be made aware of their obligation to comply with a PAB's rules and membership requirements.

We solicit comment on our proposals concerning PAB enrollment procedures. Should our rules allow a PAB more or less flexibility in this area? Are there ways to reduce further administrative burden that could be specified in our rules? Should an entity that is an audit client of a PAB member accountant be required to file an application or other information with a PAB?

*Quality Control Systems.* Proposed rules 13–04(d)(2)-(4) concern a PAB's quality control system requirements for its members. Under proposed rule 13–04(d)(2), a PAB's rules would require member-accountants to maintain a system of quality controls for their accounting and auditing practices designed to meet requirements set or designated by a PAB. At a minimum, a PAB would set or designate quality control requirements that would encompass those described in proposed section 13–04(e), discussed below. Under proposed rule 13–04(d)(3), a PAB would require its member-accountants to comply with their quality control systems in a way that provides reasonable assurance of conforming with professional standards. A PAB would also, under proposed rule 13–04(d)(4), develop and administer a continuing quality control review program for its members concerning accounting and auditing practices, and adherence to Commission and professional auditor independence requirements. The requirements for the quality control review program are set out in proposed rule 13–04(f), discussed below.

We solicit comments on the proposed rules concerning a PAB's requirements for members concerning quality control systems. Should a PAB have any other rules in place concerning its members' quality control systems?

*Retention of Documentation Related to Audits and Reviews.* It will be critical for a PAB to be able to review documents relating to audits performed and accordingly, it will be important for a PAB to have clear and effective requirements regarding record retention. Under proposed rule 13–04(d)(5), Commission recognition of a PAB would be conditioned on a PAB having in place rules, membership requirements, systems, or procedures that would direct each member firm to retain documentation related to the firm's audit and review engagements for a set period of time after completion of the engagement, and in accordance with such other policies as a PAB may establish. The records to be kept would include those required by the professional auditing literature,[91] and records that otherwise document the procedures performed and the resolution of material issues during the engagement. Record retention policies and the period of time for the records to be kept would be determined by a PAB under its rulemaking process.

We request comment on the requirement for a PAB to direct its member firms to retain certain documents. Are the categories of records the proposed rules would require a PAB to direct its members to retain appropriate? Should we be more specific in our rules with respect to either which documents must be retained or for how long? If so, please be specific about the types of documents and the length of time.

*Supplemental Reviews, Disciplinary Proceedings, and Dispute Resolution Procedures.* Under proposed rule 13–

[90] SEC Roundtables, *supra* note 8, at 40–41 (Mar. 6, 2002) (statement of Neil Lerner, Head of Risk Management (U.K.), KPMG).

[91] *See generally,* SAS No. 96, AU § 339 (as revised 2002).

04(d)(6), Commission recognition of a PAB would be conditioned on a PAB having rules and procedures for conducting supplemental reviews and disciplinary proceedings in accordance with the criteria set out in proposed rule 13–04(g), discussed below. Under proposed rule 13–04(d)(7), a PAB would need to provide procedures for requesting documents and testimony relevant to any PAB review or proceeding as described in proposed rules 13–04(f) and 13–04(g). We expect that a PAB will adopt rules and procedures in this area that are fair to all concerned while appropriately reflecting the need for strong enforcement mechanisms.

We solicit comments on our proposals regarding PAB procedures for disciplining and sanctioning member accountants, and resolving disputes with members and adjunct members. Should our rules provide more or less flexibility for a PAB in this area? Should we specify procedures for a PAB to resolve disputes with its members and adjunct members about fees, documents or testimony? Should we specify procedures, in addition to those described in proposed rule 13–04(g) below, for disciplining and sanctioning member accountants? If so, what specific procedures would be appropriate?

*Conflicts of Interest.* Under proposed rule 13–04(d)(8), a PAB would adopt appropriate policies to address any conflicts or potential conflicts of interest that may arise involving the PAB's board members, employees, contractors, and professional representatives. Even the appearance of a conflict of interest can damage investor confidence. Accordingly, we expect a PAB to devote careful attention to this area, and adopt policies that reassure investors that the PAB is acting in the public interest.

We solicit comments on our proposal concerning a PAB's conflict of interest policies. What conflicts of interest are likely to arise? Will a PAB be able to adopt policies to address these conflicts? Do we need to be concerned about an appearance of conflict? If so, should we revise the proposed rules to address better eliminating perceived conflicts of interest? Should we require a PAB to adopt specific rules in this area or should we allow a PAB to develop its own rules? What specific rules, if any, should we require?

*Funding for a PAB.* As noted above, a mandatory and continuous source of funds is critical to the independence and viability of a PAB. A PAB should not be dependent solely on the accounting profession for its funds or it may be viewed as beholden to, and influenced by, the profession. Accordingly, under proposed rule 13–04(d)(9)(i), a PAB would impose fees on both member accounting firms and on registrants who are adjunct members, to fund the operations and administration of the PAB. A PAB would be encouraged to adopt schedules that provide for different classes of firms and registrants to pay different fees, such that the fees would not impose unfair or disproportionate burdens on any one firm or registrant. We also would expect that the fee structure would not result in the PAB being overly reliant on any class of firms or registrants for its revenues. The PAB would determine the most appropriate method for collecting the fees.

Each accounting firm, however, should bear the cost of its own quality control reviews. Proposed rule 13–04(d)(10), therefore, would provide for each firm to pay fees to the PAB, separate and apart from the fees determined according to the schedules discussed in the preceding paragraphs, that are sufficient for the PAB to recover its costs and expenses related to each quality control review of that firm pursuant to proposed rule 13–04(f). The review of a large firm's quality controls may cost in excess of a million dollars. It would be inappropriate, in our view, to have smaller or competing firms shoulder part of those costs.

We request comment on our proposals concerning funding for a PAB. Are there alternative funding mechanisms that would better achieve the goals and purposes for which a PAB would be established? The proposed rules permit a PAB to impose fees on its members and adjunct members, but the proposed rules do not describe in detail how such fees should be set or collected. Should we be more specific, or should such matters be left to the discretion of the PAB?

The proposed rules would require a PAB to impose fees on each member firm to reimburse it for the costs associated with the quality control review of the firm. Under our proposals, firms with 70 or fewer SEC Clients might undergo quality control reviews performed by other accounting firms. The PAB would impose fees on the reviewed firm related to the PAB's evaluation and oversight of the review. The reviewed firm, however, might pay the reviewer directly. Is the fee provision appropriate? Should each firm bear the approximate cost of its own quality control reviews, or should these costs be spread evenly among firms? Are there advantages or disadvantages to a system in which each firm bears the costs of its own reviews? Are there particular approaches to billing and payment arrangements that would work best? Should our rules more specifically prescribe those arrangements? Should adjunct members contribute to the funding of these reviews?

*Funding for the FASB.* Proposed rule 13–04(d)(9)(ii) indicates that a PAB would collect fees sufficient not only to fund its own operations but also to fund the operation and administration of an accounting standards-setting body endorsed by the Commission as the primary source for generally accepted accounting principles. Today that body is the FASB.

The FASB currently receives most of its funding from two sources—sales of its publications and the receipt of voluntary donations.[92] Because accounting firms and corporations purchase a significant portion of FASB's publications and make the majority of the voluntary donations to the FASB, these two groups have significant influence over the funds available to the FASB. By reducing donations, or by reducing the volume of their purchases, they have the potential to impact the funds available to the FASB.

During debates of controversial accounting proposals, perceptions may arise that a corporation or accounting firm, or groups of corporations or firms, could use donations and sales volume to influence the FASB's decisions on substantive accounting issues.[93] To remove such possibilities, and to increase the stature, neutrality, and perceived independence of the FASB, we have proposed that the FASB, through fees paid to a PAB, have a mandatory and continuous source of funds.

Accordingly, we anticipate that a PAB would receive a proposed budget from the FASB and the PAB would include the amount required to fund the FASB in determining the fees to be collected from accounting firm members and registrant-adjunct members. After collection, a PAB would pass those funds to the FASB.[94] We anticipate that the Financial Accounting Foundation (''FAF''), which is a private sector body

[92] Financial Accounting Foundation, *High-Quality Financial Reporting: 2001 Annual Report*, at 29, which indicates FASB received net contributions of $5,113,000 and subscription and publication sales of $14,818,000; its direct costs of sales was $1,586,000.

[93] *See, e.g.,* Stephen Barr, *FASB Under Siege,* CFO Magazine, Sept. 1994, at 34, 46; Dean Foust, *It's Time to Free the FASB Seven,* Bus. Wk., May 3, 1993, at 144.

[94] In the event that more than one entity obtains Commission recognition as a PAB, as we anticipate that the FASB would receive funding through each PAB according to a formula that takes fair account of any significant difference in the size of the various PAB's membership.

comprised of representatives of the business, professional, and academic communities that selects FASB members and handles financial matters for the FASB,[95] would continue to play a significant oversight role in determining the FASB's budget.[96]

We request comment on our proposal concerning funding for the FASB. Should fees collected by a PAB be used to fund the FASB? How would an appropriate amount of fees for such a purpose be determined? Is it sufficient to rely on the FAF to assist in the preparation of the FASB's budget or should the FASB be required to submit an annual budget to the PAB? Our proposal anticipates full funding for the FASB, with the FASB appropriately reducing or eliminating the cost of its publications. Should the FASB, however, continue to generate revenues from the sale of its publications, and replace only the donations it receives with fees collected by a PAB? Would a PAB collect fees to fund the FASB in a different manner than the fees used to fund the PAB's operations and, if so, how should the fees to fund the FASB be collected? Should registrants and accounting firms be required to join the FAF so that the FAF may directly impose fees to fund the FASB?

In addition to raising funds for the FASB, the FAF raises funds for the GASB, which sets financial accounting and reporting standards for state and local governmental entities. Financial reports prepared under GASB may be the basis for investment, credit, and regulatory decisions. Because GASB has not been in existence as long as FASB, more of its funding is derived from private contributions. Costs associated with GASB are discussed in the Cost-Benefit Section of this Release. Should a PAB collect fees to fund GASB as well as FASB?

*Fair Dispute Resolution Procedures and Notices of Delinquencies.* Under proposed rule 13–04(d)(11), Commission recognition of a PAB would be conditioned on the PAB having fair procedures for disciplining and sanctioning accountants and for resolving disputes with member accountants and adjunct members concerning fees, document requests and requests for testimony. As discussed above in connection with the definition of ''delinquent,'' we would expect a PAB to take very seriously the need for fair procedures to resolve any good faith disputes.

The proposed rule also specifies the need for a PAB to have procedures for providing appropriate notice to member accountants, adjunct members, the Commission, and the public, of any action that could result, or has resulted, in suspension or bar of a member accountant, or any other loss of good standing by a member accountant or an adjunct member. The PAB's rules and procedures should be designed to balance a member or adjunct member's legitimate interest in keeping certain disputes nonpublic (such as may occur during a nonpublic PAB supplemental review) with the need to provide the public, including an accountant's audit clients, with sufficient notice of an accountant's potential loss of good standing before actually revoking good standing. In addition, it is pursuant to this proposed rule that a PAB must have procedures for providing actual notice that a member accountant or adjunct member has been determined to be delinquent.

We request comments on our proposals regarding these notices. Should the proposed rules be more specific about when these notices would be required, or about the content of the notices? If so, when should the notices be required? For example, would it be appropriate to require a 90-day notice period before a PAB makes a public determination that a member or adjunct member is delinquent? What should the notices say?

*Professional Standards.* For a PAB to be effective, it must be able to address not only personnel and systems failures in accounting firms, it must be able to address poor quality or vague standards that lead to deficient audits. When a PAB sees a need for new or revised standards, it must have a means to assure those standards are adopted and that other standard-setters, to the extent appropriate, conform their standards to facilitate the correction of the problem. Accordingly, a PAB, under proposed rule 13–04(d)(12), would either set, or designate private sector bodies to set, audit, quality control, and ethics standards. If it chooses to designate private sector bodies to set such standards, then a PAB would oversee the designated bodies by attending meetings, commenting on proposed standards, meeting as needed with each body, and, requesting that items be added to the private sector standard-setters' agendas and notifying the Commission when any such request is made.

Under proposed rule 13–04(d)(13), a PAB would also request that matters be added to the agendas of private sector bodies that set accounting or independence standards, and similarly notify the Commission of each such request. Under proposed rule 13–04(d)(14), a PAB also would sponsor meetings with and among private sector standard-setting bodies to coordinate their activities and to promote the sharing of information and effective communications.[97] These meetings would include not only the bodies involved in setting audit, quality control, and ethics standards, but also accounting standard-setting bodies, the Commission staff, and any other persons that the PAB considers appropriate.

We request comments on our proposals regarding professional standards. What is the proper role of a PAB in standard setting? Should a PAB have the ability to set standards? Should it have the ability to designate which bodies would be considered authoritative? We request comment on the proposed role of a PAB in contributing to the agenda of private sector bodies that set accounting or independence standards and in coordinating among standard-setting bodies. Are these appropriate and useful roles for a PAB to play in satisfying the goals and purposes sought through proposed Article 13? Are there more specific or additional roles that a PAB ought to play in this regard? Should the Commission approve the bodies designated by a PAB before those bodies are considered authoritative?

*Open and Deliberative Process.* A PAB's process for amending governing documents, rules, membership requirements, and procedures would include an open and deliberative rulemaking process with open meetings and publication for public comment of draft rules, requirements and procedures. Allowing for public input would enhance public confidence in a PAB's process, and improve the quality of a PAB's governing documents, rules, membership requirements, and procedures. Accordingly, we have addressed the need for such processes in proposed rule 13–04(d)(15).

We request comment on the importance of an open and deliberative rulemaking process for a PAB. What

[95] The FAF is comprised of 16 Trustees representing a broad range of professional backgrounds. The FAF currently has responsibilities for FASB and the Government Accounting Standards Board (''GASB''), and for their Advisory Councils, including oversight of the standard-setting process, selection of FASB and GASB members, and arrangmenets for financing.

[96] Further discussion of the history of the Commission's endorsement and oversight of FASB can be found in Appendix B.

[97] *See, e.g.,* The Panel on Audit Effectiveness, *Report and Recommendations,* at 141 (Aug. 31, 2000), which emphasizes the need for effective communications among standard-setting bodies and the bodies involved in disciplining accountants and conducting reviews of accounting firms' quality control systems.

goals does it serve in the context of a PAB? Should our rules specify the types of procedures that a PAB should employ in rulemaking, or is this better left to a PAB to decide? What matters should a PAB be required to address only through an open process? Are there circumstances we should provide for under which issues concerning the amendment of governing documents, rules, membership requirements, and procedures should be handled other than through such open processes?

*Full Faith and Credit.* Under proposed rule 13–04(d)(16), a PAB would give ''full faith and credit'' to the sanctions and good standing requirements of another PAB. This would be necessary, if more than one PAB is formed, to prevent an accountant from attempting to avoid a sanction by one PAB by resigning and joining a different PAB. This provision also notes that a registrant may not avoid a finding that it is in violation of a PAB's good standing requirements (due to not paying fees assessed by the PAB or not providing requested testimony or documents) simply by firing its current accountant and engaging another accountant that is a member of a different PAB. In such circumstances, the new PAB would consider the registrant to be not in good standing until the registrant remedied the nonpayment of fees or delinquency in providing testimony or documents.

We request comment on the proposed requirement to extend full faith and credit to another PAB. How would this requirement work in practice? Will a requirement to extend full faith and credit prevent attempts to avoid sanction by resigning from one PAB and joining a different PAB? Should our rules be more specific?

*Training.* A key to maintaining professional competence is continued training throughout an accountant's career. Business and financial transactions, as well as audit practices, change with ever-increasing speed. Accountants need to be able to keep abreast of these developments and adapt their skills. Under proposed rule 13–04(d)(17), therefore, we condition the Commission's recognition of a PAB on the PAB providing training for, or imposing appropriate training requirements on, its member accountants in matters relating to accounting, auditing, attestation, assurance, ethics, independence, and quality controls. A training requirement should increase investor confidence that audits are being performed effectively and competently.

We request comment on the proposed requirement that a PAB provide or require training. Should we specify the particulars of a required training program? What would be the components of such a program? Should our proposed rules require a specific amount of training per year? How much training should be required?

*Other Duties or Requirements.* Under proposed rule 13–04(d)(18), a PAB's rules, membership requirements, systems, and procedures would specify that the PAB would perform such other duties or functions as the Commission determines are necessary or appropriate in the public interest or for the protection of investors and to carry out the purposes of proposed Article 13. This provision would allow the Commission to oversee effectively a PAB's activities to make sure that the PAB is operating in accordance with the proposed rules, and would allow for the possibility of marshalling a PAB's resources for special projects that fall within its realm of responsibility. For example, in the past ten years, we asked the former POB to study accounting firms' quality control systems related to auditor independence, recent changes in audit techniques and practices, and various issues related to professionalism and independence.[98] We solicit comment on this provision.

More generally, we solicit comment on these rules and requirements. Should we include other requirements necessary for the proper functioning of a PAB as we describe it? Are any of the proposed requirements too onerous? Why?

Quality Control Requirements

Proposed rule 13–04(e) conditions Commission recognition of a PAB on the PAB ensuring that its member accountants maintain a quality control system designed to meet the requirements of quality controls set or designated as authoritative by the PAB. These controls should encompass at least the current AICPA quality control elements: independence, integrity, and objectivity; personnel management; acceptance and continuance of clients and engagements; engagement performance; and monitoring.[99] In addition, the proposed rule conditions Commission recognition on a PAB requiring its members to maintain certain specific quality controls, many of which are current SECPS membership requirements.[100] A PAB may supplement or otherwise modify the quality control elements and specific requirements with other elements and requirements it deems appropriate.

''Independence, integrity, and objectivity'' policies address the firm's relationships with its clients. ''Personnel management'' refers to the criteria for the hiring, development, continuing education, advancement, and assignment of personnel. The element related to the ''acceptance and continuance of clients and engagements'' is designed to provide reasonable assurance that the likelihood of associating with a client's management that lacks integrity is minimized. ''Engagement performance'' policies are intended to provide reasonable assurance that the firm complies with applicable professional standards and regulatory requirements. And ''monitoring'' involves an ongoing evaluation of the relevance of the firm's policies, the appropriateness of the firm's guidance materials and practice aids, the effectiveness of professional development activities, and compliance with the firm's policies and procedures.[101] We believe that these elements continue to be essential to high quality accounting and auditing practice and should continue to be required.

We request comment on conditioning Commission recognition on a PAB requiring that its member accountants maintain a quality control system. We stated that the controls should encompass at least the current AICPA elements and certain SECPS membership requirements. Are these elements appropriate to address the concerns discussed in the release? Are there other elements that we should require a PAB to include as part of its quality control system?

The specific quality controls that should continue to guide accounting firms' accounting and auditing practices include:

- Rotating the partner in charge of an audit engagement at least once every seven years;[102]
- Having a second-partner (one other than the partner in charge of the audit engagement) independently review the audit report and the financial statements,[103] unless the PAB authorizes alternative procedures where

[98] These projects are noted in Appendix A.

[99] AICPA, *System of Quality Control for a CPA Firm's Accounting and Auditing PRactice,* ¶ 7, Quality Control (''QC'') § s20.07.

[100] *See generally,* SECPS, *Requirements of Members,* items, e, f, h, i, k, m, n, o, and p. The membership requirements are available online at *htt://www.aicpa.org/members/div/secps/require.htm.*

[101] *See supra* note 99, QC §§ 20.07–20.20 (description of each quality control eleemnt).

[102] SECPS, *Requirements of Members,* at item e.

[103] *Id.* at item f.

this requirement cannot be met because of the size of the firm;

• Ensuring policies and procedures are in place to comply with auditor independence requirements and to refrain from providing to audit clients consulting services that are inconsistent with § 210.2–01 and conducting public opinion polls and merger and acquisition assistance for a finder's fee; [104]

• Reporting to the audit client and the SEC when the firm resigns, declines to stand for reelection, or is dismissed; [105]

• Seeking to have foreign associated firms adopt policies and procedures consistent with the objectives of the proposed rules, and notifying the Commission when any such firms have done so; [106] and

• Ensuring the firm has policies and procedures for reporting litigation or government investigations or proceedings to the PAB,[107] with a copy of the report to the Commission's Office of the Chief Accountant.

We request comment on each of these items. Is a requirement to rotate a partner every seven years, for example, the appropriate time frame? Should a PAB be permitted to make any exceptions to these requirements in some cases? If so, under what circumstances?

In addition to the current SECPS membership requirements, other practices currently enhance investors' confidence and contribute to improved audit quality. Under proposed rule 13–04(e), Commission recognition of a PAB depends on the PAB requiring its members' quality control systems to encompass these practices as well. For example, proposed rule 13–04(e)(4) essentially restates the requirement in Independence Standard No. 1 regarding communications on auditor independence issues between an accountant and the audit committee of its audit client.[108]

Another example of a beneficial practice is maintaining a central office function that has expertise in accounting and financial reporting matters, and having policies and procedures in place for: (1) Engagement partners and others to consult with that office, and (2) the resolution of differences of opinions between that office and engagement partners. Proposed rule 13–04(e)(8) would condition Commission recognition of a PAB on the PAB ensuring that member firms maintain such a central office function, but a PAB could authorize alternative procedures for firms that could not meet this requirement because of their size. We solicit comment on the central office function requirement. Would this requirement place a burden on those firms that do not already maintain a central office function? Would conditioning recognition on the maintenance of a central office function pose any competitive concerns?

Finally, proposed rule 13–04(e)(9) would condition Commission recognition of a PAB on the PAB ensuring that its members incorporate many of the procedures discussed by the Independence Standards Board in Independence Standard No. 3, *Employment with Audit Clients.*[109] This standard requires an accounting firm, when an audit client employs a former firm professional, to take steps to eliminate the risk that the firm's former partner or employee could, by reason of his or her knowledge of or relationships with the firm, adversely influence the quality or effectiveness of the audit.[110]

We request comment on the quality control elements and specific requirements we have included in the proposed rule. Should we require these items, or should we defer to a PAB's discretion to devise quality control elements and requirements or to designate another entity's as authoritative? If they should be retained, should any be omitted or should additional procedures be added? Which ones? For example, should all partners who participate in a portion of the audit of a registrant's financial statements be rotated periodically? Are there other circumstances when we should require reporting to the audit client, a PAB, and/or the SEC? What are they? Should the Commission provide greater or lesser direction regarding the content of requirements set or adopted by a PAB?

Quality Control Review Program

In section 13–04(f), we propose to build on the most successful parts of the SECPS's peer review process and membership requirements to create a stronger, more diligent and independent system. Proposed rule 13–04(f) conditions Commission recognition of a PAB on the PAB having a continuing program for the review and inspection of member accountants' compliance with the PAB's rules and membership requirements and professional standards.

The frequency of the reviews of a firm's quality control system under proposed rule 13–04(f)(1) would vary based on the number of the firm's SEC clients. For each member firm with more than 70 SEC clients, or such other number of SEC clients as the PAB may determine, the proposed rule would require a PAB to conduct an annual review of the firm's quality control system. For all other member firms, a review would be conducted at least once every three years.

According to a recent computer run of SECPS members, ten accounting firms have more than 70 SEC clients.[111] We have chosen 70 SEC clients for the dividing line to ensure that those accountants who audit the vast majority of registrants will be subject to very frequent scrutiny by a PAB. We recognize that the number of firms with more or less than 70 SEC clients, and the need to review more or fewer firms on an annual basis, may change over time. Proposed rule 13–04(f)(1), therefore, would provide a PAB with the discretion to change the number of SEC clients that would trigger an annual, as opposed to a triennial, review.

Should a PAB conduct reviews more or less often than annually for the larger firms? Will triennial reviews for small firms meet the goals of the proposed rules? Should a PAB have the discretion to alter these frequency requirements based on experience over time with the review process? If so, in what way, if any, should that discretion be guided by Commission rules?

We also request comment on whether 70 SEC clients is the appropriate trigger for an annual review or whether a larger or smaller number of SEC clients would be more appropriate. Additionally, we request comment on the proposal to provide a PAB with discretion to alter the 70 SEC client trigger/standard. Should a PAB have that discretion? If it does not, how should developments over time and a PAB's experience with the review process be factored into or accounted for in adjusting the trigger, as

[104] *Id.* at item h and o.

[105] *Id.* at item m.

[106] *Id.* at item n. As discussed elsewhere in this release, foreign accountants would be exempt from the coverage of the proposed rules. The provisions in this section is intended only to continue current practices, under the SECPS membership requirements, of encouraging foreign firms to improve their quality control systms.

[107] *Id.* at items k and p.

[108] Independence Standards Board, *Independence Discussions with Audit Committes,* Independence Standard No. 1 (Jan. 1999), which requires the auditor to disclose to the audit committee, in wiritng, relationships that the auditor believes may reasonably be thought to bear on auditor independence, confirm in the letter its independence, and discuss its independence with the audit committee.

[109] *See* Independence Standards Board, *Employment with Audit Clients,* Independence Standards No. 3 (July 2000).

[110] *Id.*

[111] The same data, derived from a list obtained from the SECPS, indicates that ten firms have between 30 and 75 SEC clients and approximately 800 firms have fewer than 30 SEC clients.

may be appropriate? If a PAB is granted discretion to change the trigger, are there factors the Commission should identify to guide the exercise of that discretion?

Proposed rule 13–04(f)(2) would permit a PAB to direct its member firms to make and keep records that are necessary for the conduct of the reviews. Proposed rule 13–04(f)(3) would make clear our expectation that a PAB would establish the policies and procedures for conducting reviews, establish reporting requirements, and maintain public files. Under proposed rule 13–04(f)(4), a PAB would monitor each review to ensure that it is conducted in a fair and impartial manner and that appropriate procedures are recommended and implemented to correct any noted deficiencies in a timely and effective manner.

We request comment on all aspects of our proposals regarding quality control reviews, including on the elements of a strong quality control review program. How can a PAB best assess compliance of its members with rules of a PAB and with professional standards? How can a PAB best assess compliance of individual accountants associated with a firm?

If a PAB program would be compared to the peer review program that currently is conducted under the auspices of the AICPA, we would expect that the PAB and its staff would perform the functions related to peer reviews that currently are performed by the Peer Review Committee,[112] the SECPS Executive Committee,[113] and until recently the POB and the POB staff,[114] to the extent those functions are deemed necessary by a PAB.

Under proposed rules 13–04(f)(5) a PAB would direct and make all key decisions related to each review of a firm that has over 70 SEC clients, or such other number of SEC clients as the PAB may determine. For firms with 70 or fewer SEC clients, a PAB may permit the reviews to be conducted by non-PAB staff, but only if the PAB: (1) Approves the review program; (2) establishes policies and procedures for the reviews as well as for reporting the results of the reviews; (3) maintains public files related to the reviews; (4) monitors the program to insure that reviews are conducted in a thorough and impartial manner; and (5) evaluates each review to gain assurance that appropriate procedures are being recommended and implemented to correct any noted deficiencies in a timely and effective manner.

We request comment on whether a PAB should be permitted to use approved review programs. The five items listed should help to make sure that such programs operate effectively. Are there any other requirements that should be added to this list before a PAB may permit reviews under a review program? If review under a program is permitted, should a PAB, as part of its oversight of such a program, have control or veto power over the reviewer?

Under proposed rule 13–04(f)(5)(i), in performing a PAB-directed review, the PAB may engage accountants from one or more non-associated firms to work on the review. As noted above, however, all key decisions must be made by the PAB. We are proposing to allow the PAB to engage such accountants to assist in doing the ''leg work'' of the reviews, so that a PAB may decide whether to hire a larger permanent staff or to contract for additional support on reviews as needed. Any accountants engaged to assist the PAB in conducting the reviews would perform only assigned functions and be supervised by the PAB or its staff.

Should a PAB be permitted to engage accountants to work on a review? If so, what is the scope of functions that accountants engaged to assist a PAB in conducting reviews should be permitted to perform? Should there be other limitations or requirements on the accountants that may be engaged to assist a PAB in conducting a review? Would it be practical, and would a PAB be able to obtain the necessary expertise, if it had to conduct all or a significant portion of reviews exclusively with its own staff? Should a PAB direct the reviews, and make all key decisions for all reviews? In a PAB-directed review, should a PAB be permitted to engage, on a contract basis, employees of firms that are not affiliated with the firm being reviewed to do the ''leg work'' on the review? We have proposed that firms with 70 or fewer SEC clients may have quality control reviews conducted under a review program approved by a PAB. Should firm-on-firm reviews be allowed? If firm-on-firm peer reviews are allowed, should a PAB, as part of its oversight of such a program, have veto power over a firm's selection of its reviewer? Should these reviews be conducted by teams of persons from one accounting firm or should the teams include members from several firms? What are the advantages and disadvantages of either team composition? Should firms employ staff members dedicated, at least on a part-time basis, to PAB quality control reviews?

Proposed rule 13–04(f)(6) provides that a PAB or approved reviewer would examine various offices and personnel within the firm. It also would require a PAB or reviewer to determine whether the firm's quality control system is appropriate, whether adequate documentation and communication of quality control policies and procedures exists within the firm, and whether those policies and procedures provide reasonable assurance of compliance with the Commission's rules, the PAB's rules and membership requirements, and professional standards. Under proposed rule 13–04(f)(7), a PAB or reviewer would prepare a report of its findings and comments during each review. Each report and any response provided by the reviewed firm would be available to the public.

We solicit comments on the appropriate scope of a review and the type of report and access to the report that should be established by the rules.

Supplemental Reviews and Disciplinary Proceedings

In proposed rule 13–04(g) we have created the framework for a disciplinary process that for the first time would add teeth to the quality control review process. Under this proposal, the PAB could suspend or bar an individual or firm from being a member of a PAB or impose other remedial or disciplinary sanctions, as it believes appropriate. Such a proceeding might be based on an individual accountant's incompetent or unethical conduct, other acts or omissions that constitute a failure to comply with professional standards, or for violations of the PAB's rules or membership requirements. A proceeding against a firm might be based on the issuance of an adverse

[112] The Peer Review Committee administers the peer review program, establishes standards for conducting peer reviews, establishes standards for reports on peer reviews and publication of such reports, requests the SECPS Executive Committee to appoint a hearing panel when it believes that sanctions should be imposed on a member firm for failure to comply with membership requirements, keeps records of peer reviews, and establishes and maintains a public file for each member firm, which includes the firm's three most recent annual reports, the latest peer review report, the reviewer's letter of comments, and the firm's response. *See* AICPA, *Governing Bodies* at: *http://www.aicpa.org/members/div/secps/bodies/index.htm.*

[113] The SECPS Executive Committee, among other things, establishes requirements for membership in the SECPS and determines sanctions to be imposed on member firms for failure to comply with the SECPS's membership requirements, ordinarily through the appointment of hearing and appeals panels. *Id.*

[114] The POB and the POB staff, among other things, monitored and evaluated the effectiveness of the Peer Review Committee and the SECPS Executive Committee and determined whether the Peer Review Committee was ascertaining that firms were taking appropriate action as a result of findings during peer reviews. *Id.*

review report, which indicates that the firm's quality controls, or compliance with those controls, are deficient and fail to provide reasonable assurance that the firm is complying with professional standards during its audit, review, or attest engagements. A PAB could also institute disciplinary proceedings against a firm or an individual for conduct that comes to the attention of a PAB other than through the quality control review.

Proposed rule 13–04(g)(1) conditions Commission recognition of a PAB on the PAB having rules, membership requirements, systems, and procedures, incorporating the criteria described in this section, pursuant to which it could institute public disciplinary proceedings to determine whether an accountant has violated PAB rules or membership requirements, or professional standards, and to impose sanctions. Prior to making a determination to institute a disciplinary proceeding, under proposed rule 13–04(g)(1)(ii) a PAB may, on the basis of information suggesting such a violation, engage in a nonpublic ''supplemental review'' process of gathering information relevant to its determination of whether to institute a disciplinary proceeding.

The supplemental review process would be an important part of the PAB's mission. We would expect a PAB to pursue a supplemental review on the basis of any information suggesting the possibility of the type of violation described above, whether that information comes to a PAB through a routine quality control review or otherwise. Some supplemental reviews might be very brief, with PAB staff satisfying itself in the course of a single interview that there is no basis for inquiring further, while other supplemental reviews could be complex, requiring careful consideration of a large amount of information to make a responsible decision about whether to institute a disciplinary proceeding. Proposed rule 13–04(g)(4) provides that a PAB may request relevant testimony and documents from any person in connection with a supplemental review or a disciplinary proceeding.

We request comment on the proposed supplementary review and disciplinary mechanisms. Under what circumstances should a PAB exercise this power? Should a PAB have the power to suspend or bar an individual or firm from being a PAB member? Should the rules set forth detailed requirements regarding the procedures that a PAB should employ before exercising disciplinary powers? What procedures, limitations, and controls should apply to a PAB's exercise of its disciplinary powers? Should the rule provide more specific limits on the circumstances in which a PAB may pursue a supplemental review?

If a PAB becomes aware of information indicating that a violation of the securities laws has, or is likely to have, occurred, then under proposed rule 13–04(g)(2) the PAB would notify the Commission. As noted above, we intend to continue to address instances of violations of the securities laws and other conduct through our enforcement efforts, including enforcement of Rule 102(e) of our Rules of Practice. Violations of the securities laws and other actionable conduct should not go unaddressed because they are detected during a quality control review as opposed to coming to light through another means. While we recognize that some may fear that such a referral procedure could have a chilling effect on the review process, to provide otherwise would be contrary to our mandate under the securities laws. In light of the balance between these interests, we request comment on whether we should require that a PAB notify the Commission of information indicating that a violation of the securities laws has or is likely to have occurred. Would this referral procedure affect the review process? If so, how?

Further, to ensure that there is not unnecessary duplication of effort or burden on a party, and to retain the Commission's control over the enforcement of the securities laws, we propose that a PAB could only institute a disciplinary proceeding regarding that information after notifying and consulting with the Commission. We solicit comment on whether the Commission should prohibit a PAB's institution of a disciplinary proceeding in this manner. Are there alternative ways to achieve the purposes of this limitation? Should a PAB have broader discretion and disciplinary powers to conduct proceedings related to violations of the securities laws?

Under proposed rule 13–04(g)(3), a PAB must establish fair procedures for supplemental reviews and disciplinary proceedings. The rule also would require a PAB's disciplinary proceeding to be public unless otherwise ordered by the PAB with the prior approval of the Commission. We intend for a PAB's disciplinary proceedings to be open and transparent to the same extent that our Rule 102(e) proceedings are open to the public.[115]

We request comment on the requirement that a PAB establish procedures for disciplinary proceedings. Should our rules be more specific with respect to the procedures a PAB must establish, such as specifically providing for appropriate burdens of proof or evidentiary rules? We request comment on the ability of a PAB to institute disciplinary proceedings and supplemental reviews, and on the procedures proposed for those proceedings and reviews. Under the proposal, disciplinary proceedings would be public. Are there reasons that all disciplinary proceedings, certain categories of disciplinary proceedings, or certain portions of disciplinary proceedings should not be public, or as to which a PAB should have discretion to make them non-public? Is providing a PAB discretion to close a disciplinary proceeding, but only with prior Commission approval, an appropriate response to these situations, given that it may not be possible to foresee all possible contingencies?

We are not proposing to prescribe the details of the hearing process. A PAB, if it chooses, may have independent, non-accountant hearing officers conduct a hearing and recommend findings and sanctions to the PAB, in a manner not dissimilar to the process used by the NASD. Alternatively, it may require a panel of PAB members, with the advice of legal counsel, to conduct the hearings, or it may adopt rules and procedures for other suitable proceedings. Should we require a particular process in this area?

At a minimum, however, under proposed rule 13–04(g)(3), a PAB should provide its members with procedural safeguards similar to those required by statute in proceedings conducted by the securities exchanges and the NASD. These include notice of specific charges, an opportunity to defend against the charges, a record of the proceedings, and an explanation of the grounds for any sanction imposed.[116] As noted above, we believe that to have a credible process and protect the interests of both investors and accountants, these proceedings should be public to the

[115] *See* 17 CFR 201.102(e)(7). In 1988, the Commission amended Rule 102(e) to state that proceedings shall be public unless the Commission otherwise directs, and stated that the reasons supporting public proceedings against accountants include that disciplinary proceedings against broker-dealers and other market professionals are public, that private proceedings create an incentive for delay, that there is considerable public and professional interest in such proceedings, and that public proceedings are more favored in the law than are closed proceedings. *See Disciplinary Proceedings Involving Professionals Appearing or Practicing Before the Commission,* Release No. 33–6783 (July 7, 1988), 53 FR 26427 (July 13, 1988).

[116] *See, e.g.,* 15 U.S.C. 78*o*–3(h).

same extent as our Rule 102(e) proceedings.

We request comment on which safeguards, if any, a PAB should provide to its members. Are there additional safeguards that any final rules should require a PAB to provide? Are there safeguards that we propose that are unnecessary and would impede a PAB's ability to accomplish the goals and purposes of Article 13? Should the Commission provide more guidance or detail regarding the safeguards it proposes or may adopt in this proposed rule?

Under proposed rule 13–04(g)(4), Commission recognition of a PAB is also conditioned on the PAB having rules pursuant to which it may request that any person provide documents or testimony relevant to any supplemental reviews or disciplinary proceeding. We have not proposed any provisions pursuant to which a PAB could require production or testimony from anyone who is not a member or adjunct member of the PAB.

Are there appropriate mechanisms that could be included in the rule to increase the PAB's ability to obtain documents and testimony? Should the rule limit the circumstances under which, or the methods by which, a PAB should be permitted to seek documents and testimony?

Proposed rule 13–04(g)(5) states that PAB board members who are not public members would not vote on any disciplinary matters (but could be consulted in connection with supplemental reviews and disciplinary proceedings). Placing the outcome of disciplinary matters solely in the hands of representatives of investors and issuers would serve to enhance investor confidence that their interests are being protected.

Is this proposed restriction on voting in disciplinary matters to the public board members appropriate in light of the importance of assuring investor confidence in these proceedings? Are there circumstances when the accountant board members should be able to vote? Should further or other limitations be placed on the participation of accountant board members with regard to disciplinary proceedings or supplemental reviews? For example, should consultation be prohibited as well? If so, why?

Under proposed rule 13–04(g)(6), if a PAB finds in a disciplinary proceeding that an accountant has violated rules or membership requirements of a PAB or professional standards, it could, among other sanctions, revoke or suspend the accountant's membership in, or expel the accountant from, the PAB; impose limitations on an accountant's activities, including requiring resignation from a specific audit, review, or attest engagement; suspend or bar an accountant from participating in any SEC audit, review, or attest engagement; impose fines and censures; and impose any other appropriate sanction.

The Commission requests comment on whether these are appropriate sanctions. Should our rules be more or less specific with respect to the sanctions and remedial actions a PAB could take? If so, how?

To provide heightened transparency in the disciplinary process, proposed rule 13–04(g)(7) would provide for a PAB to issue a public written report whenever it imposes a sanction. Copies of the report would be provided to the Commission and to any state or foreign financial regulatory authorities, with which the individual or firm is licensed, registered, or certified to practice public accounting. Each report would name the accountant being sanctioned, describe the acts or omissions on which the sanction is based, describe the nature of the sanction, and contain such other information as the PAB deems appropriate. We request comment on the persons to whom the report should be sent, whether it should be public, and what information it should contain. In addition, we solicit comment on whether public reports, either on a case-by-case basis or otherwise, should be provided when a PAB determines that no sanction should be imposed, and, if so, what those reports ought to include.

Under proposed rule 13–04(g)(8), if a PAB is unable to complete a proceeding because of the refusal of any person to provide testimony or documents or otherwise to cooperate with the PAB, then the PAB would report that refusal to the Commission. Further, where the uncooperative party is a registrant, the PAB would additionally report the refusal to any market or exchange on which that registrant's securities are traded. Under this proposed rule, a PAB also may refer any other matter to the Commission that it deems appropriate.

We solicit comments on the reporting and referral provisions in proposed rule 13–04(g)(8). Among other matters, should the Commission provide guidance or details regarding the timing and content of those reports and referrals. Are there other circumstances when a PAB should report to the Commission or to an exchange or market on which a registrant's securities are traded?

Proposed rule 13–04(g)(9) addresses the situation where a firm employs a person who is subject to a PAB sanction, order, or ruling. Because many accounting firms provide diverse and varied services, it is possible for a firm to retain an individual to perform services that are unrelated to audits, reviews, or attest services for Commission registrants. Under this provision, however, the firm would notify the PAB of its relationship with the sanctioned individual and undertake procedures to make sure the terms of the sanction, order, or ruling are not violated. We request comment on these proposed requirements. Is it necessary or appropriate to the accomplishment of the goals and purposes of Article 13 for a member accounting firm to provide notice if the individual is not going to perform any audit, review, or attest services for registrants? Should the requirement to provide notice take into account whether the sanctioned person would perform services unrelated to audits of Commission registrants? Should the firm's requirement to notify a PAB of its relationship with the sanctioned person be a one-time or continuous requirement?

Rule 102(e)(2) of the Commission's Rules of Practice states that any person whose license to practice as an accountant has been revoked or suspended in any state, and any person who has been convicted of a felony or a misdemeanor involving moral turpitude, shall be forthwith suspended from appearing or practicing before the Commission.[117] Should proposed rule 13–04(g)(9), if adopted, include a provision that any person barred, suspended, or expelled from membership in a PAB shall be forthwith suspended from appearing or practicing before the Commission? Should we include such a provision in Rule 102(e)(2)?

Public Reporting

To facilitate our oversight and to provide transparency regarding a PAB's operations and processes, we would encourage a PAB to make as much information available on a ''real-time'' basis as possible. Under proposed rule 13–04(h), a PAB would report to the Commission and the public at least annually, and where practicable on a current basis:

- A description of its quality control review and disciplinary activities;
- Annual audited financial statements;
- An explanation of fees and charges imposed on member accountants and adjunct members;
- A summary of issues discussed in the PAB-sponsored meetings with, or in

[117] 17 CFR 201.102(e)(2).

connection with its oversight of, private sector standard-setting bodies;

- A list of matters referred to each private sector standard-setter that were not placed on the standard-setter's agenda within 90 days of the referral; and
- Other matters as the PAB or the Commission deems appropriate.

Transparency is essential if a PAB is going to be a credible private sector regulatory body, develop the trust of both accountants and government bodies, and enhance the confidence of investors in the audit process and in the integrity of the information that fuels our securities markets. Public reports are one means of providing that transparency.

We request comment on our proposed public reporting provisions. Should we be more specific? Will the specified reports achieve an adequate level of transparency? If not, on what other types of reporting should we condition a PAB's Commission recognition? We also request comment on the appropriate timing and the scope of the reports.

Commission Oversight

As discussed above, under proposed section 13–04(i), Commission recognition is conditioned on a PAB's charter and bylaws providing that it will be subject to, and act in accordance with, Commission oversight. Our oversight authority under proposed section 13–04(i) is substantial. We expect to monitor closely the activities of any PAB and exercise particular aspects of our oversight authority whenever the public interest so requires. Among other things, under these proposed rules, the Commission may make changes to a PAB's rules, inspect and monitor a PAB's operations, review PAB disciplinary proceedings and modify or reverse any sanctions imposed, remove PAB board members under certain circumstances, redirect fees paid to a PAB that fails to comply with the conditions of recognition, and, ultimately, withdraw recognition. We believe that the system of private regulation proposed by the release, coupled with Commission oversight, is the best way to achieve our goals of improving audit quality and financial disclosure.

