



# Federal Register

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# Rules and Regulations

Federal Register

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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.

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 02-029-2]

#### Citrus Canker; Removal of Quarantined Area

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

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

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the citrus canker regulations by removing a portion of Manatee County, FL, from the list of quarantined areas. The regulations require that an area be free from citrus canker for a period of at least 2 years before it may be removed from the list of quarantined areas. Surveys have shown that the Duette area of Manatee County, FL, has been free of citrus canker since February 4, 2000. The interim rule removed restrictions on the interstate movement of regulated articles from that portion of Manatee County, FL.

**EFFECTIVE DATE:** The interim rule became effective on May 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Poe, Operations Officer, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1231; (301) 734-8899.

#### SUPPLEMENTARY INFORMATION:

##### Background

In an interim rule effective and published in the *Federal Register* on May 8, 2002 (67 FR 30769-30771, Docket No. 02-029-1), we amended the citrus canker regulations in 7 CFR part

301 by removing a portion of Manatee County, FL, from the list of quarantined areas in § 301.75-4(a). The regulations require that an area be free from citrus canker for a period of at least 2 years before it may be removed from the list of quarantined areas, and surveys have shown that the 41-square-mile Duette area in eastern Manatee County, FL, has been free of citrus canker since February 4, 2000. Therefore, the interim rule removed restrictions on the interstate movement of regulated articles from that area.

Comments on the interim rule were required to be received on or before July 8, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

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

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

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

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

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 30769-30771 on May 8, 2002.

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

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

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

**Peter Fernandez,**

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

[FR Doc. 02-20330 Filed 8-9-02; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 331

#### 9 CFR Part 121

[Docket No. 02-082-1]

RIN 0579-AB47

#### Agricultural Bioterrorism Protection Act of 2002; Listing of Biological Agents and Toxins and Requirements and Procedures for Notification of Possession

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

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

**SUMMARY:** In accordance with the Agricultural Bioterrorism Protection Act of 2002, we are establishing, by regulation, an initial list of biological agents and toxins determined to have the potential to pose a severe threat to animal or plant health, or to animal or plant products. The Act requires that all persons in possession of any listed biological agent or toxin must, within 60 days of the publication of this interim rule, notify the Secretary of such possession. This interim rule establishes the initial list of biological agents and toxins and provides guidance on the manner in which the required notice is to be provided.

**DATES:** This interim rule is effective August 12, 2002. We will consider all comments that we receive on or before October 11, 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. 02-082-1, 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. 02-082-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto: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. 02-082-1" 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 concerning the regulations in 7 CFR part 331, contact Dr. Arnold T. Tschanz, Senior Staff Officer, Regulatory Coordination, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737-1236, (301) 734-8790.

For information concerning the regulations in 9 CFR part 121, contact Dr. Denise Spencer, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737-1231, (301) 734-3277.

#### SUPPLEMENTARY INFORMATION:

##### Background

The President signed into law the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107-188) on June 12, 2002. Title II of Public Law 107 188, "Enhancing Controls on Dangerous Biological Agents and Toxins" (sections 201 through 231), provides for the regulation of certain biological agents and toxins by the Department of Health and Human Services (subtitle A, sections 201-204) and the Department of Agriculture (subtitle B, sections 211-213), and provides for interagency coordination between the two departments regarding overlap agents and toxins (subtitle C, section 221). Subtitle D (section 231) provides for criminal penalties regarding certain biological agents and toxins. For the Department of Health and Human Services, the Centers for Disease Control and Prevention (CDC) has been designated as the agency with primary responsibility for implementing the provisions of the Act; the Animal and Plant Health Inspection Service (APHIS) is the agency fulfilling that role for the Department of Agriculture (USDA).