We envision a more thorough and extensive oversight of a PAB's processes than existed under the prior self-regulatory structure. We would intend to have full access to the process so that we would be able to determine to our satisfaction whether a PAB is operating in the interests of investors and working diligently to improve firms' quality control systems, including sanctioning or removing from practice before the Commission incompetent or unethical individuals.

The proposed rule allows a PAB to set auditing, ethical and quality control standards, perform quality control and supplemental reviews, and impose disciplinary sanctions. As discussed elsewhere in this release, these powers are necessary in order for a PAB to improve audit quality and enhance public confidence in our markets. Because a PAB's influence on financial reporting will be significant, Commission oversight is necessary to ensure that a PAB exerts its influence exclusively in the public interest.

We request comment on the structure and scope of Commission oversight provided in the proposed rules. Would our goals better be served by a system of oversight that was less extensive? Why or why not? Should our rules set forth detailed criteria with respect to when the Commission would exercise its oversight? What should those criteria be?

Although we would not approve a PAB's rules before they take effect, as we do for the securities exchanges and others, one of the conditions of Commission recognition of a PAB would be, as set out in proposed rule 13–04(i)(1), that the PAB consent to and act in compliance with any Commission rule that abrogates, adds to, or deletes from the rules of a PAB. Using this provision, we could, by rule, amend a PAB's rules to remove inconsistencies, assure compliance with the securities laws or our regulations, and otherwise fulfill the purposes of Article 13. We would notify a PAB of our intention to take such action before we commenced a rulemaking proceeding. We also would follow our normal rulemaking process under the Administrative Procedure Act,[118] including publication of the proposed changes in the **Federal Register**, to solicit a wide range of comments on the proposed amendments. As discussed above, a PAB's charter and bylaws would provide that any changes we make to a PAB's rules would be immediately effective without further action by a PAB. We request comment on this provision. Should we review or approve of a PAB's rules before they take effect? Should the Commission amend a PAB's rules or should we only suggest or require that changes be made by the PAB itself? We request comment on our requirement that a PAB provide that any changes we make to a PAB's rules would be immediately effective. Does this requirement raise any concerns in light of state law requirements in the areas of fiduciary duty and business judgment?

Under the self-regulatory structure, a 1982 memorandum of understanding (''MOU'') among the Commission, the SECPS Peer Review Committee, the SECPS Executive Committee, and the POB significantly limited our oversight. For example, the MOU provided for the Commission staff to have access to POB staff workpapers, but only to certain workpapers of the peer reviewers on a random selection basis. The MOU also stated that the Commission staff was not permitted to retain or make copies of POB or reviewer workpapers.

Under proposed rule 13–04(i)(2), a totally different approach is proposed that would give the Commission the requisite involvement and oversight of a PAB's activities. Under the rule, our staff periodically may monitor and inspect the operations, records, and results of a PAB to ensure it is operating in the public interest and fulfilling the purposes of the Commission's rules. We intend that our staff would, in fact, regularly inspect the PAB's operations, records, and results, and would meaningfully monitor the PAB's operations. Among other things, we expect that monitoring to include our staff's attendance at meetings between a PAB and firms in connection with closing conferences at the completion of quality control reviews. The rule also requires a PAB to make and keep records that the Commission staff deems necessary for its inspections of the PAB's quality control reviews, supplemental reviews, and disciplinary activities.

We solicit comment on the approach to oversight in the proposed rules and on Commission involvement of a PAB's activities. How extensive should the involvement be of our staff in meetings between a PAB and a firm being reviewed? At what stage of the oversight process would our staff's involvement be most productive?

Because a PAB may limit or suspend an accountant's practice before the Commission, an adversely affected firm or individual should have the opportunity to seek Commission review of a PAB disciplinary decision. In addition, any member or adjunct member who is found delinquent in paying fees, producing documents or providing testimony should have an opportunity to seek Commission review of that determination. Under proposed rule 13–04(i)(3)(i), a PAB member accountant or adjunct member would have 30 days from the date the member accountant or adjunct member was

[118] *See* 5 U.S.C. 553 *et seq.*

notified by the PAB of the sanction or delinquency determination to file an application with the Commission for review. The Commission also could review a PAB sanction or delinquency determination on its own motion. A Commission review, however, would not stay the operation of the sanction unless the Commission so orders.

We seek comment on Commission review of a PAB disciplinary or delinquency action. Under the proposed rules, a PAB member or adjunct member would have 30 days to file an application for review. Is 30 days sufficient time to file an application? Should an application for review stay the operation of the sanction?

Under 13–04(i)(3)(ii), a Commission proceeding for review of a PAB's final disciplinary action against a member accountant would allow for notice and an opportunity for a hearing. The hearing may consist solely of consideration of the record before the PAB and opportunity for the presentation of supporting reasons to affirm, set aside, or modify the sanction. Under the proposed rule, the Commission would make a finding determining whether the member accountant engaged in the acts or omissions that the PAB found the accountant to have engaged in; whether those acts or omissions violated the provisions of the securities laws or rules thereunder, rules or membership requirements of the PAB, or professional standards that the PAB specified; and whether those provisions are, and were applied in a manner, consistent with proposed Article 13. If the Commission makes those findings, the Commission would by order so declare, and affirm or modify the sanction or, where appropriate, remand it to the PAB for further proceedings. If the Commission does not make those findings, it would set aside the sanction and, if appropriate, remand it to the PAB. We are not proposing that the Commission, during such a review, be able to increase the sanction imposed on the accountant. If the Commission deems a greater sanction to be necessary, it would initiate its own civil, administrative, or disciplinary proceedings.

Proposed rule 13–04(i)(3)(iii) sets forth similar procedures for Commission review of a PAB delinquency determination against a member or adjunct member. In proposed rule 13–04(i)(3)(iv), we have expressed specifically our authority to cancel, reduce, or require remission of a sanction or to cancel a delinquency determination, if we find that the sanction or delinquency determination imposes an unnecessary burden on competition or is excessive or oppressive.

We request comment on the Commission proceeding to review a PAB's disciplinary actions or delinquency determinations. What should such a hearing entail? Should the rule allow for us to increase the sanction imposed on an accountant when appropriate? Under the proposed rules, we may cancel, reduce or require remission of a sanction or cancel a delinquency determination if it would impose an unnecessary burden on competition or is excessive or oppressive. Are these the appropriate instances when we should take such action? Are there other circumstances when we should act to ameliorate a sanction? What are they?

Proposed rule 13–04(i)(4) allows us, by order, to remove from office or censure any PAB board member if we find, after notice and opportunity for hearing that the member has (1) willfully violated any provision of the securities laws, rules or regulations thereunder, or the rules of the PAB; (2) willfully abused his or her authority; or (3) without reasonable justification or excuse failed to enforce a PAB member's compliance with any such provision or professional standards. In addition, under proposed rule 13–04(i)(5), if the Commission finds that a PAB is failing or has failed to comply with any of the conditions of recognition in proposed rule 13–04, we could withdraw recognition of the PAB and direct that PAB fees be deposited into escrow pending either correction of the PAB's failing or redirection of the funds to another PAB with which the formerly recognized PAB's members have enrolled.

Does our proposal set forth the appropriate circumstances for when we would remove from office or censure a PAB board member? We solicit comment on the redirection of funds to another PAB. Are there other circumstances that would warrant such action by the Commission? Are there alternative approaches for resolving or correcting a PAB's failure to meet the conditions of ongoing recognition?

We request comment on all aspects of Commission oversight of a PAB. Are there important aspects of Commission oversight that we have not identified? What are they? We request comment on our proposed rule that would allow us to withdraw recognition of a PAB.

### *F. Confidentiality and Immunity*

Proposed rule 13–05(a) contains the Commission's finding that it is in the public interest for reports, memoranda, and other information prepared by, and deliberations of, the PAB and its agents to receive appropriate confidential treatment under applicable law. We also find it in the public interest for a PAB to claim such protection, except to the extent that such information is requested by the Commission, any other Federal agency or department, any state licensing or criminal law authorities, and any foreign governmental or foreign financial regulatory authorities.

The Commission anticipates and intends that a PAB vigorously will claim confidentiality for its quality control review files, supplemental review files, and other files to the full extent permitted under law. Courts have recognized the strong public interest in allowing non-governmental entities entrusted with enforcing rules of conduct to minimize disclosure of investigative materials.[119] In *Ross* v. *Bolton,* the court noted the danger in ''making NASD files fair game for any of the thousands of private securities fraud litigants across the country who wish to shortcut their own discovery efforts and instead to reap the benefits of the Association's ongoing, statutorily governed work.'' [120]

Those who possess information may be less forthcoming in responding to a PAB inquiry if they believe that the information they provide will be made public or made available to private litigants.[121] The PAB's efforts to improve audit quality accordingly would be hindered.[122] Additionally, we believe that in most instances a plaintiff's legitimate interest in obtaining discovery from a PAB will be slight at best. This particularly will be the case where the PAB is not a party to the litigation or where a PAB inquiry is not the subject of a plaintiff's claims.[123] Moreover, a plaintiff generally will be able to obtain the information it seeks from sources other than a PAB. Accordingly, a PAB's files should receive significant protection from compelled disclosure. The scope of

[119] *See Fiero Bros.* v. *Mishkin,* No. 95–08203 JLG, 1999 WL 1747410 (S.D.N.Y. Dec. 8, 1999); *Apex Oil Co.* v. *DiMauro,* 110 F.R.D. 490, 496 (S.D.N.Y. 1985); *Ross* v. *Bolton,* 106 F.R.D. 22, 23 (S.D.N.Y. 1985).

[120] *Ross,* 106 F.R.D. at 24.

[121] *See Apex Oil,* 110 F.R.D. at 496.

[122] Additionally, as with our own proceedings, substantial harm may occur to individuals, accounting firms, or registrants if materials are released either prematurely or after a determination has been made that allegations or suspicions of misconduct have not been substantiated sufficiently to warrant instituting a PAB disciplinary proceeding. Absent such confidentiality, the reputation of innocent professionals could be tarnished irreparably and the price of a registrant's securities could suffer based on unfounded suspicion or rumor.

[123] *See Apex Oil,* 110 F.R.D. at 497.

this protection, however, should not be so broad as to permit a PAB to deny Commission access to the PAB's materials, nor should it permit a PAB to deny access to the other governmental authorities described above.

We request comment on our proposal that the Commission find that information prepared by a PAB receive confidential treatment. Should such information be treated confidentially? Why or why not? Our proposal sets forth exceptions to confidentiality, such as information requested by a federal agency. Should our rules provide for other exceptions? We seek comment on the effect that discovery requests in private actions would have on a PAB inquiry. Would those who possess information be less willing to share information if the information could be subject to discovery in a private action? Is there some other way to address this concern besides a PAB maintaining confidentiality of the information?

In proposed Section 13–05(b), the Commission finds that public policy dictates that a PAB, its staff, contractors, and professional representatives should be immune from liability in a private civil suit for any action or failure to act in connection with the PAB's responsibilities under Article 13. We anticipate, and intend, that a PAB and its members and employees will claim and be entitled to immunity from private civil liability for any action or failure to act in connection with a PAB's responsibilities under the proposed rules.[124] Common law provides immunity for non-governmental actors who perform public functions such as the ''development and promulgation of interpretations of statutory and regulatory requirements, the dissemination and implementation of these interpretations, and the provision of information to government agencies.'' [125] Accordingly, self-regulatory organizations (''SROs''), for example, have been held to enjoy immunity for actions taken within the scope of their duties as SROs, including interpretive, enforcement, adjudicatory, and referral activities.[126] Immunity from civil liability attaches because of, among other things, the likelihood of recriminatory lawsuits against SROs and the safeguards against abuse provided by the Commission's oversight.[127]

Although we are proposing the framework for a private sector regulatory organization that is not self-regulatory in nature, a PAB and its employees should be immune for activities within the scope of their duties under these rules. Like an SRO, the PAB will further the purposes of the federal securities laws by setting standards, enforcing compliance, and providing the Commission with information. A PAB will perform critical public functions as it fulfills its mission to ensure reliable financial information and enhance public confidence in our markets. A PAB will, to the same extent as an SRO, be susceptible to lawsuits that could hamper its important public mission or discourage public-spirited persons from serving on a PAB. Finally, a PAB will be subject to Commission oversight to guard against abuses. Accordingly, a PAB and its employees should be immune from civil liability to the same extent as the SROs.[128]

We solicit comment on our proposed finding that a PAB be immune from private liability. Should we make such a finding? Would immunity be appropriate, as our proposed finding suggests, for staff, contractors, and professional representatives of a PAB? Are there reasons we should not find that such immunity is appropriate?

*G. Exemptions*

The Commission's broad exemptive authority [129] is reflected in proposed rule 13–06(a). Under this provision, on our own motion or upon an application by any interested party, we may exempt, conditionally or unconditionally, in whole or in part, any registrant, accountant, or class of registrants or accountants, from the operation of Article 13 and proposed rule 2–01(a)(2) of Regulation S–X.

In proposed rule 13–06(b), we would use our authority and exempt from the operation of Article 13 and proposed rule 2–01(a)(2) of Regulation S–X those accountants who do not audit or review financial statements filed with the Commission on a recurring basis and whose audit reports are filed with us only in accordance with Rule 3–05 of Regulation S–X.[130] Rule 3–05 requires that the audited financial statements of certain businesses acquired, or to be acquired, by registrants be filed with the Commission. An audit of a private business that subsequently is acquired by a registrant, therefore, would not, by itself, require the accountant performing the audit to become a member of a PAB.

Under proposed rule 13–06(c), the Commission may relieve a PAB from any of its obligations under Article 13 to enforce rules or membership requirements of a PAB or professional standards with respect to any accountant, adjunct member, or class of accountants or adjunct members. We believe this proposal is appropriate to clarify our ability to address unintended consequences or unforeseen events that may occur and result in a need to suspend or alter the functions performed by a PAB.

We request comment on the proposed use of our exemptive authority. Should the Commission grant exemptions for accountants whose reports are filed only pursuant to Rule 3–09, regarding the financial statements of certain unconsolidated subsidiaries and ''50 percent or less owned persons,'' or Rule 3–10, regarding the financial statements of certain guarantors and issuers of guaranteed securities?

*H. Foreign Accountants*

Under proposed rule 13–07(a), foreign accountants that audit or review financial statements filed with the Commission, and foreign issuers that engage foreign accountants for such services, would be exempt from the operation of Article 13 and proposed rule 2–01(a)(2) of Regulation S–X.[131] As noted above, under proposed section 13–03(c)(5), a PAB would study the quality control systems of foreign accountants and periodically report to us on whether the exemption provided to foreign accountants should be withdrawn. We would expect a PAB, at an appropriate time, to recommend that all or various classes of foreign accountants, conditionally or unconditionally, should be subject to proposed Article 13 and proposed rule 2–01(a)(2) of Regulation S–X.

In the meantime, we would require, under proposed section 13–04(e)(6), that domestic firms that are associated with foreign firms continue the current

[124] We do not intend anything in this rule to suggest that a PAB would or should be immune from civil law enforcement actions.

[125] *See D'Alessio* v. *New York Stock Exchange Inc.,* 125 F. Supp. 2d 656, 658 (S.D.N.Y. 2000), *aff'd,* 258 F.3d 93 (2d Cir. 2001).

[126] *See D'Alessio* v. *New York Stock Exchange Inc.,* 258 F.3d 93, 106 (2d Cir. 2001).

[127] *See Barbara* v. *New York Stock Exchange Inc.,* 99 F.3d 49, 59 (2d Cir. 1996); *Austin Municipal Securities, Inc.* v. *National Assoc. of Securities Dealers, Inc.,* 757 F.2d 676, 692 (5th Cir. 1985).

[128] The distinction between private regulation and self-regulation is important because under these rules the accounting profession will not be responsible for regulating itself. Rather, a private sector entity not controlled or dominated by accountants will assume this role. We do not believe, however, that distinction is relevant for the purposes of determining whether a PAB will be immune from civil liability.

[129] *See, e.g.,* Section 36 of the Exchange Act, 15 U.S.C. 78mm.

[130] 17 CFR 210.3–05.

[131] This proposed exemption would not preclude the Commission from initiating Rule 102(e) proceedings or other appropriate proceedings when warranted.

practice of encouraging their international organizations and individual foreign associated firms to improve their quality control policies and procedures, in a manner consistent with the objectives of Article 13.[132] We also would expect that domestic firms would continue to urge their foreign associated firms to adopt policies and procedures that are at least as rigorous as those set forth in Appendix K to the current SECPS Membership Requirements.[133] These policies and procedures are intended to provide a mechanism for persons knowledgeable in United States accounting, auditing, and auditor independence requirements to assist foreign accountants in the performance of audits of financial statements included in filings with the Commission. Appendix K also addresses policies and procedures related to an annual inspection process that would include the review of a sample of audit engagements performed by foreign associated firms for clients that are Commission registrants.[134] We would require under proposed rule 13–04(e)(6) that domestic accountants would report to a PAB, as they currently report to the SECPS, the name and country of the foreign associated firms, if any, that have advised the domestic accountant that such policies and procedures have been put in place.[135]

In this regard, under proposed rule 13–07(b), during a review of a member firm's quality controls, a PAB or other reviewer would examine the procedures performed by the firm related to documents filed with the Commission that contain audit reports prepared by the firm's foreign associated firms.

We request comments on our proposal regarding foreign accountants. Is the exemption for foreign accountants appropriate? There may be situations where, for example, a foreign company has the majority of its assets and operations in the United States and as a result it engages a U.S. firm to conduct the audit of the foreign company's financial statements. Should the exemption be broadened to include such a foreign issuer? Are there situations in which a U.S. firm's audit work for public companies is limited to companies that are foreign issuers? If so, should the exemption be broadened to include those issuers, but not broadened to include foreign issuers whose U.S. accounting firm also provides audit services to domestic issuers, and would therefore be required to be a PAB member anyway? Should we include an explicit provision to prevent domestic issuers from avoiding the PAB requirement by engaging a foreign accounting firm as their principal auditor?

*I. Disclosure by Directors, Executive Officers, Promoters, and Control Persons*

Under our proposed addition to item 401(f) of Regulation S–K,[136] disclosure would be required if, during the past five years, any director, person nominated to become a director, or executive officer was, in his or her capacity as a PAB member accountant, sanctioned by a PAB for violations of professional standards or the PAB's rules or membership requirements and that sanction has not been subsequently reversed, suspended, or vacated.

Item 401 currently requires disclosure of similar sanctions, such as court orders or judgments by federal or state authorities barring or limiting the right of the person to engage in activities related to, among other things, commodity trading, any type of business practice, or the purchase or sale of any securities.

A PAB sanction would be designed to protect investors from incompetent or unethical conduct or other failures to comply with professional standards. Such a sanction would be considered to be sufficiently serious that investors should be notified of the sanction for consideration in connection with investment or voting decisions.

We request comment on our proposal regarding disclosure. The disclosure requirement has been placed in Regulation S–K but not in Regulation S–B in order not to increase the compliance burden on small business issuers. We are considering, however, placing the requirement in Regulation S–B as well. Should small business issuers make this disclosure? Assuming disclosure is required of PAB sanctions that have been imposed on executive officers, directors, or director nominees, should disclosure also be required of sanctions that have been imposed against such individuals in disciplinary actions under Rule 102(e) of the Commission's Rules of Practice? Should disclosure be required for sanctions that were imposed longer than five years ago?

*J. Transition Period*

We are considering the appropriate timing for the implementation of final rules, if any are adopted, and how best to allow for an orderly transition to the new rules. We are considering what, if any, delay would be necessary or appropriate in this case.

We could set a transition or compliance date that would allow additional time for a PAB to be established, recognized by the Commission, and in a position to begin accepting members. We anticipate that one or more entities seeking to be a PAB will submit appropriate information to the Commission soon after the final rules are published. We further anticipate that we would review that information promptly and, if practicable, issue an order recognizing a PAB by January 2003. Even though such a PAB might not be in a position for several months to begin conducting quality control reviews or disciplinary proceedings, it could begin accepting members soon after it conducts a rulemaking project related to the content and processing of accounting firms' applications.

One alternative, therefore, may be for a transition or compliance date to be based on the public issuance of the Commission's Order recognizing a PAB. For example, the compliance date could be 90 days after the public release of a Commission Order recognizing a PAB. Another alternative, which would encourage entities desiring to be a PAB to submit information to us promptly, might be to set a date certain or specific period of time after the effective date for full compliance with the rules.

We solicit comments on the appropriate timing for compliance with the proposed rules. Would a period of time beyond the effective date be necessary or appropriate for compliance with the rules? How should such a date be determined?

## IV. General Request for Comments

We invite any interested person wishing to submit written comments on

[132] The Commission staff also will continue to seek comfort regarding a foreign accountant's knowledge of United States accounting, auditing, and auditor independence requirements as part of its review of filings or in anticipation of being requested to exercise its judgment in the public interest to accelerate the effectiveness of registration statements.

[133] Appendix K is available at *http://www.aicpa.org/members/div/secps/inmere.htm.*

[134] Persons knowledgeable in U.S. GAAP, GAAS and independence requirements and Commission regulations (the ''inspection reviewers'') would review the engagements. The inspection reviewers would determine whether anything came to their attention to cause them to believe that: (1) Either the financial statements did not comply with U.S. GAAP or the required reconciliation to U.S. GAAP did not include appropriate treatment of material reconciling items; (2) the audit engagement was not performed in accordance with U.S. GAAS; (3) the foreign associated firm did not comply with U.S. auditor independence requirements; and (4) the foreign associated firm did not comply with procedures for having Commission filings reviewed by a person knowledgeable in U.S. GAAP, U.S. GAAS, U.S. auditor independence requirements, and Commission regulations. *See Id.*

[135] SECPS, *Requirements of Members*, at n.

[136] 17 CFR 229.401(f).

these proposed rules to do so. We specifically request comments from investors, accounting firms, and registrants and other audit clients. We solicit comment, both general and specific, on each component of the proposals.

**V. Paperwork Reduction Act**

Certain provisions of the proposed amendments to Regulation S–X and Regulation S–K contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. 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 titles for the collections of information are ''Framework for a Public Accountability Board—PAB,'' ''Framework for a Public Accountability Board—Accountants and Audit Clients,'' and ''Regulation S–K'' (OMB Control No. 3235–0071). Compliance with the collection of information requirements would be mandatory. There would be no mandatory retention period for the information, except as provided below. Responses to the disclosure requirements would not be kept confidential. The collections of information are necessary to provide assurance that audit, review, and attest services performed by accountants fulfill their statutory and regulatory purpose and enhance the confidence of investors in the audit and review processes and in reported financial information.

*Information Provided by a PAB*

We are proposing a collection of information entitled ''Framework for a Public Accountability Board—PAB'' for information that would be provided by a PAB to the Commission, the public and others. The respondents to this collection of information would be PABs and entities seeking Commission recognition as PABs. As discussed below, we estimate solely for the purposes of the PRA that only one PAB would respond to this collection of information. This collection of information is necessary to allow the Commission to oversee a PAB to ensure that it is operating in the public interest. In addition, the collection of information would provide the public with important information concerning a PAB's activities. Finally, the information is necessary to ensure that the proposed rules operate effectively. This collection of information encompasses:

- An initial submission to the Commission;
- Notices concerning the loss of good standing;
- Requests to add items to agendas of standard-setters and related notices to the Commission;
- Publication of rules;
- Foreign accountants' quality controls report;
- Quality control review reports and files;
- Referrals to the Commission, markets, and exchanges;
- Notices of charges in disciplinary proceedings;
- Reports of sanctions;
- Public reports; and
- Record retention.

*Initial Submission to the Commission.* Under proposed rule 13–03, an entity seeking Commission recognition as a PAB must make a submission to the Commission that would include its charter, bylaws, organizational structure, proposed budget, proposed board members and terms of board membership, and representations that it would perform certain functions and have rules, membership requirements, systems, and procedures to accomplish certain tasks. After evaluating this information and such other information as the Commission might request, the Commission would determine whether to recognize a PAB.

We estimate solely for the purposes of the PRA that only one entity would apply to be a PAB [137] and that it would prepare a charter, bylaws, and other governing documents for the purpose of incorporation under state law. While we would carefully scrutinize an entity's submission in order to determine its commitment and capacity to carry out the functions and to accomplish the purposes of a PAB, we do not believe that the submission would be onerous to prepare. As a result, for purposes of the PRA, we estimate it would take approximately 240 hours to prepare a submission to be filed with the Commission.

*Notices Concerning the Loss of Good Standing.* Under proposed rule 13–04(d)(11), a PAB would have in place rules to provide notices to the member or adjunct member, the Commission, and the public of (1) any action that could result in a member or adjunct member's loss of good standing in the PAB, and (2) the loss of good standing by a PAB member or adjunct member. The notice requirements could be triggered by a failure to pay fees, produce documents or provide testimony, or by noncompliance with a PAB sanction.[138] We expect that such notices would be rare. Accordingly, for the purposes of the PRA, we estimate that a PAB would provide 15 such notices each year. The paperwork burden involved in preparing the notice would be minimal because the notice would consist only of a short, factual statement. Accordingly, we estimate that each notice would require one hour to prepare, and that 15 burden hours per year would be spent on preparing these notices.

*Requests to Add Items to Agendas of Standard-Setters and Related Notices to the Commission.* Under proposed rule 13–04(d)(12), a PAB would either set audit, quality control and ethics standards or designate private sector bodies' standards as authoritative. If it chooses the latter, it would notify the Commission any time it requests that a private sector standard-setter add an item to its agenda. Proposed rule 13–04(d)(13) would require a similar notice to the Commission any time a PAB requests that a private sector body that sets accounting or independence standards add an item to its agenda.

For purposes of the PRA, we estimate that, after it completes its quality control review cycle, a PAB would make approximately five requests to standard-setting bodies to add several items to each body's agenda reflecting concerns that arose during the quality control review process.[139] Each request would necessitate a letter to the appropriate standard-setting body, and would require a PAB to consider carefully any requests it would make. We therefore estimate, for purposes of the PRA, that each such request letter would require approximately 40 burden hours. The required notice to the Commission could simply include a copy of the request and an appropriate cover letter. As a result, the notice to the Commission would result in little additional burden. We estimate for

[137] We use this assumption, which we make solely for the purposes of the PRA, throughout this discussion of the information collection requirements that would be imposed by the proposed rules. Thus, wherever an estimate of the number of PABs is necessary to calculate an estimated paperwork burden, we assume that there will be only one PAB.

[138] As discussed below, proposed rule 13–04(d)(11) also requires notice when the PAB takes action that could result, or results, in a suspension or bar from the PAB. The burden that would result from these notices is discussed in the section entitled ''Notices of Charges in Disciplinary Proceedings,'' below.

[139] We estimate that a PAB might make one request regarding each of the five types of standards enumerated in the proposed rules.

purposes of the PRA that such a notice would require approximately one burden hour. Accordingly, we estimate that this aspect of the proposed rules would impose 205 burden hours per year.

*Publication of Rules.* Under proposed rule 13–04(d)(14), a PAB would provide an open and deliberative rulemaking process that would include publication of draft rules for notice and comment. We expect that a PAB would publish a large number of rules during its first year after recognition. In later years, we expect that a PAB would publish fewer, if any, new rules per year. Thus, we estimate, for the purposes of the PRA, that, on average, a PAB will publish approximately ten new rules per year. We expect that a PAB would expend significant time and effort in developing appropriate rules and requirements for its members. We also expect that a PAB would make its rules available to its members. Therefore, we estimate for purposes of the PRA that a PAB would spend, on average, approximately 200 burden hours for each rule it publishes. Accordingly, we estimate that this aspect of the proposed rules would impose approximately 2,000 burden hours per year.

*Foreign Accountants' Quality Controls Report.* Under proposed rule 13–03(c)(5), a PAB would study and periodically report to the Commission on matters related to the quality controls of foreign accountants. Foreign accountants are not covered by the proposed rules. A PAB would, however, periodically review whether foreign accountants should be subject to the rules, and report to the Commission on that issue. This proposed rule might require foreign travel, an analysis of various foreign legal and regulatory requirements, an analysis of foreign professional standards, and other items. We therefore estimate for the purposes of the PRA that this aspect of the collection of information may require 1,000 burden hours.

*Quality Control Review Reports and Files.* Under the proposed rules, a PAB would issue a report at the end of each PAB-directed quality control review. A PAB-directed review would be required each year for accounting firms with more than 70 SEC clients. We estimate that there are currently approximately ten firms with more than 70 SEC clients;[140] a PAB would therefore issue approximately ten such reports each year. We estimate that under the current SECPS system, a report requires approximately 40 burden hours to prepare. We expect that preparing a PAB quality control review report should take approximately the same amount of time. We therefore estimate, for purposes of the PRA, that a PAB would require approximately 400 burden hours per year to complete reports of quality control reviews.

Under the proposed rules, a PAB also would maintain public files of all quality control review reports and any responses to the reports by the reviewed accounting firms. According to our records, there are approximately 850 domestic accounting firms that currently perform audits for SEC registrants. Accordingly, we estimate that approximately 850 accounting firms would be members of a recognized PAB under the proposed rules. Ten of these firms would undergo a PAB-directed quality control review each year. The remaining 840 firms would be reviewed at least every three years. We therefore estimate that each year, a PAB would create or add to 290 public files of quality control review reports.[141] Making the reports publicly available by maintaining them in a public file would not impose a significant burden. As a result, we estimate for purposes of the PRA that publicly maintaining one report would require one burden hour. Thus, 290 burden hours would be expended per year on this aspect of the proposed rule.

*Referrals to the Commission, Markets and Exchanges.* Under proposed rule 13–04(g)(2), a PAB would report information indicating a violation of the securities laws to the Commission. Under proposed rule 13–04(g)(8), a PAB would similarly refer matters to the Commission anytime it is unable to conduct or complete a supplemental review or a disciplinary proceeding because of the refusal of any person to cooperate. If an uncooperative party is a registrant, the PAB would also report the registrant's lack of cooperation to the relevant market or exchange. A PAB would also refer any other matter it deems appropriate to the Commission. Although we cannot estimate with precision how frequently a PAB would make such a referral, for purposes of the PRA we estimate that a PAB would make 20 such referrals per year. These reports would likely be fact specific, and not result in significant burdens. The reports might be oral or written, and might be accompanied by such information that indicates a violation or non-cooperation. We estimate that these reports will require approximately two burden hours each, and therefore that 40 burden hours per year would be required to comply with this requirement.

*Notices of Charges in Disciplinary Proceedings.* Under proposed rule 13–04(g)(3), a PAB would notify a member of specific charges in any disciplinary proceeding. We anticipate that this notice would be similar to a complaint or an order instituting administrative proceedings. Based on our experience with disciplinary proceedings against accountants, we estimate that a PAB might initiate approximately 75 disciplinary proceedings per year.[142] This notice would require careful formulation and, possibly, legal review. Additionally, under proposed rule 13–04(d)(11), any disciplinary proceeding that could result in suspension or bar of a member accountant would trigger a requirement that a PAB provide notice, in addition to the member accountant, to the Commission, and to the public. Solely for the purposes of the PRA, we estimate that a PAB also would provide notice under 13–04(d)(11) each time it institutes disciplinary proceedings against an accountant. We estimate for the purposes of the PRA that approximately 30 burden hours would be required to complete both notices, and that a PAB would therefore expend 2,250 hours per year on this aspect of the proposed rules.

*Reports of Sanctions.* Under proposed rule 13–04(g)(7), anytime a PAB imposes a disciplinary sanction on an accountant, the PAB would report the sanction to the Commission, the public, and the appropriate state or foreign authorities. These reports would include the name of the accountant being sanctioned, a description of the acts or omissions upon which the sanction is based, the nature of the sanction, and such other information as a PAB deems appropriate. Based on our experience with disciplinary proceedings against accountants, we anticipate that a PAB may make approximately 50 such reports each year. Assuming for purposes of the PRA

[140] We make this assumption based on a list of SECPS member firms compiled by the SECPS. *See supra* note 111.

[141] We derived this number by assuming that each year, one-third of the accounting firms not subject to an annual PAB-directed review will be reviewed under a PAB-approved program. Thus, 280 of these firms would be reviewed per year. In addition, each year a PAB would review the ten firms with more than 70 SEC clients. As a result, the PAB would create or add to 290 public files per year.

[142] The Commission initiates approximately 100 cases per year related to deficient financial reporting. *See, e.g.,* SEC, *Annual Report 2001,* at 134. We estimate that approximately one-half of these cases involve disciplinary actions against accountants. Because of its ability to detect issues during its reviews, we expect that a PAB would initiate at least as many actions as, and possibly more than, the Commission. Accordingly, we estimate that a PAB may initiate 75 disciplinary proceedings per year.

that preparation and internal legal review of one report would require approximately 50 burden hours, there would be an annual burden of approximately 2,500 hours imposed by this requirement.

*Public Reports.* Under proposed rule 13–04(h), a PAB would report to the public and the commission at least annually, and where practicable on a current basis, detailed descriptions of its activities, annual audited financial statements, explanations of its fees and charges, a summary of issues discussed with private sector standard-setting bodies, a list of matters referred to each standard-setter that were not placed on the standard-setter's agenda within 90 days, and such other information as a PAB considers appropriate or that the Commission requires by order. All of the information required would be readily available to a PAB. Nevertheless, some time would be required to compile the information and put it into usable form. We estimate for purposes of the PRA that 200 burden hours per year would be associated with the preparation of these reports. Burdens associated with preparation of the reports might be minimized if a PAB creates a website and updates information on that website on an ongoing basis.

*Record Retention.* Under proposed rule 13–04(i)(2), a PAB would be required to make and keep records that the Commission staff deems necessary for its inspection of the PAB's quality control review activities, supplemental reviews, and disciplinary proceedings. A PAB would adopt a record retention policy that would be approved by the Commission. The policy would provide for the retention of records until the Commission has either inspected them or informed the PAB that they no longer need to be retained. In addition, under proposed rule 13–04(g)(3), a PAB would keep a record of its disciplinary proceedings. We estimate for purposes of the PRA that 1,000 burden hours would be associated with these recordkeeping requirements.

We therefore estimate for purposes of the PRA that a total of approximately 10,140 burden hours would be imposed on a PAB by this collection of information. We estimate that approximately 25% of these hours would be expended by a PAB's outside lawyers, while the rest would be incurred in-house. Assuming a cost of $300 per hour for outside legal expenses, the cost associated with the burden hours incurred by a PAB's outside counsel would be $760,500.

*Information Provided by Accountants and Audit Clients*

The proposed rules would require accountants that are members of a PAB to provide certain information to the Commission, a PAB, the public, and others. A primary focus of the proposed rules is on the thoroughness of the quality control reviews and disciplinary proceedings resulting from these reviews. For the most part, the information to be provided by accountants currently is reported to the SECPS, or is otherwise required under professional standards. We assume that, if the proposed rules are adopted, the SECPS would no longer impose any requirements that would be duplicative of PAB requirements. In many instances, therefore, the proposed rules would simply require that information be directed to a PAB rather than the SECPS. Accordingly, most of what the proposed rules would require from accountants is usual and customary and would not impose a new burden.[143]

We estimate, however, that approximately 80 accounting firms that are not currently members of the SECPS would likely become members of a PAB under the proposed rules.[144] These firms are, we believe, smaller firms with one or two SEC clients that chose not to join the SECPS. Under the proposed rules, however, these firms would likely join a PAB in order to maintain those SEC clients. These firms would incur new paperwork burdens under the proposed rules, and we have estimated these burdens below, along with new burdens that would be imposed on all PAB-member accounting firms, regardless of membership in the SECPS.

This information collection is necessary to enhance investor confidence that auditors of public companies are acting in the public interest and in furtherance of the purposes of the federal securities laws. The information would be used by a PAB, accounting firms, registrants, and the public to monitor accountants' compliance with the federal securities laws, PAB rules, and professional requirements. The respondents to this collection of information would be accountants and, extremely rarely (resulting in no more than approximately 15 burden hours, as discussed below), audit clients. As discussed below, we estimate that approximately 850 accounting firms would respond per year to the proposed collection of information requirements. In addition, up to approximately 53 individual accountants and 3 audit clients per year might respond to the collection of information requirements, depending on circumstances.[145] The title for this collection of information is ''Framework for a Public Accountability Board—Accountants and Audit Clients.'' The collection of information would encompass:

- Enrollment procedures;
- Auditor independence reports;
- Reports concerning the termination of an auditor-client relationship;
- Notices upon beginning employment discussions;
- Reports concerning foreign associated firms;
- Reports concerning litigation and government investigations or proceedings;
- Applications for Commission review;
- Quality control review reports;
- Record retention; and
- Notices concerning the hiring or retention of sanctioned individuals.

*Enrollment Procedures.* Under proposed rule 13–04(d)(1), a PAB would provide for membership enrollment procedures that would minimize the administrative burden on individual accountants by maximizing the extent to which the enrollment requirements could be satisfied by an accounting firm on behalf of its individual accountants. A PAB would develop its own procedures under this proposed rule. We expect, however, that most likely a PAB would require each member accounting firm to provide at least a list of the individual accountants working for the firm. We believe that accounting firms will have this information, and the other information a PAB might require, readily available. For the purpose of the PRA, we estimate that each member-accounting firm might expend five burden hours per year on enrollment in a PAB and any updating requirements.

[143] *See* 5 CFR 1320.3(b)(2) (''The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (*e.g.,* in compiling and maintaining business records) will be excluded from the 'burden' if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.'').

[144] We estimate that the audit reports of approximately 850 domestic accounting firms are filed with the Commission, and that approximately 770 of these firms are SECPS members.

[145] Individual accountants and audit clients could, in rare cases, be subject to this collection of information. First, as discussed below, individual accountants could provide a notice upon beginning employment discussions with an audit client. Because such notices are already required, however, individual accountants would incur no new burden with respect to this usual and customary activity. Second, as discussed below, we estimate that as many as 53 individual accountants and 3 audit clients per year might file applications for Commission review of PAB disciplinary sanctions or delinquency determinations.

Above, we estimated that approximately 850 accounting firms would be members of a PAB under the proposed rules. Accordingly, we estimate that accounting firms might expend 4,250 hours on enrollment procedures.

*Auditor Independence Reports.* Under proposed rule 13–04(e)(4), each accounting firm that is a member of a PAB would disclose at least annually to the audit committee of each audit client that is a Commission registrant all relationships between the accountant and its related entities that may bear on auditor independence, and confirm that it is independent of the registrant. Reports such as these have been required since 1999 by Independence Standards Board Standard No. 1.[146] Accordingly, all accounting firms that would be members of a PAB already make such reports. Thus, these reports are usual and customary and no new burden would be imposed.

*Reports Concerning the Termination of an Auditor-Client Relationship.* Under proposed rule 13–04(e)(5), when an accountant's relationship with a Commission registrant ends, a PAB member accountant would report this fact to the registrant and the Commission. The proposed rule simply codifies a long-standing SECPS requirement.[147] Accordingly, all accountants that are members of the SECPS already are making such reports. Therefore, these reports are a usual and customary activity for SECPS members, and no additional burden would be imposed on them.

As discussed above, we estimate that approximately 80 accountants that are not currently members of the SECPS would be members of a PAB under the proposed rules. These firms would most likely be smaller firms, with longstanding personal relationships with their one or two SEC clients. We believe that each year only a few of these firms would be required to provide notice of the termination of a relationship with a Commission registrant. We estimate, therefore, for the purposes of the PRA that approximately 6 of the 80 accountants that are not members of the SECPS would be required to make one of these reports each year. The report should require no more than one or two sentences and should not take more than one-half hour. We therefore estimate for purposes of the PRA that this requirement would impose 3 burden hours on accountants.

*Notices Upon Beginning Employment Discussions.* Under proposed rule 13–04(e)(9), a PAB would ensure that its member accounting firms have policies requiring prompt notification to the firm when an individual accountant who is a partner or employee of the firm begins employment discussions with an audit client. Under Independence Standards Board Standard No. 3,[148] all accounting firms that would be members of a PAB are already required to make such reports. Accordingly, this is a usual and customary activity and no new burden would be imposed.

*Reports Concerning Foreign Associated Firms.* Under proposed rule 13–04(e)(6), PAB member accountants would report at least annually the name and country of any foreign associated firms that have notified the PAB member in writing that they have adopted policies and procedures that are consistent with proposed Article 13. Currently, accounting firms make such reports to the SECPS; these reports are therefore a usual and customary practice.[149] Having such reports directed to a PAB instead of to the SECPS would impose no additional burden.[150]

*Reports Concerning Litigation and Government Investigations and Proceedings.* Under proposed rule 13–04(e)(7), a PAB would adopt a rule requiring its member accounting firms to have policies or procedures in place to report to the PAB, with a copy to the Commission, litigation or any proceeding or investigation by a government agency alleging deficiencies in an audit or review or violations of the securities laws. Currently, these reports are made to the SECPS QCIC.[151] Accordingly, the proposed rule should not increase the burden of this usual and customary activity for accounting firms that are members of the SECPS.

This proposed rule, however, would impose a new paperwork burden for any of the approximately 80 accounting firms that are not members of the SECPS but would be members of a PAB. We expect that litigation or government investigations or proceedings involving these firms would be relatively rare. Accordingly, we estimate that two of these 80 firms would report litigation or government investigations or proceedings once per year. We expect that a firm could satisfy the reporting requirement by sending the PAB and the Commission a copy of the complaint (or other relevant document) with a short cover letter. We therefore estimate for purposes of the PRA that one burden hour would be required to satisfy the proposed requirement, and that accounting firms would therefore incur two burden hours per year under this aspect of the proposed rules.

*Applications for Commission Review.* Under proposed rule 13–04(i)(3), any final PAB disciplinary action or determination of a loss of good standing as a result of a failure to pay fees, produce documents, or provide testimony is subject to Commission review upon application by any person aggrieved by the action. An application for review would not need to be lengthy or burdensome. We therefore estimate for purposes of the PRA that such an application would require approximately 5 burden hours.

We estimated above that a PAB might sanction approximately 50 accountants per year. Assuming, for purposes of the PRA, that each sanctioned accountant requests Commission review, accountants would file 50 applications each year. These accountants could include individual accountants as well as accounting firms. We estimated above that a PAB might issue 15 notices per year that a member or adjunct member might lose, or has lost, good standing as a result of either: (1) Failing to pay fees, produce documents, or provide testimony, or (2) not complying with a PAB sanction other than a suspension or a bar. We expect that few of these notices would result from an actual loss of good standing as a result of a failure to pay fees, produce documents, or provide testimony. Accordingly, we estimate for purposes of the PRA that 3 accounting firms, individual accountants, or adjunct members would make one request each for Commission review of such a good standing determination per year. Thus, for purposes of the PRA, we estimate that this aspect of the proposed rules would impose 265 burden hours. Up to fifteen of these hours could be incurred by audit clients, depending on the circumstances.

*Quality Control Review Reports.* As discussed above, the proposed rules would require all members of a PAB to undergo quality control reviews. A PAB would direct the reviews of all members

[146] Independence Standards Board, *Independence Discussions with Audit Committees,* Independence Standard No. 1 (Jan. 1999).

[147] SECPS, *Requirements of Members,* at m. These requirements are available at *www.aicpa.org/members/div/secps/require.htm.*

[148] Independence Standards Board, *Employment with Audit Clients,* Independence Standard No. 3, (July 2000).