In subtitle B (which is cited as the "Agricultural Bioterrorism Protection Act of 2002," referred to below as the Act), section 212(a) provides, in part, that the Secretary of Agriculture (the Secretary) must establish by regulation a list of each biological agent and each toxin that she determines has the potential to pose a severe threat to animal or plant health, or to animal or plant products. In determining whether to include an agent or toxin on the list, the Act requires the Secretary to consider:

- The effect of exposure to the agent or toxin on animal or plant health, and on the production and marketability of animal or plant products;
- The pathogenicity of the agent or the toxicity of the toxin and the methods by which the agent or toxin is transferred to animals or plants;
- The availability and effectiveness of pharmacotherapies and prophylaxis to treat and prevent any illness caused by the agent or toxin; and
- Any other criteria that the Secretary considers appropriate to protect animal or plant health, or animal or plant products.

The Act also calls on the Secretary to consult with appropriate Federal departments and agencies and with scientific experts representing appropriate professional groups.

Under section 213(a) of the Act, the Secretary must, not later than 60 days after the Act's date of enactment (*i.e.*, by August 11, 2002), promulgate an interim final rule that establishes the initial list required under section 212(a). The Act further requires (under section 213(b)) that all persons in possession of any listed biological agent or toxin must, within 60 days of the publication of that interim rule, notify the Secretary of such possession; the Act provides that the interim rule establishing the list must also furnish written guidance on the manner in which the required notice is to be provided.

In accordance with the statutory requirements discussed above, this interim rule establishes the initial lists of biological agents and toxins and sets out the manner in which persons in possession of listed agents and toxins are to provide notice of such possession. To accomplish this, we are establishing new parts in the Code of Federal Regulations (CFR), one part in the plant-related provisions of title 7, chapter III, and one part in the animal-related provisions of title 9, chapter I.

The two new parts, 7 CFR part 331 and 9 CFR part 121, are both titled "Possession of Biological Agents and Toxins" and are constructed similarly: Each contains a section that provides

definitions for specific terms used in the part, a section in which the list of biological agents and toxins is set out, and a section that provides guidance on the manner in which the required notice is to be provided. The main difference between the two parts is in the lists: The regulations in 7 CFR part 331 list only those agents and toxins determined to have the potential to pose a severe threat to plant health or to the production and marketability of plant products, while the regulations in 9 CFR part 121 list those agents and toxins determined to have the potential to pose a severe threat to both human and animal health ("overlap agents and toxins"), to animal health, or to the production and marketability of animal products. These new parts are discussed in detail below.

##### Definitions

Both 7 CFR part 331 and 9 CFR part 121 begin with a definitions section, §§ 331.1 and 121.1, respectively. With one exception, the terms defined in each section are the same. Specifically, we define the terms *biological agent*, *facility*, *person*, *responsible facility official*, and *toxin* in both parts, while the term *overlap agent or toxin* is defined only in 9 CFR 121.1 (this term is not applicable to the plant-related regulations in 7 CFR part 331).

The definitions of *biological agent* and *toxin* are taken from 18 U.S.C. 178. Section 212(l) of the Act provides that "[t]he terms "biological agent" and "toxin" have the meanings given such terms in section 178 of title 18, United States Code." Thus, we define *biological agent* as "any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing: (1) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism; (2) deterioration of food, water, equipment, supplies, or material of any kind; or (3) deleterious alteration of the environment." *Toxin* is defined as "the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including: (1) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or (2) any poisonous isomer or biological product, homolog, or derivative of such a substance."

In 9 CFR 121.1, we also define the term *overlap agent or toxin*. The definition we use is based on the definition provided for the term “select agent” in the CDC’s regulations in 42 CFR 72.6(j). In appendix A to 42 CFR part 72, CDC provides a list of 36 select agents, 18 of which are microorganisms or toxins that pose a risk to both human and animal health. Those 18 microorganisms and toxins are listed as “overlap agents or toxins” in our regulations in § 121.2(a) and are characterized in the same manner by CDC for the purposes of carrying out its responsibilities under the Act.

Given that the agents and toxins listed in § 121.2(a) were drawn from the CDC’s list of select agents, we believe that it is appropriate to adapt the CDC definition of the term “select agent” for use as our definition of the term “overlap agent or toxin” in order to provide regulated entities with a consistent frame of reference. Therefore, in 9 CFR 121.1, *overlap agent or toxin* is defined as “a microorganism (including a virus, bacterium, fungus, rickettsia) or toxin that poses a risk to both human and animal health and that is listed in § 121.2(a). The term also includes: (1) Genetically modified microorganisms or genetic elements from organisms listed in § 121.2(a), shown to produce or encode for a factor associated with a disease; and (2) genetically modified microorganisms or genetic elements that contain nucleic acid sequences coding for any of the toxins listed in § 121.2(a), or their toxic subunits.”

The remaining three terms, which are defined in both 7 CFR 331.1 and 9 CFR 121.1, are *facility*, *responsible facility official*, and *person*. Like our definition of *overlap agent or toxin*, our regulations define the first two terms in the same manner as they are defined in CDC’s regulations in 42 CFR 72.6(j) in order to provide a consistent frame of reference. *Facility* is defined as “any individual or government agency, university, corporation, company, partnership, society, association, firm, or other legal entity located at a single geographic site that may transfer or receive through any means a biological agent or toxin subject to this part.” Generally speaking, “a single geographic site” can be viewed as the complex of buildings and laboratories at a single mailing address.

*Responsible facility official* is defined as “an official authorized to transfer and receive biological agents or toxins covered by this part on behalf of a facility. This person should be either a safety officer, a senior management official of the facility, or both. The responsible facility official should not

be an individual who actually transfers or receives a biological agent or toxin at the facility.” For the purposes of clarity, the definition of this term in 9 CFR 121.1 includes the words “including overlap agents and toxins” after the words “authorized to transfer and receive biological agents or toxins.”

We have defined *person* as “any individual, firm, corporation, company, society, or association; any Federal, State, or local governmental entity; or any organized group of any of the foregoing.” Where this term is defined elsewhere in our regulations in titles 7 and 9, the scope of the definition is limited to individuals, companies, and other legal entities. However, section 212(l)(5) of the Act, in defining “person,” stipulates that the term includes Federal, State, and local governmental entities.

#### *Lists of Biological Agents and Toxins*

The initial lists of biological agents and toxins required under section 212(a)(1) of the Act are located in 7 CFR 331.2 and 9 CFR 121.2. The Act requires that these lists be reviewed and republished biennially, or more often as needed, and revised as necessary.

The list of nine biological agents and toxins provided in 7 CFR 331.2 was compiled by APHIS’ Plant Protection and Quarantine (PPQ) program. The listed agents and toxins are viruses, bacteria, or fungi that can pose a severe threat to a number of important crops, including potatoes, rice, soybeans, corn, citrus, and stone fruit. PPQ staff, after internal discussions and a review of several existing or proposed lists of plant pathogens that potentially pose a severe threat to plant health or plant products, requested input from USDA’s Agricultural Research Service, Forest Service, and Cooperative State Research, Education, and Extension Service, and consulted with the American Phytopathological Society. The resulting list of agents and toxins identified as potentially posing a severe threat to plant health or plant products is as follows:

*Liberobacter africanus*, *Liberobacter asiaticus*  
*Peronosclerospora philippinensis*  
*Phakopsora pachyrhizi*  
 Plum pox potyvirus  
*Ralstonia solanacearum* Race 3  
*Sclerophthora rayssiae* var. *zeae*  
*Synchytrium endobioticum*  
*Xanthomonas oryzae* pv. *oryzicola*  
*Xylella fastidiosa* (citrus variegated chlorosis strain)