[149] SECPS, *Requirements of Members,* at n.

[150] We expect that none of the approximately 80 smaller firms that are not members of the SECPS but would be members of a PAB would have foreign associated firms.

[151] SECPS, *Requirements of Members,* at k.

with more than 70 SEC clients.[152] Reviews of PAB members with 70 or fewer SEC clients could be conducted under a review program approved and monitored by the PAB.

Under the SECPS system, accountants already prepare reports at the conclusion of reviews. Preparation of such reports, therefore, is a usual and customary activity for accountants. We expect that the SECPS will no longer require reviews if our proposed rules are adopted. While we expect that our proposed quality control review system would provide increased confidence in the reliability of audited financial statements, we do not expect that the preparation of the reports would require more burden hours than is currently required. While we estimate that there are approximately 1,250 SECPS members (some of whom do not in fact audit financial statements of public companies), we have estimated that approximately 850 accounting firms would be members of a PAB. Accordingly, no new burden would be imposed by this aspect of the proposed rules.

*Record Retention.* Under proposed rule 13–04(d)(5), a PAB would adopt rules or membership requirements that direct member accounting firms to make and keep for specified periods of time records that are required by professional standards or that otherwise document procedures performed and the resolution of material issues during audit and review engagements. Additionally, proposed rule 13–04(f)(2) would require a PAB to direct its members to make and keep, for such periods as the PAB determines necessary, records that are necessary for the conduct of quality control reviews. The creation and retention of such records already is required by GAAS and, therefore, is a usual and customary activity within the accounting profession.[153] Accordingly, accounting firms would not incur a new paperwork burden associated with this proposed rule. We do not know whether a PAB might impose rules requiring longer retention periods than are currently in place at accounting firms. Any such requirement, and resulting incremental burden, would be a function of PAB rules.

*Notices Concerning the Hiring or Retention of Sanctioned Individuals.* Finally, under proposed rule 13–04(g)(9), a member firm would notify a PAB if the firm employs or becomes associated with an individual during any period in which that person is subject to a sanction, order, or ruling issued by a PAB. This notice would alert the PAB to consider, during quality control reviews, whether the firm and individual are in compliance with the PAB sanction. We anticipate that the notice would be relatively short and identify the individual, firm, sanction, and public report announcing the sanction. Such a report should take less than an hour to prepare. We estimate that no more than 10 such reports would be made in any year. Accordingly, compliance with this provision would require approximately 10 burden hours.

Thus, member-accounting firms would incur a total of approximately 4,530 burden hours.[154] We estimate that approximately 25% of these 4,530 hours would be expended by outside lawyers, while the rest would be incurred in-house. Assuming a cost of $300 per hour for outside legal expenses, the cost associated with the burden hours incurred by outside counsel would be $339,750.

*Information Disclosed by Registrants*

We have proposed an amendment to item 401 of Regulation S–K[155] that would require disclosure if, within the last five years, any director, person nominated to be a director, or executive officer was sanctioned by a PAB for violations of professional standards or the PAB's rules or membership requirements and that sanction has not been subsequently reversed, suspended, or vacated. This information is necessary to alert investors of violations of PAB membership requirements or professional standards by directors, persons nominated to be directors, and executive officers. Investors would use this information to help them make informed investment decisions. The potential respondents are registrants. Below, we estimate that approximately 10 registrants per year would make one disclose each under the proposed amendment.

The title for the collection of this information is ''Regulation S–K'' (OMB Control No. 3235–0071). This regulation was adopted pursuant to the Securities Act and the Exchange Act and sets forth disclosure requirements for annual and quarterly reports, registration statements, and proxy and information statements filed by registrants to ensure that investors are informed. The proposed disclosure requirement would provide investors with important information regarding executive officers, directors, and director nominees. The hours and costs associated with preparing, filing, and sending these disclosures constitute reporting and cost burdens imposed by each collection of information. Regulation S–K, however, historically has carried only one response and one burden hour because the burdens associated with the items within Regulation S–K are reflected in the estimated burdens assigned to each form, report, or registration statement.

For disclosure to occur under the proposed amendment, an individual would have to be sanctioned by a PAB, not have that sanction reversed, suspended, or vacated, and within five years from the date of the sanction become an executive officer, director, or director nominee of a public company. We anticipate that these circumstances will occur infrequently. We estimated above that approximately 50 accountants might be sanctioned by a PAB per year. It is difficult to estimate, however, how many of these sanctioned individuals might be engaged to serve as an executive officer or director of a public company. Solely for the purpose of the PRA, we estimate that this disclosure would occur approximately ten times per year. It most likely would appear in a Form S–1 (OMB Control No. 3235–0065), Schedule 14A (OMB Control No. 3235–0059), or Form 10–K (OMB Control No. 3235–0063).[156] Such disclosure may be no more than a few lines that include a citation to the sanction and clarifying information, if any. Because it may be a relatively brief disclosure, printing and dissemination costs should be inconsequential. We estimate that no more than three burden hours would be required to prepare and review such disclosure, for a total burden of 30 hours. This burden would be divided evenly among Form S–1, Schedule 14A, and Form 10–K. Our proposal would therefore increase the burden hour inventory for Form S–1 from 196,846 to 196,856, the burden hour inventory for Schedule 14A from 98,868 to 98,878, and the burden hour inventory for Form 10–K from 12,309,462 to 12,309,472.

[152] The burden imposed by the reports at the conclusion of these reviews is included in the information collection entitled ''Framework for a Public Accountability Board—PAB'' discussed above.

[153] *See generally,* SAS No. 96, AU § 339 (as revised 2002).

[154] As described in the section entitled ''Applications for Commission Review,'' above, we estimate that up to 265 of these hours might instead be incurred by up to 53 individual accountants, and up to 15 of these hours might instead be incurred by up to three audit clients, depending on the circumstances.

[155] 17 CFR 229.401.

[156] Item 401, Regulation S–K disclosures are required by, among other provisions, item 11(k) of Form S–1, item 10 of Form 10–K, and item 7 of Schedule 14A; 17 CFR 239.11, 240.14a–101, and 249.310 respectively.

*Solicitation of Comments*

Pursuant to 44 U.S.C. 3506(c), we solicit comments to: (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of our estimates of the burdens of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burdens of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–24–02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–24–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

## VI. Cost-Benefit Analysis

We are sensitive to the costs and benefits imposed by our rules, and we have identified certain costs and benefits of these proposals. We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits. We encourage commenters to identify and supply relevant data concerning the costs or benefits of the proposed amendments.

### *A. Background*

In the wake of recent corporate failures that caused significant losses to investors and pensioners, Congress, the Commission, and others have been examining longstanding deficiencies in the accounting profession's self-regulatory programs. During this examination, the POB, which had overseen the profession's programs since 1977, voted to disband.

Many of the criticisms of the accounting profession that existed when the current self-regulatory process was created in 1977 continue to exist today. Congressional hearings held in the first half of 2002, reminiscent of those held approximately 25 years before, considered why major corporations have failed without adequate warning in the companies' financial reports. Witnesses during those hearings expressed a lack of confidence in the self-regulatory system and the need for change.[157]

Our proposals would create the framework for a new private sector regulatory structure for accountants that audit or review financial statements, or prepare attestation reports, that are filed with the Commission. Under the proposed rules, these accountants would be members of a Public Accountability Board, or PAB. A Commission registrant engaging an accountant to perform such services would be an adjunct member of the same PAB to which the accountant belongs.

As discussed in detail above, our objective is to lay the foundation for a new, stronger system of private sector regulation that would enhance investor confidence in the audit process and in the reliability of the financial information used to make investment and voting decisions.

A PAB would oversee the quality of financial statements relied on by investors by, among other things, directing periodic reviews of accounting firms' quality controls over their accounting and auditing practices and, when appropriate, disciplining accountants for deficiencies noted during those quality control reviews or otherwise coming to a PAB's attention. We focused on the need for a PAB to be able to remedy any deficiencies in standards that it may detect during quality control or disciplinary proceedings. The rules provide, therefore, that a PAB also would set, or rely on designated private sector standard-setting bodies to set, audit, quality control, or ethics standards, and would facilitate communications among these bodies and others.

A PAB would be required to meet the conditions specified in the proposed rules to be recognized by the Commission. These conditions include Commission oversight and a board dominated by persons who are not members of the accounting profession. To ensure that result, our rules would set a maximum number of accountant-board members. A PAB, with a significant majority of public members, a diligent quality control review process, effective disciplinary proceedings, the ability to set standards or influence standard setters, and close oversight by the Commission, should be in a position to make meaningful improvements in the quality of audits and enhance the confidence of investors in both the audit process and in the reliability of financial information.

The proposal addresses the need for all accountants providing audit, review or attest services to Commission registrants to have a strong, effective organization that could operate in the public interest without fear of losing its funding. We therefore included in our framework provisions regarding membership in such an organization, continuous and involuntary funding, and an effective disciplinary mechanism. The proposal also would allow a PAB to collect fees from its members and adjunct members to fund not only its own administration and operations, but also the administration and operations of an accounting standard-setting body recognized by the Commission, which currently is the FASB. We have included funding for the FASB in our proposal because that body currently collects funds primarily through donations from, and by selling its publications to, accounting firms and corporations. There is a perception that such funding may be increased or decreased based on the reaction of accounting firms or companies to proposed accounting standards.[158] To remove this perception, a PAB would establish a mandatory and continuous source of funding for the FASB. A PAB would collect sufficient fees from its

[157] *See, e.g., Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs* (Mar. 19, 2002). For discussion of the profession in 1977, *see, e.g.*, Staff of Subcomm. on Reports, Accounting, and Management of the Senate Comm. on Government Operations, 95th Cong., *Report on the Accounting Establishment: A Staff Study*, 7 (Subcomm. Print Mar. 31, 1977).

[158] *See, e.g.*, Stephen Barr, *FASB Under Siege*, CFO Magazine, Sept. 1994, at 34, 46, which states that the FASB reported reduced contributions during the debate over the accounting for employee stock options, and Dean Foust, *It's Time to Free the FASB Seven*, Bus. Wk., May 3, 1993, at 144, which states: ''It's time to free the FASB Seven [board members] from this outside influence—beginning with their financial support. . . Critics contend that some executives have threatened to withhold support if FASB doesn't vote their way. A good solution is to require that corporations filing documents with the SEC pay a small sum each time to create a permanent endowment for FASB.''

members and adjunct members to fund the FASB and then transfer those funds to it.

Our proposal would keep the requirements under the current system that we believe increase the quality of audits. Our proposal would place these requirements, however, in a stronger system that is more independent from the profession, more transparent, more closely overseen by the Commission, more willing and able to discipline its members, and more efficient in coordinating the efforts of the various participants in the regulatory process. In addition, we are adding features to the current system, such as public disciplinary proceedings by a PAB, increased frequency of reviews of the largest firm's quality control systems, and requiring maintenance of a central office function with expertise in accounting and financial reporting matters.

Congressional proposals, suggestions made during the SEC Roundtables, the U.K. system of regulation of the accounting profession, and recommendations submitted by others, all of which are discussed above, have provided numerous alternatives for the regulation of the accounting profession. Based on that input, we considered alternative frameworks that would include, among other things:

- Different mixes of accountant and ''public'' representatives on a PAB's governing board;
- Membership for accounting firms only, and not for individual accountants or registrants;
- Different funding sources and more specific methods of collecting fees assessed by a PAB;
- Funding that did not include the FASB;
- No standard-setting responsibilities;
- More disciplinary authority, including the authority to compel the production of documents and testimony from persons who are neither members nor adjunct members of a PAB; and
- Foreign accountants as members.
- An increased level of Commission oversight over the current self-regulatory system.

Of the alternatives considered, we believe that our proposal would best protect investors.

*B. Potential Benefits of the Proposed Rules*

Potential benefits to the proposed rule amendments include increased investor confidence in the audit process and in the reliability of reported financial information, and enhanced corporate governance resulting from more disclosure about directors and officers. Accountants and registrants also may benefit from a more streamlined and efficient regulatory process.

The benefits of a stronger, more transparent, and more efficient regulatory system for the accounting profession should translate into increased investor confidence in the audit process and in the financial information provided to our securities markets. If the rule amendments lead to increased investor confidence in financial reporting, they also may encourage investment and facilitate capital formation. Issuers, therefore, may be able to lower their cost of capital, or raise capital where they might have been unable to do so. Additionally, the benefits of enhanced disclosure by directors, director nominees, and officers should translate into enhanced corporate governance in registrants. These benefits flow from the following six points, as well as other features of our proposal:

1. *Independence from the accounting profession and assured funding.* A PAB established under our framework would be outside the realm of the AICPA. Representatives of investors and issuers, not accountants, would dominate a PAB's governing board, would actively participate in directing quality control reviews of large accounting firms, and would evaluate the quality control reviews of smaller firms. Funding, instead of being dependent on the AICPA, would be mandatory and flow from both accountants and registrants. Continuous and mandatory funding also would be provided for the FASB, which sets accounting standards.

2. *Periodic reviews.* The current ability of an accounting firm to avoid periodic reviews of its quality control system, simply by deciding not to join a regulatory organization, would be removed. Reviews of quality control systems would occur more often for some firms and for the first time for some firms that were not previously members of the SECPS. Because registrants would be adjunct members, the payment of fees by registrants and the cooperation by registrants in a PAB's quality control reviews and disciplinary proceedings, would be assured.

3. *Enhanced quality of audit, review, and attest services.* High quality audit, review, and attest services form a cornerstone of the Commission's full disclosure system. A PAB, after conducting an appropriate disciplinary process, could suspend individuals and firms from conducting audits and reviews of financial statements and from preparing attestation reports filed with us, or impose other appropriate remedial or disciplinary sanctions. By disciplining incompetent and unethical practices, a PAB would improve the overall quality of the audit, review, and attest services.

4. *Improved transparency regarding the regulatory system.* In order for a PAB to earn investors' trust, investors must be able to view the PAB's regulatory system at work. Our proposals would not only encourage ''real-time'' reporting by the PAB of its regulatory activities, they also would open a PAB's disciplinary proceedings to the public to the same extent that our Rule 102(e) proceedings are public.[159] Open proceedings would shed light on a professional disciplinary process that the AICPA has conducted behind closed doors.

5. *Enhanced disclosure by corporate officers, directors, and director nominees of PAB sanctions.* We are proposing that investors be informed if an executive officer, director, or person nominated to become a director has been sanctioned as a member accountant by a PAB within the last five years. We anticipate that a PAB would initiate disciplinary proceedings in cases of incompetence, unethical behavior, or serious breaches of professional standards. Sanctions imposed following these proceedings, therefore, would be of interest to investors making investment or voting decisions.

6. *Improved cooperation among standard-setting bodies.* As noted by the Panel on Audit Effectiveness and others, one of the limitations of the current system is a lack of effective communications among the various entities involved in oversight of the audit process.[160] That Panel recommended that the profession's system of governance be united under a POB that oversees standard setting, monitoring, discipline, and supplemental reviews.[161] Our proposals reflect the need for greater communication and coordination among the participants of the regulatory system. Under our proposed rules, a PAB would either set, or rely on designated private bodies to set, audit, ethics, and quality control standards. To the extent that a PAB relies on others to set these standards, a PAB would oversee their efforts and encourage communication and coordination among them. In addition, a PAB would conduct periodic meetings with these bodies and include in those meetings the bodies that set accounting principles

[159] 17 CFR 201.102(e)(7).

[160] The Panel on Audit Effectiveness, *Report and Recommendations,* at 138–41 (Aug. 31, 2000).

[161] *Id.*

and other standards affecting the accounting profession. The primary purpose for these meetings would be to facilitate an understanding of one another's projects, which may lead to better coordinated and more efficient standard-setting within the profession.

We request comment on each of the items identified above. Would they result in higher quality audits? Would they result in enhanced investor protection and investor confidence? Would the proposed rules, if adopted, yield other benefits? Is it possible to quantify the benefits of the proposed rules?

Accountants and registrants also may benefit from a more coordinated and efficient regulatory process. As noted, our proposals would centralize into one independent body the quality control review functions previously performed by the POB and its staff, the SECPS's Peer Review Committee, the SECPS Executive Committee, the QCIC, and portions of the AICPA's disciplinary program. This body also would facilitate communications among various standard-setting bodies. We believe that a more efficient and leaner regulatory system, and a more coordinated standard-setting process, would benefit all participants in the financial reporting process. Among other things, we believe that these changes would reduce uncertainty about the regulatory and disciplinary system and would increase compliance.

The Commission seeks comment on the benefits of the proposed rule. What methods are available to estimate the benefits to investors and others that would result from a private sector regulatory scheme for accountants? We request comment, including supporting data if available, on these benefits, and commenters with quantitative or empirical data on these issues are invited to provide that data for our consideration.

*C. Potential Costs of the Proposed Rules*

We are sensitive to the costs that might result from our rules. We believe that the costs related to the proposals in this release would fall within three general categories: costs that are similar to costs currently borne, incremental costs, and costs that will be redistributed among market participants. We recognize that redistributed costs are not mutually exclusive of costs already borne.

The proposal may result in costs similar to those already exisiting. SECPS member accounting firms already bear significant costs related to quality control reviews and to the POB-SECPS regulatory structure that administers and oversees those reviews. We assume that those firms will cease to pay the SECPS to perform those functions once a PAB is in place and that the costs attendant to our proposals will be offset by that cost savings.[162] The proposed framework may result in incremental costs to small accounting firms that do not currently undergo quality control reviews, to Commission registrants, and to other accounting firms. Incremental costs could result from the performance of functions by a PAB that are performed today by no one. Finally, the proposal may result in redistributed costs. Funding for the FASB, for example, would not likely increase as a result of the proposals, but the burden might be redistributed from registrants and firms that make voluntary contributions to the FASB, or those that purchase a significant number of its publications, to all registrants and accounting firms that benefit from FASB's standards.[163]

We discuss each category of costs in more detail below in relation to the costs needed to fund a PAB (and the FASB), the imposition of costs on accounting firms and registrants, and the costs of preparing disclosure.

The proposed rules would entail costs to a PAB for its operations. Our proposals would leave many facets of a PAB's operations to its discretion. It is difficult, therefore, to estimate the budget that would be required to fund a PAB's full range of activities. Nonetheless, to estimate the funds that a PAB may require, we examined the budgets of other accounting regulatory bodies. The FAF, for example, has approximately 140 employees and reported 2001 net operating revenues of $22,137,000. The POB was smaller, with five part-time board members, a permanent staff of five full-time professional employees, seven part-time professional employees, and two administrative employees. The POB's annual budget, without special projects, was approximately $3,500,000, although under the February 2001 charter, the POB could have increased its budget to $5,200,000 per year. The POB Chairman received $70,000 per year, the Vice Chairman $60,000, and members $50,000.

The ISB, which from 1997 to 2001 undertook the development of auditor independence standards, had a part-time board of eight members, three full-time staff and one administrative employee. The annual budget for the ISB was approximately $2,000,000 to $2,200,000.

The SECPS has an annual budget of less than $1,000,000, most of which relates to travel and lodging expenses. SECPS members are not compensated for their time, and except for a $300,000 per year charge that the SECPS pays to the AICPA, the AICPA pays for the SECPS staff. The AICPA annual report, however, does not specifically provide the cost of its peer review program.[164]

We recognize that a proposed PAB would not be identical to any of these organizations. They provide guidance, however, to the cost of a comparably-sized organization within the accounting profession. The FAF, for example, funds standard-setting organizations that conduct neither on-site reviews of the performance of accounting firms nor disciplinary proceedings. The FAF budget, however, might provide some evidence of the revenues needed to run an organization within the accounting regulatory system that has 125 to 150 employees and permanent facilities. The amounts paid to the FASB Chairman and FASB members also might provide an indication of the amount of compensation required to attract a full-time Chairman or Vice Chairman to a PAB.

The POB's budget undoubtedly would be too small to fund a PAB, due to the more ''hands-on'' approach that we believe a PAB would take when directing large firms'' reviews, evaluating smaller firms' reviews, conducting supplemental reviews, conducting disciplinary proceedings, and improving communications and coordination among various standard-setting bodies. Even when the funds budgeted to the SECPS are added to the POB's budget, the total amount might underestimate the amount required for a PAB due to the SECPS's reliance on volunteers from the accounting firms and on the payment of certain expenses by the AICPA. We anticipate that the cost of a PAB would be at least as much as the cost to run the POB and the SECPS, plus the cost of services provided to those organizations by volunteers. Moving these costs to a PAB would not result in an incremental cost.

[162] Because a PAB would have discretion in determining the nature and extent of procedures to be performed each year, we cannot reliably estimate what those additional costs may be.

[163] We recognize that some portion of the voluntary contributions may be derived from fees paid by registrants to their auditors. Direct payment by registrants may lead to reduced audit fees or a decrease in the rate of audit fee increases. To that extent, our proposals should have no redistributive effects.

[164] The AICPA notes expenses related to ''professional examinations'' of $12,121,000, but it is unclear what amounts are included in this category. AICPA, *Annual Report 2000–2001*, at 26.

Incremental costs may occur, however, from the performance of additional functions. Because our proposal leaves the identification of, and procedures for, these functions to the discretion of a PAB, we cannot quantify those costs.

We anticipate that quality control reviews by a PAB would entail greater costs than those for quality control reviews by the POB. A PAB, for example, may incur significant costs to visit the offices of accounting firms during quality control reviews. If a PAB were directing a review, a PAB member or staff would conduct on-site visits to numerous and widely-dispersed offices of the accounting firm. Even if a PAB were not directing a quality control review but monitoring the review for its thoroughness and impartiality, we expect that a PAB or its staff would attend conferences between the reviewer and the firm being reviewed, and conduct on-site inspections during the conduct of the review. Fees to recover these costs, however, would be assessed separately from the more general fees imposed on all registrants and firms. As noted, we have proposed that each firm pay the cost of its own quality control reviews, as they do under the SECPS peer review system. To the extent that the cost of a PAB directed or approved quality control review exceeded both the cost of a peer review under the current SECPS peer review system and the cost of professional services donated to the SECPS and its committees, it would be an incremental cost. At this point, however, we are unable to quantify that cost. We also anticipate that incremental costs may result from a PAB conducting disciplinary hearings, preparing records of proceedings, and monitoring compliance with sanctions.

A PAB may incur costs attendant to an open and deliberative standard-setting process. These costs may include hiring staff who are experts not only in a given subject area, but also experts in drafting standards. These costs may also include hiring staff for the preparation and publication of standards. If a PAB elects not to set standards but to designate other private sector bodies to set them, a PAB would incur costs related to its oversight of those bodies, including costs related to reviews of their standards and other documents.

Finally, a PAB would have costs associated with our oversight. The preparation of an initial application and ongoing public reports, keeping quality control review records for our inspection, and preparing reports and records of disciplinary proceedings so we may review the sanctions imposed by a PAB, among other things, would add to a PAB's costs.

Costs To fund the FASB Through a PAB

Our rules would impose costs on a PAB to fund the FASB. The revenues and expenses of the FASB are generally known. According to the 2001 Annual Report published by the FAF, the FASB received contributions of $5,113,000, sold subscriptions and publications for $14,818,000, and had direct costs of sales of $1,586,000. The FASB, therefore, had revenues of $19,931,000 and revenues minus costs of sales equal to $18,345,000. The FASB and the GASB, also overseen and financed through the FAF, had combined net operating income of $22,137,000. The FAF Annual Report does not break out expenses between the FASB and GASB, but it reports total program expenses of $18,345,000 and total support expenses of $4,883,000, for total expenses of $23,228,000 and a combined operating loss (*i.e.,* revenues minus expenses) of $1,091,000. The FAF Annual Report also notes a decline in investments and unrestricted net assets of $2,342,000, from $28,812,000 to $26,470,000. The FAF has indicated to our staff that it has 141 employees, with 65 assigned to the FASB, 25 assigned to the GASB, and 51 assigned as FAF administrative support staff for both the FASB and GASB. We understand that the FASB Chairman is paid $535,000 per year and that each of the other six full-time FASB members receive $435,000 per year.

An estimate of the funds that a PAB would have to collect each year for the FASB, therefore, might range from $20 million to $24 million. Some registrants and accounting firms (the two groups that would pay fees to fund the FASB under our proposals) already bear these costs through voluntary contributions and purchases of FASB publications. The proposals, however, might result in a more even redistribution of these costs among all registrants and accounting firms, not simply those wishing to make contributions or purchase large volumes of publications. We believe that by spreading the costs more evenly, we would enhance investor confidence by promoting a system whereby those with an interest in the system do not have a larger role in funding it. In any event, the fees an accounting firm or registrant would pay to a PAB to fund the FASB would be largely offset by reductions in contributions to the FASB and the elimination of costs for FASB's publications.[165]

We invite comment and data on estimated revenues needed by a PAB to conduct the programs described in this release and our proposed rules. Are our estimates correct? We also seek comment on the extent to which those costs would be incremental costs, and the extent to which the funding costs may be redistributed among various market participants. We request comment on the costs that would be imposed on a PAB to fund the FASB. Are our estimates correct?

Imposition and Distribution of Costs Incurred by Accounting Firms and Registrants

This section of the cost-benefit analysis discusses how the costs imposed by the proposal would be distributed among accounting firms and registrants. Under our proposal, the costs to fund a PAB and the FASB would be paid through fees assessed by a PAB. We expect a PAB to assess such fees according to schedules that apportion fees based on relative size of accounting firms and registrants such that fees would not be significant to any one entity. We also expect each accounting firm to continue to pay the costs of its own quality control reviews.

As noted, accounting firms and registrants currently bear the costs associated with the self-regulatory system. Both accounting firms and registrants make contributions to the FASB and buy FASB publications. Accounting firms pay fees to the SECPS and other organizations to fund the current peer review and professional standard-setting processes, and they pay the costs of their own peer reviews. Registrants pay increased audit fees to compensate accounting firms for conducting peer reviews and for other professional expenses. To the extent that a registrant or accounting firm makes donations to the FASB or purchases FASB publications, a reduction in those amounts would offset the new fees paid to a PAB. To the extent that the SECPS and other organizations no longer would perform peer reviews or conduct similar programs after a PAB begins operations, the reduction in costs associated with the SECPS self-regulatory system would offset new costs imposed by the PAB. These offsets would reduce the net or incremental cost of a PAB-based system.

Not all SECPS members would be members of a PAB. Of approximately 1,250 SECPS members, we estimate that

[165] Our proposal anticipates full funding for the FASB, with the FASB appropriately reducing or eliminating the cost of its publications. We have requested comment, however, regarding whether the FASB should continue to generate revenues from the sale of its publications, and replace only the donations it receives with fees collected by a PAB.

approximately 850 audit the financial statements of Commission registrants and approximately 400 do not. All 1,250 firms now contribute to the SECPS budget of approximately $1 million and to the POB's budget of approximately $3.5 million. Because 400 of the SECPS member firms would not be required to join a PAB, any amounts paid by those 400 firms might have to be borne by accounting firm and registrant members of a PAB, to the extent a PAB performs similar functions.

We also estimate that approximately 80 domestic small accounting firms that audit the financial statements of Commission registrants are not members of, and do not pay fees to, the SECPS or the AICPA. Amounts paid by these 80 firms to a PAB, therefore, would not be offset by reduced payments to the SECPS or AICPA. We expect, as noted, that a PAB would assess fees based on an entity's size or other relevant criteria. These firms, however, for the first time, may incur costs related to the conduct of quality control reviews. Because of the relatively small size of these firms, we anticipate that large, automated quality control systems would not be necessary. Nonetheless, the incremental costs of establishing controls and preparing and paying for reviews may be significant to a small firm. Some of these costs might be passed on or redistributed to the firm's audit clients that are Commission registrants, but such a redistribution would not affect the aggregate incremental cost of these firms' reviews.

In addition to the approximately 850 accounting firms that would be members of a PAB, approximately 16,242 public companies and 5,587 investment companies, as adjunct members, would pay fees to a PAB.[166] By creating a base of at least 20,000 paying adjunct members,[167] a PAB should be able to construct a fee schedule that is fair and equitable. Assuming that the FASB and a PAB each would require $20 million to fund its administrative functions and operations, an average of approximately $2,000 per member and adjunct member would be assessed. Larger registrants and firms would be assessed significantly larger amounts; smaller firms and registrants would pay less.

Finally, we believe that certain firms would face costs in maintaining a central office function. Many firms already have procedures for consultation with a central office and resolution of differences of opinion between the central office and other offices. The rule would require a PAB to ensure that member firms maintain this function. Those firms that do not currently do so, therefore, could face costs to establish and maintain a central office function that would likely not be offset from any other source.

We solicit comments on the potential costs that would be imposed on registrants and accounting firms. What types of additional costs might be incurred? For example, if an accounting firm currently does not have a central office function, what would be the costs associated with creating and maintaining one? We seek comment on our assumptions about which costs would be offset and which would be incremental costs. Is it possible to quantify the costs discussed? We solicit quantitative data to assist in our assessment of the compliance costs related to a PAB.

Our proposal would result in differences in the timing and conduct of quality control reviews of those accounting firms with more than 70 SEC Clients and those with 70 or fewer SEC Clients. From a cost-benefit perspective, is this an appropriate dividing line? If not, what should be the cutoff, if any? We solicit any quantitative data that may be helpful in making this determination. We also request data on whether such costs would be costs that already are being borne by the accounting profession or others, incremental costs, or a redistribution of costs among market participants.

## Costs of Complying With Collections of Information

The proposed rules would impose costs associated with disclosure, record retention, notice, and other information collection requirements. For purposes of the Paperwork Reduction Act, we estimated the number of burden hours that would be incurred by a PAB, accountants, audit clients, and registrants as a result of the proposed rules. This ''paperwork burden'' is described in detail in Section V. of this release.

A PAB would incur costs as a result of complying with the information collection requirements in the proposed rules. These requirements are discussed in detail in Section V., above. Solely for the purposes of the Paperwork Reduction Act, we estimated that a PAB would incur 10,140 burden hours as a result of the proposed rules. Certain of these burden hours, specifically those associated with an initial submission to the Commission would be non-recurring costs for any PAB. All other burden hours would recur annually. We estimate that of the total burden hours, 75% of them would be incurred by the in-house staff of a PAB and 25% of them would be incurred by outside counsel. Assuming a rate of $100 for in-house staff, a PAB would incur a cost of $760,500 for in-house work. Assuming a rate of $300 for outside counsel, a PAB would incur a cost of $760,500 for work performed by outside counsel. Under these assumptions, a PAB would therefore expend approximately $1,521,000 on paperwork requirements.

Accountants also would incur costs as a result of complying with collection of information requirements that would be imposed by the proposed rules. These requirements are discussed in detail in Section V, above. Solely for purposes of the PRA, we estimated that accountants would incur 4,530 burden hours as a result of our proposed rules. As discussed above, we estimated that as many as approximately 15 of these hours might be incurred by audit clients as opposed to accountants. We estimate that 75% of the 4,530 hours would be incurred in-house, and that 25% would be incurred by outside counsel. Based on staff experience, we estimate that the hours expended in-house by accountants would cost approximately $100 per hour. We estimate that outside legal work would cost $300 per hour. Under these assumptions, the in-house hours would result in a cost of $339,750 and the hours incurred by outside counsel would result in a cost of $339,750. Thus, the cost to accountants of information collection requirements would be $679,500.

Finally, registrants would incur costs in complying with a new disclosure requirement under the proposed rules. Registrants would be required to make disclosure if a director, person nominated to be a director, or executive

[166] According to OMB Active Information Collections as of April 30, 2002, the following number of responses are submitted annually on the following forms: Form 10–K—10,381; Form 10–KSB—3,641; Form 11–K—774; Form S–1—3,617. We estimate that only 40 percent of the filers on Form S–1 will include financial statements and that the remainder are reporting companies making repeat filings. Therefore, to avoid duplication in determining the number of registrants filing financial statements with the Commission, we have reduced this number to 1,446 (3,617 × .4).

[167] If the Commission determines to include the approximately 865 investment advisers, 8,100 broker-dealers, 950 transfer agents, and the auditors of their financial statements within the scope of the rules, this base may be significantly expanded. In addition, a PAB might determine to assess fees to investment companies based on the numbers of portfolios, in the case of mutual funds and unit investment trusts other than insurance company separate accounts, and sub-accounts, in the case of insurance company separate accounts. Currently, there are approximately 8,364 portfolios of open-end management investment companies, 14,451 sub-accounts of insurance company separate accounts, and 9,940 portfolios of unit investment trusts other than insurance company separate accounts.

officer was, in his or her capacity as a PAB member accountant, sanctioned by a PAB for violations of professional standards or the rules or membership requirements of the PAB within the previous five years, and that sanction has not been subsequently reversed, suspended, or vacated. For purposes of the PRA, we estimated that registrants would incur 30 burden hours per year in connection with this proposed rule. Thus, registrants would incur a cost associated with the 30 hours per year spent on the proposed disclosure requirement. We solicit comments on the costs of complying with the collections of information requirements that would be imposed by the proposed rules.

*D. Request for Comments*

We request comment on all aspects of this cost-benefit analysis. Would the primary benefits of the proposal be enhanced investor confidence and corporate governance? Are there other significant benefits we have not discussed? Are we correct in our assumption that the proposal would entail costs similar to those already incurred, incremental costs, and redistributed costs? Are there other categories of costs we have not discussed? To assist the Commission in its evaluation of the costs and benefits that may result from the proposed rules discussed in this release, we request that commenters provide views and data relating to any costs and benefits associated with the proposed rules. Is it possible to quantify the costs and benefits discussed? What methods should we employ in attempting to place values on the costs and benefits?

## VII. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

For the purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[168] we are requesting information regarding the potential impact of the proposals on the economy on an annual basis. Commenters should provide empirical data to support their views.

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact on competition of any rule we adopt. The proposed rules are intended to create a framework for a new, independent, private-sector regulatory structure for oversight of accountants who audit or review financial statements, or prepare attestation reports, filed with the Commission. We have identified two possible areas where the proposed rules could place a burden on competition. A possible impact on competition could occur as a result of: (1) Accountants and registrants being members and adjunct members, respectively, of a PAB in order to satisfy conditions necessary to make financial statements and attestation reports acceptable for filing with the Commission, and (2) new costs placed on small accounting firms that currently are not subject to periodic quality control reviews. To the extent that a PAB uses fee schedules based on the relative size of registrants and accounting firms, we would expect that there would not be a significant burden imposed on a substantial number of small accounting firms and small registrants.

Any competitive impact stemming from membership of accountants in a PAB in order to provide audit, review, or attest services to a Commission registrant must be balanced against the need for investors to have confidence in the quality of audits and in the integrity of the financial information that fuels our securities markets. As noted above, accountants are assigned critical roles under the securities laws and our regulations, including reviewing and certifying financial statements and reporting their opinions on those statements directly to investors. If investors do not believe in the integrity and competence of the accountants providing those opinions, then investors might lose faith in the integrity of reported financial information and lose confidence in our markets. Our rule proposals are intended to provide a structure for a regulatory system that would foster the confidence of investors.

As noted in our cost-benefit analysis, firms that currently do not undergo periodic quality control reviews would have additional costs related to those reviews.[169] We estimate that this could occur for approximately 80 audit firms who are not currently members of the SECPS. These additional costs might also lead to an impact on competition. Under our proposals, these same audit firms with relatively few SEC clients would be members of a PAB. The imposition of PAB-related costs might lead to higher audit fees by these firms, eroding their ability to compete for the provision of audit services with larger audit firms. Alternatively, these audit firms with relatively few SEC clients may choose to withdraw providing services to SEC registrants in order to avoid these additional costs. This may also result in less competition for the provision of audit services to some set of smaller SEC registrants.

We request comment regarding the degree to which our proposal would have harmful competitive effects on such small firms. We also request comment on any indirect effects on these firms' audit clients, including whether these costs might discourage some companies from making an initial public offering or entering our securities markets.

Section 2(b) of the Securities Act,[170] section 3(f) of the Exchange Act,[171] and section 2(c) of the ICA,[172] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. We believe that the proposed rules would promote market efficiency and capital formation by enhancing confidence in the financial information provided by registrants and examined or reviewed by accountants. Investors would have more confidence that: (1) Accounting firms' quality control systems reasonably assure the performance of high quality audit, review, and attest services and that individual accountants are adhering to those systems; (2) incompetent or unethical accountants are being identified and appropriately disciplined; and (3) there are direct lines of communication between quality control reviewers who discover problems with audit, quality control, ethics, or other standards and the body or bodies that can change those standards.

The possible effects of our rule proposals on efficiency, competition, and capital formation are difficult to quantify. We request comment on these matters in connection with our proposed rules.

## VIII. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates

[168] Pub. L. No. 104–121, tit. II, 110 Stat. 857 (1996).

[169] As noted in our cost-benefit analysis, even firms that currently undergo SECPS reviews may incur incremental costs associated with PAB quality controls. Because a PAB would have discretion in determining the nature and extent of procedures to be performed each year, we cannot reliably estimate what those additional costs may be.

[170] 15 U.S.C. 77b(b).

[171] 15 U.S.C. 78c(f).

[172] 15 U.S.C 80a–2(c).

to proposed revisions to rule 1–02 [173] and rule 2–01 [174] of Regulation S–X, the proposed addition of Rules 13–01 through 13–07 to Regulation S–X, and proposed revisions to Item 401 of Regulation S–K.[175] The proposals would create the framework for a new private sector regulatory structure for oversight of accountants that audit or review financial statements, or prepare attestation reports, that are filed with the Commission.

*A. Reasons for the Proposed Action*

In the wake of recent corporate failures that caused significant losses to investors and pensioners, Congress, the Commission, and others have been examining longstanding deficiencies in the accounting profession's self-regulatory programs. During this examination, the POB, which had overseen the profession's programs since 1977, voted to disband, leaving the profession without its ''conscience and critic.'' [176] The consequences of not remedying the problems we have outlined in more detail above are significant to the quality of the audit process and the reliability of the financial information disseminated to investors. We have continuing concerns about the oversight of the accounting profession, including the effectiveness of the quality control review process. Without rules such as those we are proposing today, we are concerned that effective oversight will not be accomplished.

*B. Objectives*

Our objective is to lay the foundation for a new, stronger system of private sector regulation that would enhance investors' confidence in the audit process and in the reliability of the financial information used to make voting and investment decisions. Our proposals, among other things, would facilitate the formation of a stronger and more independent system of private sector regulation that would enhance investors' confidence in the quality of the audit process and in the integrity of reported financial information. The system, among other things, would:

- Move the system of regulation outside the AICPA and place it within the control of the representatives of public;
- Provide for more Commission oversight of the audit quality control process;
- Subject to periodic quality control reviews accounting firms that audit or review registrants' financial statements or provide attestation reports;
- Establish a consistent source of funds for the regulatory and accounting standard-setting processes, which is not dependent on voluntary contributions by the accounting profession;
- For larger firms, replace ''firm-on-firm peer reviews'' with PAB-directed reviews and assure that reviews of smaller firms' quality controls are conducted under programs that, among other things, are approved by a PAB, use a PAB's procedures, and provide for a PAB evaluation of each review; and
- Give the PAB the ability to discipline, in a public forum, accounting firms and individual accountants for incompetent or unethical conduct, or other violations of professional standards, and to discipline accounting firms for not having sufficient quality control systems or not complying with them.

Under the proposed rules, an SEC registrant's financial statements would not comply with Commission requirements unless the accountant who audited or reviewed those statements is a member of a PAB. Attestation reports would not comply with Commission requirements unless prepared by outside accountants who are members of a PAB. Furthermore, an SEC registrant's financial statements and attestation reports contained in or accompanying an SEC registrant's reports or registration statements would not comply with Commission requirements unless the registrant is an adjunct member of, and thereby bound to cooperate in any review or proceeding commenced by, the same PAB as its accountant.

A PAB would oversee the quality of financial statements relied on by investors by, among other things, administering a program of periodic reviews of accounting firms' quality controls and, when appropriate, disciplining accountants for deficiencies noted during those quality control reviews or that otherwise come to a PAB's attention. A PAB also would set, or rely on designated private sector standard-setting bodies to set audit, quality control, and ethics standards, and to facilitate communications among these bodies and others. To be recognized by the Commission, a PAB would be required to meet the conditions specified in the proposed rules, including having a board dominated by individuals who are not members of the accounting profession, and being subject to the Commission's oversight.

Disclosure would be required in Commission filings if an executive officer, director, or director nominee had been, in his or her capacity as a PAB member accountant, sanctioned as a member accountant by a PAB within the previous five years and that sanction had not been reversed, suspended, or vacated.

*C. Legal Basis*

We are proposing the rule amendments and new rules under the authority set forth in Schedule A and Sections 2, 4, 5, 6, 7, 8, 10, 11, 19, and 28 of the Securities Act; Sections 2, 3, 9, 10, 10A, 12, 13, 14, 15, 17, 23, and 36 of the Exchange Act; Sections 5, 10, 14, and 20 of the PUHCA; Sections 304, 305, 307, 308, 309, 310, 314, and 319 of the Trust Indenture Act of 1939 (''Trust Indenture Act''); Sections 6, 8, 20, 30, 31, and 38 of the ICA; and Sections 203, 206A and 211 of the Advisers Act.

*D. Small Entities Subject to the Proposed Rules*

The proposals would affect small registrants and small accounting firms that are small entities. Exchange Act Rule 0–10(a) [177] and Securities Act Rule 157 [178] define a company to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that, as of February 20, 2002, approximately 2,500 companies were small entities, other than investment companies.

For purposes of the ICA, Rule 0–10 [179] defines ''small business'' to be an investment company with net assets of $50 million or less as of the end of its most recent fiscal year. We estimate that, as of May 17, 2002, approximately 225 investment companies met this definition.[180]

Our rules do not define ''small business'' or ''small organization'' for purposes of accounting firms. The Small Business Administration defines small business, for purposes of accounting firms, as those with under $6 million in annual revenues.[181] We have only limited data indicating revenues for accounting firms, and we cannot estimate the number of firms with less than $6 million in revenues that

[173] 17 CFR 210.1–02.

[174] 17 CFR 210.2–01.

[175] 17 CFR 229.401.

[176] *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs* (Mar. 19, 2002) (statement of Charles A. Bowsher, Chairman, Public Oversight Board, Former Comptroller General of the United States).

[177] 17 CFR 240.0–10(a).

[178] 17 CFR 230.157.

[179] 17 CFR 270.0–10.

[180] *See Proposed Amendments to Investment Company Advertising Rules,* Release No. 33–8101 (May 17, 2002), at n.142, 67 FR 36712 (May 24, 2002).

[181] 13 CFR 121.201.

practice before the Commission. We request comment on the number of accounting firms with revenue under $6 million.

Our rules do not define ''small business'' or ''small organization'' in terms of private sector regulatory organizations such as a PAB. Because no such entity exists at this time, we cannot reliably estimate its revenues or expenses. In addition, we cannot know in advance whether more than one PAB would exist, and if so, whether one PAB may be a small entity while another would not be a small entity. A PAB, however, would collect fees to fund not only its own operations but also approximately $20 to $24 million to fund the FASB. It would appear, therefore, that based on its revenues and scope of operations a PAB would not be a small entity.

We request comment on whether a PAB would be a small entity. What criteria should be used to make this determination? If more than one PAB is formed and recognized by the Commission, is it likely that there would be both small and large PABs?