The list of 18 overlap agents and toxins in 9 CFR 121.2(a) was, as noted previously, drawn from CDC’s list of 36

select agents, the 18 listed in our regulations being those select agents that pose a risk to both human and animal health. In June 2002, CDC convened an interagency working group to review the list of 36 select agents and develop recommendations regarding possible changes to that list. CDC has reviewed those recommendations and intends publish a document in the **Federal Register** to solicit comments from the public on potential changes to its list of select agents. Because the process of changing the list of select agents is still in its initial stages at the time this interim rule is being published, the list of overlap agents and toxins found in 9 CFR 121.2(a) reflects the select agent list promulgated by CDC in October 1996. The overlap agents and toxins listed in 9 CFR 121.2(a) are:

*Bacillus anthracis*  
*Brucella abortus*, *B. melitensis*, *B. suis*  
*Burkholderia (Pseudomonas) mallei*  
*Burkholderia (Pseudomonas) pseudomallei*  
*Clostridium botulinum*  
*Coccidioides immitis*  
*Coxiella burnetii*  
 Eastern equine encephalitis virus  
 Equine morbillivirus (Hendra virus)  
*Francisella tularensis*  
 Rift Valley fever virus  
 Venezuelan equine encephalitis virus  
 Aflatoxins  
 Botulinum toxins  
*Clostridium perfringens* epsilon toxin  
 Shigatoxin  
 Staphylococcal enterotoxins  
 T-2 toxin

The 23 agents and toxins listed in 9 CFR 121.2(b) include the causative agents of 14 of the 15 diseases classified by the Office International des Epizooties (OIE) as “List A” diseases. (The causative agent of the fifteenth List A disease, Rift Valley fever, is an overlap agent listed in § 121.2(a).) List A diseases are, according to OIE, those transmissible diseases that have the potential for very serious and rapid spread, irrespective of national borders, that are of serious socioeconomic or public health consequence and that are of major importance in the international trade of animals and animal products. The diseases drawn from OIE’s List A are:

African horsesickness  
 African swine fever  
 Bluetongue (exotic)  
 Classical swine fever  
 Contagious bovine pleuropneumonia  
 Foot-and-mouth disease  
 Highly pathogenic avian influenza  
 Lumpy skin disease  
 Newcastle disease (exotic)  
 Peste des petits ruminants

Rinderpest  
Sheep pox and goat pox  
Swine vesicular disease  
Vesicular stomatitis (exotic)

Five of the remaining nine agents and toxins listed in 9 CFR 121.2(b) are OIE List B diseases, *i.e.*, transmissible diseases that are considered to be of socioeconomic and/or public health importance within countries and that are significant in the international trade of animals and animal products. The List B diseases included in 9 CFR 121.2(b) are:

Bovine spongiform encephalopathy  
*Cowdria ruminantium* (heartwater)  
Japanese encephalitis virus  
Malignant catarrhal fever  
Contagious caprine pleuropneumonia

The four remaining diseases/disease agents—two restricted foreign animal pathogens (Akabane virus and camel pox virus) and two emerging paramyxoviruses (Menangle virus and Nipah virus)—were included on the list in 9 CFR 121.2(b) based on our determination that they potentially pose a severe threat to animal health or animal products.

#### *Exemptions From the Notification Requirement*

Under section 212(g)(1)(C) of the Act, certain products that are, bear, or contain overlap agents or toxins may be exempted from regulation if those products have been cleared, approved, licensed, or registered pursuant to one of the following acts:

- The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*);
- Section 351 of Public Health Service Act (42 U.S.C. 262);
- The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading "Bureau of Animal Industry" in the Act of March 4, 1913; 21 U.S.C. 151–159); or
- The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 131 *et seq.*).

Paragraph (b) of § 213 of the Act extends that exemption provision to the notification requirements that are the subject of this interim rule. Therefore, the regulations 9 CFR 121.2(c) provide that persons possessing products that are, bear, or contain overlap agents or toxins listed in 9 CFR 121.2(a) will be exempt from the notification requirements of 9 CFR 121.3 if the products have been cleared, approved, licensed, or registered pursuant to one of the acts cited above.

Because the exemption under section 212(g)(1)(C) of the Act is limited to overlap agents and toxins, none of which appear in 7 CFR 331.2, we have

not included those exemption provisions in the regulations in 7 CFR part 331. Further, while the Act, in section 212(g)(2), does provide general authority for exemptions not involving overlap agents or toxins when the Secretary determines that such exemptions are consistent with protecting animal and plant health and animal and plant products, no determination has yet been made with regard to exemptions other than those discussed above.

#### *Notification Requirements and Procedures*

Under section 213(b) of the Act, all persons (unless exempt under section 212(g) of the Act) in possession of a listed biological agent or toxin must notify the Secretary of such possession not later than 60 days after the date on which the interim rule required under section 212(a)(1) of the Act—*i.e.*, this interim rule—is promulgated. Therefore, 7 CFR 331.3 and 9 CFR 121.3 both provide that any person or facility that possesses any listed biological agent or toxin must notify APHIS of such possession by 60 days after the publication date of this interim rule. However, the regulations in 9 CFR 121.3 provide that persons possessing overlap agents or toxins listed in § 121.2(a)—which, as noted previously, are among CDC's select agents—must provide the required notification by September 10, 2002, which is the date that notice must be provided to CDC under subtitle A of Public Law 107–188. Further, the regulations in 9 CFR 121.3 make note of the exemptions discussed above and state that notification is not required for those products that meet the criteria of 9 CFR 121.2(c). The regulations in both 7 CFR 331.3 and 9 CFR 121.3 indicate the form to be used to provide the required notification (one form will be used for notification under 7 CFR part 331, and a different form will be used for notification under 9 CFR part 121) and explain where copies of each form may be obtained.

To facilitate the notification process, both sections provide that a single form should be submitted for each facility by a responsible facility official designated by the facility to ensure management oversight of the notification requirement, and that the responsible facility official should consult with others in the facility (*e.g.*, principal investigators) in order to obtain the information necessary to complete the notification form. The responsible facility official must review and sign the notification form and will be the individual contacted by APHIS if any

questions arise concerning the facility's response.

Finally, both sections provide a mailing address for the submission of completed forms, as well as a telephone number to call if assistance in completing the form is required.

#### **Immediate Action**

Immediate action is necessary in order for USDA to comply with the requirements of Title II, subtitle B, of Public Law 107–188, which requires the publication of this interim rule not later than August 11, 2002. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In this interim rule, we are establishing, by regulation, an initial list of biological agents and toxins determined to have the potential to pose a severe threat to animal or plant health, or to animal or plant products. The Agricultural Bioterrorism Protection Act of 2002 requires that all persons in possession of any listed biological agent or toxin must, within 60 days of the publication of this interim rule, notify the Secretary of such possession. This interim rule establishes the initial list of biological agents and toxins and provides guidance on the manner in which the required notice is to be provided.

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. We expect that the entities that will be affected by this rule will be laboratories and other institutions conducting research and related activities that involve the use of the biological agents and toxins listed in this rule. Most affected entities (apart

from Federal or State governmental entities) could be considered as falling under North American Industry Classification System (NAICS) code 541710, "Research and Development in the Physical, Engineering, and Life Sciences." The small business size standard established by the Small Business Administration for NAICS 541710 is 500 or fewer employees. Potentially affected entities could also fall under NAICS 541990, "All Other Professional, Scientific and Technical Services," and NAICS 611310, "Colleges, Universities and Professional Schools." The small business size standard for both of those classifications is annual receipts of \$6 million or less.

Given that this interim rule simply requires that persons possessing a listed biological agent or toxin provide notice to APHIS of such possession, we do not expect that this rule will have any substantive economic effect on any entities, large or small. We expect that any costs associated with this rule will be limited to the staff time expended in completing a notification form. This rule provides for the submission of only one form for each facility, which should limit the amount of time necessary for the preparation of a facility's response. Further, we would expect that any facility handling the kinds of biological agents and toxins listed in this rule would have a database or other records containing a listing of agents and toxins currently in the facility. Therefore, we anticipate that any personnel costs resulting from compliance with this rule should be minimal.