*E. Reporting, Recordkeeping and Other Compliance Requirements*

The proposed rules would affect small accounting firms and small audit clients of accounting firms.

Registrants

The proposed rules would impose minor reporting, recordkeeping, and compliance requirements on small entity registrants related to the operations of a PAB.

Registrants would provide testimony and documents, upon request, to a PAB. The proposed rules do not direct a registrant, however, to keep or prepare documents or to maintain them in any specific form. Any burden under the proposals would relate to releasing documents and providing testimony to the PAB in supplemental reviews and disciplinary proceedings against the registrant's accountant. Although we cannot estimate at this time how often these events would occur, we do not expect this burden to have a significant economic impact on a substantial number of small entities.

Registrants would pay fees assessed by a PAB and, through increased audit fees, might pay for increased costs incurred by accounting firms, as discussed below. We anticipate that a PAB would impose fees based on the relative size of registrants and accounting firms, such that the fees would not be significant to any one entity. Possible increases in audit fees also should not be significant. As noted below, and in our cost-benefit analysis, many accountants already undergo periodic quality control reviews. For small firms currently participating in these programs, the incremental costs should not be significant. For small accounting firms not currently participating in these programs, the incremental costs may be greater and a firm may attempt to pass these costs to a registrant-audit client. Even these firms, however, as explained below, currently must have a quality control system in place. The direct and indirect incremental fees imposed on small registrants, therefore, should not have a significant economic impact on a substantial number of small registrants.

We also have proposed a disclosure requirement in Regulation S–K for registrants with an executive officer, director, or director nominee who, in his or her capacity as a PAB member accountant, was sanctioned by a PAB during the past five years. The information required to make this disclosure, when necessary, would be readily available from the individual and from a PAB's public reports. The proposed rules, therefore, would impose very low incremental costs, if any, for the collection and retention of information. In addition, in the relatively rare instances where the information would be disclosed, we anticipate that it would consist of no more than a few lines in a document and that drafting, reviewing, filing, printing, and dissemination costs, therefore, would be insignificant.

In addition, we have not added this disclosure requirement to Regulation S–B,[182] which, in lieu of Regulation S–K, is the source of disclosure requirements for ''small business issuers.'' [183] A small business issuer is one that has revenues of less than $25 million, is a U.S. or Canadian issuer, is not an investment company, and, if a majority owned subsidiary, has a parent that also is a small business issuer.[184] Accordingly, the disclosure requirement should not impose a significant economic impact on a substantial number of small registrants.

We request comment on the reporting, recordkeeping, and other compliance requirements applicable to small entity registrants. Please quantify, if possible, what the likely burden would be.

Accountants

The proposed rules might impose incremental costs on some small accounting firms. These costs may be offset, however, by reductions in costs currently paid to the SECPS and AICPA and amounts donated and paid to the FASB. In addition, many of these costs already are incurred to comply with requirements under GAAS to have an adequate quality control system.[185]

As noted in our cost-benefit analysis, the vast majority of firms practicing before the Commission already are involved in a peer review program. For these firms, any costs imposed by the proposed rules of maintaining quality control systems and having quality control reviews should be offset to a large degree by reductions of fees paid to the SECPS or to others for such reviews.

We have estimated, however, that approximately 80 domestic small accounting firms that audit the financial statements of Commission registrants are not members of the SECPS and do not participate in the SECPS peer review program. To the extent that such a firm does not participate in a peer review conducted by another organization, it may incur costs for the first time related to the conduct of quality control reviews. Because of the relatively small size of these firms, however, we anticipate that large, automated quality control systems would not be necessary.[186] We also note that these firms already likely incur costs related to the establishment and maintenance of a quality control system as required by GAAS, which states:

> A firm of independent auditors needs to comply with the quality control standards in conducting an audit practice. Thus, a firm should establish quality control policies and procedures to provide it with reasonable assurance of conforming with generally accepted auditing standards in its audit engagements. The nature and extent of a firm's quality control policies and procedures depend on factors such as its size, the degree of operating autonomy allowed its personnel and its practice offices, the nature of its practice, its organization, and appropriate cost-benefit considerations.[187]

[182] 17 CFR 228.

[183] 17 CFR 228.10.

[184] 17 CFR 228.10(a)(1).

[185] *See* SAS No. 25, AU § 161.

[186] *See,* AICPA, *System of Quality Control for a CPA Firm's Accounting and Auditing Practice,* at 4, QC § 20.04, which states:

> A firm's system of quality control encompasses the firm's organizational structure and the policies adopted and procedures established to provide the firm with reasonable assurance of complying with professional standards. The nature, extent, and formality of a firm's quality control policies and procedures should be appropriately comprehensive and suitably designed in relation to the firm's size, the number of its offices, the degree of authority allowed its personnel and its offices, the knowledge and experience of its personnel, the nature and complexity of the firm's practice, and appropriate cost-benefit considerations.

[187] SAS No. 25, AU § 161.02 (as revised by SAS No. 96, Apr. 2002).

Nonetheless, we recognize that the costs of preparing and paying for reviews may be significant to a small firm. To address this concern, our proposals indicate that smaller firms would be required to have a review only once every three years, instead of the annual reviews required of larger firms.

We invite comments on the anticipated incremental costs to small firms of participating in the quality control review program discussed in this release. What would the reporting, recordkeeping, and other compliance costs be? Please quantify, if possible, any likely burden on small accounting firms.

In addition to paying costs associated with quality control reviews, accounting firms would pay fees imposed by a PAB to fund not only the PAB's operations but also the operations of the FASB. We expect, however, that a PAB would assess fees according to schedules based on an entity's size or other relevant criteria, such that the fees paid would not be significant to any one entity.

An accounting firm or individual accountant also might incur costs if the firm or individual becomes the subject of, or is required to participate in, a PAB's disciplinary proceedings. At this time, however, we cannot estimate the likely burden that would fall on small accounting firms as a result. In any case, we believe that they will not have a significant economic impact on a substantial number of small entities. We request comment on any likely burden that would result from disciplinary proceedings.

*F. Duplicative, Overlapping, or Conflicting Federal Rules*

We are not aware of any federal rules that duplicate, overlap, or conflict with the proposed rules.

*G. Significant Alternatives*

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

1.The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities;

2. The clarification, consolidation, or simplification of compliance and 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 proposed amendments, or any part thereof, for small entities.

Congressional proposals, suggestions made during the SEC Roundtables, the U.K. system of regulation of the accounting profession, and recommendations submitted by others have provided numerous alternatives for the regulation of the accounting profession.

After full consideration, we have included provisions in our proposed rules specifically designed to reduce the impact on small entities. We have provided for:

- A PAB to tailor fees based on a registrant's or accounting firm's size or other relevant criteria;
- Small firms to have triennial, as opposed to annual, quality control reviews; and
- Disclosure to be made by registrants complying with Regulation S–K, but not by small business issuers under Regulation S–B.

In drafting requirements for a PAB, we have made use of certain standards that set performance goals. A PAB would have the ability to design its rules, membership requirements, policies, and procedures to best achieve the goals discussed in this release.

Additional alternatives would be to exclude small entities from the rules or to provide an extended period of time for them to adhere to the rules. Because of the importance of high quality audits for all Commission registrants, we believe that small as well as large firms who audit public companies should be covered under the proposed rules.[188] We have not provided delayed implementation dates just for small firms because most firms currently are participating in a review program. We also believe that some time would be required for a PAB to be formed, adopt the appropriate rules and procedures, and hire the needed staff to begin to conduct reviews. This should give smaller firms sufficient time to prepare for those reviews.

*H. Solicitation of Comments*

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. Specifically, we request comment regarding the number of small entities that may be affected by the proposed amendments, the existence or nature of the potential impact on those small entities, how to quantify the number of small accounting firms that would be affected by the proposals, and how to quantify the impact of the proposed amendments.

Commenters are requested to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules.

**IX. Codification Update**

The Commission proposes to amend the ''Codification of Financial Reporting Policies'' announced in Financial Reporting Release No. 1 (April 15, 1982):

By adding a new section 700, captioned ''Matters Relating to a Public Accountability Board,'' to include the text in the adopting release that discusses the final rules, which, if the proposals are adopted, would be substantially similar to Section III of this release.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

**X. Statutory Authority**

We are proposing the rule amendments and new rules under the authority set forth in Schedule A and Sections 2, 4, 5, 6, 7, 8, 10, 11, 19, and 28 of the Securities Act; Sections 2, 3, 9, 10, 10A, 12, 13, 14, 15, 17, 23, and 36 of the Exchange Act; Sections 5, 10, 14, and 20 of the PUHCA; Sections 304, 305, 307, 308, 309, 310, 314, and 319 of the Trust Indenture Act; Sections 6, 8, 20, 30, 31, and 38 of the ICA; and Sections 203, 206A and 211 of the Advisers Act.

**Text of Proposed Amendments**

**List of Subjects**

*17 CFR Part 210*

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 229*

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

[188] *See, e.g.,* Mark S. Beasley, Joseph V. Carcello, and Dana R. Hermanson, *Fraudulent Financial Reporting, 1987–1997, An Analysis of U.S. Public Companies* (1999); Mark S. Beasley, Joseph V. Carcello, and Dana R. Hermanson, *Fraud Related SEC Enforcement Actions Against Auditors: 1987–1997* (2000).

## PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l,* 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll,* 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), 80b–3, 80b–11, unless otherwise noted.

* * * * *

2. Section 210.1–02 is amended by:

a. Removing the authority citation following § 210.1–02;

b. Redesignating paragraph (d) as paragraph (d)(1);

c. Removing the period at the end of newly redesignated paragraph (d)(1) and in its place adding a colon; and

d. Adding paragraphs (d)(2) and (d)(3).

The revision and additions read as follows:

### § 210.1–02 Definition of terms used in Regulation S–X (17 CFR part 210).

* * * * *

(d)(1) *Audit (or examination).* * * *

(2) *Review.* The term *review,* when used in regard to financial statements, means a review of the financial statements by an independent accountant in accordance with generally accepted auditing standards, as may be modified or supplemented by the Commission.

(3) *Attest or attestation.* The term *attest* or *attestation,* when used in regard to a report filed with the Commission pursuant to the securities laws or the rules or regulations thereunder, means a report by an independent accountant, on a written assertion that is the responsibility of another party, in accordance with Statements on Standards for Attestation Engagements, as may be modified or supplemented by the Commission, for purposes of issuing a report thereon.

* * * * *

3. Section 210.2–01 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

### § 210.2–01 Qualifications of accountants.

* * * * *

(a)(1) * * *

(2) The Commission will not recognize any accountant as a certified public accountant or a public accountant, or as independent with respect to an audit client, if, during the professional engagement period, the accountant is not a member accountant in good standing of a Public Accountability Board or if the audit client is not an adjunct member in good standing of the same Public Accountability Board, as those terms are defined in § 210.13.

* * * * *

4. Section 210 is amended by adding an undesignated center heading and §§ 210.13–01 through 210.13–07 to read as follows:

## Article 13—Public Accountability Boards

Sec.

210.13–01 Financial statements and attestation reports.
210.13–02 Definitions.
210.13–03 Commission recognition of Public Accountability Boards.
210.13–04 Conditions of Commission recognition of Public Accountability Boards.
210.13–05 Confidentiality and immunity.
210.13–06 Exemptions.
210.13–07 Foreign accountants.

## Article 13—Public Accountability Boards

### § 210.13–01 Financial statements and attestation reports.

(a) Audited or reviewed financial statements or attestation reports contained in or accompanying reports or registration statements filed with the Commission must be audited or reviewed, in the case of financial statements, or prepared, in the case of attestation reports, by an accountant that, throughout the professional engagement period:

(1) Is a member accountant in good standing of a Public Accountability Board of which the registrant filing the report or statement is an adjunct member in good standing; and

(2) Satisfies all other requirements prescribed by the federal securities laws and the rules and regulations thereunder concerning an accountant that audits, reviews, or prepares such a statement or report.

(b) [Reserved]

### § 210.13–02 Definitions.

For the purposes of this § 210.13:

(a) *Accountant* means an independent public or certified public accountant that audits or reviews financial statements filed with the Commission, or that prepares attest reports filed with the Commission pursuant to the securities laws or the rules or regulations thereunder. References to the accountant include any accounting firm with which the certified public accountant or public accountant is affiliated.

(b) *Adjunct member in good standing* means an entity that is an adjunct member of a PAB and:

(1) Is not delinquent in the payment of fees assessed by such PAB;

(2) Is not delinquent in the production of documents of the adjunct member or of the adjunct member's management employees, requested by such PAB and relevant to a review or proceeding by such PAB as described in §§ 210.13–04(f) through (g);

(3) Is not delinquent in providing testimony of the adjunct member or of the adjunct member's management employees, requested by such PAB and relevant to a review or proceeding by such PAB as described in §§ 210.13–04(f) through (g); and

(4) Is not delinquent in using its best efforts to cause its non-management employees and agents to provide to such PAB any documents or testimony requested by such PAB and relevant to a review or proceeding by such PAB as described in §§ 210.13–04(f) through (g).

(c) A member or adjunct member of a PAB is *delinquent* when a PAB has provided public notice, in accordance with PAB rules consistent with § 210.13–04(d)(11), that:

(1) With respect to payment of fees assessed by a PAB, the member or adjunct member has failed to pay the fees; or

(2) With respect to producing documents or providing testimony requested by a PAB and relevant to a review or proceeding by such PAB as described in §§ 210.13–04(f) through (g):

(i) In the case of a PAB request made to a member accountant, the member accountant has failed to produce the documents or provide the testimony after any good faith legal objection to the request has, in accordance with such PAB's rules, been resolved in such PAB's favor; and

(ii) In the case of a PAB request made to an adjunct member, the adjunct member has failed to produce the documents or provide the testimony, or has failed to use its best efforts to cause any of its non-management employees or agents to produce the documents or provide the testimony, after any good faith legal objection to the request has, in accordance with such PAB's rules, been resolved in such PAB's favor.

(d) *Foreign accountant* means an accountant, including associated entities of United States domiciled accountants:

(1) Whose place of residence and principal office is outside the United States and its territories; and

(2) Who is not licensed by any state or territory of the United States.

(e) *Member accountant in good standing* means an accountant that is a member of a PAB and:

(1) Either:

(i) Has not been barred, suspended, or otherwise sanctioned by a PAB; or

(ii)(A) Has been reinstated by the PAB after having been barred or suspended from membership with the PAB; or

(B) Has not been cited in a public notice by the PAB as being noncompliant with the terms and conditions of any remedial or disciplinary sanction, other than suspension or bar, imposed by the PAB; and

(2) Is not:

(i) Delinquent in the payment of fees assessed by the PAB of which it is a member;

(ii) Delinquent in the production of documents of the accountant, or of any of the accountant's employees or agents, requested by such PAB and relevant to a review or proceeding by such PAB as described in §§ 210.13–04(f) through (g); or

(iii) Delinquent in providing testimony of the accountant, or of any of the accountant's employees or agents, requested by such PAB and relevant to a review or proceeding by such PAB as described in §§ 210.13–04(f) through (g).

(f) *Public Accountability Board,* or *PAB,* means an entity organized in accordance with, and for the purposes described in, this § 210.13 that the Commission recognizes pursuant to §§ 210.13–03 and 210.13–04.

(g) *Professional engagement period* means the period of the engagement to audit or review the registrant's financial statements or to prepare a report filed with the Commission. The professional engagement period begins when the accountant either signs an initial engagement letter (or other agreement to review or audit a client's financial statements or to prepare an attestation report to be filed with the Commission) or begins audit, review, or attest procedures, whichever is earlier. The professional engagement period ends when the registrant or the accountant notifies the Commission that the registrant is no longer the accountant's audit client.

(h) *Professional standards* means generally accepted accounting principles, generally accepted auditing standards, generally accepted standards for attestation engagements, the Commission's auditor independence regulations, the standards of the Independence Standards Board, and any other standards related to the audit, review or preparation of financial statements or accountant's reports that accompany or are contained in filings made with the Commission, including auditing, quality control and ethics standards issued by a PAB or by a standard-setting body designated as authoritative by a PAB, as may be modified or supplemented by the Commission.

(i) *SEC clients* means issuers making initial public offerings, registrants filing periodic reports with the Commission under the Securities Exchange Act of 1934 (except broker-dealers registered only because of section 15(a) of that Act (15 U.S.C. 78o(a)) or the Investment Company Act of 1940, and any other Commission registrant that a PAB, by rule, may include within that category for the purposes for which the term is used in this § 210.13.

**§ 210.13–03 Commission recognition of Public Accountability Boards.**

(a) To obtain Commission recognition as a PAB, an entity must submit for Commission review representations and materials on the basis of which the Commission can make a determination as to the entity's commitment and capacity to carry out the functions and to accomplish the purposes of a PAB as described in this § 210.13. Such submission shall include, at a minimum, the representations and materials described in paragraph (c) of this section.

(b) After receiving any submission pursuant to paragraph (a) of this section, the Commission shall, by order, determine whether the entity making the submission shall be recognized as a PAB. The Commission shall, consistent with the public interest and for the protection of investors, make its determination on the basis of the entity's commitment and capacity to carry out the functions and accomplish the purposes of a PAB as described in this § 210.13. Before making its determination, the Commission may ask the entity to supplement its submission with such materials, representations, or written answers to questions as the Commission determines are necessary for the Commission to make an appropriate determination in the public interest and for the protection of investors.

(c) Any submission pursuant to paragraph (a) of this section must include:

(1) The entity's organizational structure, proposed board members and terms of board membership, and proposed budget, sufficient to determine that the entity will satisfy the requirements set out in § 210.13–04(b);

(2) The entity's charter and bylaws, which shall satisfy the criteria described in § 210.13–04(c);

(3) Representations that the entity shall undertake to:

(i) Improve the quality of audit, review and attest services provided by its member accountants;

(ii) Improve the quality controls over member firms' accounting practices, auditing practices, and compliance with auditor independence and ethics regulations;

(iii) Enhance investors' confidence in the audit process; and

(iv) To the extent it relies on private sector bodies to set auditing, ethics or quality control standards, foster cooperation and coordination among such private sector bodies, both domestic and international, and among those private sector bodies and private sector bodies that set standards for accounting and independence;

(4) Representations that the entity shall put in place rules, membership requirements, systems and procedures designed to further the goals described in paragraph (c)(3) of this section and sufficient to accomplish, at a minimum, the objectives described in § 210.13–04(d); and

(5) A representation that the entity will study matters concerning the quality control systems of foreign accountants and periodically report to the Commission on whether, or under what conditions, the exemption concerning foreign accountants in § 210.13–07(a) should be withdrawn.

**§ 210.13–04 Conditions of Commission recognition of Public Accountability Boards.**

(a) *Conditions of recognition.* Commission recognition of a PAB is conditioned upon the PAB satisfying the criteria described in paragraphs (b) through (i) of this section.

(b) *Organizational structure, board membership, and budget.* A PAB shall:

(1) Have a fixed number of board members:

(i) None of whom may be, or have been at any time in the two-year period immediately preceding his or her PAB term, an employee of any accountants' professional organization;

(ii) No more than one-third of whom, and in any event no more than three of whom, may:

(A) Be, or have been at any time in the ten-year period immediately preceding his or her PAB term, an accountant or a partner, principal, shareholder, or managerial employee of an accounting firm; or

(B) Be a retired partner, principal, shareholder, or managerial employee of

an accounting firm, eligible to receive benefits under an accounting firm's partner retirement plan or a comparable plan; and

(iii) The remainder of whom shall be designated as ''public board members;''

(2) Have staggered terms for board members;

(3) Have a Chairman and Vice Chairman who are selected from among the public board members, and at least one of whom shall serve on a full-time basis; and

(4) Have the means, capacity and plan to obtain the resources to employ a professional staff that includes a sufficient number of professionals with expertise in the audit process and quality control reviews to structure and supervise the quality control reviews required under paragraph (f) of this section, to conduct the supplemental reviews and disciplinary proceedings described in paragraph (g) of this section, and to engage consultants and other representatives and advisers necessary to carry out the purposes of this § 210.13.

(c) *Charter and bylaws.* A PAB's charter and bylaws shall:

(1) Provide that the entity shall be a not for profit entity;

(2) Include quorum provisions that insure that the public board members will have the ability to control the outcome of any matter submitted to a vote of the board;

(3) Provide that the entity shall be subject to and shall act in accordance with Commission oversight as described in paragraph (i) of this section; and

(4) Provide that, immediately upon the effective date of any Commission rule abrogating, adding to, or deleting from the entity's rules, the entity's rules shall be deemed, without further action, to be amended as provided by such Commission rule.

(d) *Rules, membership requirements, systems, and procedures.* A PAB shall have in place rules, membership requirements, systems, and procedures designed to further the goals described in § 210.13–03(c)(3), and sufficient to accomplish, at a minimum, the following:

(1) Provide for membership enrollment procedures that:

(i) Minimize the administrative burden on individual accountants by maximizing the extent to which the enrollment requirements, and any periodic updating requirements, may be satisfied by an accounting firm on behalf of its individual accountants; and

(ii) Require members and adjunct members to agree to be bound by the PAB's rules and membership requirements;

(2) Require that member accountants maintain a system of quality control for the accountant's accounting and auditing practice designed to meet the requirements of quality controls set or designated as authoritative by the PAB, but encompassing, at a minimum, the requirements described in paragraph (e) of this section;

(3) Require member accountants to comply with their own system of quality controls in a manner that provides reasonable assurance of conforming with professional standards;

(4) Have a continuing program of review of each member firm's quality control systems concerning accounting practices, auditing practices, and adherence to Commission and professional auditor independence requirements; and administer that program according to the criteria described in paragraph (f) of this section;

(5) Direct member firms to make and keep for specified periods of time records that:

(i) Are required by professional standards in connection with each audit, review, or attest of a registrant's financial statements or reports; or

(ii) Otherwise document the procedures performed and the resolution of material issues during each audit or review engagement;

(6) Conduct supplemental reviews and disciplinary proceedings, in accordance with the criteria described in paragraph (g) of this section;

(7) Provide procedures for requesting and obtaining documents and testimony relevant to a review or proceeding by such PAB as described in §§ 210.13–04(f) through (g);

(8) Adopt appropriate policies to address any conflicts or potential conflicts of interest that may arise involving the PAB's board members, employees, contractors, and professional representatives;

(9) Collect from each registrant that is an adjunct member of the PAB, and from each member accounting firm, reasonable fees and charges, which fees may be assessed by the PAB according to schedules specifying different fees for different classes of registrants and accounting firms, sufficient:

(i) To fund the operation and administration of the PAB; and

(ii) To fund the operation and administration of an accounting standards-setting body endorsed by the Commission as the primary source for generally accepted accounting principles;

(10) Collect from each member accounting firm reasonable fees and charges sufficient to recover the costs and expenses of conducting or overseeing quality control reviews of that firm as described in paragraph (f) of this section;

(11) Provide fair procedures for disciplining and sanctioning accountants and for resolving disputes with member accountants and adjunct members concerning fees, document requests and requests for testimony, including procedures providing for appropriate notice to the member accountant or adjunct member, the Commission, and the public of any action that could result or has resulted in suspension or bar of a member accountant or a loss of good standing by a member accountant or adjunct member;

(12) Set, or rely on designated private sector bodies to set, auditing, ethical or quality control standards for its members and, to the extent it relies on private sector bodies to set such standards, oversee such bodies and request that such matters as the PAB deems appropriate be added to the standard-setting agendas of such private sector bodies, and notify the Commission of each such request;

(13) Request that matters be added to the agenda of private sector bodies that set accounting or independence standards, and notify the Commission of each such request;

(14) Facilitate and participate in periodic meetings of representatives of the private sector bodies that set accounting, auditing, quality control, ethics and independence standards, representatives of the Commission, and such other persons as the PAB deems appropriate, for the purpose of furthering the coordination and cooperation among such bodies;

(15) Provide that the PAB's process for amending governing documents, rules, membership requirements and procedures shall include an open and deliberative rulemaking process with open meetings, the publication for public comment of draft rules, requirements and procedures and substantive consideration of those comments;

(16) Provide for extending full faith and credit to the sanctions and good standing requirements of any other PAB, such that an accountant sanctioned by, or an accountant or registrant in violation of the good standing requirements of, one PAB may not evade any sanction, inquiry, or failure of good standing by switching its membership to a different PAB;

(17) Provide or require training for accountants in matters related to accounting, auditing, attestation,

assurance, ethics, independence, and quality controls; and

(18) Perform such other duties or functions as shall be provided in any rule or order that the Commission may adopt or issue in furtherance of the public interest or for the protection of investors and to carry out the purposes of this § 210.13.

(e) *Quality control requirements.* A PAB shall require that each of its member accountants maintain a system of quality control for the accountant's accounting and auditing practice designed to meet the requirements of quality controls set or designated as authoritative by the PAB, including quality controls concerning independence, integrity, and objectivity; personnel management; acceptance and continuance of clients and engagements; engagement performance; and monitoring. The quality controls required by a PAB shall include, at a minimum:

(1) Assigning a new audit engagement partner to be in charge of an audit engagement that has had another audit partner-in-charge for a period of seven consecutive years;

(2) Establishing policies and procedures for a review of the audit report and financial statements by a partner other than the audit partner-in-charge of an audit engagement before issuance of an audit report on the financial statements and before the reissuance of such an audit report where performance of subsequent events procedures is required by professional standards, or alternative procedures that a PAB authorizes where this requirement cannot be met because of the size of the member firm;

(3) Ensuring policies and procedures are in place to comply with applicable auditor independence requirements and to refrain from performing consulting services that are inconsistent with § 210.2–01, and to refrain from conducting public opinion polls or merger and acquisition assistance for a finder's fee;

(4) At least annually, disclosing to the audit committee of each audit client that is a Commission registrant (or the board of directors if there is no audit committee), in writing, all relationships between the accountant and its related entities that in the accountant's professional judgment may reasonably be thought to bear on auditor independence; confirming in that letter that, in the accountant's professional judgment, it is independent of the registrant within the meaning of the securities laws, the rules and regulations thereunder, and professional standards; and discussing the accountant's independence with the audit committee (or board of directors);

(5) When the member firm has been the auditor of the financial statements of a Commission registrant and has resigned, declined to stand for reelection, or been dismissed, promptly reporting in writing to the registrant, with a simultaneous copy to the Commission's Office of the Chief Accountant, the fact that the client-auditor relationship has ceased;

(6) For member firms that are associated with international firms or international associations of firms:

(i) Seeking the adoption of policies and procedures by the international organization or individual foreign associated firms that are consistent with the objectives of this § 210.13; and

(ii) Reporting annually, or more frequently as the PAB may prescribe, the name and country of the foreign associated firms, if any, for which the member firm has been advised in writing by its international organization or the individual foreign associated firms that such policies and procedures have been established;

(7) Ensuring that the member firm has policies and procedures in place to report to the PAB, with a copy of the report to the Commission's Office of the Chief Accountant, litigation or any proceeding or investigation by a government agency alleging either deficiencies in the conduct of an audit or review of financial statements filed with the Commission by a present or former audit client, or any other violation of the securities laws, within 30 days of service of the first pleading in the matter on the accountant or on any partner or employee of a member accounting firm;

(8) Ensuring that the member firm maintains a central office function that develops expertise in technical accounting and financial reporting matters, and has in place the following policies and procedures, or alternative procedures that a PAB authorizes where these requirements cannot be met because of the size of the member firm:

(i) Polices and procedures requiring, as appropriate, consultations with that office by engagement partners and others within the member firm; and

(ii) Policies and procedures for the resolution of differences of opinion between that central office and engagement partners; and

(9) Ensuring that the member firm has policies and procedures that require:

(i) Prompt notification to the firm when an individual accountant who is a partner or employee of the firm begins discussions with an audit client respecting possible employment; and

(ii) Review of that accountant's work on engagements for that client to determine whether changes in the audit plan or audit team are necessary and to assure adherence to the Commission's auditor independence rules.

(f) *Quality control review program.* A PAB shall administer and conduct a continuing program of quality control reviews and inspections of each member firm to assess compliance by such firm, and by individual accountants associated with such firm, with the rules and membership requirements adopted by the PAB, and professional standards, and shall administer such program according to the following criteria:

(1) A PAB shall annually conduct such a quality control review of each member accounting firm that audits or reviews the financial statements of more than 70 SEC clients, or such other number of SEC clients as the PAB by rule may determine, and shall conduct such a quality control review of all other member accounting firms at least once every three years;

(2) A PAB shall direct member firms to make and keep, for such periods as the PAB determines necessary, records that are necessary for the conduct of the quality control reviews required by this section;

(3) A PAB shall establish policies and procedures for conducting the quality control reviews, establish procedures for reporting of the results of the quality control reviews, and maintain public files for each member accounting firm containing recent quality control review reports on the firm and the firm's response to each report;

(4) A PAB shall provide for monitoring of the quality control reviews to ensure that they are conducted in a fair and impartial manner and for evaluating each quality control review and report to gain assurance that appropriate procedures are recommended and being implemented to correct noted deficiencies, if any, in a timely and effective manner;

(5) A PAB or its staff shall plan and direct all such quality control reviews, make all key decisions related to such quality control reviews, and perform all tasks necessary to conduct such quality control reviews, except that:

(i) A PAB may engage individual accountants from a firm or firms not associated with the firm being reviewed to assist in the conduct of such quality control reviews, provided that such accountants perform only assigned functions and are under the supervision of the PAB or its staff; and

(ii) Quality control reviews of member accounting firms that audit or review the financial statements of 70 or fewer SEC clients, or such other number of SEC clients as the PAB by rule may determine, may be conducted pursuant to quality control review programs approved by the PAB, provided any such quality control review program follows the PAB's policies and procedures and the PAB administers the program and performs the functions described in paragraphs (f)(2) through (f)(4) of this section;

(6) In conducting such quality control reviews, a PAB or, in the case of a quality control review program, the reviewer, shall review, among such other things as the PAB may determine, selected audit and review engagements performed at various offices and by various persons associated with the firm under review, and, in connection therewith, evaluate whether such firm's quality control system is appropriate, whether its policies and procedures are adequately documented and communicated to its personnel, and whether the firm is in compliance with such policies and procedures sufficient to provide reasonable assurance of conformity with Commission rules, PAB membership requirements and rules, and professional standards; and

(7) In connection with each quality control review, a PAB or, in the case of a quality control review program, the reviewer, shall prepare a report of its findings and comments, and such report, accompanied by any letter of response from the member firm, shall be made publicly available as specified in paragraph (f)(3) of this section.

(g) *Supplemental reviews and disciplinary proceedings.* (1) A PAB shall have rules, membership requirements, systems, and procedures, incorporating the criteria described in paragraphs (g)(2) through (g)(9) of this section, pursuant to which a PAB may:

(i) Institute public proceedings (hereinafter ''disciplinary proceedings'') to determine whether an accountant has engaged in any act or practice, or omitted to act, in violation of the rules or membership requirements adopted by the PAB or professional standards, and to impose remedial or disciplinary sanctions for any such act, practice, or omission; and

(ii) On the basis of information suggesting the possibility of any such act, practice, or omission, engage in a nonpublic practice of requesting and reviewing information (hereinafter ''supplemental reviews'') to determine whether to institute disciplinary proceedings;

(2) If a PAB, at any time, becomes aware of information indicating that a violation of the securities laws has or is likely to have occurred, then the PAB promptly shall notify the Commission of that information. A PAB may initiate a disciplinary proceeding regarding that information only after notifying and consulting with the Commission;

(3) A PAB shall establish fair procedures for supplemental reviews and for disciplinary proceedings. In any disciplinary proceeding, a PAB shall bring specific charges, notify such firm or person of those charges, give such firm or person an opportunity to defend against those charges, and keep a record. Disciplinary proceedings shall be public unless otherwise ordered by the PAB with the prior approval of the Commission;

(4) For purposes of supplemental reviews or disciplinary proceedings, a PAB may request that any person provide testimony or documents relevant to the review or proceeding;

(5) PAB board members who are not public board members may be consulted in connection with supplemental reviews and disciplinary proceedings but shall not have a vote in the PAB's determination whether to institute a disciplinary proceeding, what findings to make in a disciplinary proceeding, or what sanctions to impose;

(6) If, as the result of a disciplinary proceeding, a PAB finds that an accountant has engaged in any act or practice, or omitted to act, in violation of the rules or membership requirements adopted by the PAB or professional standards, then the PAB may impose any appropriate disciplinary or remedial sanctions including revocation or suspension of membership, or expulsion from, the PAB; limitations on activities, functions, and operations, including requiring a member firm to resign a specific audit, review or attestation engagement; suspending or barring an accountant from participating in any way in any audit, review or attest engagement for any Commission registrant; fine; censure; or any other appropriate sanction;

(7) Whenever a PAB imposes a disciplinary sanction against an accountant, the PAB shall report such sanction in writing to the accountant against whom the sanction is imposed, to the Commission, to the appropriate State or foreign financial regulatory authority or authorities with which such firm or such person is licensed, registered, or certified to practice public accounting, and to the public. Each PAB report shall include:

(i) The name of the accountant against whom the sanction is imposed;

(ii) A description of the acts or practices, or omissions to act, upon which the sanction is based;

(iii) The nature of the sanction; and

(iv) Such other information respecting the circumstances of the disciplinary action as the PAB deems appropriate;

(8) In the event that a PAB is unable to conduct or complete a proceeding under this section because of the refusal of any person to testify, produce documents, or otherwise cooperate with the PAB, the PAB shall report such refusal to the Commission. If the uncooperative party is a registrant, the PAB shall also report such refusal to any market or exchange where the registrant's securities are traded or listed. A PAB may refer any other matter to the Commission, as the PAB deems appropriate; and

(9) PAB rules shall require member accounting firms:

(i) To notify the PAB in the event that the member firm employs or becomes associated with an individual accountant during any period in which that individual accountant is subject to a sanction, order or ruling issued by a PAB; and

(ii) To undertake procedures to ensure that the individual accountant does not violate the terms of the sanction, order or ruling.

(h) *Public reporting.* A PAB shall report to the Commission and to the public at least annually, and where practicable on a current basis, the following matters:

(1) A detailed description of the quality control review and disciplinary activities of the PAB;

(2) The annual audited financial statements of the PAB;

(3) An explanation of the fees and charges imposed by the PAB on members and adjunct members;

(4) A summary of the issues addressed in the PAB-sponsored periodic meetings with, or in connection with its oversight of, private sector standard-setting bodies;

(5) A list of all matters the PAB referred to each private sector standard-setting body that were not placed on the agenda of that body within 90 days of the PAB's referral; and

(6) Such other matters as the PAB deems appropriate or the Commission, by order, requires.

(i) *Commission oversight.* A PAB shall consent to, and act in compliance with, Commission oversight as follows:

(1) The Commission, by rule, may abrogate, add to, and delete from the rules of a PAB as the Commission deems necessary or appropriate to

ensure the fair and efficient administration of the PAB, to conform its rules to requirements of the securities laws or the rules and regulations thereunder, or otherwise in furtherance of the purposes of the securities laws. The Commission shall notify the PAB of any such action prior to publication of the notice of proposed rulemaking in the **Federal Register**;

(2) The Commission staff periodically may inspect and monitor the operations, records, and results of a PAB to ensure the PAB is operating in the public interest and for the protection of investors and fulfilling the purposes of the Commission in adopting this § 210.13. A PAB shall make and keep records, reports and summaries of its activities that the Commission staff deems necessary for its inspection of the PAB's quality control review activities, supplemental reviews, and disciplinary proceedings. A PAB shall adopt a policy, which shall be subject to Commission approval by order, identifying the categories of records, reports, and summaries that it shall retain. A PAB shall adopt a policy that provides for the retention of such materials until such time as the Commission has either inspected the materials or informed the PAB that it need no longer retain the documents;

(3) The PAB shall, in accordance with paragraphs (g)(7) and (d)(11) of this section, promptly notify the Commission whenever it imposes any final disciplinary sanction on any member accountant or determines any member accountant or adjunct member to be delinquent. The Commission may review that sanction as follows:

(i) Any final PAB disciplinary action or delinquency determination shall be subject to review by the Commission on its own motion at any time, or upon application by any person aggrieved thereby filed within thirty days after the date the notice required by paragraph (g)(7) or paragraph (d)(11) of this section was filed with the Commission and received by such aggrieved person, or within such longer period as the Commission, by order, allows. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments);

(ii) In any Commission proceeding to review a final disciplinary sanction imposed by a PAB on a member accountant, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the PAB and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction):

(A) If the Commission finds that the member accountant has engaged in such acts or practices, or has omitted such acts, as the PAB has found the accountant to have engaged in or omitted, that such acts or practices or omissions to act are in violation of such provisions of the securities laws, the rules or regulations thereunder, the rules or membership requirements adopted by the PAB, or professional standards as have been specified in the determination of the PAB, and that such provisions are, and were applied in a manner, consistent with the purposes of this § 210.13, then the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the PAB, modify the sanction in accordance with paragraph (i)(3)(iv) of this section, or, if appropriate, remand to the PAB for further proceedings; or

(B) If the Commission does not make the finding set forth in paragraph (i)(3)(ii)(A) of this section, it shall, by order, set aside the sanction imposed by the PAB and, if appropriate, remand to the PAB for further proceedings; or

(iii) In any Commission proceeding to review a PAB determination that a member accountant or adjunct member is delinquent, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the PAB and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the determination):

(A) If the Commission finds that the member accountant or adjunct member has failed to comply with PAB rules or membership requirements concerning fee payments, requests for documents, or requests for testimony, that the PAB's determination is in accordance with the rules of the PAB, and that such rules are, and were applied in a manner, consistent with the purposes of this § 210.13, the Commission, by order, shall so declare and, as appropriate, affirm the delinquency determination, cancel the delinquency determination in accordance with paragraph (i)(3)(iv) of this section, or, if appropriate, remand to the PAB for further proceedings; or

(B) If the Commission does not make the findings set forth in paragraph (i)(3)(iii)(A) of this section, the Commission shall, by order, set aside the delinquency determination and, if appropriate, remand to the PAB for further proceedings; or

(iv) If the Commission, having due regard for the public interest and the protection of investors, finds after a proceeding in accordance with this paragraph (i)(3) that a sanction imposed, or a delinquency determination made, by the PAB imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the securities laws or is excessive or oppressive, the Commission may cancel such delinquency determination or may cancel, reduce, or require the remission of such sanction;

(4) The Commission, by order, may remove from office or censure any board member of a PAB if the Commission finds, on the record after notice and opportunity for hearing, that such member has willfully violated any provision of the securities laws, the rules or regulations thereunder, or the rules of the PAB, willfully abused his or her authority, or without reasonable justification or excuse has failed to enforce compliance with any such provision or any professional standard by any accountant that is a member of the PAB.

(5) If the Commission finds that a PAB has failed or is failing to comply with any of the conditions of recognition described in this § 210.13–04, the Commission may, by order, withdraw recognition of such PAB and direct that any fees described in paragraphs (d)(9) and (d)(10) of this section and collected by, or due and owing to, such PAB shall be held in escrow pending:

(i) Resolution or correction of such PAB's failings, satisfactory to the Commission; or

(ii) A Commission order that such funds be paid to one or more other PABs that enroll members from the PAB that the Commission has ceased to recognize.

**§ 210.13–05 Confidentiality and immunity.**

(a) Because a PAB's nonpublic proceedings and deliberations are subject to Commission oversight, and are governed by this § 210.13 in furtherance of the purposes of the securities laws, including the enforcement of certain standards, the Commission finds that, except to the extent that such information is requested by the Commission, any other Federal department or agency, the appropriate State licensing authority or authorities, State criminal law enforcement authorities, and foreign governmental authorities or foreign financial regulatory authorities, it is in the public interest for a PAB:

(1) To be able to maintain the confidentiality of reports, memoranda

and other information prepared by it, and of its deliberations; and

(2) To claim confidentiality protection for its nonpublic reports, memoranda, other information prepared by it, and of its deliberations, to the full extent allowed by law.

(b) Because a PAB's activities are subject to Commission oversight, and are governed by this § 210.13 in furtherance of the purposes of the securities laws, the Commission finds that it is in the public interest for the PAB and its board members, employees, contractors, and professional representatives:

(1) To have immunity from private civil liability for any action or failure to act in connection with the PAB's responsibilities; and

(2) To claim immunity from private civil liability, for any action or failure to act in connection with the PAB's responsibilities, to the full extent allowed by law.

**§ 210.13–06 Exemptions.**

(a) The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt in whole or in part any accountant or any Commission registrant, or any class of accountants or Commission registrants, from any or all of the provisions of §§ 210.13 and 210.2–01(a)(2), if the Commission finds that such exemption is consistent with the public interest and the protection of investors.

(b) Accountants that do not audit or review financial statements or prepare attestation reports filed with the Commission on a recurring basis and whose audit reports are filed with the Commission only in accordance with § 210.3–05 are exempt from the requirements of this §§ 210.13 and 210.2–01(a)(2).

(c) The Commission, by rule or order, consistent with the public interest, the protection of investors, and the other purposes of the securities laws, may relieve a PAB of its responsibility to enforce compliance with any specified provision in § 210.13, the rules or membership requirements adopted by a PAB, or professional standards, with respect to any accountant, Commission registrant, or any class of accountants or registrants.

**§ 210.13–07 Foreign accountants.**

(a) Any foreign accountant that audits or reviews financial statements filed with the Commission, or prepares reports that are filed with the Commission, and any foreign issuer that engages a foreign accountant for such services, shall be exempt from compliance with §§ 210.13 and 210.2–01(a)(2).

(b) In reviewing the quality controls of any member firm that has associated entities that are foreign accountants, the PAB or reviewer should review the procedures performed by the member firm related to documents filed with the Commission that contain the reports or opinions of those foreign accountants.

## PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

5. The general authority citation for part 229 continues to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78ll(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), and 80b–11, unless otherwise noted.

* * * * *

6. Section 229.401 is revised by adding paragraph (f)(7) before the Note to Paragraph (f) of Item 401 to read as follows:

**§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.**

* * * * *

(f) * * *

(7) Such person was sanctioned by a Public Accountability Board under § 210.13 of this Chapter for violations of professional standards or the rules or membership requirements of that Public Accountability Board and that sanction has not been subsequently reversed, suspended or vacated.

* * * * *

Dated: June 26, 2002.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

**Note:** Appendices A and B to the preamble will not appear in the Code of Federal Regulations.

## Appendix A

### Brief History of the Self-Regulatory System

The self-regulatory system established in September 1977 included the formation within the AICPA of a Division for CPA Firms and then the organization of that Division into two sections, one for those firms that audit financial statements filed with the Commission (the SECPS) and one for those that do not.[189] Since its formation, the SECPS has imposed membership requirements on firms and required member firms to participate in two programs intended to promote effective quality control systems. The first is a peer review program, which in recent years has involved firm on firm reviews.[190] The SECPS's Peer Review Committee administers the peer review program. The second program reviews allegations of audit failures involving Commission registrants that are contained in litigation filed against member firms. The QCIC conducts the second program.

The September 1977 resolution of the AICPA Council that created the SECPS also provided for the establishment of the POB.[191] This resolution indicated that the POB, among other things, would ''(a) Monitor and evaluate [the regulatory and sanction] activities of the Peer Review and [SECPS] Executive Committees to assure their effectiveness, (b) Determine that the Peer Review Committee is ascertaining that firms are taking appropriate action as a result of peer reviews, (c) Conduct continuing oversight of all other activities of the Section.''[192]

Operating under this resolution and related provisions, the POB oversaw the SECPS peer review and quality control inquiry programs and gradually expanded its scope to monitor and comment on other matters that affect public confidence in the integrity of the audit process.[193] When the Commission was

[189] The section for those firms that do not audit Commission registrants was formerly called the Private Companies Practice Section. The AICPA recently renamed its efforts for firms that provide services to private companies as ''Partnering for CPA Practice Success.''

[190] Although it is our understanding that ''firm on firm'' reviews are most prevalent, an SECPS member firm may choose a review team formed by a state CPA society (a committee-appointed review team, known as a CART review), or by an association of CPA firms authorized by the AICPA Peer Review Committee to assist its members by forming review teams to carry out peer reviews (an association review). *See* AICPA, *Standards for Performing and Reporting on Peer Reviews* at ¶ 15.

[191] AICPA, *Official Releases: Organizational Structure and Functions of the SEC Practice Section of the AICPA Division for CPA Firms,* J. Acct., Nov. 1997, at 113, 114.

[192] *See* Division for CPA Firms SEC Practice Section, *SECPS Reference Manual,* at SECPS § 100.23.

[193] For example, in 1993 the POB issued a document entitled *In the Public Interest: Issues Confronting the Accounting Profession,* which contained recommendations designed to enhance the reliability of financial statements and improve the performance of auditors. In 1994, in response to issues raised by then-SEC Chief Accountant Walter Schuetze, the POB sponsored a committee that published *Strengthening the Professionalism of the Independent Auditor,* which contained further recommendations in the areas of auditor independence, litigation reform, and the relationship of the accounting profession with various standard-setting and regulatory bodies, including the Commission. More recently, in response to the Commission's concerns about the impact of changes in audit procedures on the efficacy of the audit process, the POB formed the Panel on Audit Effectiveness (''Panel''). The Panel used a ''Quasi Peer Review'' (''QPR'') process to examine the audit processes of large SECPS member firms. The Panel on Audit Effectiveness, *Report and Recommendations,* at 211–17 (Aug. 31, 2000). Each QPR was conducted under the close supervision of the Panel staff, including at least one senior

concerned about the status of accounting firms' quality controls over auditor independence, it asked the POB to oversee a review of the firms' systems and procedures in this area.[194] During discussions about the POB's reviews of the firms' systems of quality controls over auditor independence, the SECPS took the unprecedented step of threatening to halt the funding for the POB's reviews.[195] The SECPS indicated that this step was part of its obligations to its member firms to exercise fiscal responsibility, but it was perceived widely as an indication of the POB's lack of financial independence from the AICPA.[196]

## Appendix B

### The Commission's Endorsement and Oversight of FASB

We have ample authority to set accounting requirements for Commission registrants.[197] Practically since the Commission's inception, however, we have looked to the accounting profession for leadership in establishing and improving the accounting principles used to prepare financial statements filed with the Commission and relied on by investors.[198] These principles come from a variety of sources, and together form generally accepted accounting principles, or GAAP.[199] Commission rules state that financial statements that do not follow GAAP will be presumed to be misleading, unless the Commission has directed otherwise.[200]

In Accounting Series Release No. 150, which was published on December 20, 1973, the Commission endorsed the establishment of the FASB and stated that standards promulgated by the FASB would be considered to have ''substantial authoritative support'' and that those contrary to FASB pronouncements would be deemed to have no such support. The Commission, in making that decision, noted that the commitment of resources to the FASB by the private sector was ''impressive'' and evidenced an intention on the part of the private sector to support the FASB in accomplishing its task of taking ''prompt and reasonable actions flowing from research and consideration of varying viewpoints.'' [201] In that release, the Commission acknowledged and endorsed the FASB as the primary source for GAAP.

The FASB operates under the Commission's oversight. That oversight reflects the fact that our staff, by virtue of its day-to-day activities, often is among the first to identify emerging issues and areas of accounting that need attention. As the staff identifies issues, such as revenue recognition and accounting for business combinations, the staff refers them to the FASB for guidance. It is our expectation that, in response to such a referral, the FASB will add an item to its agenda to address the issue and will ensure that the item receives the priority requested by the Commission or by our staff.

As the FASB conducts its deliberations, our staff monitors each project to ensure that the process is fair and deliberative, and that any final standard improves financial reporting for investors. The Commission staff, however, does not dictate final standards, but rather allows the private-sector standard setting process to work. Once a FASB project is completed, our staff evaluates the final product taken as a whole. We would expect to take action with respect to a FASB standard if we determine that the standard does not adequately protect the interests of investors.

As companies adopt new FASB standards, our staff monitors implementation,[202] addresses additional questions, and refers unique issues to the FASB's interpretative body, the Emerging Issues Task Force (''EITF''). Through this cycle, many EITF issues have been addressed at the request of the Commission staff because of implementation problems the staff observed in practice.

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member of the Panel staff, and all of the reviewers had relevant industry experience. *Id.* at 213. The Panel also reviewed the relevant issues and held public hearings. In August 2000, the Panel issued a report containing recommendations for those involved in the audit process and for those who oversee that process. The Panel on Audit Effectiveness, *Report and Recommendations* (Aug. 31, 2000).

[194] The program is in progress and will be completed by the POB staff under the review of an independent party, Donald Kirk. *See* SEC Press Release No. 2002–40 (Mar. 19, 2002).

[195] Letter from David Brumbeloe, Director, SECPS, to Jerry D. Sullivan, Executive Director, POB (May 3, 2000), which states, in part: ''The SEC Practice Section (the ''Section'') will not approve nor authorize payment for invoices submitted by the Public Oversight Board (''POB'') or its representatives that contain charges for the special reviews until such time that the Section and POB determine that such reviews will take place, and accordingly, that the work plan is agreed to by all parties.''

[196] *See, e.g., Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs* (Mar. 19, 2002) (statement of Charles A. Bowsher, Chairman, Public Oversight Board, Former Comptroller General of the United States).

[197] *See, e.g.,* 15 U.S.C. 77s(a), 78c(b), and 78m(b)(1).

[198] *See* Accounting Series Release Nos. 4 (Apr. 25, 1938) and 150 (Dec. 20, 1973).

[199] For a discussion of the various sources of GAAP and the hierarchy used to determine the most authoritative among conflicting principles or practices, *see* SAS No. 69 (for periods ending after Mar. 15, 1992), AU § 411.

[200] Rule 4–01(a)(1) of Regulation S–X, 17 CFR 210.4–01(a)(1).

[201] Accounting Series Release No. 150 (Dec. 20, 1973), which is reprinted in the Commission's Codification of Financial Reporting Policies, § 101.

[202] In light of the SEC's unique role, it is critical that the SEC work closely with the FASB. However, no matter how good accounting standards are, there will be instances where answers will not be clear and additional guidance will be needed. In these instances, we have encouraged registrants and their auditors to discuss the issue with the staff prior to the filing of the registrant's financial statements. *See* Preliminary Note to § 210.2–01; Staff Accounting Bulletin No. 99, *General Comments* (Aug. 13, 1999).

Federal Register

Friday,
July 5, 2002

Part IV

# Department of Health and Human Services

## Announcement of Anticipated Availability of Funds for Family Planning Services Grants; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Announcement of Anticipated Availability of Funds for Family Planning Services Grants

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Population Affairs.

**ACTION:** Notice.

**AUTHORITY:** Section 1001 of the Public Health Service (PHS) Act.

**SUMMARY:** The Office of Population Affairs (OPA) announces the anticipated availability of funds for Fiscal Year (FY) 2003 family planning services grants under the authority of Title X of the Public Health Service Act and solicits applications for competing grant awards to serve the areas and/or populations set out below. Only applications which propose to serve the populations and/or areas listed in Table I will be accepted for review and possible funding.

**DATES:** Application and funding dates vary. See **SUPPLEMENTARY INFORMATION** below.

**ADDRESSES:** Applications for grants in DHHS Regions I–X should be sent to: Office of Grants Management for Family Planning Services, 1301 Young Street, Suite 766, Dallas, TX 75202.

Application kits are also available online at the Office of Population Affairs web site at *http://opa.osophs.dhhs.gov* or may be requested by fax at (214) 767–3425.

**FOR FURTHER INFORMATION CONTACT:**

**Administrative and Budgetary Requirements**

Regions I–X: Maudeen Pickett, Office of Grants Management for Family Planning Services, 214–767–3401.

**Program Requirements**

Regional Program Consultants for Family Planning: Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)—Suzanne Theroux, 617–565–1063; Region II (New Jersey, New York, Puerto Rico, Virgin Islands)—Robin Lane, 212–264–3935; Region III (Delaware, Washington, D.C., Maryland, Pennsylvania, Virginia, West Virginia)—Louis Belmonte, 215–861–4641; Region IV (Kentucky, Mississippi, North Carolina, Tennessee, Alabama, Florida, Georgia, South Carolina)—Cristino Rodriguez, 404–562–7900; Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)—Janice Ely, 312–886–3864; Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)—Evelyn Glass, 214–767–3088; Region VII (Iowa, Kansas, Missouri, Nebraska)—Elizabeth Curtis, 816–426–2924; Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)— Jill Leslie, 303–844–7856 or Laura Grogan, 303–844–7849; Region IX (Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federal States of Micronesia, Republic of the Marshall Islands)—Nadine Simons, 415–437–7984; Region X (Alaska, Idaho, Oregon, Washington)—Janet Wildeboor, 206–615–2776.

**SUPPLEMENTARY INFORMATION:**

**Definitions**

For the purposes of this announcement, the following definitions apply:

*Application*—a request for financial support of a project submitted to OPA on specified forms and in accordance with instructions provided.

*Eligible Applicants*—any public or nonprofit private entity located in a State (which includes one of the 50 United States, the District of Columbia, Commonwealth of Puerto Rico, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands) is eligible to apply for a Title X family planning grant. Faith-based organizations are eligible to apply for these Title X family planning grants.

*Evidence-based*—relevant scientific evidence that has undergone comprehensive review and rigorous analysis.

*Grant*—financial assistance in the form of money, awarded by the Federal Government to an eligible recipient (a *grantee* or *recipient* is the entity that receives a Federal grant and assumes the legal and financial responsibility and accountability for the awarded funds and performance of activities approved for funding).

*Project*—those activities described in the grant application and supported under the approved budget.

Title X of the Public Health Service Act, 42 U.S.C. 300 *et seq.*, authorizes the Secretary of Health and Human Services (HHS) to award grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants ''to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents).'' The broad range of services should include abstinence education. Section 1001 of the statute also requires that, to the extent practicable, Title X service providers shall encourage family participation in family planning services projects. Section 1008 of the Act, as amended, stipulates that ''none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.''

Requirements regarding the provision of family planning services under Title X can be found in the Title X statute, the implementing regulations which govern project grants for family planning services (42 CFR part 59, subpart A), and the ''Program Guidelines for Project Grants for Family Planning Services,'' published in January 2001. Copies of the Title X statute, regulations, and Program Guidelines may be obtained by contacting the Office of Grants Management for Family Planning Services (at the address above), or downloaded from the Office of Population Affairs web site at *http://opa.osophs.dhhs.gov/grants.* All Title X requirements—including those derived from the statute, the regulations, and the Program Guidelines—apply to all activities funded under this announcement. (For example, projects must meet the regulatory requirements set out at 42 CFR 59.5 regarding charges to clients, and the funding criteria set out at 42 CFR 59.7 apply to all applicants under this announcement. As stated in Sec. 59.7(b) ''* * * No grant may be made for less than 90 percent of the project's costs, as so estimated, unless the grant is to be made for a project that was supported, under section 1001, for less than 90 percent of its costs in fiscal year 1975. In that case, the grant shall not be for less than the percentage of costs covered by the grant in fiscal year 1975.'' Furthermore, Sec. 59.7(c) stipulates that ''no grant may be made for an amount equal to 100 percent for the project's estimated costs.'') A description of the Title X Family Planning Program can be found at OMB Catalog of Federal Domestic Assistance 93.217.

The anticipated FY 2003 appropriation for the Title X Family Planning program is approximately $265 million. Of this amount, approximately $100 million will be made available for competing grant awards. This notice announces the anticipated availability of funds for competitive family planning service grants in 22 states. (See Table I for competing areas and approximate amount of awards). The remaining

funds will be used for continued support of grants and activities which are not competitive in FY 2003. This program announcement is subject to the appropriation of funds and is a contingency action taken to ensure that, should funds become available for this purpose, applications can be processed in an orderly manner, and funds can be awarded in a timely fashion. Competing grant applications are invited for the following areas (please note, in order to maximize access to family planning services, one or more grants may be awarded for each area listed):

TABLE I

| Populations/areas to be served | Approximate | | |
|---|---|---|---|
| | Funding available | Application due date | Approx. grant funding date |
| **Region I** | | | |
| Massachusetts-Central/Southeast | $1,471,813 | 09–01–02 | 01–01–03 |
| **Region II** | | | |
| New Jersey | 7,974,484 | 09–01–02 | 01–01–03 |
| **Region III** | | | |
| Delaware | 1,009,643 | 12–01–02 | 04–01–03 |
| Maryland | 3,729,883 | 12–01–02 | 04–01–03 |
| Pennsylvania | 11,951,606 | 03–01–03 | 07–01–03 |
| Virginia | 4,299,203 | 12–01–02 | 04–01–03 |
| West Virginia | 2,008,201 | 12–01–02 | 04–01–03 |
| **Region IV** | | | |
| Alabama | 4,315,101 | 03–01–03 | 07–01–03 |
| Florida | 7,652,636 | 03–01–03 | 07–01–03 |
| Georgia | 7,080,259 | 03–01–03 | 07–01–03 |
| Kentucky | 4,759,359 | 03–01–03 | 07–01–03 |
| Mississippi | 4,508,789 | 03–01–03 | 07–01–03 |
| North Carolina | 6,076,410 | 03–01–03 | 07–01–03 |
| **Region V** | | | |
| Minnesota | 2,242,934 | 09–01–02 | 01–01–03 |
| Minneapolis, Minnesota | 187,945 | 05–29–03 | 09–29–03 |
| Ohio | 5,202,414 | 12–01–02 | 03–01–03 |
| Portage, Summit & Medina Counties, Ohio | 749,745 | 03–01–03 | 07–01–03 |
| **Region VI** | | | |
| Louisiana | 3,743,201 | 03–01–03 | 07–01–03 |
| **Region VII** | | | |
| Iowa | 2,206,340 | 03–01–03 | 07–01–03 |
| | 951,128 | 05–30–03 | 09–30–03 |
| **Region VIII** | | | |
| None competing in FY 2003 | | | |
| **Region IX** | | | |
| Arizona | 3,811,522 | 09–01–02 | 01–01–03 |
| California | 20,123,818 | 09–01–02 | 01–01–03 |
| Washoe County, Nevada | 613,415 | 03–01–03 | 07–01–03 |
| **Region X** | | | |
| Idaho | 949,660 | 03–01–03 | 07–01–03 |
| Seattle, WA | 163,438 | 05–30–03 | 09–30–03 |

**Title X Program Priorities**

The following priorities represent overarching goals for the Title X program. The application should describe how the proposed project will address each priority:

(1) Assurance of continued high quality clinical family planning and reproductive health services that will improve the overall health of individuals;

(2) Increasing access to family planning and reproductive health services by partnering with public health providers and other community-based organizations that have related interests and that work with similar populations;

(3) Emphasis on clinical services for hard-to-reach populations, *e.g.,* uninsured or under-insured women, males in need of clinical services, adolescents, substance abusers, migrant workers, and the homeless; and

(4) Assuring access to a broad range of family planning and reproductive health clinical services, including provision of highly effective contraceptive methods; breast and cervical cancer screening and prevention; STD and HIV prevention education, counseling, and testing; and abstinence education and counseling. The broad range of services does not include abortion as a method of family planning.

**Key Issues**

The following key issues impact the current and future delivery of family planning services, and should be considered when developing the proposal:

(1) The U.S. Department of Health and Human Services' priorities and Healthy People 2010 objectives (*http://www.health.gov/healthypeople*);

(2) Medicaid waivers, managed care, State Children's Health Insurance Program (SCHIP), Temporary Assistance to Needy Families (TANF), Title XX of the Social Services Block Grant, state

support, and private insurance coverage related to family planning and reproductive health services, teen pregnancy and abstinence education (e.g., Title XX of the PHS Act—Adolescent Family Life (AFL) Program, Title V of the Social Security Act—SPRANS and State Block Grants for Abstinence Education), and ACF Infant Adoption Awareness Training Program;

(3) Increased need for current and reliable data to use in program planning and monitoring program performance;

(4) Use of electronic technologies in program activities and management;

(5) Use of evidence-based information to support program activities; and

(6) Legislative mandates such as counseling teens on involving families and avoiding coercive sexual relationships, and program compliance with state reporting laws regarding child abuse, child molestation, sexual abuse, rape or incest.

**Application Requirements**

Application kits (including the application form, Form OPHS–1, Revised 6/01), may be obtained by contacting the Office of Grants Management for Family Planning Services (at the address listed above), or downloaded from the Office of Population Affairs web site at *http://opa.osophs.dhhs.gov/grants.* Applications should be limited to 60 double-spaced pages, not including appendices. Appendices may provide examples of organizational capabilities or other supplemental information. Completed applications must be submitted to the Office of Grants Management for Family Planning Services.

A copy of the legislation and regulations governing this program will be included as part of the application kit package. Applications must address all applicable regulatory requirements. Applicants should use the legislation, regulations, and information included in this announcement to guide them in developing their applications. The information collections (reporting requirements) contained in this notice have been approved by the Office of Management and Budget and assigned control number 0937–0189.

Applications will be considered as meeting the deadline if they are postmarked on or before the application due date (listed for all areas in Table I). A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. All hand delivered applications must be received between the hours of 8:30 a.m. and 5 p.m. on or before the application due date. Applications which do not meet the deadline will be considered late and will not be accepted for review. Also, applications which do not meet the requirements of this program announcement and/or the applicable regulatory requirements at 42 CFR part 59, subpart A, will not be accepted for review. Any application which is not accepted will be returned to the applicant. Applications will not be accepted by fax or e-mail. The submission deadlines will not be extended.

The Office of Public Health and Science (OPHS) requires all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. This is consistent with the OPHS mission to protect and advance the physical and mental health of the American people.

**Application Consideration and Assessment**

Each regional office is responsible for evaluating applications and setting funding levels according to criteria in 42 CFR 59.7. Applications will be evaluated based on the following criteria (42 CFR 59.7(a)):

(1) The degree to which the project plan adequately provides for the requirements set forth in the Title X regulations at 42 CFR part 59, subpart A (20 points);

(2) The extent to which family planning services are needed locally (20 points);

(3) The number of patients, and, in particular, the number of low-income patients to be served (15 points);

(4) The adequacy of the applicant's facilities and staff (15 points);

(5) The capacity of the applicant to make rapid and effective use of the Federal assistance (10 points);

(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project (10 points); and

(7) The relative need of the applicant (10 points).

In making grant award decisions, the Regional Health Administrator will fund those projects which will, in his judgement, best promote the purposes of section 1001 of the Act, within the limits of funds available for such projects.

Grants are generally approved for project periods of three to five years. Grants are funded in annual increments (budget periods). An annual non-competitive continuation application is required to obtain continued support. Application kits for non-competing grants will automatically be sent to the project director indicated on the Notice of Grant Award. Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and efficient and effective use of grant funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Federal Government.

**Review Under Executive Order 12372**

Applicants under this announcement are subject to the review requirements of Executive Order 12372, as implemented by 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not listed, further inquiries regarding the review process designed by their State should be made to the Governor's office of the pertinent State. The SPOC should forward any comment(s) to the Office of Grants Management for Family Planning Services, 1301 Young Street, Ste. 766, Dallas, TX 75202. The SPOC has 60 days from the applicable closing date as listed in Table I of this announcement to submit any comments.

**Notification of Grant Award**

When final funding decisions have been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award. This document specifies to the grantee the amount of money awarded, the purposes of the grant, the length of the project period, and terms and conditions of the grant award.

Dated: June 7, 2002.

**Mireille B. Kanda,**

*Acting Director, Office of Population Affairs.*

[FR Doc. 02–16784 Filed 7–3–02; 8:45 am]

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Federal Register

Friday,
July 5, 2002

# Part V

# Department of Energy

## Office of Energy Efficiency and Renewable Energy

## 10 CFR Part 431

## Energy Efficiency Program for Certain Commercial and Industrial Equipment: Interim Determinations Concerning Petitions for Recognition as a Nationally Recognized Certification Program for Electric Motor Efficiency; Interim Final Rules

**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and Renewable Energy**

**10 CFR Part 431**

**[Docket No. EE–RM–96–400]**

# Energy Efficiency Program for Certain Commercial and Industrial Equipment: Interim Determination Concerning the CSA International Petition for Recognition as a Nationally Recognized Certification Program for Electric Motor Efficiency

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

**ACTION:** Public notice of an interim determination and solicitation of comments.

**SUMMARY:** Today's action announces the Department of Energy's interim determination classifying the CSA International Motor Efficiency Verification Service Program as a nationally recognized certification program in the United States for the purposes of section 345(c) of the Energy Policy and Conservation Act. The Department solicits comments, data and information with respect to its interim determination prior to issuing a final determination.

**DATE:** Written comments, data and information, and a signed original with an electronic copy, must be received at the Department of Energy by August 5, 2002.

**ADDRESSES:** Comments, data and information should be labeled ''Interim Determination Concerning the CSA International Petition for Recognition as a Nationally Recognized Certification Program for Electric Motor Efficiency,'' and submitted to: Ms. Brenda Edwards-Jones, Office of Energy Efficiency and Renewable Energy, EE–41, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945; Telefax: (202) 586–4617. Also, a copy of such comments should be submitted to Mr. Otto Krepps, Manager, Accreditations, CSA International, 178 Rexdale Boulevard, Toronto, Ontario, Canada M9W 1R3. Telephone: (416) 747–2798; Telefax (416) 747–4173.

**FOR FURTHER INFORMATION CONTACT:** James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121; Telephone: (202) 586–8654; Telefax: (202) 586–4617; or Electronic Mail: *jim.raba@ee.doe.gov.*

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103; Telephone: (202) 586–7432; Telefax: (202) 586–4116; or Electronic Mail: *francine.pinto@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Introduction
A. Authority
B. Background
II. Discussion
A. General
B. Application of Evaluation Criteria
1. Standards and Procedures for Conducting and Administering a Certification System
2. Independence
3. Operation of a Certification System in a Highly Competent Manner
a. General Operating Requirements (ISO/IEC Guide 65)
b. Guidelines for Corrective Action in the Event of Misapplication of a Mark of Conformity (ISO/IEC Guide 27)
c. General Rules for a Model Third-Party Certification System for Products (ISO/IEC Guide 28)
d. General Requirements for the Competence of Testing Laboratories (ISO/IEC Guide 25)
(1) Operating Procedures
(2) Testing Laboratory
4. Expertise in IEEE 112–1996 Test Method B and CSA C390–93 Test Method (1)
5. Sampling Criteria and Procedures for Selecting an Electric Motor for Energy Efficiency Testing
III. Conclusion
A. Interim Determination
B. Future Proceedings

## I. Introduction

A copy of the ''Petition for Recognition of CSA International as a Nationally Recognized Certification Program for Motor Efficiency'' (CSA International Petition or the Petition) was published in the **Federal Register** on April 26, 2000. 65 FR 24429. The Petition consisted of a letter from CSA International to the Department, narrative statements on five subject areas, and supporting documentation. At the same time, the Department of Energy (Department) solicited comments, data and information as to whether CSA International's Petition should be granted. The Department also conducted an independent investigation concerning the CSA International Petition pursuant to 10 CFR 431.28(f).

The supporting documents that accompanied the Petition, as well as the material CSA International subsequently submitted to the Department in support of the Petition, are available in the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585–0101, telephone (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Additional information about CSA International's Motor Efficiency Verification Service Program (MEVS Program or Program) and its Petition to be a nationally recognized certification program for electric motor efficiency can be obtained on the World Wide Web at *http://www.csa-international.org/welcome.html,* or from Mr. Otto Krepps, Manager, Accreditations, CSA International, 178 Rexdale Boulevard, Toronto, Ontario, Canada M9W 1R3; Telephone: (416) 747–2798; Telefax: (416) 747–4173; or Electronic Mail at *otto.krepps@csa-international.org.*

The final rule for ''Test Procedures, Labeling, and Certification Requirements for Electric Motors'' was published in the **Federal Register** on October 5, 1999. 64 FR 54141. It is codified in 10 CFR Part 431 in subparts A, B, E and G. It can also be obtained from the Office of Building Research and Standards, Office of Energy Efficiency and Renewable Energy, EE–41, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121; Telephone: 202–586–9127; or on the World Wide Web at *http://www.eren.doe.gov/buildings/codes_standards/rules/motors/index.htm.*

### *A. Authority*

Part C of Title III of the Energy Policy and Conservation Act (EPCA) contains energy conservation requirements for electric motors, including requirements for test procedures, energy efficiency standards, and compliance certification (42 U.S.C. 6311–6316). Section 345(c) of EPCA directs the Secretary of Energy to require motor manufacturers ''to certify, through an independent testing or certification program nationally recognized in the United States, that [each electric motor subject to EPCA efficiency standards] meets the applicable standard.'' 42 U.S.C. 6316(c). Regulations to implement this EPCA directive, with respect to certification programs, are codified in 10 CFR Part 431 at sections 431.123, *Compliance Certification,* 431.27, *Department of Energy recognition of nationally recognized certification programs, and 431.28, Procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs.* Sections 431.27 and 431.28 of 10 CFR Part 431 set forth the criteria and procedures for national recognition of an energy efficiency certification

program for electric motors by the Department of Energy.

For a certification program to be classified by the Department as being nationally recognized, the program must: (1) Have satisfactory standards and procedures for conducting and administering a certification system, and for granting a certificate of conformity; (2) be independent; (3) be qualified to operate in a highly competent manner; (4) be expert in the test procedure and methodology in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), or similar procedures and methodologies for determining the energy efficiency of electric motors; and (5) have satisfactory criteria and procedures for selecting and sampling electric motors for energy efficiency testing. 10 CFR 431.27(b).

*B. Background*

Pursuant to 10 CFR 431.28, the Department is required to publish the CSA International Petition in the **Federal Register** in order to solicit comments, data and information on whether the Petition should be granted. CSA International may then respond in writing to any comments received. After review of the Petition, other applicable documents, including public comments and facts found through investigation, the Department is required to issue an interim determination and notify CSA International in writing of that interim determination. Also, the Department is required to publish its interim determination in the **Federal Register** and solicit comments, data and information with respect to the interim determination. After review of the comments and information that is submitted, the Department is required to publish in the **Federal Register** an announcement of its final detemination on the Petition. See 10 CFR 431.28(a) through (f).

The Department received comments on the CSA International Petition from the following four manufacturers and one trade association with respect to the CSA International Petition: Sterling Electric, Inc. (Sterling), Baldor Electric Company (Baldor), Siemens Energy & Automation, Inc. (Siemens), GE Industrial Systems (GE), and the National Electrical Manufacturers Association (NEMA), dated May 16, May 22, May 23, May 24, and May 26, 2000, respectively. In general, Sterling, Baldor, and Siemens believe CSA International to be qualified to test and certify electric motors for energy efficiency, and favor national recognition in the United States of the CSA International Program. GE and NEMA did not appear to state a position on national recognition, but instead commented on the appropriateness of CSA International's sampling plan. GE recommended CSA International use a process equivalent to the National Institute of Standards and Technology/ National Voluntary Laboratory Accreditation Program for determining the competency of a testing facility. NEMA asserted that the CSA International process of selecting motors for energy efficiency testing appeared to be burdensome to manufacturers.

The Department also conducted an independent investigation of the CSA International Program pursuant to 10 CFR 431.28(f).

**II. Discussion**

*A. General*

*Sections 431.27(b)(1) and (c)(1) of 10 CFR Part 431* set forth criteria and guidelines for the standards and procedures for conducting and administering a certification system and for granting a certificate of conformity. As such, a certification program must have satisfactory standards and procedures for conducting and administering a certification system, including periodic follow-up activities to assure that basic models of electric motors continue to conform to the efficiency levels for which they were certified and for granting a certificate of conformity. ISO/IEC Guide 65 (discussed in 10 CFR 431.27(c)(3) and also below) sets forth the general requirements intended to ensure a certification program is operated in a consistent and reliable manner. These requirements address: (1) Impartiality; (2) sufficient personnel having the necessary education, training, technical knowledge and experience; (3) relevant procedures for sampling, testing and inspecting the product, and the means necessary to evaluate conformance by a manufacturer with those standards; (4) surveillance and periodic audits to ensure continued conformance with the applicable standards; (5) subcontracting work, such as testing, with proper arrangements to ensure competence, impartiality, and compliance with the applicable standards; (6) procedures to control records, documents and data, including review and approval by appropriately authorized personnel; and (7) control over use and display of certificates and marks of conformity.

*Sections 431.27(b)(2) and (c)(2) of 10 CFR Part 431* set forth criteria and guidelines for independence. A certification program must be independent of electric motor manufacturers, importers, distributors, private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity. Further, it should disclose any relationship it believes might appear to create a conflict of interest. ISO/IEC Guide 65 sets forth requirements for a certification program to be impartial, and have a documented structure that safeguards that impartiality. For example, each decision on certification is made by a person(s) different from those who carried out an evaluation or actual testing of the motor. Its policies and procedures must distinguish between product certification and other activities; its certification process must be free from any commercial, financial and other pressures that might influence decisions; and it must have a committee structure where members are chosen to provide a balance of affected interests.

*Sections 431.27(b)(3) and (c)(3) of 10 CFR Part 431* set forth criteria and guidelines requiring that a certification organization must be qualified to operate a certification system in a highly competent manner. Of particular relevance is documentary evidence that establishes experience in the application of guidelines contained in International Standards Organization/ International Electrotechnical Commission (ISO/IEC) Guide 65: 1996, *General requirements for bodies operating product certification systems,* ISO/IEC Guide 27: 1983, *Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk,* ISO/IEC Guide 28: 1982, *General rules for a model third-party certification system for products,* as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 25: 1990, *General requirements for the competence of calibration and testing laboratories.*

*Sections 431.27(b)(4) and (c)(4) of 10 CFR Part 431* set forth criteria and guidelines requiring that a certification program must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1). Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 25.

ISO/IEC Guide 25 addresses general requirements for establishing quality systems in laboratories and for recognizing their competence to carry

out specified tests. In part, these requirements address: (1) Organization and management that are free from commercial, financial, and other pressures which might adversely affect quality of work; (2) independence of judgment and integrity; (3) supervision by persons familiar with the applicable test procedures; (4) a quality system, and manual which contains procedures for control and maintenance of documents, and procedures for periodic audit and review; (5) sufficient personnel, having the necessary education, training, technical knowledge and experience for their assigned functions, and that training of its personnel is kept up-to-date; (6) all items of equipment and reference materials for the correct performance of tests, and that equipment is properly maintained and calibrated; (7) test equipment that is calibrated and verified prior to operation, and there is traceability to national standards of measurement; (8) documented instructions for the use and operation of equipment, manuals, and applicable test procedures; (9) retention of testing records with sufficient information to permit repetition of a test; and (10) where a laboratory is sub-contracted to conduct testing, that laboratory complies with the requirements contained in ISO/IEC Guide 25 and is competent to perform the applicable testing activities. An example of a ''sub-contracted'' laboratory would be a manufacturer's laboratory that tests motors for energy efficiency under the CSA International MEVS Program.

Also, where 10 CFR 431.27(b)(4) requires a certification program to have satisfactory criteria and procedures for the sampling and selection of electric motors, likewise, ISO/IEC Guide 25 requires the use of documented sampling procedures and appropriate techniques to select samples.

*B. Application of Evaluation Criteria*

1. Standards and Procedures for Conducting and Administering a Certification System

Sections 431.27(b)(1) and (c)(1) of 10 CFR part 431, and ISO/IEC Guide 65, set forth criteria and guidelines for the standards and procedures to be used in administering a certification system and granting a certificate of conformity.

The CSA International Petition asserts, in general, that its certification quality assurance program system is based on national and international accreditation requirements and specific customer requirements in order to ensure technical excellence, consistency of interpretation, application of standards, programs and procedures, integrity of its ''Energy Efficiency Marking,'' and continuous improvement. CSA International asserts that it has implemented the requirements specified in the ISO/IEC Guide 65. Further, CSA International asserts that it has implemented the requirements specified in SCC/CAN P–3 and SCC/CAN P–4, which the Department understands are the Standards Council of Canada equivalents of ISO/IEC Guides 65 and 25, respectively. In order to substantiate these assertions, CSA International has provided to the Department certain Divisional Quality Documents (DQDs) which contain the operating procedures and guidelines used by CSA International's staff in support of its MEVS Program.

In view of the above, the Department understands that the CSA International Program carries out the ISO/IEC Guides 65 and 25 requirements through its Quality Assurance System and DQD No. 050, ''Certification Division Quality Assurance Manual,'' DQD No. 200, ''Certification Program,'' DQD No. 306, ''Guidelines for Handling Complaints and Disputes,'' DQD No. 306.1, ''Customer Complaints,'' DQD No. 318, Guidelines for Handling Product Incidents Investigations,'' DQD No. 320, ''Factory Inspections,'' DQD No. 326, ''Handling of Non-conformances,'' and DQD No. 327, ''Corrective & Preventive Action,'' which provide necessary operating procedures and guidelines.

The Department's investigation found that the CSA International procedures for operating a certification system were very general in nature and could be satisfactorily applied to any certification program conducted by CSA International. This raised the issue as to whether the specific standards and procedures by which the CSA International Program operates in order to certify the energy efficiency of electric motors were adequate, properly documented, well established and maintained, understood, and in fact carried out by staff.

For example, according to section 4.8.2 of ISO/IEC Guide 65, the certification body shall establish procedures to control all documents and data that relate to its certification functions, and these documents shall be reviewed and approved by authorized personnel prior to being issued following initial development or subsequent amendment. The Department found that procedural documents used in the electric motor efficiency evaluation process, including witness testing by CSA International staff at non-CSA International facilities, and the sampling procedure to be used, were not marked with identification numbers and information such as date of issue, sources or authorities by which the documents were issued and approved, revision numbers, or a particular page from a set of pages. Consequently, the Department requested that CSA International submit documents relevant to the motor efficiency evaluation procedure that had been processed and approved by the CSA International Engineering Quality Assurance group. CSA International complied and submitted, under a letter dated June 14, 2001, the following DQDs:

*Certification Division Quality/ Management System Manual,* DQD No. 050, dated October 4, 2000.

*Guidelines for the Selection of Test and Measurement Equipment and Validation of Borderline Test Measurements,* DQD No. 308, dated March 12, 2001.

*Selection of Test and Measurement Equipment/Significant Parameters—CSA Energy Efficiency Verification Program for Three-Phase Induction Motors,* DQD No. 308.01, dated March 12, 2001.

*Witness Testing,* DQD No. 316, dated January 22, 2001.

*Electric Motor Efficiency Evaluation,* DQD No. 384, dated January 23, 2001.

*Application Process—CSA Energy Efficiency Verification Program for Three Phase Induction Motors,* DQD No. 385, dated January 24, 2001.

*Review of Work and Designation of Signatories,* DQD No. 431, dated October 17, 2000.

The Department has examined the above documents and concluded that they provide evidence that the standards and procedures CSA International uses to conduct a motor efficiency verification program satisfy the requirements set forth in 10 CFR 431.27(b)(1). Nevertheless, the Department's December 20, 2001, electronic message to CSA International requested that CSA International clarify or make corrections to certain procedures and documents used in its MEVS Program. In sum, the Department requested that CSA International confirm or correct the following: (1) Confirm that DQD No. 308.01 refers to IEEE Standard 112–1996 Test Method B with the modifications described under appendix A to subpart B of 10 CFR part 431, paragraph 2 subparagraph (2); and (2) correct DQD No. 385 to refer to C390–93 Test Method (1). Also, the Department requested that CSA International submit the following documents for examination: DQD No.

305—*Quality/Management System Audit Program;* DQD No. 313—*Guidelines on Retesting;* DQD No. 332—*Document Control Procedure;* DQD No. 424—*Technical Training;* DQD No. 425—*Periodic Technical and Process Review;* and DQD No. 513—*Factory Audit Report.*

CSA International's letter, dated March 1, 2002, addressed the above matters and submitted a revised copy of DQD No. 308.01, dated February 15, 2002, to confirm the reference to IEEE Standard 112–1996 Test Method (1) as set forth under appendix A to subpart B of 10 CFR part 431, and a revised copy of DQD 385 that refers to C390–93 Test Method (1). CSA International's March 1 letter asserts that its MEVS Program operates pursuant to DQD No. 385, wherein fully qualified staff would visit each testing facility to witness the tests being performed, write a detailed report, and have the manufacturer sign an agreement to manufacture the product [motor] in accordance with the description in the report. Also, CSA International confirms that there will be a minimum of one audit visit per year by certification staff.

CSA International also submitted, with its March 1, 2002, letter, DQD Nos. 305, 313, 320, 385, 424, 425 and 513. Furthermore, CSA International stated that DQD No. 332, *Document Control Procedure,* had been withdrawn from its Quality System and the Department should refer to DQD 050 section 1.5, ''Documentation System,'' section 6.0, ''Document Control,'' and section 12.0, ''Maintenance of Records.'' In view of the criteria and guidelines set forth in 10 CFR 431.27(b)(1) and (c)(1), and ISO/IEC Guide 65, the Department examined the above-referenced DQDs. In sum, DQD No. 305 sets forth procedures and guidelines for staffing, organizing, and conducting audits of the CSA International quality system, including technical audits of testing facilities in accordance with ISO/IEC Guide 25. DQD No. 313 sets forth procedures and guidelines for witness retesting to ensure continued compliance with, for example, motor efficiency standards. DQD No. 320, *Factory Inspections,* sets forth guidelines for scheduling and conducting factory audits. DQD No. 385, *Electric Motor Efficiency Evaluation,* sets forth the process for evaluating the energy efficiency of three-phase induction motors and applies both to the regulations in Canada and the United States, including the scope, sampling methods, test procedures, alternative efficiency determination methods, and efficiency levels in 10 CFR part 431. DQD No. 424, *Technical Training,* sets forth the policy and guidelines for the training of technical staff, which is an ongoing activity that is monitored, evaluated and documented in the individual's training record. DQD No. 425, *Periodic Technical and Process Review,* sets forth guidelines to ensure that technical, administrative and quality records are maintained and periodically reviewed by management. DQD No. 513 is a facility audit report form with provisions for sampling and compliance with standards. In addition, CSA International submitted DQD No. 510.02, *List of Fully Qualified Project Holders for the Motor Energy Verification Program,* dated February 28, 2002, and DQD No. 050, revised November 30, 2001, *CSA International Quality Management System Manual,* that supersedes DQD No. 332. CSA International's March 1, 2002, letter confirms that all compliance and follow up testing is witnessed by technically qualified staff.

The Department has examined the Petition and all other documents described above, and concludes that the standards and procedures CSA International uses to conduct its MEVS Program satisfy the requirements set forth 10 CFR 431(b)(1) and (c)(1), and the guidelines contained in ISO/IEC Guide 65.

2. Independence

Sections 431.27(b)(2) and (c)(2) of 10 CFR Part 431, and ISO/IEC Guide 65, set forth criteria and guidelines for impartiality.

Under Section 2 of its Petition, entitled ''CSA International,'' CSA International provides an overview of its history and a copy of its incorporation document, by-laws, annual report and an organization chart. CSA International asserts that it is an independent organization, has no affiliation with manufacturers or suppliers of products submitted for certification, and provides a copy of its ''Statement of Independence'' to substantiate these claims. However, the Department understands that the CSA International Standards Division administers the development of voluntary consensus standards for safety matters that involve participation from electric motor manufacturers, while the Certification Division and Quality Management Institute provide conformity assessment programs that carry out laboratory testing certification and inspection of electric motors.

The Department's May 14, 2001, letter requested that CSA International submit to the Department any documents that set forth the policies and procedures that provide assurance of CSA International's independence from any relationship with a manufacturer, importer, or supplier which might create a conflict of interest with its MEVS Program. Also, the Department requested that CSA International provide an explanation as to why a direct or indirect relationship with a motor manufacturer, importer, or private labeler through (a) the combined energy efficiency and product safety certification processes, (b) status as a ''Certification Member,'' (c) membership on a CSA International technical or standards development committee, or (d) shared certification whereby a manufacturer could perform unwitnessed motor testing and submit a certification report to CSA International, would not compromise CSA International's independence or bias information presented to CSA International for the purposes of compliance with 10 CFR 431.27(b)(2).

CSA International submitted, under a letter dated June 14, 2001, the following documents of policy and procedures as further evidence of its independence from manufacturers, importers, distributors, private labelers or vendors:

*Corporate Policy Manual,* dated December 1, 1996.

*Certification Division Policies and Practices Manual,* dated February 1999.

*Standards of Business Conduct,* dated May 1993.

*Annual Report 2000.*

*Statement of Independence,* signed by the Vice President, Corporate Secretary of CSA International and a Commissioner of Oaths and Notary Public, Province of Ontario, Canada, dated June 4, 1998.

The Department has examined the above documents and concludes that they provide sufficient evidence that the CSA International MEVS Program meets the requirements for independence which are set forth in 10 CFR 431.27(b)(2), and (c)(2). Its MEVS Program meets the guidelines for the objectivity and impartiality of technical persons and committees which are set forth in ISO/IEC Guide 65, including freedom from commercial pressures that might influence the results of the certification process, an organizational structure that provides a balance of affected interests, and procedures that assure each decision on certification is made by a person(s) different from those who carried out an efficiency evaluation or actual testing of a motor. Furthermore, CSA International's MEVS Program meets the ISO/IEC Guide 25 requirements for organization and management to ensure confidence that its independence of judgement and integrity are maintained at all times.

3. Operation of a Certification System in a Highly Competent Manner

Sections 431.27(b)(3) and (c)(3) of 10 CFR Part 431 require that the petitioner demonstrate that its certification program operates in a highly competent manner by establishing its experience in the application of certain ISO/IEC Guides, including ISO/IEC Guides 65, 27 and 28, as well as experience in overseeing compliance with the guidelines in ISO/IEC Guide 25.

Section 3 of the CSA International Petition, ''Certification Division Quality Assurance Manual,'' states that ''CSA International has implemented the requirements specified in ISO/IEC Guide 65, General requirements for bodies operating product certification systems.'' Furthermore, CSA International asserts that its Quality Assurance system is based, in part, on ISO/IEC Guide 25. Also, CSA International asserts that it has both implemented the requirements specified in SCC/CAN P–3 and SCC/CAN P–4, which the Department understands are the Standards Council of Canada equivalents of ISO/IEC Guides 65 and 25 respectively.

a. General Operating Requirements (ISO/IEC Guide 65)

The Department's letter to CSA International, dated May 14, 2001, requested evidence that, at a minimum, the initial determination as to whether an electric motor is in compliance with 10 CFR 431.42(a) is in fact witnessed by CSA International staff and procedures are in place for regular quality audits of all inspections and testing.