The benefit of this action is enhanced protection of the U.S. agricultural sector as APHIS will have a detailed inventory of biological agents and toxins that could pose a threat to the sector.

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

#### **Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not

require administrative proceedings before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control numbers 0579-0201 and 0579-0204 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 6 months. Please send written comments on the 6-month approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 02-082-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 02-082-1 and send your comments within 60 days of publication of this rule.

This rule establishes an initial list of biological agents and toxins determined to have the potential to pose a severe threat to animal or plant health, or to animal or plant products, and requires that all persons in possession of any listed biological agent or toxin must, within 60 days of the publication of this interim rule, notify the Secretary of such possession.

Two forms have been developed to provide the means by which persons in possession of listed agents or toxins will notify the Secretary of such possession. The first form, "Notification of Possession of Select Agents or High Consequence Livestock Pathogens and Toxins," was developed jointly by APHIS and the Centers for Disease Control and Prevention and will be used by persons possessing those agents and toxins determined to have the potential to pose a severe threat to human health, to both human and animal health ("overlap agents and toxins"), to animal health, or to the production and marketability of animal products. The second form, PPQ form 655, was developed by APHIS and will be used by persons possessing those agents and toxins determined to have the potential to pose a severe threat to plant health or to the production and marketability of plant products. We expect that the scope and nature of the research required to complete PPQ form 655 will be less complex than that associated with the first form, thus we have

estimated a smaller reporting burden per response for this form.

We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

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

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

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

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

*For "Notification of Possession of Select Agents or High Consequence Livestock Pathogens and Toxins," (OMB Control No. 0579-0201):*

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 2 hours per response.

*Respondents:* Researchers, universities, research and development organizations, diagnostic laboratories, and other entities that possess listed agents and toxins determined to have the potential to pose a severe threat to human health, to both human and animal health, or to the production and marketability of animal products.

*Estimated annual number of respondents:* 50,000.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 50,000.

*Estimated total annual burden on respondents:* 100,000 hours.

*For PPQ form 655 (OMB Control No. 0579-0204):*

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

*Respondents:* Researchers, universities, research and development organizations, diagnostic laboratories, and other entities that possess listed agents and toxins determined to have the potential to pose a severe threat to plant health or to the production and marketability of plant products.

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

*Estimated annual number of responses per respondent:* 1.

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

*Estimated total annual burden on respondents:* 500 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.)

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

### List of Subjects

#### 7 CFR Part 331

Agricultural research, Laboratories, Plant diseases and pests, Reporting and recordkeeping requirements.

#### 9 CFR Part 121

Agricultural research, Animal diseases, Laboratories, Medical research, Reporting and recordkeeping requirements.

Accordingly, we are amending 7 CFR chapter III by removing the heading for reserved part 331 and adding a new part 331; and we are amending 9 CFR chapter I, subchapter E, by adding a new part 121 to read as follows:

#### 7 CFR Chapter III

### PART 331—POSSESSION OF BIOLOGICAL AGENTS AND TOXINS

#### Sec.

331.1 Definitions.

331.2 List of biological agents and toxins.

331.3 Notification requirements and procedures.

**Authority:** Secs. 211-213, Title II, Pub. L. 107-188, 116 Stat. 647 (7 U.S.C. 8401).

#### § 331.1 Definitions.

*Biological agent.* Any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing:

- (1) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;
- (2) Deterioration of food, water, equipment, supplies, or material of any kind; or
- (3) Deleterious alteration of the environment.

*Facility.* Any individual or government agency, university, corporation, company, partnership, society, association, firm, or other legal

entity located at a single geographic site that may transfer or receive through any means a biological agent or toxin subject to this part.

*Person.* Any individual, firm, corporation, company, society, or association; any Federal, State, or local governmental entity; or any organized group of any of the foregoing.