CSA International submitted, by letter dated June 14, 2001, the following documents of policy and procedures as further evidence of its competency and expertise in operating a certification system: *Certification Division Policies and Practices Manual,* dated February 1999; *Certification and Testing Services Brochure;* DQD No. 050—*Certification Division Divisional Quality/ Management System Manual,* October 4, 2000; *Application for CSA Certification Services Agreement* Form; and DQD No. 301—*Guidelines for Certification Division Representation on Standards Committees,* dated March 31, 2001.

Also, CSA International submitted a copy of DQD No. 385, *Application Process—CSA Energy Efficiency Verification Program for Three Phase Induction Motors,* Attachment 1, paragraph 6, ''Qualification of a Manufacturers Testing Facilities,'' and paragraph 12, ''Follow-up Visits,'' which set forth guidelines for initial and subsequent evaluation of a manufacturer's testing facility. The Department understands that CSA International uses these guidelines in conjunction with DQD No. 316, *Witness Testing,* whereby qualified CSA International technical staff evaluate a manufacturer's motor testing laboratory and witness the testing of a motor for energy efficiency.

Also, the Certification Division of CSA International, in its June 14 letter, asserts that procedures are in place for regular quality inspections. Further, CSA International submitted DQD 385, Attachment No. 1, ''Guide to the CSA Energy Efficiency Verification Service,'' that states in paragraph 12.1 ''a minimum of one visit to each manufacturing plant will be carried out each year.''

The Department believes that the above documents provide evidence that procedures are in place for initial compliance testing that is witnessed by CSA International staff, and procedures are in place for regular quality inspections of manufacturers' facilities. Nevertheless, the Department's electronic message to CSA International, dated December 20, 2001, requested that CSA International confirm that all compliance and follow-up testing of motors for energy efficiency is witnessed by a technically qualified CSA International representative.

CSA International's letter, dated March 1, 2002, confirms that ''all compliance and follow-up testing is witnessed by technically qualified staff.'' Further, CSA International submitted as evidence revised DQD No. 385, *Electric Motor Efficiency Evaluation,* dated February 28, 2002, and DQD No. 510.02, *List of Fully Qualified Project Holders for the Motor Energy Efficiency Verification Program,* dated February 28, 2002, to substantiate its assertion of witness testing. The Department has examined the above documents and concludes that the standards and procedures CSA International uses to conduct its MEVS Program satisfy the requirements for training, expertise, and experience in operating a certification system which are set forth in 10 CFR 431.27(b)(3) and (c)(3), and ISO/IEC Guide 65.

b. Guidelines for Corrective Action in the Event of Misapplication of a Mark of Conformity (ISO/IEC Guide 27)

ISO/IEC Guide 27 identifies procedures which a certification program should consider in response to a reported misuse of its registered mark of conformity. According to paragraph 1.1(a) of ISO/IEC Guide 27, ''misuse'' may take a variety of forms, such as a mark of conformity appearing on a non-certified product. The Department construes this to mean the unauthorized use by a manufacturer or private labeler of the CSA International Motor Efficiency Verification Marking (Marking) on an electric motor, such as the use of a counterfeit Marking. Under ISO/IEC Guide 27, the certification program would then be required to have strong corrective procedures in place. Such corrective measures would depend upon the nature of the misuse and the desire by the certification program to protect the integrity of its mark.

The Department has examined the CSA International *Certification Division Policies and Practices Manual* and finds that it contains rules for authorized use of the CSA International Marking, and procedures that address unauthorized representation of certification of a product or process, and the measures that CSA International would take to protect the integrity of its Marking. Also, the Department has examined sections 15.0, ''Control on Non-conformances,'' and 16.0, ''Corrective and Preventive Action,'' contained in the CSA International *Quality Management System Manual*, DQD 050, revised November 30, 2001. These sections establish policies and procedures to control CSA International services, within the CSA International ''Quality Management System,'' which do not conform to the specified requirements, prevent their unintended use, establish a system for taking appropriate actions to resolve actual or potential non-conformances, and apply suitable corrective and preventive actions. The Department concludes that the CSA International Program satisfactorily follows the guidelines for corrective action to be taken by a certification organization in the event of misapplication of a mark of conformity to an electric motor, set forth in 10 CFR 431.27(c)(3) and ISO/IEC Guide 27.

c. General Rules for a Model Third-Party Certification System for Products (ISO/IEC Guide 28)

ISO/IEC Guide 28 addresses minimum guidelines for a third party certification system in determining conformity with product standards through sample selection, initial testing and assessment of a factory quality management system, follow-up surveillance, subsequent testing of samples from the factory, and the use of a mark of conformity. Furthermore, ISO/IEC Guide 28 requires a certification program operating at a national level, such as under section 345(c) of EPCA which requires manufacturers to certify compliance through a ''nationally recognized'' certification program, to

have a suitable organizational structure and utilize personnel, equipment, and operating procedures that comply with the criteria for a testing laboratory in ISO/IEC Guide 25.

Consistent with the above ISO/IEC Guide 28 guidelines, Section 4 to the CSA International Petition, ''CSA International's Motor Efficiency Verification Program,'' describes the CSA International MEVS as depending upon: (1) Satisfactory evaluation, sampling and testing to determine that the requirements of the applicable standard, for example CSA Standard C390–93, are met on a continuing basis; (2) identification of the critical features that affect motor efficiency; (3) initial motor qualification testing and follow-up retesting to ensure continued compliance; (4) continued access to a manufacturer's facilities and records, product retesting and challenge testing; (5) annual follow-up inspections; (6) proper authorization to apply the CSA International Motor Efficiency Verification Service Marking; and (7) corrective action when a motor fails to comply.

In view of the above ISO/IEC 28 criteria, the Department examined the CSA International *Certification Division Policies and Practices Manual*, dated February 1999, *Quality Management System Manual*, DQD No. 050, dated November 30, 2001, *Management System Audit Program*, DQD No. 305, dated October 31, 2001, *Guidelines on Retesting*, DQD No. 313, dated November 19, 1999, *Selection of Test and Measurement Equipment/ Significant Parameters—CSA Energy Efficiency Verification Program for Three-Phase Induction Motors*, DQD No. 308.1, dated February 15, 2002, *Factory Inspections*, DQD No. 320, dated January 27, 1999, *Electric Motor Efficiency Evaluation*, DQD No. 385, dated February 28, 2002, *Periodic Technical and Process Review*, DQD No. 425, dated October 3, 2000, and *Facility Audit Report*, DQD No. 513, Revision A. The Department finds that, in general, both ISO/IEC Guide 28, and the above-referenced CSA International documents address: (1) The basic conditions and rules for a manufacturer to obtain and retain a certificate of conformity or mark of conformity; (2) initial inspection of a motor factory and a manufacturer's quality management system; (3) sample selection; (4) initial testing; (5) product evaluation; (6) surveillance; (7) identification of conformity in the form of a certificate of conformity or mark of conformity; (8) withdrawal of a certificate or mark of conformity by the certification program; and (9) guidelines on corrective action for misuse of a certificate or mark of conformity. The Department concludes that the CSA International Program satisfies the general guidelines for a model third-party certification system in 10 CFR 431.27(c)(3), and the guidelines set forth in ISO/IEC Guide 28.

The above-referenced DQD No. 050, *Quality Management System Manual*, DQD No. 385, *Electric Motor Efficiency Evaluation*, and DQD No. 308.01, *Selection of Test and Measurement Equipment/Significant Parameters—CSA Energy Efficiency Verification Program for Three-Phase Induction Motors*, provide general policies, practices and procedures that govern the conformity assessment services, and, in particular, those that relate to the electric motor efficiency certification program. The CSA International *Quality Management System Manual* addresses, for example, ''Quality System,'' ''Standards of Conduct,'' ''Organization,'' ''Periodic Technical and Process Review,'' ''Audit Program,'' ''Staff Training,'' ''Inspection, Measuring and Test Equipment,'' ''Maintenance of Records,'' and ''Certification and Testing Programs and Services.'' The *Electric Motor Efficiency Evaluation* addresses, for example, ''Operational Rules/Procedure,'' ''Evaluation,'' ''Qualification of Manufacturers Test Facilities, Test Audit,'' ''Marking Authorization,'' ''Follow-up Visits,'' ''Product Retesting,'' ''Electric Motor Efficiency Evaluation Procedure,'' ''MEEV—Sampling Procedure for U.S.,'' and ''Plan and Procedure Relative to Alternative Efficiency Determination Methods (AEDMs).'' *Selection of Test and Measurement Equipment/ Significant Parameters—CSA Energy Efficiency Verification Program for Three-Phase Induction Motors* addresses, for example, the requirements of IEEE Standard 112–1996, Test Method B, with the modifications described under appendix A to subpart B of 10 CFR Part 431, the National Institute of Standards and Technology (NIST) Handbook 150–10 entitled, *Efficiency of Electric Motors*, and CSA C390–93 when selecting test and measurement equipment.

The Department has examined the contents of these manuals and concludes that they satisfy the guidelines for conducting a model third-party certification program at the national level as applicable under 10 CFR 431.27(c)(3) and ISO/IEC Guide 28.

d. General Requirements for the Competence of Testing Laboratories (ISO/IEC Guide 25)

(1) Operating Procedures

Third party certification programs must have experience overseeing compliance with the guidelines contained in ISO/IEC Guide 25. ISO/IEC Guide 25 sets out the general requirements by which a laboratory must operate if it is to be recognized as competent to carry out specific tests.

According to Section 3 of the CSA International Petition, ''Certification Division Quality Assurance Manual,'' CSA International's ''Quality Assurance'' system is based on national and international accreditation requirements, one of which is ISO/IEC Guide 25. In view of ISO/IEC Guide 25, the Department examined the procedures and guidelines contained in CSA International's *Quality Management System Manual*, DQD No. 050, and the above DQD Nos. 385, 308.01 and 316 as they apply to the evaluation of an electric motor testing facility.

The Department finds that DQD No. 050 establishes the general policies, standards of conduct, procedures, guidelines and organization requirements for CSA International's quality program. These are based on national and international accreditation requirements such as ANSI Z34.1, *American National Standard for Certification—Third Party Certification Program*, EN 45004, *General Criteria for the Operation of Various Types of Bodies Performing Inspection*, ISO/IEC 17025, *General Requirements for the Competence of Testing and Calibration Laboratories,* ISO/IEC Guide 65, *General Requirements for Bodies Operating Product Certification Systems*, and NIST Handbook 150, *National Voluntary Laboratory Accreditation Program (NVLAP)—Procedures and General Requirements*. Furthermore, the Department finds that the Standards Council of Canada[1] lists CSA International as an accredited certification body in the area of its Energy Efficiency Verification Service and specifically identifies CSA C390, ''Energy Efficiency Test Methods for Three-Phase Induction Motors,'' which adds credence to the evidence that CSA International operates its certification program in a highly competent manner, including overseeing compliance with the guidelines contained in ISO/IEC Guide 25 to test electric motors for energy efficiency.

The Department finds that DQD No. 385 establishes the guidelines for CSA International's operation of its motor

[1] The Standards Council is a federal Crown corporation which has the mandate to coordinate and oversee the efforts of the National Standards System in Canada.

energy efficiency evaluation process in the United States pursuant to 10 CFR Part 431, including the test procedures, alternative efficiency determination methods, and sampling procedures in 10 CFR 431.23 and 431.24. Under DQD No. 385, a manufacturer's motor testing facility is required to have adequate controls in place to ensure manufacturing consistency and consistent product performance with respect to energy usage. Also, the testing facility is examined for the type and accuracy of test equipment, calibration, test procedures and measurement techniques, a system for documenting test results, and staff training. The Department finds that under DQD No. 385, the CSA International sampling procedure adheres to the sampling procedure in 10 CFR 431.24(b). Also, DQD No. 385 requires periodic audit of the test facility and calibration system. A minimum of one visit per year to a manufacturing plant is carried out by CSA International staff to monitor product control measures and testing facilities, and to conduct retesting. Furthermore, DQD No. 385 sets forth procedures that address Alternative Efficiency Determination Methods (AEDMs) in order to reduce testing burden and accommodate the large number of motors a manufacturer would produce. The CSA International procedures essentially follow the procedures for the substantiation of an AEDM as provided in 10 CFR 431.24(a)(3). The Department understands that CSA International uses these guidelines in conjunction with DQD No. 316, whereby qualified CSA International technical staff evaluate a manufacturer's motor testing laboratory and witness the testing of an electric motor for energy efficiency.

The Department finds that DQD No. 308.01 establishes guidelines that follow the requirements of IEEE Standard 112–1996 Test Method B, CSA Standard C390–93, and NIST Handbook 150–10, *Efficiency of Electric Motors*, when selecting test and measurement equipment that would be utilized for testing electric motors under the CSA Motor Efficiency Verification Service Program. These are the same procedures identified in 10 CFR 431.23.

The Department finds that DQD No. 316, *Witness Testing*, provides guidelines for evaluating and monitoring the capability of a testing facility, such as a manufacturer's motor efficiency testing facility for performing tests that are witnessed by CSA International technical staff. Under DQD No. 316, a motor manufacturer's testing facility is evaluated according to (1) the scope of the standard and test method that it utilizes, for example CSA Standard C390, (2) the technical capability of testing facility staff, ongoing training of that staff and maintenance of personnel records, (3) suitability of the testing environment, (4) suitability and accuracy of the test equipment that is to be used, (5) the system for calibrations and control of test methods, and (6) traceability of calibration to national standards. Also, DQD No. 316 requires examination of the manufacturer's quality system, proper supervision and control of testing, documentation control, and retention of records.

In addition to examining the underlying documentation that establishes the policies and procedures of the CSA International quality system and operating procedures for evaluating electric motors, the Department directly compared the requirements in ISO/IEC Guide 25 with CSA International's MEVS Program as it would apply to a manufacturer's motor testing laboratory under a certification program and found them to be consistent with each other. The Department found, for example:

- ISO/IEC Guide 25 sets forth requirements for organization and management of a testing laboratory to ensure proper supervision and integrity of data. Similarly, the CSA International Program requires examination of the manufacturer's quality system, proper supervision and control of testing, documentation control, and retention of records.
- ISO/IEC Guide 25 requires a manufacturer's testing laboratory to have a quality system with documented policies and procedures, such as for the organization and operation of a testing laboratory, traceability of measurements, calibration of equipment, test procedures used, procedures for corrective actions and audits. Similarly, the CSA International Program requires use of the test procedures and calibration of equipment set forth in 10 CFR 431.23 and the requirements of IEEE Standard 112–1996, Test Method B, with the modifications described in appendix A to subpart B of 10 CFR Part 431, and CSA Standard C390–93. In addition, the CSA International Program requires use of the quality system set forth in NIST Handbook 150–10 when selecting test and measurement equipment, meeting significant calibration parameters for electric motor efficiency evaluation, and having traceability of calibrated equipment to national standards. Also, the CSA International Program requires periodic audits of the test facility and calibration system, whereby a minimum of one visit per year to a manufacturing plant is carried out by CSA International staff to monitor product control measures and testing facilities, to conduct retesting, and to take any corrective actions.
- ISO/IEC Guide 25 requires a manufacturer's testing laboratory to have sufficient personnel having the necessary education, training, technical knowledge and experience. Similarly, the CSA International Program evaluates the technical capability of the testing facility staff, staff training, and maintenance of personnel records.
- ISO/IEC Guide 25 requires the proper environment and equipment for performance of testing, and that such equipment is properly maintained and calibrated. Similarly, the CSA International Program requires the proper environment for testing, control of test methods, and suitable equipment that is accurate and properly calibrated and traceable to nationally recognized standards of measurement.
- ISO/IEC Guide 25 requires the testing laboratory to maintain a record system of original observations, calculations, reference to sampling procedures, and derived data sufficient to permit repetition of a test. Similarly, the CSA International Program requires that the test procedures be under documentation control, and that test records be current and properly maintained. Also, the CSA International sampling procedure is consistent with the sampling procedure set forth in 10 CFR 431.24(b).
- Both ISO/IEC Guide 25 and the CSA International Program require test reports that contain similar information.

In view of these comparisons, the Department believes that CSA International's MEVS Program satisfies the requirement of 10 CFR 431.27(c)(3) for documentary evidence that establishes experience in operating a certification system and overseeing compliance with the guidelines for competence contained in ISO/IEC Guide 25 to test electric motors for energy efficiency.

(2) Testing Laboratory

Under Section 1, ''Designated Testing Facility,'' of the CSA International Petition, it is stated that ''as part of CSA International's Motor Energy Efficiency Verification Program we are using our Toronto test facility,'' and that ''the facilities of Toronto are used for testing the full range of motors up to 50 horsepower.'' Also, under Section 3, ''Certification Division Quality Assurance Manual,'' of the CSA International Petition, CSA International asserts that its Quality Assurance system is based, in part, on ISO/IEC Guide 25 and SCC/CAN P–4 that is the

Standards Council of Canada equivalent of ISO/IEC Guide 25.

GE Industrial Systems' comments, dated May 24, 2000, recommend that a test facility, such as the ones used by CSA International which test motors for energy efficiency, should be established and maintained by a process equivalent to the National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP) as set forth in the NIST Handbook 150–10, ''Efficiency of Electric Motors.'' Also, GE Industrial Systems recommends that any organization that certifies the energy efficiency of electric motors participate in the NIST/NVLAP proficiency testing program in order to understand, document, and make known any variations among participating testing facilities.

The Department's investigation found that the CSA International testing facility in Toronto was not fully operational at the time of the CSA International Petition, and that the CSA International Program relies heavily on the manufacturer to provide most of the test data, including data for initial qualification based on sampling and testing motors for energy efficiency, that are not witnessed by CSA International staff. Nor was there clear evidence of what quality control exists for monitoring the validity of motor efficiency testing by a manufacturer. Also, it appeared that the CSA International Program lacked sufficient staff to perform all the annual follow-up inspections, bi-annual retesting, cross-testing every three years, unannounced retesting, and challenge testing which it claimed would occur. The Department's May 14, 2001, letter requested that CSA International submit information concerning its Toronto motor testing facility, its oversight of testing performed at a motor manufacturer's facility, and procedures for regular quality audits of all inspections and testing for motor efficiency.

The Certification Division of CSA International, in its June 14, 2001 letter, asserts that the Toronto test facility is fully operational, initial compliance testing is witnessed by CSA International staff, and that procedures are in place for regular quality inspections of a manufacturer's motor testing laboratory. In view of the June 14 letter, the Department understands that CSA International uses the Laboratoire des technologies electrochimiques et des electrotechnologies d'Hydro-Quebec (LTEE) for testing motors over 50 horsepower, and acknowledges that the CSA International test laboratory in Toronto is capable of testing motors up to 50 horsepower. Also, the Department understands that LTEE, although not officially listed in the NIST/NVLAP *2001 Directory*, participates in the NIST/NVLAP Proficiency Testing Program.

Section 431.27 of 10 CFR Part 431 does not require a certification program to actually operate its own motor testing laboratory, nor is a laboratory operated or observed by a certification program required to be accredited. Nevertheless, the Department believes that a testing facility operated or observed by a certification program should follow the guidelines in ISO/IEC Guide 25 and in principle be reasonably close to conforming to the technical requirements of an accredited laboratory. The Department understands that, in general, the evaluation of a motor testing laboratory under an accreditation program includes an on-site assessment, proficiency testing, audit of a laboratory's policies and operational procedures, review of staff qualifications, checks of proper maintenance and calibration of test equipment, and records review. Likewise, the evaluation under the CSA International Program includes evaluation of the manufacturer's testing facility, control and maintenance and calibration of test equipment, factory audits for continued compliance, document control, periodic audits of the operational and technical consistency of the program, control of non-conformances, staff training, and witness testing. The Department believes that the goal of a third party certification program is to provide assurance that test results are accurate, valid, and capable of being replicated. Tests must be performed with a degree of oversight so that the results are not influenced by marketing and production concerns. The Department believes that the CSA International Program, while not identical to a laboratory accreditation program, nevertheless satisfactorily follows the ISO/IEC 25 Guidelines.

4. Expertise in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1)

Sections 431.27(b)(4) and (c)(4) of 10 CFR Part 431 set forth evaluation criteria and guidelines whereby personnel conducting a certification program should be expert and experienced in the content and application of IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), or similar procedures and methodologies for determining the energy efficiency of electric motors. The program must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency, and provide documents that establish experience in applying the guidelines for confidence in testing laboratories contained in ISO/IEC Guide 25. Such guidelines address quality audits and reviews, personnel, equipment, test methods, sampling, and records.

Section 3, ''Certification Division Quality Assurance Manual,'' of the CSA International Petition, states that its Quality Assurance system is based on national and international requirements that include ISO/IEC Guide 25. The Department understands that section 6, ''Personnel,'' of ISO/IEC Guide 25 sets forth general requirements for the training, technical knowledge, and experience of testing laboratory personnel. In sum, it states that the testing laboratory shall have sufficient personnel, having the necessary education, training, technical knowledge and experience for their assigned functions; training of personnel is kept up-to-date; and records on relevant qualifications, training, skills, and experience of the technical personnel shall be maintained.

The Department's investigation found that the technical qualifications of the CSA International staff involved in the MEVS Program were very limited with regard to electric motor construction, performance, and efficiency testing. Also, it appeared to the Department that CSA International has only one person that actually participates in the qualification of a motor manufacturer's test facility, witnesses testing, and both directs and evaluates compliance testing, cross testing, and retesting. Consequently, the Department requested that CSA International address its intention to assign additional expert staff to its MEVS Program, and submit evidence as to the nature and extent of training the current staff receives in order to maintain proficiency in the evaluation of motor design and construction, and the practice of efficiency testing.

CSA International, in its June 14, 2001 letter, asserts that it has identified additional staff for participation in the operation of its MEVS Program, additional training would be provided, and that it would ensure its staff resources are appropriate to the amount of work required by its Motor Efficiency Verification Program. On August 20, 2001, the Department received an electronic message from CSA International which identified additional staff, their credentials, and the associated training each would receive as part of its MEVS Program in order to fulfill the requirements set forth

in 10 CFR 431.27(b)(4) and 431.27(c)(4). In sum, the Department understands that this training addresses electric motor construction, performance, and efficiency testing, and will become part of a regular training program. Also, the Department understands that certain technical staff will work under the direction of a CSA International senior engineer or qualified project leader.

In the Department's view, any technically qualified person could satisfy the criteria for expertise in the content, application and methodologies of the test procedures pursuant to 10 CFR 431.27 (b)(4) if that person: (1) Is proficient in the test methodology of IEEE Standard 112 Test Method B and CSA C390–93 Test Method (1); (2) is familiar with the electrical, mechanical and environmental capabilities of a testing laboratory system; (3) understands how to prepare and mount a motor for testing, which includes the connection and operation of the test equipment; (4) is competent in calibrating test equipment; and (5) is competent with data collection and analysis. CSA International's experience in standards development, testing and evaluation of motors to both U.S. and International safety and similar energy efficiency procedures and methodologies provide sufficient evidence of CSA International staff having the necessary proficiency and expertise to conduct energy efficiency evaluations under ISO/IEC Guide 25. Thus, the Department believes that the credentials of the CSA International staff, regular additional training, and monitoring by CSA International management, satisfy the general requirements for the training, technical knowledge, and experience of testing laboratory personnel under 10 CFR 431.27(b)(4) and (c)(4).

5. Sampling Criteria and Procedures for Selecting an Electric Motor for Energy Efficiency Testing

Section 431.27(b)(4) of 10 CFR Part 431 requires a certification organization to have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency. Based on the National Institute of Standards and Technology report, NISTIR 6092, ''Analysis of Proposals for Compliance and Enforcement Testing Under the New Part 431: Title 10, Code of Federal Regulations,'' January 1998, which analyzed various criteria and sampling plans proposed for establishing compliance with the nominal full-load efficiency levels prescribed by EPCA, 42 U.S.C. 6313(b)(1), the Department determined that ''the NEMA proposal for compliance testing provides statistically meaningful sampling procedures.'' Moreover, the NIST analysis was extensive in order to determine whether a particular sampling plan would be valid for the purpose of establishing compliance with EPCA motor efficiency levels. Also, section 10.5 of ISO/IEC Guide 25: 1990 requires the use of documented procedures and appropriate statistical techniques to select samples.

Under section 4 of the Petition, entitled ''CSA International's Motor Efficiency Verification Program,'' CSA International describes its process for the selection and sampling of electric motors to be tested for energy efficiency. CSA International asserts that the objective of its sampling process is to minimize manufacturers' tests, costs and time to market, while providing sufficient confidence that the series of motors verified meet the applicable energy efficiency standard. Further, CSA International conducts unannounced follow-up inspections, random motor retesting, and challenge testing to ascertain continued compliance with energy efficiency standards by a manufacturer. The Department understands that under the CSA International sampling program, a minimum of 5 basic models are required to be tested to verify the energy efficiency ratings of a series of motors. The basic models are selected so as to represent the complete range of motors within the series, which could require more than 5 basic models. Thereafter, 1 to 5 units of each basic model are tested. The average efficiency of the sample lot must equal or exceed the required nominal full load efficiency. Furthermore, CSA International's goal for verifying continued compliance is to retest high volume motors at least once every 2 years. Other motors of different frame series are retested as needed to ensure continued compliance. Also, the Department understands that under the CSA International retesting program, the initial sample lot is one motor, and if after retesting the result equals or exceeds the minimum result from the qualification tests, then no further samples would be required. If the result is less than the minimum result from the qualifying tests, then motor samples would be selected pursuant to the qualifying test procedure.

GE Industrial Systems' comments, dated May 24, 2000, assert that there should be some understanding of the level of confidence CSA International believes appropriate for the efficiency data that is determined from testing, and the basis for that confidence level. GE Industrial Systems describes the CSA International statistical approach to sampling of motors for testing as the selection and testing of 5 basic models with a sample size of 1 to 5. GE Industrial Systems asserts that a minimum sample selection to substantiate an Alternative Efficiency Determination Method [2] should be 5 randomly selected units of 5 basic models, in order to provide a look at the population and statistical variation in the basic model. Further, GE Industrial Systems asserts that frequent sampling over time is more appropriate to an assessment of design and manufacturing variables, and therefore an ongoing sampling program would be appropriate.

NEMA's comment, dated May 26, 2000, asserts that CSA International's sampling process appears to be more burdensome than required by the Department of Energy. NEMA did not elaborate on its comment.

In view of GE Industrial Systems' and NEMA's comments, the Department's investigation found confusing statements from CSA International concerning its intentions to substantiate a manufacturer's AEDMs, either (1) by analyzing and comparing a manufacturer's energy efficiency modeling methods to actual test measurements, or (2) through comparisons between a motor manufacturer's energy efficiency calculations on a software program and a CSA International software program. It is not clear to the Department that the CSA International Program would substantiate an AEDM in a manner that is consistent with 10 CFR 431.24(a)(3) and (4), whereby a manufacturer could test 5 units each of 5 basic models and use the test results to substantiate an AEDM. Furthermore, it is not clear that the CSA International sampling plan would be valid if the initial sample lot is one motor, nor is it clear that testing all the basic models that a manufacturer produces would not be unduly burdensome. The Department's May 14, 2001, letter requested that CSA International submit documents and other materials to substantiate that its motor sampling procedures are

[2] Alternative Efficiency Determination Method (AEDM) means a method of calculating the total power loss and average full load efficiency of an electric motor. See 10 CFR 431.2. Section 431.24(a)(1) of 10 CFR Part 431 provides that the energy efficiency of a motor must be determined either by testing in accordance with the Department of Energy test procedure or application of an AEDM. Section 431.24(a)(3) of 10 CFR Part 431 requires that, in sum, the accuracy and reliability of an AEDM must be substantiated through testing at least 5 basic models; and that the calculated total power loss for each basic model must be within plus or minus 10 percent of the mean total power loss determined from testing.

statistically valid and result in a confidence level such that the true mean energy efficiency of a basic model meets or exceeds the motor's represented energy efficiency level. Further, the Department's letter requested that CSA International submit its plan and procedures to evaluate a manufacturer's AEDMs.

CSA International, in its June 14, 2001 letter, describes its plan and procedures to evaluate a manufacturer's AEDMs, whereby CSA International verifies that the manufacturer's software energy efficiency calculations are in agreement with its independent calculated values using the methods described in CSA Standard C390. The Department understands that CSA International uses the test data measurements, and then (a) performs its own calculations to determine the efficiency of the tested motor and (b) matches it with the manufacturer's calculated efficiency. If the two values are in agreement for all the motors tested, then CSA International would accept the manufacturer's efficiency calculation procedure as intended by 10 CFR 431.24(b)(3). In its June 14 letter, CSA International asserts that its sampling procedures for electric motor efficiency evaluations are statistically valid, use random selection, and result in confidence levels such that the true mean energy efficiency of a basic model meets or exceeds the motor's represented energy efficiency level.

Furthermore, CSA International's DQD 384, *Electric Motor Efficiency Evaluation*, paragraph 6.2 and Attachment No. 2, *MEEV—Sampling Procedure*, dated January 23, 2001, set forth the CSA International sampling procedure whereby, in sum, CSA International staff selects a minimum of 5 basic models that represent a complete range of motors, and tests 1 to 5 units of those basic models to determine whether the average efficiency of the sample lot equals or exceeds the required efficiency rating. Also, the Department understands that CSA International is establishing a database to substantiate that the sampling plan is valid, uses random selection, and provides the required confidence limits. In view of the above-referenced sampling plan, the Department calculates that a manufacturer could be required to test only 5 motors (5 basic models × 1 unit = 5 motors) to substantiate compliance for up to 113 basic models. The Department believed this approach was not statistically valid for the purposes of 10 CFR 431.24 and 431.27(b)(4).

On August 28, 2001, the Department received an electronic message from CSA International which set forth its ''Plan and Procedure Relative to Alternative Efficiency Determination Methods (AEDMs)'' (Plan and Procedure). In sum, CSA International asserts that it will require a motor manufacturer to submit predicted energy efficiency values that represent a group of motors. CSA International would then select a minimum of 5 basic models from that group, and 5 samples of each basic model, for testing to determine the correlation between the predicted efficiency and the tested efficiency. CSA International asserts that the individual and average efficiency of the motors tested shall be in accordance with 10 CFR 431.24(b)(2)(i) and (ii). Also, CSA International asserts that it will conduct periodic follow-up audits and testing witnessed by CSA International staff.

The Department finds that the above Plan and Procedure is consistent with 10 CFR 431.24(a)(1)–(4)(i). However, in item 3 of the Plan and Procedure, CSA International states that ''tests may be performed at the manufacturer's previously evaluated testing facility with some testing witnessed by [CSA International] CSAI staff.'' This appeared to contradict the aforementioned CSA International policies and procedures in DQDs 385 and 316, and assertions by CSA International in its *Certification and Testing Services* booklet, that both initial compliance and periodic follow-up tests are witnessed by qualified CSA International technical staff. The Department requested that CSA International confirm that the ''witness testing'' policies and procedures apply to initial and subsequent verification of a manufacturer's AEDMs.

On August 30, 2001, the Department received an electronic message from CSA International containing a revised sampling plan and procedure DQD 384, ''Attachment 2, MEEV—Sampling Procedure for U.S., Part 431—DOE Energy Efficiency Program for Motors,'' dated August 29, 2001, for motor compliance testing, substantiation of an AEDM, and retesting. The Department examined the above DQD 384 Attachment 2 and, in general, found it to be consistent with 10 CFR 431.24(a)(1)–(4)(i) and 431.24(b)(1). However, where the CSA International sampling procedures follow 10 CFR 431.24, the Department recommended that DQD 384 Attachment 2 clearly state that (1) the average full load efficiency of each basic model of electric motor must be determined either by testing or by the application of an Alternative Efficiency Determination Method, (2) the section entitled ''Samples Required for Motor Model Qualification Testing'' should be modified to read ''Samples of Units Required for Motor Model Qualification Testing,'' (3) the section entitled ''Selection of Basic Model Types to Represent a Group of Motors'' should be modified to read ''Selection of Basic Models for Testing,'' and (4) the specific example provided under ''Example Scope of Certification'' should be corrected to accurately depict the sampling guidelines that precede it in DQD 384 Attachment 2.

Also, DQD 384 Attachment 2, entitled ''Samples Required for Scheduled Motor Retesting,'' states: ''The initial retest sample lot shall consist of one motor. If the measured full load efficiency from retest meets or exceeds the lowest full load efficiency determined from the qualification testing, then no further samples are required for testing.'' It is not clear to the Department whether the ''lowest full load efficiency determined from the qualification testing'' refers to the results of actual tests or some other criterion. Consequently, the Department requested that the procedures to be used during retesting be clarified.

Moreover, the Department believes that the sampling procedures set forth in 10 CFR 431.24(b)(2)(i) and (ii) provide reasonable assurance that the average full load efficiency of the basic model being retested meets or exceeds the mandated efficiency level and, accordingly, may be applied during re-testings. The Department recommended that CSA International adopt these sampling procedures for retesting. Thus, when testing a sample size of one motor during retesting, the efficiency of that unit must not be less than the full load efficiency described in section 431.24(b)(2)(ii); and, when samples of two or more motors are tested during retesting, the average efficiency of the lot must not be less than the full load efficiency described in section 431.24(b)(2)(i) and, the lowest efficiency of any unit in the lot must not be less than the full load efficiency described in section 431.24(b)(2)(ii).

CSA International's letter, dated March 1, 2002, addresses the above recommendations. As such, the Department understands that DQD No. 384 and DQD No. 385 have been combined into one document, and have been revised to clarify the sampling and compliance requirements. Also, CSA International revised the above DQD No. 384, Attachment 2, *MEEV—Sampling Procedure* which is now DQD No. 385, Attachment 2 in order to incorporate the Department's above recommendations both for initial qualification testing and retesting. The Department has examined the above documents and concludes

that the standards and procedures CSA International uses to conduct sampling under its MEVS Program are consistent with 10 CFR 431.24 and 431.42, and satisfy the criteria for the selection and sampling of electric motors to be tested for energy efficiency under 10 CFR 431.27(b)(4).

## III. Conclusion

### *A. Interim Determination*

In view of CSA International's Petition and supporting documents, the public comments received, the Department's independent investigation, and CSA International's actions to correct the defects the Department addressed as described above, the Department concludes that the CSA International Motor Efficiency Verification Service Program satisfactorily meets the criteria in 10 CFR 431.27.

Therefore, the Department's interim determination is, as of today's **Federal Register** notice, to classify the CSA International Motor Efficiency Verification Service Program as nationally recognized in the United States for the purposes of section 345(c) of EPCA. In the event that a final determination recognizes the CSA International Motor Efficiency Verification Service Program as a nationally recognized certification program pursuant to the criteria in 10 CFR 431.27, and the Program thereafter fails to meet the criteria for recognition, the Department can withdraw its recognition after following the procedural requirements in 10 CFR 431.28(g).

### *B. Future Proceedings*

Pursuant to 10 CFR 431.28(d), the Department will notify CSA International in writing of this interim determination. Today's **Federal Register** notice solicits comments, data and information concerning the Department's interim determination to classify the CSA International Motor Efficiency Verification Service Program as nationally recognized in the United States. After review of information submitted concerning the interim determination, the Department will publish in the **Federal Register** an announcement of its final determination. See 10 CFR 431.28(e).

Issued in Washington, DC, on June 28, 2002.

**Douglas L. Faulkner,**

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

[FR Doc. 02–16819 Filed 7–3–02; 8:45 am]

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**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and Renewable Energy**

**10 CFR Part 431**

**[Docket No. EE–RM–96–400]**

# Energy Efficiency Program for Certain Commercial and Industrial Equipment: Interim Determination Concerning the Petition for Recognition of Underwriters Laboratories Inc. as a Nationally Recognized Certification Program for Electric Motor Efficiency

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

**ACTION:** Public notice of an interim determination and solicitation of comments.

**SUMMARY:** Today's action announces the Department of Energy's interim determination classifying the Underwriters Laboratories Inc. Energy Verification Service Program for Electric Motors as a nationally recognized certification program in the United States for the purposes of section 345(c) of the Energy Policy and Conservation Act. The Department solicits comments, data and information with respect to its interim determination prior to issuing a final determination.

**DATES:** Written comments, data and information, as a signed original with an electronic copy, must be received at the Department of Energy by August 5, 2002.

**ADDRESSES:** Comments, data and information should be labeled ''Interim Determination Concerning the Underwriters Laboratories Inc. Petition for Recognition as a Nationally Recognized Certification Program for Electric Motor Efficiency,'' and submitted to: Ms. Brenda Edwards-Jones, Office of Building Research and Standards, EE–41, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945; Telefax: (202) 586–4617. Also, a copy of such comments should be submitted to Ms. Jodine E. Smyth, Senior Coordinator, Global Accreditation Services, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062. Telephone: (847) 272–8800, ext. 42418; or Telefax (847) 509–6321.

**FOR FURTHER INFORMATION CONTACT:**

James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone (202) 586–8654, Telefax (202) 586–4617, or: *jim.raba@ee.doe.gov*.

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, Telephone (202) 586–7432, Telefax (202) 586–4116, or: *francine.pinto@hq.doe.gov*.

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## I. Introduction

A copy of Underwriters Laboratories Inc.'s Petition, ''Classification in Accordance with 10 CFR 431.27,'' (UL Petition or the Petition) was published in the **Federal Register**, on October 3, 2001. 66 FR 50355. The Petition consisted of a letter from Underwriters Laboratories Inc. (UL) to the Department, narrative statements on five subject areas, and supporting documentation. At the same time, the Department of Energy (Department) solicited comments, data, and information as to whether UL's Petition should be granted. The Department received two comments. The Department also conducted an independent investigation concerning the UL Petition pursuant to 10 CFR 431.28(f).

The supporting documents that accompanied the Petition, as well as the material UL subsequently submitted to the Department in support of UL's Petition, are available in the Freedom of Information Reading Room, U.S.

Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585–0101, Telephone (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Additional information about UL's Energy Verification Service (UL EVS Program or Program) and its Petition to be a nationally recognized certification program for electric motor efficiency can be obtained on the World Wide Web at *http://www.eren.doe.gov/buildings/codes_standards/rules/index.htm,* or from Ms. Jodine E. Smyth, Senior Coordinator, Global Accreditation Services, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062, or Telephone: (847) 272–8800, ext. 42418; or Telefax (847) 509–6321, or electronic mail at *Jodine.E.Smyth@us.ul.com.*

The final rule for ''Test Procedures, Labeling, and Certification Requirements for Electric Motors,'' was published in the **Federal Register** on October 5, 1999. 64 FR 54141. It is codified in 10 CFR Part 431 in Subparts A, B, E and G. It can also be obtained from the Office of Building Research and Standards, Office of Energy Efficiency and Renewable Energy, EE–41, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0121, or Telephone 202–586–9127, or on the World Wide Web at *http://www.eren.doe.gov/buildings/codes_standards/rules/motors/index.htm.*

*A. Authority*

Part C of Title III of the Energy Policy and Conservation Act (EPCA) contains energy conservation requirements for electric motors, including requirements for test procedures, energy efficiency standards, and compliance certification (42 U.S.C. 6311–6316). Section 345(c) of EPCA directs the Secretary of Energy to require motor manufacturers ''to certify, through an independent testing or certification program nationally recognized in the United States, that [each electric motor subject to EPCA efficiency standards] meets the applicable standard.'' 42 U.S.C. 6316(c). Regulations to implement this EPCA directive, with respect to certification programs, are codified in 10 CFR part 431 at sections 431.123, *Compliance Certification,* 431.27, *Department of Energy recognition of nationally recognized certification programs,* and 431.28, *Procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs.* Sections 431.27 and 431.28 set forth the criteria and procedures for national recognition of an energy efficiency certification program for electric motors by the Department of Energy.

For a certification program to be classified by the Department as being nationally recognized, the program must: (1) Have satisfactory standards and procedures for conducting and administering a certification system, and for granting a certificate of conformity; (2) be independent; (3) be qualified to operate in a highly competent manner; and (4) be expert in the test procedures and methodologies in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), or similar procedures and methodologies for determining the energy efficiency of electric motors; and (5) have satisfactory criteria and procedures for selecting and sampling electric motors for energy efficiency testing. 10 CFR 431.27(b).

*B. Background*

Pursuant to 10 CFR 431.28, the Department is required to publish the UL Petition in the **Federal Register** in order to solicit comments, data and information on whether the Petition should be granted. UL may then respond in writing to any comments received. After review of the Petition, other applicable documents, including public comments and facts found through investigation, the Department is required to issue an interim determination and notify UL in writing of that interim determination. Also, the Department is required to publish its interim determination in the **Federal Register** and solicit comments, data and information with respect to the interim determination. After review of comments and information that is submitted, the Department is required to publish in the **Federal Register** an announcement of its final determination on the Petition. See 10 CFR 431.28(a)-(f).

The Department received comments on the UL Petition from Advanced Energy, dated October 12, 2001, and Emerson Motor Company, dated October 15, 2001. Advanced Energy is an independent motor testing facility and Emerson is a manufacturer of electric motors. In general, neither of these companies believes Underwriters Laboratories Inc. to be qualified to test and certify electric motors for energy efficiency for the purposes of section 345(c) of EPCA.

**II. Discussion**

*A. General*

*Sections 431.27(b)(1) and (c)(1) of 10 CFR part 431* set forth criteria and guidelines for the standards and procedures for conducting and administering a certification system and for granting a certificate of conformity. As such, a certification program must have satisfactory standards and procedures for conducting and administering a certification system, including periodic follow up activities to assure that basic models of electric motors continue to conform to the efficiency levels for which they were certified and for granting a certificate of conformity. ISO/IEC Guide 65 (discussed in 10 CFR 431.27(c)(3) and also below) sets forth the general requirements intended to ensure a certification program is operated in a consistent and reliable manner. These requirements address: (1) Impartiality; (2) sufficient personnel having the necessary education, training, technical knowledge and experience; (3) relevant procedures for sampling, testing and inspecting the product, and the means necessary to evaluate conformance by a manufacturer with those standards; (4) surveillance and periodic audits to ensure continued conformance with the applicable standards; (5) subcontracting work, such as testing, with proper arrangements to ensure competence, impartiality, and compliance with the applicable standards; (6) procedures to control records, documents and data, including review and approval by appropriately authorized personnel; and (7) control over use and display of certificates and marks of conformity.

*Sections 431.27(b)(2) and (c)(2) of 10 CFR part 431* set forth criteria and guidelines for independence. A certification program must be independent of electric motor manufacturers, importers, distributors, private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity. Further, it should disclose any relationship it believes might appear to create a conflict of interest. ISO/IEC Guide 65 sets forth requirements for a certification program to be impartial and have a documented structure that safeguards impartiality. For example, each decision on certification is made by a person(s) different from those who carried out the evaluation or actual testing of the motor. Its policies and procedures must distinguish between product certification and other activities, its certification process must be free from any commercial, financial

and other pressures that might influence decisions, and it must have a committee structure where members are chosen to provide a balance of affected interests.

*Sections 431.27(b)(3) and (c)(3) of 10 CFR part 431* set forth criteria and guidelines requiring that a certification organization must be qualified to operate a certification system in a highly competent manner. Of particular relevance is documentary evidence that establishes experience in the application of guidelines contained in International Standards Organization/ International Electrotechnical Commission (ISO/IEC) Guide 65: 1996, *General requirements for bodies operating product certification systems,* ISO/IEC Guide 27: 1983, *Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk,* ISO/IEC Guide 28: 1982, *General rules for a model third-party certification system for products,* as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 25: 1990, *General requirements for the competence of calibration and testing laboratories.*

*Sections 431.27(b)(4) and (c)(4) of 10 CFR part 431* set forth criteria and guidelines requiring that a certification program must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1). Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 25.

ISO/IEC Guide 25 addresses general requirements for establishing quality systems in laboratories and for recognizing their competence to carry out specified tests. In part, these requirements address: (1) Organization and management that are free from commercial, financial, and other pressures which might adversely affect quality of work; (2) independence of judgment and integrity; (3) supervision by persons familiar with the applicable test procedures; (4) a quality system, and manual which contains procedures for control and maintenance of documents, and procedures for periodic audit and review; (5) sufficient personnel, having the necessary education, training, technical knowledge and experience for their assigned functions, and that training of its personnel is kept up-to-date; (6) all items of equipment and reference materials for the correct performance of tests, and that the equipment is properly maintained and calibrated; (7) test equipment that is calibrated and verified prior to operation, and there is traceability to national standards of measurement; (8) documented instructions for the use and operation of equipment, manuals, and applicable test procedures; (9) retention of testing records with sufficient information to permit repetition of a test; and (10) where a laboratory is subcontracted to conduct testing, that laboratory complies with the requirements contained in ISO/IEC Guide 25 and is competent to perform the applicable testing activities. An example of a ''sub-contracted'' laboratory would be a manufacturer's laboratory that tests motors for energy efficiency under the UL EVS Program.

Also, where 10 CFR 431.27(b)(4) requires a certification program to have satisfactory criteria and procedures for the sampling and selection of electric motors, likewise, ISO/IEC Guide 25 requires the use of documented sampling procedures and appropriate techniques to select samples.

*B. Application of Evaluation Criteria*

1. Standards and Procedures for Conducting and Administering a Certification System

Sections 431.27(b)(1) and (c)(1) of 10 CFR 431, and ISO/IEC Guide 65, set forth criteria and guidelines for the standards and procedures to be used in administering a certification system and granting a certificate of conformity.

In Attachment 1 to the UL Petition, entitled ''431.27(c)(1) Standards and Operating Procedures,'' it is stated that ''Underwriters Laboratories Inc. product safety certification program is an ISO Guide 65 compliant program'' and that ''UL's Energy Verification utilizes the same operation manuals as UL's product safety certification services with minor variations that are detailed in the UL Energy Verification Manual.''

Advanced Energy's comments, dated October 12, 2001, and Emerson Motor Company's comments, dated October 15, 2001, generally assert that the UL EVS Program is not an ISO/IEC Guide 65 compliant program.

The Department's investigation found that the UL procedures for operating a certification system, provided as attachments to the Petition, were very general in nature and could be satisfactorily applied to any UL certification program. This raised the issue as to whether the specific standards and procedures by which the UL EVS Program operates are adequate, properly documented, well established and maintained according to the aforementioned ISO/IEC Guide 65 criteria. The Department's letter to UL, dated June 12, 2001, requested copies of the specific documents that have been approved by appropriately authorized UL personnel, and are used as the standard operating procedures for the UL EVS Program as it pertains to electric motors.

UL's letter to the Department, dated July 2, 2001, asserts that procedures which demonstrate compliance with sections 4.3, 4.8, 5 and 13 of ISO/IEC Guide 65 are contained in UL's *Conformity Assessment Manual,* the *Energy Verification Service Manual* (EVS Manual), and the *Client Interactive Programs Manual.* Copies were submitted to the Department during its investigative process. UL's letter, dated July 31, 2001, conveyed a copy of its *Motor Efficiency Guide,* 2001, which outlines the criteria UL uses to evaluate motor efficiency in the United States.

The UL *Conformity Assessment Manual* and *Client Interactive Programs Manual* establish general operating procedures that form a basis for UL certification programs, including the certification program for electric motors. The Department finds that ISO/IEC Guide 65 and the UL *Conformity Assessment* and *Client Interactive Programs Manuals* are consistent with each other in that they address, for example: (1) Steps necessary to evaluate conformance with relevant product standards, such as energy efficiency standards for electric motors; (2) competence of persons carrying out testing; (3) documented procedures for granting, maintaining and withdrawing certification; (4) control of documentation; and (5) surveillance to assure continued conformity with standards, such as energy efficiency standards for motors. The Department understands that these manuals are used in conjunction with the UL *EVS Manual* and *Motor Efficiency Guide.* The *Conformity Assessment Manual* and *Client Interactive Programs Manual* are further addressed in section II.3.c. of today's **Federal Register** Notice.

The EVS Manual outlines the standard criteria and operating procedures by which UL evaluates and verifies the energy efficiency of various types of products. In the case of electric motors, the EVS Manual refers to the energy efficiency test procedures found in 10 CFR 431.27. Its contents include efficiency verification procedures, documentation, sample selection, product testing, test facility evaluation, product construction evaluation, and manufacturers ongoing and follow-up

testing. The *Motor Efficiency Guide* outlines the criteria that UL utilizes to evaluate motor efficiency in accordance with the energy efficiency regulations in the United States and Canada. It is used in combination with the EVS Manual for conducting evaluations in accordance with UL's EVS Program. It contains a tutorial on motor efficiency, information on correlation of stray load loss and the basis of acceptability for motor efficiency, sample selection, assessment of a testing facility, test record data sheets, and guides the UL representative that conducts a facility assessment and witness testing. For example, the section entitled ''Assessment of Client Facility,'' lists areas of a manufacturer's testing facility that UL would investigate under its certification program. These include investigation of a manufacturer's quality program system as to whether (1) an ISO 9001 or ISO 9002 quality assurance program is in place, (2) proficiency of personnel is witnessed, (3) the motor testing laboratory environment is properly maintained, (4) testing equipment is properly maintained and calibrated, and (5) testing of the energy efficiency of electric motors is conducted in accordance with 10 CFR 431.23.

Also, UL submitted the revised *Motor Efficiency Guide* ULS–02194–ZWAA, ''Test Record Data Sheet'' pages 1 through 14, and a page ULS–02194-ZWAA ''Appendix D,'' page 0001, ''Manufacturer's Test Equipment.'' The Department understands that this revised guide supersedes the above-referenced earlier version and is used in combination with the *Energy Verification Services Manual* for conducting evaluations in accordance with UL's EVS Program. Further, UL provided the Department a copy of UL's specific standard operating procedures which are utilized as part of the UL EVS Program. These included data sheets that describe the test methodology, follow-up inspections to verify electric motor efficiency, and an exemplary ''Certificate of Compliance.''

The Department has examined UL's Petition and all other documents described above, and concludes that these documents provide evidence of satisfactory standards and procedures for UL to conduct its EVS Program to satisfy the requirements set forth in 10 CFR 431.27(b)(1) and (c)(1), and the guidelines contained in ISO/IEC Guide 65.

2. Independence

Sections 431.27(b)(2) and (c)(2) of 10 CFR part 431, and ISO/IEC Guide 65, set forth criteria and guidelines for impartiality.

In Attachment 2 to the UL Petition, entitled ''Independence,'' UL asserts that it is independent and impartial of any individual electric motor supplier or purchaser and is free from any other conflict of interest. A notarized Statement of Independence signed by an officer of the corporation was submitted in support of its assertion.

The Department's June 12, 2001, letter to UL requested additional documents concerning the policies or procedures that distinguish (a) a direct or indirect relationship with a motor manufacturer, importer, or private labeler that is in a situation where UL both provides safety certification services and an EVS for such entity's motors, and (b) where a manufacturer's representative serves, for example, on UL Standards Technical Panel UL 1004, Electric Motors. Such relationships need more explanation as to why each would not create or appear to create a conflict of interest, compromise UL's independence, or bias information presented to UL for the purposes of compliance with 10 CFR part 431.

UL's letter to the Department, dated July 2, 2001, asserts that UL is ''independent and impartial of any individual supplier or purchaser and is free from any other conflict of interest,'' and that ''UL has no stockholders, i.e., no direct or indirect relationship with manufacturers, importers or private labelers.'' UL explains that it is incorporated as a not-for-profit organization in the State of Delaware, and its policy regarding conflict of interest is both addressed as a condition for employment and in its code of ethics. Also, chapter 2 of the UL ''*Client Interactive Programs Manual*'' sets forth procedures whereby each decision on certification is made by a person or persons different from those who carried out a motor efficiency evaluation. Furthermore, UL explains that its standards development process for safety matters is organizationally separated from its certification operations. Thus, a manufacturer's representative who participates in a UL Technical Panel as part of the standards development process only provides technical input to standards and has no influence over certification functions, such as the EVS Program for Electric Motors.

The Department has examined the above documents and concludes that they provide sufficient evidence that the UL EVS Program meets the requirements for independence which are set forth in 10 CFR 431.27(b)(2) and(c)(2), and the guidelines for objectively and impartiality of technical persons and committees which are set forth in ISO/IEC Guide 65. Furthermore, the UL EVS Program meets the ISO/IEC Guide 25 requirements for organization and management to ensure confidence that its independence of judgement and integrity are maintained at all times.

3. Operation of a Certification System in a Highly Competent Manner

Sections 431.27(b)(3) and (c)(3) of 10 CFR 431 require that the petitioner demonstrate that its certification program operates in a highly competent manner by establishing its experience in the application of certain ISO/IEC Guides, including ISO/IEC Guides 65, 27 and 28, as well as experience in overseeing compliance with the guidelines in ISO/IEC Guide 25.

In Attachment 3 to the UL Petition, ''Testing Experience and Expertise,'' UL asserts that it has been conducting product safety evaluations for 105 years, and that in 1999 alone it conducted more than 94,300 product evaluations. As to further experience in operating a certification system and application of guidelines contained in ISO/IEC Guide 65, UL states in Attachment 3, ''Summary of UL's Accreditations,'' that it is involved in more than 80 accreditation programs that are involved with the evaluation and testing of products for public safety. It states that its competence as a product certification organization has been, for the most part, established under the criteria in ISO/IEC Guides 25 and 65. Copies of UL's accreditation documents from the American National Standards Institute (ANSI) and the Standards Council of Canada (SCC), and recognition as a Nationally Recognized Testing Laboratory from the Occupational Safety and Health Administration were attached to the UL Petition.

a. General Operating Requirements (ISO/IEC Guide 65)

Both Advanced Energy and Emerson Motor Company state that ''UL has a solid reputation in testing services and quality assurance for safety programs,'' and is capable of administering safety programs because they are ISO/IEC Guide 65 compliant, as demonstrated by the ANSI accreditation. However, both Advanced Energy and Emerson Motor Company ''find no evidence of this being true with respect to UL's Energy Verification Program.'' Advanced Energy's letter, dated October 12, 2001, asserts that UL's EVS Program has the potential to confuse customers in the marketplace and unduly burden motor manufacturers, because UL would visit each motor manufacturer's facilities twice per year, require testing of an unspecified number of sample motors,

and require inspection of the motor manufacturing processes. Advanced Energy and Emerson Motor Company state that the UL EVS Program is not sufficient for the purposes of EPCA on motor efficiency, and that it conflicts with the intent of EPCA and 10 CFR part 431.

In response to the above comments from Advanced Energy and Emerson Motor Company, UL's letter to the Department, dated October 22, 2001, asserts that Advanced Energy's view of the UL certification program is based upon limited exposure to UL's technical expertise and other portions of the EVS Program related to electric motors. Also, UL believes that Emerson Motor Company's concerns are addressed under 10 CFR part 431 concerning the use of a certification program.

The Department examined the above UL accreditations and found that the majority of them concerned product safety certification and there was no explicit reference to the certification of energy efficiency for electric motors. The Department's June 12, 2001, letter to UL requested evidence as to whether the UL EVS Program for electric motors is, or will become, accredited by another organization, such as ANSI. Also, the Department's letter requested evidence of the technical qualifications and experience held by UL personnel directly involved with the UL EVS Program, such as technical evaluations and decisions concerning critical motor construction features, performance, and testing for energy efficiency using IEEE 112–1996 Test Method B and CSA C390–93 Test Method (1).

Thereafter, the Department received a letter, dated June 26, 2001, from ANSI which affirms that the UL EVS Program is covered under the scope of the ANSI accreditation for Electrical and Electronic Products, Processes, Systems, and Services in accordance with ISO/IEC Guide 65. Also in response to the Department's June 12 letter, UL's letter, dated July 2, 2001, asserts that UL has documented procedures to ensure that qualified personnel review the evaluation of motors for compliance with energy efficiency requirements, and written instructions that set forth the duties and responsibilities of such personnel. UL staff undergoes continual on-the-job training and is evaluated through a documented performance appraisal process. UL has supervisory and review staff with the necessary education, training, skill, abilities and experience for evaluating motors for compliance with energy efficiency requirements, and its management structure provides for the supervision of reviewers and other personnel involved in the product certification process. UL's July 2nd letter conveyed resumes of certain staff involved in the EVS Program.

As to any undue burden on a manufacturer caused by UL's biannual inspections of a motor facility, the Department understands that UL's surveillance program consists of two random unannounced audits of the manufacturer's facilities, and such audits can be conducted separately or in conjunction with its motor safety investigations, thereby lessening the compliance burden on a manufacturer. Therefore, the Department believes that the UL EVS Program does not present any undue burden on a manufacturer.

As to the above-referenced comments from Advanced Energy and Emerson Motor Company concerning the UL EVS Program not meeting the requirements for a ''certification program'' in section 345(c) of EPCA and in 10 CFR 431.123(a)(1), the Department finds no facts or convincing arguments that support the assertions of Advanced Energy or Emerson Motor Company that the UL certification program is ''not sufficient'' or ''conflicts with the intent'' of EPCA, or ''would place additional burden on manufacturers.'' Such issues involving the merits and use of an accredited laboratory or a certification program were argued at length under section II.C.2. and 3. of the Preamble to the Final Rule for Electric Motors, 64 FR 54124–26 (October 5, 1999) and need not be repeated here. The Department continues to believe that use of a certification program, such as the UL EVS Program, where it meets the requirements set forth in 10 CFR 431.27(a) will provide adequate assurance of compliance with EPCA's energy efficiency requirements. Because the assertions of Advanced Energy and Emerson Motor Company are merely arguments against the wisdom of the final rule and of the Departments regulations themselves, and are not directed at the UL Petition, they are rejected.

b. Guidelines for Corrective Action in the Event of Misapplication of a Mark of Conformity (ISO/IEC Guide 27)

ISO/IEC Guide 27 identifies procedures which a certification program should consider in response to a reported misuse of its registered mark of conformity. According to paragraph 1.1 (a) of ISO/IEC Guide 27, ''misuse'' may take a variety of forms, such as a mark of conformity appearing on a non-certified product. The Department construes this to mean the unauthorized use by a manufacturer or private labeler of the UL Verification Mark for Energy Efficiency (Mark or UL Mark) on an electric motor, such as the use of a counterfeit UL Mark. Under ISO/IEC Guide 27, the certification program would then be required to have strong corrective procedures in place. Such corrective measures would depend upon the nature of the misuse and the desire by the certification program to protect the integrity of its mark.

The Department has examined the UL *Conformity Assessment Manual* and finds that it contains procedures for reporting the misuse of any UL Mark used to identify certified products, such as any unauthorized or counterfeit use of a UL Registered mark. The Department concludes that the UL *Conformity Assessment Manual* satisfactorily follows the guidelines for corrective action to be taken by a certification organization in the event of misapplication of a mark of conformity to an electric motor set forth in 10 CFR 431.27(c)(3) and ISO/IEC Guide 27.

c. General Rules for a Model Third-Party Certification System for Products (ISO/IEC Guide 28)

ISO/IEC Guide 28 addresses minimum guidelines for a third-party certification system in determining conformity with product standards through sample selection, initial testing and assessment of a factory quality management system, follow-up surveillance, subsequent testing of samples from the factory, and the use of a mark of conformity.

Consistent with the above ISO/IEC Guide 28 guidelines, Attachment 1 to the UL Petition, entitled ''431.27(c)(1) Standards and Operating Procedures,'' describes the UL certification of motors under its EVS Program as being based upon: (1) Satisfactory evaluation and testing to the requirements of the applicable standard, which in this case is under 10 CFR 431.23; (2) continued surveillance at the manufacturing location; (3) initial motor evaluation that consists of an examination of motor efficiency test data, test facilities, and motor design and construction; (4) selection of samples and witness testing by a UL representative; (5) where an electric motor is found to be in compliance, authorization to apply a mark of conformity; and (6) procedures for withdrawal or cancellation of a mark of conformity if an electric motor is found in non-conformance. Also, UL submitted its *Energy Verification Service Manual* as evidence that its EVS Program for electric motors follows the guidelines contained in ISO/IEC Guide 28.

In view of ISO/IEC Guide 28, the Department examined the UL EVS Manual that outlines the criteria by which UL performs third-party energy efficiency certifications for various products, including electric motors. In sum, the UL EVS Manual contains the general operating procedures and business document formats applicable to UL's EVS Program, that when utilized in conjunction with the procedures and technical document formats in the UL *Conformity Assessment Manual* and *Motor Efficiency Guide,* correspond to the ''model'' procedures and example forms contained in ISO/IEC Guide 28. The Department finds that, in general, both ISO/IEC Guide 28, and the UL EVS and *Conformity Assessment Manuals* address: (1) The basic conditions and rules for a manufacturer to obtain and retain a certificate of conformity or mark of conformity; (2) initial inspection of a motor factory and a manufacturer's quality management system; (3) sample selection; (4) initial testing; (5) product evaluation; (6) surveillance; (7) identification of conformity in the form of a certificate of conformity or mark of conformity; (8) withdrawal of a certificate or mark of conformity by the certification program; and (9) guidelines on corrective action for misuse of a certificate or mark of conformity. The Department concludes that the UL EVS Program satisfies the general guidelines for a model third-party certification system under 10 CFR 431.27(c)(3) and the guidelines set forth in ISO/IEC Guide 28.

Also, ISO/IEC Guide 28 requires a certification program operating at a national level, such as under section 345(c) of EPCA which requires manufacturers to certify compliance through a ''nationally recognized'' certification program, to have a suitable organizational structure and utilize personnel, equipment, and operating procedures that comply with the criteria for a testing laboratory in ISO/IEC Guide 25. Consistent with these guidelines, the UL *Conformity Assessment Manual* and *Client Interactive Programs Manual* provide general policies, practices and procedures that govern UL's conformity assessment services. These include submitting a product for investigation, conduct of the investigation, witnessed test data procedures, compliance management, issuance of the UL Mark, and follow-up services. The Department finds that the ''Client Test Data Program,'' contained in the *Client Interactive Programs Manual,* particularly addresses the UL EVS Program, whereby tests for energy efficiency are conducted at client facilities and are subject to review and audit by UL. Furthermore, the ''Client Test Data Program'' establishes policies and procedures consistent with ISO/IEC Guide 25 which address operating a laboratory quality system, testing equipment, qualification of personnel, test standards and procedures for testing, training, assessment of a test facility, program administration, documentation, and issuing a certificate of qualification. The Department understands that both the *Conformity Assessment* and *Client Interactive Programs Manuals* are used in conjunction with UL's product-specific operations manuals, such as the UL *Energy Verification Service Manual,* that applies specific procedures to the acceptance of energy efficiency test data for electric motors.

The Department has examined the contents of these manuals and concludes that they satisfy the guidelines for conducting a model third-party certification program at the national level as applicable under 10 CFR 431.27(c)(3) and ISO/IEC Guide 28.

d. General Requirements for the Competence of Testing Laboratories (ISO/IEC Guide 25)

Third-party certification programs must have experience overseeing compliance with the guidelines contained in ISO/IEC Guide 25. ISO/IEC Guide 25 sets out the general requirements by which a laboratory must operate if it is to be recognized as competent to carry out specific tests.

According to Attachment 3 to the UL Petition, ''Summary of UL's Accreditations,'' the majority of UL's accreditations cover UL as a testing laboratory and product safety certification organization. Although each accreditor to a certain extent establishes its own criteria, for the most part, two sets of criteria are utilized for evaluating the competence of a testing laboratory and product certification organization: ISO/IEC Guide 25, *General Requirements for the Competence of Calibration and Testing Laboratories* and ISO/IEC Guide 65 *General Requirements for Bodies Operating Product Certification Systems.* UL's written policies and associated operating procedures were designed using the criteria of these two guides.

UL's letter to the Department, dated January 24, 2002, asserts that UL has ''significant experience understanding, adapting, documenting and applying the requirements of Guide 25 to manufacturers' laboratories as evidenced by the [Client Test Data Program] CTDP documentation and overseeing compliance of manufacturers with UL's CTDP.'' According to the January 24 letter, UL has determined that Guide 25 as written ''can not solely be the basis on which it accepts responsibility for the test data generated from a manufacturer's laboratories,'' and as a result, UL's Client Test Data Program requirements are ''an adaptation of Guide 25, with necessary changes made, so that UL has an adequate basis for taking responsibility for the test data from a manufacturer's laboratory.'' For example, even though not required by ISO/IEC Guide 25, UL requires repeat testing and requires that the data from that repeat testing correlate with the original test data generated by the manufacturer. In addition, UL conducts audits of manufacturers' laboratories under the Client Test Data Program, whereas ISO/IEC Guide 25 only requires a laboratory to audit itself. UL believes such additional oversight requirements are necessary in order for it to accept responsibility for the test data. Further, UL asserts that it does not rely solely on a manufacturer's self-monitoring of laboratory competence through the laboratory's quality system; rather, UL itself ''directly monitors those aspects of laboratory operations that contribute to the accuracy of the test data produced.'' Thus, UL adds a second level of assurance through audit testing and subsequent data correlation. UL's January 24 letter concludes with the assertion that it has ''demonstrated experience overseeing a laboratory not just to Guide 25 requirements, but to even more stringent requirements related to transfer of responsibility for test data.''

The Department compared ISO/IEC Guide 25 with UL's CTDP as it would apply to a manufacturer's motor efficiency testing laboratory under a certification program and found them to be consistent with each other. Under UL's CTDP, a motor manufacturer's laboratory must, in sum, have a quality program that is subject to assessment and reassessment, have physical resources, equipment, qualified personnel and procedures that conform to national and international accreditation criteria, and have test data that is reviewed and subject to a regular audit. The Department found, for example:

- Where ISO/IEC Guide 25 sets forth requirements for organization and management of a testing laboratory to ensure proper supervision and integrity of data, similarly, the UL CTDP requires a testing laboratory to have procedures and policies in place to assure accuracy and correctness of the performance of the tests, test data developed, and

results reported, as well as qualified staff to oversee testing and ensure proper documentation.

- Where ISO/IEC Guide 25 requires a manufacturer's testing laboratory to have a quality system with documented policies and procedures, such as for the organization and operation of a testing laboratory, traceability of measurements, calibration of equipment, test procedures used, procedures for corrective actions and audits, likewise, the UL CTDP requires a manufacturer's testing laboratory to have procedures and policies that assure accuracy and correctness of the performance of a test, test data developed, and results reported, and oversight of sampling, testing, data recording and periodic audits.
- Where ISO/IEC Guide 25 requires a manufacturer's testing laboratory to have sufficient personnel having the necessary education, training, technical knowledge and experience, the UL CTDP requires similar qualifications of testing laboratory personnel.
- Where ISO/IEC Guide 25 requires the proper environment and equipment for performance of testing, and that such equipment is properly maintained and calibrated, the UL CTDP requires the proper environment for testing, and requires that equipment is fully operational, calibrated and traceable to nationally recognized standards of measurement.
- Where ISO/IEC Guide 25 requires the testing laboratory to maintain a record system of original observations, calculations, and derived data sufficient to permit repetition of a test, similarly, the UL CTDP requires data recording and test reports, and other documentation of initial assessments and reassessments and verification. Also, the UL CTDP requires that reference standards and test procedures used by the testing laboratory are current.
- Both ISO/IEC Guide 25 and the UL CTDP require test reports or test certificates that contain similar information.

In view of these comparisons, the Department believes that UL's EVS Program satisfies the requirement of 10 CFR 431.27(c)(3) for documentary evidence that establishes experience in operating a certification system and overseeing compliance with the guidelines for competence contained in ISO/IEC Guide 25 to test electric motors for energy efficiency.

Also, 10 CFR 431.27 does not require a certification program to actually operate its own motor testing laboratory, nor is a laboratory operated or observed by a certification program required to be accredited. Nevertheless, the Department believes that the quality program to which a motor efficiency testing laboratory adheres under a certification program that is ''nationally recognized'' for the purposes of EPCA should be inherently stringent because its efficiency measurements are the basis for compliance determinations for many motors. Therefore, the Department believes that a testing facility operated or observed by a certification program should follow the guidelines in ISO/IEC Guide 25: 1990. The Department understands that, in general, the evaluation of a motor testing laboratory under ISO/IEC Guide 25 includes an on-site assessment, proficiency testing, an audit of a laboratory's policies and operational procedures, review of staff qualifications, checks of proper maintenance and calibration of test equipment, and records review. Likewise, evaluation of a motor testing laboratory under the UL EVS includes evaluation of the manufacturer's testing facility, control and maintenance and calibration of test equipment, factory audits for continued compliance, document control, periodic audits of the operational and technical consistency of the program, control of non-conformances, staff training, and witness testing.

The Department believes that the goal of a third-party certification program is to provide assurance that test results are accurate, valid, and capable of being replicated. Tests must be performed with a degree of oversight so that the results are not influenced by marketing and production concerns. The Department believes that the UL EVS Program essentially follows the ISO/IEC 25 Guidelines.

4. Expertise in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1)

Section 431.27(b)(4) of 10 CFR part 431 set forth evaluation criteria and guidelines whereby personnel conducting a certification program should be expert and experienced in the content and application of IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), or similar procedures and methodologies for determining the energy efficiency of electric motors. The program must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency, and provide documents that establish experience in applying the guidelines for confidence in testing laboratories contained in ISO/IEC Guide 25. Such guidelines address quality audits and reviews, personnel, equipment, test methods, sampling, and records.

In Attachment 4 to the UL Petition entitled, ''431.27(c)(4) Expertise in Motor Test Procedures,'' it is stated that ''UL has been providing Energy Verification certification services since 1995,'' and that ''UL has evaluated motors in sizes ranging from 1 hp to 200 hp using the standards IEEE 112 Test Method B or CSA C390.'' According to the Petition, UL publishes a *Directory of Electric, Gas Fired, and Oil-Fired Equipment Verified for Energy Efficiency 1999,* which includes electric motors, and asserts that each member of its engineering staff has at least four-year Bachelor of Science degree in engineering. Also, UL submitted to the Department a copy of its *Conformity Assessment Manual, EVSs Manual, Client Interactive Programs Manual,* and *Motor Efficiency Guide* as evidence of its expertise in electric motor test procedures.

The Department's letter to UL, dated June 12, 2001, requested evidence as to the nature and extent of training that current staff actually involved with the EVS Program regularly undergoes to maintain proficiency with the evaluation of motor designs and construction, and the practice of energy efficiency testing.

UL's letter, dated July 2, 2001, asserts that UL has documented procedures to ensure that qualified personnel review the evaluation of motors for compliance with energy efficiency requirements. These include the written instructions for the duties and responsibilities of personnel with respect to the evaluation of motor efficiency investigations, as well as qualification requirements to assure that its personnel are qualified in the scientific disciplines related to energy efficiency. Further, UL asserts that its staff undergoes continual, on-the-job training and each person is evaluated through a documented performance appraisal process. UL has supervisors as review staff with the necessary education, training, skill, abilities and experience for evaluating motors for compliance with energy efficiency requirements. Also, UL has developed its own *Motor Efficiency Guide* as a reference for staff involved in conducting motor efficiency evaluations. UL's management structure provides for the supervision of reviewers and other personnel involved in the product certification process. UL's letter, dated September 20, 2001, contains the names of UL technical staff involved with the EVS Program, indicates their experience with CSA C390–93 and IEEE 112–1996, and contains a resume for each.

Furthermore, UL's letter dated September 20, 2001, asserts that the test procedures in ''CSA C390–93 method B'' [sic] are similar to those procedures already in place under other CSA International Standards as well as UL Standards, and that the data and information recorded to verify energy efficiency is some of the same data and information required under the testing it conducts on a routine basis and which follows UL Standard 1004, ''Electric Motors,'' UL Standard 2111, ''Overheating Protection for Motors,'' UL 547, ''Thermally Protected Motors,'' and CSA C22.2 No. 77, ''Overheating Protection for Motors,'' and CSA C22.2 No. 100, ''Motors and Generators.'' UL asserts that the data and information recorded for energy verification testing is some of the same data and information required under the above-referenced test procedures, which it uses in an automated spreadsheet program entitled ''Motor Efficiency Testing Program V3.0,'' UL copyrighted 1994 and 1997, to calculate motor efficiency. The September 20 letter from UL compares the IEEE 112 and CSA C390 test procedures with similar procedures in the above ''UL'' and ''CSA'' standards for performance and safety.

Advanced Energy's letter, dated October 12, 2001, expresses concern with ''the level of 'expert' knowledge regarding motor testing.'' Advanced Energy asserts that UL is thorough in the documentation of procedures and calibrations of laboratory equipment, but weak in motor efficiency testing, test data analysis, and in its prescriptive audit process that does not involve motor testing, review of motor test data, or proficiency testing by a laboratory.

Emerson Motor Company's letter, dated October 15, 2001, expresses concern that UL uses a motor manufacturer's testing facilities that have been ''reviewed'' by a UL staff member, but there is no evidence of the staff member's credentials, knowledge, level of training and certification with regard to motor efficiency testing laboratories.

In response to the above comments from Advanced Energy and Emerson Motor Company, UL's letter, dated October 22, 2001, asserts that Advanced Energy's view of the UL certification program is based upon limited exposure to UL's technical expertise when both UL and Advanced Energy were exploring a business relationship in the 1990s. According to UL, a laboratory assessment is one part of its Client Test Data Program under which external testing, such as by Advanced Energy, would be accepted by UL. However, other portions of the UL's EVS Program, including staff with specific technical capability related to motor testing, were not completed at that time, nor had Advanced Energy been exposed to the ''full expertise'' within the UL Program.

UL's letter to the Department, dated February 21, 2002, asserts that its experience in standards development, testing, and safety evaluation of motors according to the requirements of UL and other U.S. and International standards and the corresponding data acquisition necessary to accomplish these endeavors, is ''equivalent to and demonstrative of the indicated UL staff having the necessary proficiency and expertise to conduct energy efficiency evaluations.'' In sum, the experience with CSA C390–93 and IEEE Standard 112 of the five UL staff persons engaged in the UL EVS Program ranges from one to four years, which is in addition to their four to 13 years experience with test procedures for motor safety.

In the Department's view, any technically qualified person could satisfy the criteria for expertise in the content, application, and methodologies of the test procedures pursuant to 10 CFR 431.27(b)(4) if that person: (1) Is proficient in the test methodology of IEEE Standard 112 Test Method B and CSA C390–93 Test Method (1); (2) is familiar with the electrical, mechanical and environmental capabilities of a testing laboratory system, (3) understands how to prepare and mount a motor for testing, which includes the connection and operation of the test equipment, (4) is competent in calibrating test equipment; and (5) is competent with data collection and analysis. UL's experience in standards development, testing and evaluation of motors to both U.S. and International safety and similar energy efficiency procedures and methodologies provide sufficient evidence of UL staff having the necessary proficiency and expertise to conduct energy efficiency evaluations under ISO/IEC Guide 25. Thus, the Department believes that the qualifications of the UL Staff named in the above September 20 letter, regular additional training, and monitoring by UL management, satisfy the general requirements for the training, technical knowledge, and experience of testing laboratory personnel under 10 CFR 431.27(b)(4) and (c)(4).

5. Sampling Criteria and Procedures for Selecting an Electric Motor for Energy Efficiency Testing

Section 431.27(b)(4) of 10 CFR 431 requires a certification organization to have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency. Based on the National Institute of Standards and Technology report, NISTIR 6092, ''Analysis of Proposals for Compliance and Enforcement Testing Under the New Part 431: Title 10, Code of Federal Regulations,'' January 1998, which analyzed various criteria and sampling plans proposed for establishing compliance with the nominal full-load efficiency levels prescribed by EPCA, 42 U.S.C. 6313(b)(1), the Department determined that ''the NEMA proposal for compliance testing provides statistically meaningful sampling procedures.'' Moreover, the NIST analysis was extensive in order to determine whether a particular sampling plan would be valid for the purpose of establishing compliance with EPCA motor efficiency levels. Also, section 10.5 of ISO/IEC Guide 25: 1990 requires the use of documented procedures and appropriate statistical techniques to select samples.

In Attachment 1 of its Petition, UL describes its sample selection process as one where representative samples from the manufacturer's production are selected for use in testing and witnessed by UL engineering staff. According to the Petition, representative samples are those that, when reviewed as a group, can adequately represent a line of similar models that use the same major energy consuming components. UL asserts that the objective in selecting representative samples is to obtain sufficient confidence that the series of motors verified meet the applicable energy efficiency standard while at the same time minimize the number of tests the manufacturer is required to perform. Samples are selected to represent an entire range of motors. Furthermore, as part of a manufacturer's ongoing production testing, UL audits the number of samples tested and the frequency of testing and test results which are documented by the manufacturer. The manufacturer is required to document the test results, which UL audits as part of each follow-up visit.

Notwithstanding UL's above assertions, the Department found no evidence that the samples used for a motor manufacturer's test data was selected randomly, that a UL representative participated in the sample selection process or witnessed any of the initial testing, or that it was clear that ''two samples'' were sufficient to statistically validate the energy efficiency of an entire line of electric motors.

Subsequently, UL submitted to the Department, under cover letter dated

July 31, 2001, a copy of its *Motor Efficiency Guide* (Guide), to outline the criteria by which UL evaluates motor efficiency in accordance with energy efficiency regulations. The Department examined the Guide and found that appendix D contained a section entitled ''Sample Selection,'' Form Page 8 on ULS–02194–ZWAA–Appendix–0001, which set forth procedures whereby samples consisting of production units are ''randomly selected by UL Staff'' and appeared to satisfy one of the Department's concerns. However, in the ''Definitions'' section of the Guide, the Department found that the definition of ''nominal full load efficiency'' was not consistent with the definition of ''nominal full load efficiency'' in 10 CFR 431.2, nor did the Guide contain a definition of the term ''Sample.'' Also, the ''Basis of Acceptability,'' on Form Page 11 of appendix D in the Guide, which provided procedure to calculate a tolerance for ''permitted values of energy efficiency'' using a ''Coefficient K'' and required that the ''actual motor efficiency value will be not less than the associated minimum value,'' was inconsistent with 10 CFR 431.24, ''Determination of efficiency,'' and 10 CFR 431.42, ''Energy conservation standards.'' Thereafter, UL submitted to the Department, under cover letters dated January 11 and January 28, 2002, a copy of the revised pages in the Guide that were in question. These included a definition for the term ''sample,'' revised sample selection criteria, identification of UL's initial factory production visit to select the random samples, and corrections to the ''Statistical Test Method'' formulas and the ''Basis of Acceptability'' in order to be consistent with the applicable provisions in 10 CFR 431.

The Department concludes that the above documents, as corrected by UL, are consistent with 10 CFR 431.24 and 431.42, and satisfy the criteria and procedures for the selection and sampling of electric motors to be tested for energy efficiency under 10 CFR 431.27(b)(4).

*C. Other Matters*

In a separate matter related to 10 CFR 431.82, ''Labeling requirements,'' and section 14, ''Use of licenses, certificates and marks of conformity,'' in the ISO/IEC Guide 65, Emerson Motor Company's comments, dated October 15, 2001, object to any requirement to display a compliance certification labeling mark, such as the UL Mark, on an electric motor either in place of or in addition to the required Compliance Certification number supplied by the Department of Energy as provided for in 10 CFR 431.82(a)(1)(ii). Emerson Motor Company asserts that such additional marks would add significant financial burdens on motor manufacturers and confuse the motor purchaser. Further, Emerson Motor Company asserts that the Department of Energy Compliance Certification number is the only mark allowed.

Advanced Energy's comments, dated October 12, 2001, object to the proposed UL requirement that a manufacturer display the UL Mark. Advanced Energy asserts that there would be an added financial burden to a manufacturer because of being forced to display the UL Mark, with possible confusion to a motor purchaser attempting to distinguish between one motor with a Compliance Certification number alone and another motor with both a Compliance Certification number and the UL mark.

Section 431.82(a)(1) of 10 CFR 431 requires a manufacturer or private labeler to mark the permanent nameplate of an electric motor clearly with the motor's nominal full load efficiency and a Compliance Certification number supplied by the Department. However, 10 CFR 431.82(a)(3) permits the optional display of the encircled lowercase letters ''ee'' or some comparable designation or logo on either the permanent nameplate of an electric motor, a separate plate, or decalcomania. The UL Mark falls into the ''optional display'' category and would be comparable to the encircled lowercase letters ''ee.'' Therefore, display of the UL Mark would be permitted in addition to the labeling requirements set forth under section 431.82(a)(1). But, such optional display is not a replacement mark for the motor's nominal full load efficiency and the Compliance Certification number supplied by the Department. The optional logo or designation, (such as the UL Mark) may also be used in catalogs and other marketing materials according to 10 CFR 431.82(b)(2). The Department believes that display of the UL Mark is a matter between UL and the manufacturer or private labeler.

## III. Conclusion

*A. Interim Determination*

In view of the UL Petition and supporting documents, the public comments received, the Department's independent investigation, and UL's corrections to its Program described above, the Department concludes that the UL EVS Program for Electric Motors satisfactorily meets the criteria in 10 CFR 431.27.

Therefore, the Department's interim determination is, as of today's **Federal Register** notice, to classify the UL EVS Program for Electric Motors as nationally recognized in the United States for the purposes of section 345(c) of EPCA. In the event that a final determination recognizes the UL EVS Program for Electric Motors as a nationally recognized certification program pursuant to the criteria in 10 CFR 431.27, and the Program thereafter fails to meet the criteria for recognition, the Department can withdraw its recognition after following the regulatory procedural requirements in 10 CFR 431.28(g).

*B. Future Proceedings*

Pursuant to 10 CFR 431.28(d), the Department will notify UL in writing of this interim determination. Today's **Federal Register** notice solicits comments, data and information concerning the Department's interim determination to classify the UL EVS Program for Electric Motors as nationally recognized in the United States. After review of information submitted concerning the interim determination, the Department will publish in the **Federal Register** an announcement of its final determination. See 10 CFR 431.28(e).

Issued in Washington, DC, on June 28, 2002.

**Douglas L. Faulkner,**

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

[FR Doc. 02–16820 Filed 7–3–02; 8:45 am]

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Federal Register

Friday,
July 5, 2002

# Part VI

# Department of Education

## 34 CFR Part 200

## Title I—Improving the Academic Achievement of the Disadvantaged; Final Rule

**DEPARTMENT OF EDUCATION**

**34 CFR Part 200**

**RIN 1810–AA92**

## Title I—Improving the Academic Achievement of the Disadvantaged

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations governing programs administered under Title I, part A, of the Elementary and Secondary Education Act of 1965, as amended (ESEA). These regulations implement recent changes to the standards and assessment requirements of Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act) and were drafted subject to a negotiated rulemaking process.

**DATES:** These regulations are effective August 5, 2002.

**FOR FURTHER INFORMATION CONTACT:** Susan Wilhelm, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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**SUPPLEMENTARY INFORMATION:** These regulations implement changes to Title I, part A, of the Elementary and Secondary Education Act, as amended by the NCLB Act (Public Law 107–110), enacted January 8, 2002.

On May 6, 2002, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (67 FR 30452). The proposed regulations were developed through a negotiated rulemaking process on the issues of standards and assessments in accordance with section 1901(b)(3) of Title I.

In the preamble to the NPRM, the Secretary discussed on pages 30453 through 30456 the major changes proposed in that document to implement changes in the standards and assessment provisions of Title I, part A, made by the NCLB Act. These included the following:

- Clarifying in § 200.1(b)(2) that States have the flexibility to develop academic content standards in reading/language arts and mathematics that cover either each grade specifically or more than one grade. If a State develops academic content standards that cover more than one grade, the State must have content expectations that indicate to teachers and others the portion of the standards to be taught at each grade level.
- Specifying in § 200.1(c)(2) that, although academic content standards may cover more than one grade, States must have academic achievement standards for each grade and subject assessed.
- Clarifying in § 200.1(c)(3) that, with regard to student achievement standards in science, States must have achievement levels and descriptions of those levels in place by the 2005–2006 school year. The actual assessment scores (called ''cut scores'' by the assessment community) for those achievement levels, however, would not have to be set until the assessments are due in the 2007–2008 school year.
- Incorporating in § 200.2 the statutory requirements for a State to implement a system of high-quality, yearly student academic assessments.
- Requiring in § 200.2(b)(2) that a State's assessment system be designed to be valid and accessible for use with the widest possible range of students, including students with disabilities and students with limited English proficiency.
- Clarifying in § 200.3 that a State may use different types of assessments as long as those assessments (for each grade and subject) address the depth and breadth of the State's academic content standards; are valid, reliable, and of high technical quality; and express results in terms of the State's academic achievement standards.
- Clarifying in § 200.4(a) that, if a State is prohibited by State law from establishing standards and assessments applicable to all public school students, the State may adopt standards and assessments applicable to students participating under subpart A of this part or permit each LEA to adopt its own standards and assessments subject to criteria developed by the State.
- Clarifying in § 200.5(a) that, beginning no later than the 2005–2006 school year, States must administer yearly assessments in both reading/language arts and in mathematics in each of grades 3 through 8 and at least once in grades 10 through 12.
- Including in § 200.5(c) the statutory requirement that a State provide assessment results to school districts, schools, and teachers no later than the beginning of the next school year. This requirement starts with the 2002–2003 school year.
- Clarifying in § 200.6 the requirement that State assessment systems include all students and provide appropriate accommodations for students with disabilities and students covered under Section 504 of the Rehabilitation Act of 1973.
- Requiring in § 200.6(a)(2) that a State's academic assessment system must provide one or more alternate assessments for those students with disabilities (as defined under section 602(3) of the Individuals with Disabilities Education Act), who, in the determination of the student's IEP team, cannot participate in all or part of the State assessments, even with appropriate accommodations.
- Requiring in § 200.6(b)(2) that a State assess, in English, limited English proficient students' achievement in reading/language arts if those students have been in schools in the United States (except Puerto Rico) for three or more consecutive years and clarifying that this requirement does not exempt a State from assessing LEP students for three years.
- Clarifying in § 200.7(a)(2) that, in disaggregating data, a State is responsible for determining how many students constitute a sufficient number to make the results reliable for accountability and reporting purposes.
- Clarifying in § 200.7(b)(2) that a State must apply section 444(b) of the General Education Provisions Act (the Family Educational Rights and Privacy Act) in determining whether disaggregated data would reveal personally identifiable information.
- Requiring in § 200.8(a) that individual student reports must describe achievement measured against the State's academic achievement standards.
- Requiring in § 200.9(b) that a State must continue to develop assessments if amounts appropriated at the Federal level for assessments are below a certain minimum.
- Clarifying in § 200.10 that nothing in § 200.2 would require a private school to participate in a State's assessment system. However, through timely consultation with private school officials, an LEA must determine how it will assess academic services to participating private school students and how it will use the assessment results to improve services to these students.

The final regulations reflect these provisions, modified as noted in the analysis of comments and changes in the appendix.

*Analysis of Comments and Changes*

In response to the Secretary's invitation in the NPRM, 140 parties submitted comments. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these final regulations.