*Responsible facility official.* An official authorized to transfer and receive biological agents or toxins covered by this part on behalf of a facility. This person should be either a safety officer, a senior management official of the facility, or both. The responsible facility official should not be an individual who actually transfers or receives a biological agent or toxin at the facility.

*Toxin.* The toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

- (1) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or
- (2) Any poisonous isomer or biological product, homolog, or derivative of such a substance.

#### § 331.2 List of biological agents and toxins.

The biological agents and toxins listed in this section have been determined to have the potential to pose a severe threat to plant health or to the production and marketability of plant products. Any person who possesses any listed agent or toxin or, in the case of a listed disease, the causative agent of that disease, must notify the Animal and Plant Health Inspection Service of that possession in accordance with § 331.3.

*Liberobacter africanus*, *Liberobacter asiaticus*  
*Peronosclerospora philippinensis*  
*Phakopsora pachyrhizi*  
 Plum pox potyvirus  
*Ralstonia solanacearum* Race 3  
*Sclerophthora rayssiae* var. *zeae*  
*Synchytrium endobioticum*  
*Xanthomonas oryzae* pv. *oryzicola*  
*Xylella fastidiosa* (citrus variegated chlorosis strain)

#### § 331.3 Notification requirements and procedures.

(a) Any person or facility that possesses any biological agent or toxin listed in § 331.2 must notify the Animal and Plant Health Inspection Service (APHIS) of such possession by October 11, 2002. Notice must be provided using Plant Protection and Quarantine (PPQ) form 655, which may be obtained by

calling PPQ at (301) 734-8896. The form is also available on the Internet at <http://www.aphis.usda.gov/ppq/permits>.

(b) Each facility should designate a responsible facility official to complete PPQ form 655, and a single form that reflects all listed agents and toxins possessed by all persons within the facility should be submitted for each facility. The responsible facility official for each facility should consult with others in the facility (e.g., principal investigators) in order to obtain the information necessary to complete the notification form. The responsible facility official must review and sign the notification form and will be the individual contacted by APHIS if any questions arise concerning the facility's response.

(c) Completed forms must be mailed to: U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permits and Risk Assessment, 4700 River Road Unit 133, Riverdale, Md 20737-1236.

(d) Assistance in completing the form may be requested by calling (301) 734-8896.

(Approved by the Office of Management and Budget under control number 0579-0204)

#### 9 CFR Chapter I

### PART 121—POSSESSION OF BIOLOGICAL AGENTS AND TOXINS

#### Sec.

121.1 Definitions.

121.2 List of biological agents and toxins.

121.3 Notification requirements and procedures.

**Authority:** Secs. 211-213, Title II, Pub. L. 107-188, 116 Stat. 647 (7 U.S.C. 8401).

#### § 121.1 Definitions.

*Biological agent.* Any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing:

- (1) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;
- (2) Deterioration of food, water, equipment, supplies, or material of any kind; or
- (3) Deleterious alteration of the environment.

*Facility.* Any individual or government agency, university, corporation, company, partnership, society, association, firm, or other legal entity located at a single geographic site that may transfer or receive through any

means a biological agent or toxin subject to this part.

*Overlap agent or toxin.* A microorganism (including a virus, bacterium, fungus, rickettsia) or toxin that poses a risk to both human and animal health and that is listed in § 121.2(a). The term also includes:

(1) Genetically modified microorganisms or genetic elements from organisms listed in § 121.2(a), shown to produce or encode for a factor associated with a disease; and

(2) Genetically modified microorganisms or genetic elements that contain nucleic acid sequences coding for any of the toxins listed in § 121.2(a), or their toxic subunits.

*Person.* Any individual, firm, corporation, company, society, or association; any Federal, State, or local governmental entity; or any organized group of any of the foregoing.

*Responsible facility official.* An official authorized to transfer and receive biological agents or toxins, including overlap agents and toxins, covered by this part on behalf of a facility. This person should be either a safety officer, a senior management official of the facility, or both. The responsible facility official should not be an individual who actually transfers or receives a biological agent or toxin at the facility.