We discuss substantive issues under the sections of these regulations to which they pertain. Generally, we do not address technical and other minor changes, or suggested changes that the law does not authorize the Secretary to make. We also do not address suggested changes to other parts of Title I that are not covered in these regulations. Those comments will be considered as we develop future proposed regulations, as appropriate.

*Executive Order 12866*

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of this order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM under the following topic:

**Executive Order 12866**

*Paperwork Reduction Act of 1995*

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

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(Catalog of Federal Domestic Assistance Number: 84.010 Improving Programs Operated by Local Educational Agencies)

**List of Subjects in 34 CFR Part 200**

Administrative practice and procedure, Adult education, Children, Coordination, Education, Education of disadvantaged children, Education of children with disabilities, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs-education, Indians-education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

Dated: June 28, 2002.

**Rod Paige,**

*Secretary of Education.*

The Secretary amends part 200 of title 34 of the Code of Federal Regulations as follows:

## PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 is revised to read as follows:

**Authority:** 20 U.S.C. 6301 through 6578, unless otherwise noted.

2. The heading for part 200 is revised to read as set forth above.

3. Revise the first undesignated center heading in subpart A of this part to read as follows:

**Standards and Assessments**

4. Revise §§ 200.1 through 200.6 to read as follows:

**§ 200.1 State responsibilities for developing challenging academic standards.**

(a) *Academic standards in general.* A State must develop challenging academic content and student academic achievement standards that will be used by the State, its local educational agencies (LEAs), and its schools to carry out subpart A of this part. These academic standards must—

(1) Be the same academic standards that the State applies to all public schools and public school students in the State, including the public schools and public school students served under subpart A of this part;

(2) Include the same knowledge, skills, and levels of achievement expected of all students; and

(3) Include at least mathematics, reading/language arts, and, beginning in the 2005–2006 school year, science, and may include other subjects determined by the State.

(b) *Academic content standards.* (1) The challenging academic content standards required under paragraph (a) of this section must—

(i) Specify what all students are expected to know and be able to do;

(ii) Contain coherent and rigorous content; and

(iii) Encourage the teaching of advanced skills.

(2) A State's academic content standards may—

(i) Be grade specific; or,

(ii) Cover more than one grade if grade-level content expectations are provided for each of grades 3 through 8.

(3) At the high school level, the academic content standards must define the knowledge and skills that all high school students are expected to know and be able to do in at least reading/language arts, mathematics, and, beginning in the 2005–06 school year, science, irrespective of course titles or years completed.

(c) *Academic achievement standards.* (1) The challenging student academic achievement standards required under paragraph (a) of this section must—

(i) Be aligned with the State's academic content standards; and

(ii) Include the following components for each content area:

(A) Achievement levels that describe at least—

(*1*) Two levels of high achievement—proficient and advanced—that determine how well students are mastering the material in the State's academic content standards; and

(*2*) A third level of achievement—basic—to provide complete information about the progress of lower-achieving students toward mastering the proficient and advanced levels of achievement.

(B) Descriptions of the competencies associated with each achievement level.

(C) Assessment scores (''cut scores'') that differentiate among the achievement levels as specified in paragraph (c)(1)(ii)(A) of this section, and a description of the rationale and procedures used to determine each achievement level.

(2) A State must develop academic achievement standards for every grade and subject assessed, even if the State's academic content standards cover more than one grade.

(3) With respect to academic achievement standards in science, a State must develop—

(i) Achievement levels and descriptions no later than the 2005–06 school year; and

(ii) Assessment scores (''cut scores'') after the State has developed its science assessments but no later than the 2007–08 school year.

(d) *Subjects without standards.* If an LEA serves students under subpart A of this part in subjects for which a State has not developed academic standards, the State must describe in its State plan a strategy for ensuring that those students are taught the same knowledge and skills and held to the same expectations in those subjects as are all other students.

(e) *Other subjects with standards.* If a State has developed standards in other subjects for all students, the State must apply those standards to students participating under subpart A of this part.

(**Authority** 20 U.S.C. 6311(b)(1))

(Approved by the Office of Management and Budget under control number 1810–0576)

**§ 200.2 State responsibilities for assessment.**

(a)(1) Each State, in consultation with its LEAs, must implement a system of high-quality, yearly student academic assessments that includes, at a minimum, academic assessments in mathematics, reading/language arts and, beginning in the 2007–08 school year, science.

(2)(i) The State may also measure the achievement of students in other academic subjects in which the State has adopted challenging academic content and student academic achievement standards.

(ii) If a State has developed assessments in other subjects for all students, the State must include students participating under subpart A of this part in those assessments.

(b) The assessment system required under this section must meet the following requirements:

(1) Be the same assessment system used to measure the achievement of all students in accordance with § 200.3 or § 200.4.

(2) Be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency.

(3)(i) Be aligned with the State's challenging academic content and student academic achievement standards; and

(ii) Provide coherent information about student attainment of those standards.

(4)(i) Be valid and reliable for the purposes for which the assessment system is used; and

(ii) Be consistent with relevant, nationally recognized professional and technical standards.

(5) Be supported by evidence (which the Secretary will provide, upon request, consistent with applicable federal laws governing the disclosure of information) from test publishers or other relevant sources that the assessment system is—

(i) Of adequate technical quality for each purpose required under the Act; and

(ii) Consistent with the requirements of this section.

(6) Be administered in accordance with the timeline in § 200.5.

(7) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding of challenging content.

(8) Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal or family beliefs and attitudes, except that this provision does not preclude the use of items—

(i) Such as constructed-response, short answer, or essay questions; or

(ii) That require a student to analyze a passage of text or to express opinions.

(9) Provide for participation in the assessment system of all students in the grades being assessed consistent with § 200.6.

(10) Except as provided in § 200.7, enable results to be disaggregated within each State, LEA, and school by—

(i) Gender;

(ii) Each major racial and ethnic group;

(iii) English proficiency status;

(iv) Migrant status as defined in Title I, part C of the Elementary and Secondary Education Act (hereinafter ''the Act'');

(v) Students with disabilities as defined under section 602(3) of the Individuals with Disabilities Education Act (IDEA) as compared to all other students; and

(vi) Economically disadvantaged students as compared to students who are not economically disadvantaged.

(11) Produce individual student reports consistent with § 200.8(a).

(12) Enable itemized score analyses to be produced and reported to LEAs and schools consistent with § 200.8(b).

(c) The State assessment system may include academic assessments that do not meet the requirements in paragraph (b) of this section as additional measures. Those additional assessments—

(1) May not reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring under section 1116 of Title I of the Act, if those assessments were not used; but

(2) May identify additional schools for school improvement, corrective action, or restructuring.

(**Authority:** 20 U.S.C. 6311(b)(3))

**§ 200.3 Designing State Academic Assessment Systems.**

(a)(1) For each grade and subject assessed, a State's academic assessment system must—

(i) Address the depth and breadth of the State's academic content standards under § 200.1(b);

(ii) Be valid, reliable, and of high technical quality;

(iii) Express student results in terms of the State's student academic achievement standards; and

(iv) Be designed to provide a coherent system across grades and subjects.

(2) A State may include in its academic assessment system under § 200.2 either or both—

(i) Criterion-referenced assessments; and

(ii) Assessments that yield national norms, provided that, if the State uses only assessments referenced against national norms at a particular grade, those assessments—

(A) Are augmented with additional items as necessary to measure accurately the depth and breadth of the State's academic content standards; and

(B) Express student results in terms of the State's student academic achievement standards.

(b) A State that includes a combination of assessments as described in paragraph (a)(2) of this section, or a combination of State and local assessments, in its State assessment system must demonstrate in its State plan that the system has a rational and coherent design that—

(1) Identifies the assessments to be used;

(2) Indicates the relative contribution of each assessment towards—

(i) Ensuring alignment with the State's academic content standards; and

(ii) Determining the adequate yearly progress of each school and LEA; and

(3) Provides information regarding the progress of students relative to the State's academic standards in order to inform instruction.

(c) A State that includes local assessments in the system described in § 200.2(b) must—

(1) Establish technical criteria to ensure that each local assessment meets the requirements of paragraphs (a)(1) and (c)(2) of this section;

(2) Demonstrate in its State plan that all local assessments used for this purpose—

(i) Are equivalent to one another and to State assessments, where they exist, in their content coverage, difficulty, and quality;

(ii) Have comparable validity and reliability with respect to groups of students described in section 1111(b)(2)(C)(v) of the Act; and

(iii) Provide unbiased, rational, and consistent determinations of the annual progress of schools and LEAs within the State;

(3) Review and approve each local assessment to ensure that it meets or exceeds the State's technical criteria in paragraph (c)(1) of this section and the requirements in paragraph (c)(2) of this section; and

(4) Be able to aggregate, with confidence, data from local assessments to determine whether the State has made adequate yearly progress.

(d) A State's academic assessment system may rely exclusively on local assessments only if it meets the requirements of § 200.4.

(**Authority:** 20 U.S.C. 6311(b)(3))

**§ 200.4 State law exception.**

(a) If a State provides satisfactory evidence to the Secretary that neither the State educational agency (SEA) nor any other State government official, agency, or entity has sufficient authority under State law to adopt academic content standards, student academic achievement standards, and academic assessments applicable to all students enrolled in the State's public schools, the State may meet the requirements under §§ 200.1 and 200.2 by—

(1) Adopting academic standards and academic assessments that meet the requirements of §§ 200.1 and 200.2 on a Statewide basis and limiting their applicability to students served under subpart A of this part; or

(2) Adopting and implementing policies that ensure that each LEA in the State that receives funds under subpart A of this part will adopt academic standards and academic assessments aligned with those standards that—

(i) Meet the requirements in §§ 200.1 and 200.2; and

(ii) Are applicable to all students served by the LEA.

(b) A State that qualifies under paragraph (a) of this section must—

(1) Establish technical criteria for evaluating whether each LEA's—

(i) Academic content and student academic achievement standards meet the requirements in § 200.1; and

(ii) Academic assessments meet the requirements in § 200.2, particularly regarding validity and reliability, technical quality, alignment with the LEA's academic standards, and inclusion of all students in the grades assessed;

(2) Review and approve each LEA's academic standards and academic assessments to ensure that they—

(i) Meet or exceed the State's technical criteria; and

(ii) For purposes of this section—

(A) Are equivalent to one another in their content coverage, difficulty, and quality;

(B) Have comparable validity and reliability with respect to groups of students described in section 1111(b)(2)(C)(v) of the Act; and

(C) Provide unbiased, rational, and consistent determinations of the annual progress of LEAs and schools within the State; and

(3) Be able to aggregate, with confidence, data from local assessments to determine whether the State has made adequate yearly progress.

(**Authority:** 20 U.S.C. 6311(b)(5))

**§ 200.5 Timeline for assessments.**

(a) *Reading/language arts and mathematics.* (1) Through the 2004–2005 school year, a State must administer the assessments required under § 200.2 at least once during—

(i) Grades 3 through 5;

(ii) Grades 6 through 9; and

(iii) Grades 10 through 12.

(2) Except as provided in paragraph (a)(3) of this section, beginning no later than the 2005–2006 school year, a State must administer both the reading/language arts and mathematics assessments required under § 200.2—

(i) In each of grades 3 through 8; and

(ii) At least once in grades 10 through 12.

(3) The Secretary may extend, for one additional year, the timeline in paragraph (a)(2) of this section if a State demonstrates that—

(i) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(A) A natural disaster; or

(B) A precipitous and unforeseen decline in the financial resources of the State; and

(ii) The State can complete implementation within the additional one-year period.

(b) *Science.* Beginning no later than the 2007–2008 school year, the science assessments required under § 200.2 must be administered at least once during—

(1) Grades 3 through 5;

(2) Grades 6 through 9; and

(3) Grades 10 through 12.

(c) *Timing of results.* Beginning with the 2002–2003 school year, a State must promptly provide the results of its assessments no later than before the beginning of the next school year to LEAs, schools, and teachers in a manner that is clear and easy to understand.

(**Authority:** 20 U.S.C. 6311(b)(3))

**§ 200.6 Inclusion of all students.**

A State's academic assessment system required under § 200.2 must provide for the participation of all students in the grades assessed.

(a) *Students eligible under IDEA and Section 504.* (1) *Appropriate accommodations.* A State's academic assessment system must provide—

(i) For each student with disabilities, as defined under section 602(3) of the IDEA, appropriate accommodations that each student's IEP team determines are necessary to measure the academic achievement of the student relative to the State's academic content and achievement standards for the grade in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c); and

(ii) For each student covered under section 504 of the Rehabilitation Act of 1973 (Section 504), appropriate accommodations that each student's placement team determines are necessary to measure the academic achievement of the student relative to the State's academic content and achievement standards for the grades in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c).

(2) *Alternate assessment.* (i) The State's academic assessment system must provide for one or more alternate assessments for a student with disabilities as defined under section 602(3) of the IDEA who the student's IEP team determines cannot participate in all or part of the State assessments under paragraph (a)(1) of this section, even with appropriate accommodations.

(ii) Alternate assessments must yield results in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science.

(b) *Limited English proficient students.* A State must include limited English proficient students in its academic assessment system as follows:

(1) *In general.* (i) Consistent with paragraph (b)(2) of this section, the State must assess limited English proficient students in a valid and reliable manner that includes—

(A) Reasonable accommodations; and

(B) To the extent practicable, assessments in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English until the students have achieved English language proficiency.

(ii) In its State plan, the State must—

(A) Identify the languages other than English that are present in the student population served by the SEA; and

(B) Indicate the languages for which yearly student academic assessments are not available and are needed.

(iii) The State—

(A) Must make every effort to develop such assessments; and

(B) May request assistance from the Secretary in identifying linguistically accessible academic assessments that are needed.

(2) *Assessing reading/language arts in English.* (i) Unless an extension of time is warranted under paragraph (b)(2)(ii) of this section, a State must assess, using assessments written in English, the achievement of any limited English proficient student in meeting the State's reading/language arts academic standards if the student has attended schools in the United States, excluding Puerto Rico, for three or more consecutive years.

(ii) An LEA may continue, for no more than two additional consecutive years, to assess a limited English proficient student under paragraph (b)(1) of this section if the LEA determines, on a case-by-case individual basis, that the student has not reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on reading/language arts assessments written in English.

(iii) The requirements in paragraph (b)(2)(i) and (ii) of this section do not permit an exemption from participating in the State assessment system for limited English proficient students.

(3) *Assessing English proficiency.* (i) Unless a State receives an extension under paragraph (b)(3)(ii) of this section, the State must require each LEA, beginning no later than the 2002–2003 school year, to assess annually the English proficiency, including reading, writing, speaking, and listening skills, of all students with limited English proficiency in schools in the LEA.

(ii) The Secretary may extend, for one additional year, the deadline in paragraph (b)(3)(i) of this section if the State demonstrates that—

(A) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(*1*) A natural disaster; or

(*2*) A precipitous and unforeseen decline in the financial resources of the State; and

(B) The State can complete implementation within the additional one-year period.

(c) *Migratory and other mobile students.* A State must include migratory students, as defined in Title I, part C, of the Act, and other mobile students in its academic assessment system, even if those students are not included for accountability purposes under section 1111(b)(3)(C)(xi) of the Act.

(d) *Students experiencing homelessness.*

(1) A State must include homeless students, as defined in section 725(2) of Title VII, Subtitle B of the McKinney-Vento Act, in its academic assessment, reporting, and accountability systems, consistent with section 1111(b)(3)(C)(xi) of the Act.

(2) The State is not required to disaggregate, as a separate category under § 200.2(b)(10), the assessment results of the students referred to in paragraph (d)(1) of this section.

(Approved by the Office of Management and Budget under control number 1810–0576)

(**Authority:** 20 U.S.C. 6311(b)(3))

5. Add § 200.7 to read as follows:

**§ 200.7 Disaggregation of data.**

(a) *Statistically reliable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act or to identify schools in need of improvement, corrective action, or restructuring under section 1116 of the Act if the number of students in those subgroups is insufficient to yield statistically reliable information.

(2) Based on sound statistical methodology, a State must determine and justify in its State plan the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used.

(b) *Personally identifiable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act if the results would reveal personally identifiable information about an individual student.

(2) To determine whether disaggregated results would reveal personally identifiable information about an individual student, a State must apply the requirements under section 444(b) of the General Education Provisions Act (the Family Educational Rights and Privacy Act of 1974).

(3) Nothing in paragraph (b)(1) or (b)(2) of this section shall be construed to abrogate the responsibility of States to implement the requirements of section 1116(a) of the Act for determining whether States, LEAs, and schools are making adequate yearly progress on the basis of the performance of each subgroup under section 1111(b)(2)(C)(v) of the Act.

(4) Each State shall include in its State plan, and each State and LEA shall implement, appropriate strategies to protect the privacy of individual students in reporting achievement results under section 1111(h) of the Act and in determining whether schools and LEAs are making adequate yearly progress on the basis of disaggregated subgroups.

(Approved by the Office of Management and Budget under control number 1810–0576)

(**Authority:** 20 U.S.C. 6311(b)(3); 1232g)

6. Transfer the undesignated center heading ''Schoolwide Programs'' from its location after § 200.7 and place it after § 200.17 in subpart A of part 200.

7. Redesignate § 200.8 as § 200.18 and place it under the undesignated center heading ''Schoolwide Programs'' in subpart A of part 200.

8. Add a new § 200.8 and place it under the undesignated center heading ''Standards and Assessments'' to read as follows:

**§ 200.8 Assessment reports.**

(a) *Student reports.* A State's academic assessment system must produce individual student interpretive, descriptive, and diagnostic reports that—

(1)(i) Include information regarding achievement on the academic assessments under § 200.2 measured against the State's student academic achievement standards; and

(ii) Help parents, teachers, and principals to understand and address the specific academic needs of students; and

(2) Are provided to parents, teachers, and principals—

(i) As soon as is practicable after the assessment is given;

(ii) In an understandable and uniform format, including an alternative format (e.g., Braille or large print) upon request; and

(iii) To the extent practicable, in a language that parents can understand.

(b) *Itemized score analyses for LEAs and schools.* (1) A State's academic assessment system must produce and report to LEAs and schools itemized score analyses, consistent with § 200.2(b)(4), so that parents, teachers, principals, and administrators can interpret and address the specific academic needs of students.

(2) The requirement to report itemized score analyses in paragraph (b)(1) of this section does not require the release of test items.

(**Authority:** 20 U.S.C. 6311(b)(3))

9. Add § 200.9 under the undesignated center heading ''Standards and Assessments'' to read as follows:

**§ 200.9 Deferral of assessments.**

(a) A State may defer the start or suspend the administration of the assessments required under § 200.2 that were not required prior to January 8, 2002 for one year for each year for which the amount appropriated for State assessment grants under section 6113(a)(2) of the Act is less than the trigger amount in section 1111(b)(3)(D) of the Act.

(b) A State may not cease the development of the assessments referred to in paragraph (a) of this section even if sufficient funds are not appropriated under section 6113(a)(2) of the Act.

(**Authority:** 20 U.S.C. 6311(b)(3); 7301b(a)(2))

**§ 200.10 [Redesignated as § 200.14]**

10. Redesignate § 200.10 as § 200.14.

11. Add a new § 200.10 and place it under the undesignated center heading ''Standards and Assessments'' to read as follows:

**§ 200.10 Applicability of a State's academic assessments to private schools and private school students.**

(a) Nothing in § 200.1 or § 200.2 requires a private school, including a private school whose students receive services under subpart A of this part, to participate in a State's academic assessment system.

(b)(1) If an LEA provides services to eligible private school students under subpart A of this part, the LEA must, through timely consultation with appropriate private school officials, determine how services to eligible private school students will be academically assessed and how the results of that assessment will be used to improve those services.

(2) The assessments referred to in paragraph (b)(1) of this section may be the State's academic assessments under § 200.2 or other appropriate academic assessments.

(**Authority:** 20 U.S.C. 6320, 7886(a))

## Appendix—Analysis of Comments and Changes

**Note:** The following appendix will not appear in the Code of Federal Regulations.

*Section 200.1 State Responsibilities for Developing Challenging Academic Standards*

*Comment:* One commenter recommended amending the regulations to make clear that, if a State has adopted academic content standards in subjects other than reading/language arts, mathematics and science for all students, those standards must be the basis of instruction for Title I students in those other subjects.

*Discussion:* The statute explicitly requires that a Title I student be taught the same knowledge and skills and be held to the same expectations as all students in subjects a student is taught, but for which a State is not required to develop academic standards. The Secretary agrees that a clarification is needed to ensure that Title I students are also held to the same expectations as all students when a State has academic content standards for all students in subjects other than reading/language arts, mathematics and science. However, ensuring that such standards apply to Title I students does not change the statutory requirements for calculating adequate yearly progress.

*Changes:* Section 200.1(e) has been added to clarify that, if a State has developed standards in other subjects for all students, the State must apply those standards to students participating under subpart A of this part.

*Comment:* One commenter recommended amending the regulations to require States to develop standards in computer science.

*Discussion:* The NLCB Act identifies reading/language arts, mathematics, and science as the three subjects for which States must develop academic contents standards. States are free to develop standards in other subject areas and, in fact, many have done so.

*Changes:* None.

*Comment:* Several commenters raised issues related to student academic achievement standards. One commenter sought clarification as to whether States may have more than three levels of student achievement standards. Several other commenters indicated a need for States to have grade-specific examples of student work to help ensure that the public has a clear understanding of what the ''proficient'' level of achievement entails.

*Discussion:* States have the flexibility to develop more than three levels of student achievement standards. However, States choosing to do so must ensure that their student achievement standards include at least the three levels required by the statute. With regard to increasing public understanding of what constitutes the ''proficient'' level of achievement, the regulations already specify that student achievement standards must include descriptions of the competencies associated with each achievement level. As a result, States will need to have grade-specific information for each subject assessed.

*Changes:* None.

*Comment:* One commenter suggested that greater clarity was needed as to when ''assessment scores'' or ''cut scores'' defining the boundaries between achievement levels on science assessments must be provided.

*Discussion:* The regulations state that ''assessment scores'' or ''cut scores'' for achievement levels on science assessments do not have to be set until the assessment are due in 2007–2008. For tests administered in the 2007–2008 school year, completion of science assessment scores for each achievement level is expected by December 2008.

*Changes:* None.

*Comment:* One commenter expressed concern that the regulations requiring that high school content standards define the knowledge and skills that all students are expected to know and be able to do will result in standards based on minimum competencies.

*Discussion:* High school standards must reflect what a State expects all students to know by the time they graduate in the broad academic content areas of reading/language arts, mathematics and science, as opposed to the content covered in a specific course that not all students take. Academic content standards address both skills and subject content. While a student may be able to demonstrate process skills through different content, the intent of content standards is that there is a body of challenging knowledge in an academic content area that all students, not just those in a particular class, are expected to know. All students must have access to the same challenging content if no child is to be left behind.

*Changes:* None.

*Comment:* One commenter suggested that the Secretary provide a deadline for the development of grade-level content standards or expectations as well as the descriptions of competencies associated with each achievement level in mathematics and reading/language arts.

*Discussion:* The 2002 Consolidated State Application requires that States provide a timeline of major milestones for either adopting challenging content standards in, or disseminating grade-level expectations for, reading/language arts and mathematics at each grade level for grades 3 through 8. States must provide evidence of content standards or grade-level expectations in reading/language arts and mathematics for grades 3 through 8 by May 2003.

*Changes:* None.

*Section 200.2 State Responsibilities for Assessment*

*Comment:* A number of commenters commented generally on the NCLB Act's assessment requirements. One commenter, for example, applauded the NCLB Act's

efforts to move districts to annual assessments in grades 3 through 8. Another commenter supported a national test to obtain more standardization among States. Another commenter, however, expressed concern that the NCLB Act places a disproportionate emphasis on nationwide testing and insufficient emphasis on basic learning and curriculum deficits. The commenter noted that, without the necessary curriculum frameworks in place, students would not be able to successfully pass the required tests. Other commenters, particularly teachers, criticized reliance on one assessment to judge performance and emphasized the need for multiple assessments throughout the year to truly know that students are learning.

*Discussion:* The assessment requirements are one cornerstone of the NCLB Act. They implement President George W. Bush's plan to assess students in grades 3 through 8 and at least once during high school to help teachers and parents know how their students are achieving. These assessments also are the primary vehicle for holding schools and school districts accountable for student achievement. The NCLB Act assessment requirements do not require, or even envision, a national test. Rather, they rely on each State to develop or adopt an assessment system that is aligned with the State's own academic content and achievement standards. Moreover, the NCLB Act assessment requirements do not purport to be the sole assessments that schools will use to measure the achievement of their students. Teachers regularly assess the progress of their students through formal and informal measures and modify their instruction accordingly.

*Changes:* None.

*Comment:* Several commenters questioned whether § 200.2 permits a State assessment system to include approaches such as matrix sampling or parallel forms that administer different questions to different students. The commenters expressed support for flexibility in this regard.

*Discussion:* The statute does not preclude the use of parallel test forms or assessments that employ a matrix design as long as the assessments yield individual student results expressed in terms of the State academic content and achievement standards. The statute does require that all students be held to the same achievement standards. This means that assessments for a particular grade and subject must elicit comparable content knowledge and understanding, within the framework of the standards, for all students tested. If parallel forms or a matrix design are used, the State must provide evidence that all students are being held to the same academic achievement standards for the grade tested.

*Changes:* None.

*Comment:* One commenter recommended that a State's assessment system under § 200.2 require ''individual level assessments.'' According to the commenter, those assessments are a valuable tool in learning and teaching because they assess where a child is and how much growth the child has made in a nine-month period.

*Discussion:* The focus of the NCLB standards and assessment regulations is promoting achievement to high standards by schools and students using standards-based assessments aligned with a State's academic content and achievement standards. Individual level assessments (or levels assessments or adaptive assessments) would measure the performance of some students at a particular grade level against lower standards. This would result in some schools being held to lower standards than other schools in the same school district. Use of levels assessments would not allow all schools and students to be held to the same high standards required by the NCLB Act.

*Changes:* None.

*Comment:* One commenter suggested that the final regulations clarify that charter schools must comply with all the assessment and reporting requirements that apply to traditional public schools. The commenter also suggested that chartering agencies be required to submit all data to the SEA in order to provide parents and the public comprehensive and accurate information on all public schools in the State.

*Discussion:* Under section 1111(b)(3)(A) of the Act, each State must implement a set of high-quality, yearly student assessments that will be used as the primary means of determining the yearly performance of the State and of each LEA and school in the State. Thus, the assessment requirements in §§ 200.2 through 200.9 apply, as appropriate, to all public elementary and secondary schools in a State. As such, they also apply to public charter schools.

*Changes:* None.

*Comment:* A number of commenters commented on the fact that the regulations require a State's assessment system to meet certain requirements. Two commenters supported the emphasis on an assessment system, noting that it recognizes a coherent program of standards and assessments that provides flexibility to States. Other commenters, however, disagreed and suggested changing the phrases ''assessment system'' and ''system of assessments'' throughout the regulations to ''assessments'' to be consistent with the statute. The commenters expressed concern that, under an assessment system, a State could depart from using the same assessments for all students.

*Discussion:* Section 1111(b)(3) of the Act requires a State to develop and implement a ''set of high-quality, yearly student academic assessments.'' The final regulations intentionally use the phrases ''assessment system'' and ''system of assessments'' to emphasize that this set of assessments must produce a coherent and rational system for measuring the depth and breadth of the State's content standards and for holding schools and LEAs accountable. It also permits flexibility in how that system is structured. Using the word ''system'' in no way negates the fact that the assessments required under § 200.2 must be the same assessments used to measure the achievement of all students.

*Changes:* None.

*Comment:* One commenter noted regarding § 200.2(a)(2) that, if a State develops assessments in subjects other than reading/language arts, mathematics, and science, the State must administer those assessments to Title I students.

*Discussion:* Section 1111(b)(1) of the Act concerning academic standards makes clear that a State must have such standards for all public elementary and secondary school students, including students served under this part, in subjects determined by the State. Those subjects must include reading/language arts, mathematics, and science, but may certainly include other subjects as well. Section 1111(b)(3) of the Act also requires a State to have assessments that are aligned with its academic standards, and those assessments must be the same academic assessments used to measure the achievement of all students. As a result, if a State adopts standards and aligned assessments in subjects not required under section 1111, the State must also use those standards and assessments to measure the achievement of students participating under subpart A of this part. However, assuring that such assessments apply to Title I schools does not change the statutory requirements for calculating adequate yearly progress.

*Changes:* Section 200.2(a)(2)(ii) has been added to make clear that, if a State has developed assessments in other subjects for all students, the State must include students participating under subpart A of this part in those assessments.

*Comment:* A number of commenters noted that the provision in § 200.2(b)(1) requires the assessment system to measure the achievement of all students. The commenters expressed concern that, because students do not all achieve at the same level, the assessment system must be allowed to assess a student's actual level of achievement, not just the desired level of achievement. Teachers, in particular, emphasized that all students do not achieve at the same level and that tests, to be helpful for planning instruction, must focus on student performance, not a student's grade level. Other commenters specifically supported ''out-of-level'' tests for students who are studying at a lower academic level than their grade level, suggesting that grade-level assessments would not be valid because they would not focus on what a student was actually learning nor would they provide meaningful information to parents.

*Discussion:* One of the bedrock principles of the NCLB Act is that all students can learn to high standards. As a result, section 1111(b)(1) requires challenging academic content and student achievement standards that a State applies to all schools and students in the State. Similarly, section 1111(b)(3) requires a State to develop aligned assessments that the State uses to measure the achievement of all students. These requirements are accurately implemented in §§ 200.2(b)(1) and 200.6(a) of the final regulations. Specifically, as § 200.6(a)(1) indicates, a State's assessment system must provide accommodations so that a student with disabilities or a student covered under Section 504 of the Rehabilitation Act of 1973 can be held to the content and achievement standards for the grade in which the student is enrolled. Although ''out-of-level'' tests, for example, may provide instructional information about a student's progress, they

are not an acceptable means to meet the State's assessment requirements under §§ 200.2 and 200.6 or the accountability requirements of the NCLB Act.

*Changes:* None.

*Comment:* Several commenters commented on § 200.2(b)(5), which requires a State assessment system be supported by evidence from test publishers or other relevant sources that the system is of adequate technical quality for each purpose required under the Act. One commenter requested that this requirement be phased in to apply to new assessments entered into by States after the effective date of the final regulations. The commenter expressed concern that evidence of technical quality may not be covered under existing contracts. Other commenters suggested adding disclosure protections provided for under State law and contractual agreements.

*Discussion:* Section 200.2(b)(5) implements a new requirement in section 1111(b)(3)(C)(iv) that a State must provide the Secretary evidence from the test publisher or other relevant sources that the State's assessments are of adequate technical quality. Although this is a new statutory requirement, the Secretary has requested evidence of technical quality in its review of State assessment systems under the Improving America's Schools Act, predecessor to the NCLB Act. As a result, the Secretary does not anticipate that this requirement will pose a problem for States. Moreover, this requirement applies to assessments developed to meet the new NCLB Act requirements and should thus afford States sufficient time to modify test contracts, if necessary. With respect to the comment to protect disclosure of information based on State law or contractual provisions, we would expect the State and its test publishers to work out any issues in a manner that permits submission of adequate evidence of technical quality. Once submitted to the Department, the technical information is a public record, subject only to Federal disclosure rules and protections.

*Changes:* None.

*Comment:* One commenter requested that the Secretary clarify the requirement in § 200.2(b)(7) that a State's assessment system must include multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding of challenging content. According to the commenter, multiple measures means multiple ways of measuring the same proficiencies to increase the validity of determinations based on the assessment results.

*Discussion:* The term ''multiple measures'' has several meanings. On occasion, it means assessments using different formats (selected response, constructed response, etc.). It also refers to assessments that measure objectives within a particular content domain and assessments with items that measure both higher-order thinking skills (reasoning, synthesis, analysis, etc.) as well as knowledge and recall items to assess the depth and breadth of mastery of the particular content domain. The final regulations, therefore, do not limit the meaning.

*Changes:* None.

*Section 200.3 Designing State Academic Assessment Systems*

*Comment:* A number of commenters generally supported the flexibility afforded in § 200.3.

*Discussion:* The Secretary appreciates the commenters' support. In developing this provision, the Secretary intends to afford significant flexibility to States, consistent with section 1111(b)(3) of the Act, to enable States to design assessment systems that best meet their needs. At the same time, the Secretary has included safeguards to ensure that those systems adequately measure a State's standards, hold schools and students to high academic achievement standards, are valid, reliable, and of high technical quality, express student results in terms of the State's standards, and are designed to provide a coherent system across grades and subjects.

*Changes:* None.

*Comment:* Several commenters commented on § 200.3(a)(1)(i), which requires a State's assessment system to address the depth and breadth of the State's academic content standards. Some commenters endorsed the regulatory language as written, noting that the system as a whole must address the depth and breadth of the State's standards but not necessarily each assessment component. One commenter, in particular, argued persuasively that it would be literally impossible, as well as unnecessary, for a State to measure students' attainment of every single content standard. This commenter suggested that States need to be able to identify their highest-priority content standards and then ensure that students' mastery of those standards is appropriately measured to inform instruction. Other commenters, however, strongly supported requiring an assessment system to address fully the depth and breadth of the State's standards. These commenters believed that, without the word ''fully,'' any assessment system could meet the requirement that it address the depth and breadth of a State's content standards.

*Discussion:* Section 1111(b)(3)(C)(ii) of the Act requires a State's assessment system to be aligned with its academic content and student achievement standards and provide coherent information about student attainment of those standards. The purpose of § 200.3(a)(1)(i) is to ensure that a State's assessment system measures both the depth and breadth of the State's standards. As the comments suggest, the system as a whole must meet this requirement. The Secretary does not believe that adding the word ''fully' would significantly strengthen this requirement.

*Changes:* None.

*Comment:* One commenter questioned whether § 200.3(a)(1)(i) in effect requires a graduation test. The commenter expressed concern that, read in conjunction with § 200.1(b)(3), which requires high-school content standards ''irrespective of course titles or years completed,'' the requirement in § 200.3(a)(1)(i) that high-school assessments address the depth and breadth of the State's content standards would result in a de facto graduation test.

*Discussion:* Section 200.1(b)(3) is intended to make clear that a State must define the academic content standards it expects high-school students to know and be able to do. These standards may well include content that is covered in several courses. For example, a State's mathematics standards may include content in algebra, geometry, and probability. Under § 200.3(a)(1)(i), a State's high-school assessments must address the depth and breadth of the State's content standards. As a result, an end-of-course Algebra I test may not measure the depth and breadth of this State's mathematics standards unless that test also measures geometry and probability. The provision in § 200.3(a)(1)(i), however, is not intended to require a de facto graduation test.

*Changes:* None.

*Comment:* A number of commenters addressed § 200.3(a)(2), which permits a State to include in its assessment system either or both criterion-referenced assessments or nationally normed assessments that are augmented with additional items. Some commenters supported this flexibility. One commenter supported the use of nationally normed assessments only if those assessments are augmented with additional items as necessary to measure a State's content standards. Other commenters, however, strongly criticized the use of nationally normed assessments at all, arguing they are contrary to the intent of the NCLB Act and would damage effective implementation. These commenters noted that norm-referenced assessments measure performance relative to other students rather than to standards and thus are antithetical to the notion that all students can learn at high levels. Another commenter noted that norm-referenced assessments are not aligned with State standards.

*Discussion:* The Secretary has carefully considered these comments and believes the final regulations contain the proper amount of flexibility for States while requiring any State that uses only a nationally normed assessment at a particular grade to augment that assessment with additional items as necessary to measure the depth and breadth of the State's standards. Moreover, student results from an augmented nationally normed assessment must be expressed in terms of the State's achievement standards, not relative to other students in the nation. The Secretary believes these provisions address the commenters' concerns and will ensure that, before a State includes a nationally normed assessment in its assessment system, the State carefully examines the alignment of the assessment with the State's standards and the extent to which the State must add items to fully address its standards. Moreover, if a State combines criterion-referenced and nationally normed assessments, the State must demonstrate that its system has a rational and coherent design.

*Changes:* None.

*Comment:* A number of commenters commented on § 200.3(b), which permits a State assessment system to include a combination of State and local assessments, provided the system has a rational and coherent design and meets a number of

rigorous requirements. Some commenters strongly supported the flexibility this provision affords States. Several commenters, however, criticized this provision. The commenters argued that this provision conflicts with section 1111(b)(3)(C) of the Act, which requires a State's assessments to ''be the same academic assessments used to measure the achievement of all children'' in the State. Moreover, the commenters believed that LEAs, which are subject under the NCLB Act to much stricter accountability requirements than under the prior law, would have an incentive to adopt easier local assessment measures in order to ensure that their students make adequate yearly progress. The commenters also questioned whether LEAs have sufficient resources and expertise needed to develop local assessments that truly meet the rigorous standards for alignment, multiple measures, and inclusion that the Act requires. In addition, the commenters noted that using local assessments would preclude like comparisons of all students.

*Discussion:* The Secretary appreciates the commenters' concerns and believes that local assessments must be held to a high standard before they may be included in a State's assessment system. A State must demonstrate, for example, that its local assessments meet requirements such as validity, reliability, technical quality, alignment, and inclusion of all students. Furthermore, the State must demonstrate that the assessments are equivalent to one another in their content coverage, difficulty, and quality; have comparable validity and reliability; and provide unbiased, rational, and consistent determinations of the adequate yearly progress of schools and LEAs within the State. If local assessments can meet these requirements, the Secretary believes a State may include them in its State assessment system.

*Changes:* None.

*Comment:* One commenter questioned the reference in § 200.3(c)(1), which deals with local assessments in a State's assessment system, to § 200.3(a)(2), which permits either or both criterion-referenced or augmented nationally normed assessments. The commenter believed that the cross-reference assumed that any local assessment would be nationally normed.

*Discussion:* The purpose of the requirements in § 200.3(c)(1) is to ensure that a State whose assessment system includes local assessments establish technical criteria to ensure that each local assessment meets statutory requirements applicable to statewide assessments. Its purpose is not to require that local assessments be nationally normed assessments.

*Changes:* The cross-reference in § 200.3(c)(1) has been changed to refer to § 200.3(a)(1) and (c)(2), which establish requirements for local assessments that comprise a State's system.

*Section 200.4 State Law Exception*

*Comment:* One commenter objected to the regulation specifying that local assessments be equivalent to one another in content coverage, difficulty, and quality across a State. Instead, the commenter suggested that voluntary consortia of LEAs using common sets of standards, benchmarks, and assessments be permitted.

*Discussion:* The NCLB Act requires a State to use its State assessment system to measure the adequate yearly progress (AYP) of each public school and LEA in the State and to hold schools and LEAs accountable for failing to make AYP. To ensure that LEAs are evaluated fairly and consistently across a State that is using only local assessments, it is thus critical that the State establish criteria to ensure equivalence in content coverage, difficulty, and quality of LEA's local assessments. In addition, the statute requires that AYP be calculated for a State based on the State's aligned assessment system. In a State relying solely on local assessments, the results of AYP calculations could not provide statistically valid and reliable results without equivalency among assessments.

*Changes:* None.

*Section 200.6 Inclusion of All Students*

*Comment:* One commenter indicated that clarification was needed regarding the inclusion of students with limited English proficiency (LEP) in State assessments. The commenter suggested that the Secretary require States to establish criteria and procedures for including LEP students in the mathematics and science tests prior to the three-year schooling requirement for including them in reading/language arts assessments. This commenter felt that the inclusion of LEP students in the assessments from the beginning of the school year is neither practical nor conducive to the attainment of valid and reasonable assessment results.

*Discussion:* The statute requires that LEP students be included in State assessment systems. For their first three years in U.S. schools, such students must be tested in reading/language arts and mathematics content (and science by 2007–2008) in a valid and reliable manner, including, to the extent practicable, native language assessments if a native language assessment would yield better information on what a student knows and can do. Students with limited-English proficiency who have been in U.S. schools (except Puerto Rico) for three or more years are to be tested in English on the reading/language arts assessment.

*Changes:* None.

*Comment:* One commenter recommended that SEAs and LEAs be required to report on the progress of students who are homeless and who attend school in more than one school district in a school year. That commenter also recommended amending the regulations to require that the performance of homeless children who attend more than one school in an LEA be used in determining the progress of the SEA in meeting adequate yearly progress.

*Discussion:* The goal of the NCLB Act is to ensure that all students benefit from school reforms designed to increase achievement, including students who are experiencing homelessness. As additional guidance documents are developed, the Secretary will work to identify ways to assist States and LEAs accomplish this goal.

On the issue of calculating AYP for States, the statute already requires that students who have attended several schools in an LEA for a full academic year but have not attended the same school for a full academic year must be included in assessments and their performance be used in determining whether LEAs make AYP. As a result, data for these students will influence whether SEAs make AYP also. Moreover, even if homeless children attend schools in several LEAs, they must be assessed and their performance would be included in determining State AYP.

*Changes:* None.

*Section 200.7 Disaggregation of Data*

*Comment:* A number of commenters expressed concern regarding the requirement that States set their own group sizes and minimum thresholds. One commenter suggested that the regulations specify what a reliable group size is. Many commenters recommended that the Secretary set a uniform minimum student threshold for reporting accountability to ensure statistical reliability and validity. On the other hand, one commenter supported the State's ability to set its own minimum thresholds. This commenter commended the Department's acknowledgement of the flexibility in the threshold necessary to accommodate the variability in circumstances.

*Discussion:* The statute states that subgroup disaggregation is not required for accountability or reporting purposes if the number is too small to yield reliable information or if the results would reveal personally identifiable information. This issue was subject to a great deal of discussion during negotiated rulemaking. Ultimately, it was decided that each State is in the best position to make this determination due to the wide variety in school size across the nation, differences in test psychometric properties, and the fact that different numbers may be reliable for reporting than for accountability.

*Changes:* None.

*Section 200.8 Assessment Reports*

*Comment:* One commenter recommended amending the regulations to require that score analyses indicate the number of items and assessment instruments that support a determination that a student is less than proficient in meeting a particular State standard.

*Discussion:* The regulations do not specify what a score analyses must include so that States may have maximum flexibility in tailoring their score analyses to the type of assessment system they have developed. The Secretary agrees that there may be circumstances where such information is helpful. A State may certainly include the commenter's suggested items in its score analyses.

*Change:* None.

*Section 200.9 Deferral of Assessments*

*Comment:* One commenter indicated that requiring continued work on assessment development when the appropriation falls below the trigger amount would be difficult if Federal funds are being used for assessment development.

*Discussion:* The regulations restate the statutory requirements. The Secretary believes that Congress did not want

assessment development to cease once it begins, even if sufficient Federal funds are not available.

*Changes:* None.

*Section 200.10 Applicability of a State's Academic Assessments to Private Schools and Private School Students*

*Comment:* Several commenters commented generally on the applicability of a State's academic assessments to private schools and private school students. Additionally, one commenter suggested that the regulation should be revised to make it clearer that the LEA has the sole authority for determining which assessment to use when assessing services to eligible students attending private schools.

*Discussion:* These regulations do, in fact, indicate that the decision rests with the LEA. However, the LEA must consult with private school officials in making the determination.

*Changes:* None.

[FR Doc. 02–16913 Filed 7–3–02; 8:45 am]

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**H.R. 327/P.L. 107–198**

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