*Toxin.* The toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

(1) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(2) Any poisonous isomer or biological product, homolog, or derivative of such a substance.

#### § 121.2 List of biological agents and toxins.

The biological agents and toxins listed in this section have been determined to have the potential to pose a severe threat to both human and animal health, to animal health, or to the production and marketability of animal products. Unless exempted under paragraph (c) of this section, any person who possesses any listed agent or toxin or, in the case of a listed disease, the causative agent of that disease, must notify the Animal and Plant Health Inspection Service of that possession in accordance with § 121.3.

(a) *Overlap agents and toxins.*

(1) *Bacillus anthracis.*

(2) *Brucella abortus, B. melitensis, B. suis.*

(3) *Burkholderia (Pseudomonas) mallei.*

(4) *Burkholderia (Pseudomonas) pseudomallei.*

(5) *Clostridium botulinum.*

(6) *Coccidioides immitis.*

(7) *Coxiella burnetii.*

(8) Eastern equine encephalitis virus.

(9) Equine morbillivirus (Hendra virus).

(10) *Francisella tularensis.*

(11) Rift Valley fever virus.

(12) Venezuelan equine encephalitis virus.

(13) Aflatoxins.

(14) Botulinum toxins.

(15) *Clostridium perfringens* epsilon toxin.

(16) Shigatoxin.

(17) Staphylococcal enterotoxins.

(18) T-2 toxin.

(b) *Animal agents and toxins.*

African horsesickness virus

African swine fever

Akabane virus

Avian influenza (highly pathogenic)

Bluetongue virus (exotic)

Bovine spongiform encephalopathy agent

Camel pox virus

Classical swine fever

*Cowdria ruminantium* (heartwater)

Foot-and-mouth disease virus

Goat pox virus

Japanese encephalitis virus

Lumpy skin disease virus

Malignant catarrhal fever

Menangle virus

*Mycoplasma capricolum* /M. F38/M.

*mycoides capri* (contagious caprine pleuropneumonia)

*Mycoplasma mycoides mycoides* (contagious bovine pleuropneumonia)

Newcastle disease virus (exotic)

Nipah virus

Peste des petits ruminants

Rinderpest virus

Sheep pox

Swine vesicular disease virus

Vesicular stomatitis (exotic)

(c) *Exemptions.* Persons possessing products that are, bear, or contain overlap agents or toxins listed in paragraph (a) of this section will be exempt from the notification requirements of § 121.3 if the products have been cleared, approved, licensed, or registered pursuant to:

(1) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*);

(2) Section 351 of Public Health Service Act (42 U.S.C. 262);

(3) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading "Bureau of Animal Industry" in the Act of March 4, 1913; 21 U.S.C. 151-159); or

(4) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 131 *et seq.*).

#### § 121.3 Notification requirements and procedures.

(a) Any person or facility that possesses any biological agent or toxin listed in § 121.2(b) must notify the Animal and Plant Health Inspection Service (APHIS) of such possession by October 11, 2002. Any person or facility that possesses any biological agent or toxin listed in § 121.2(a) that is not exempt under § 121.2(c) must notify APHIS of such possession by September 10, 2002. Notice must be provided using the form "Notification of Possession of Select Agents or High Consequence Livestock Pathogens and Toxins." A machine-readable version of the form may be obtained by calling (866) 567-4232. An alternate version of the form is available on the Internet at <http://www.aphis.usda.gov/vs/ncie>.

(b) Each facility should designate a responsible facility official to complete the form, and a single form that reflects all listed agents and toxins possessed by all persons within the facility should be submitted for each facility. The responsible facility official for each facility should consult with others in the facility (*e.g.*, principal investigators) in order to obtain the information necessary to complete the notification form. The responsible facility official must review and sign the notification form and will be the individual contacted by APHIS if any questions arise concerning the facility's response.

(c) Completed forms must be mailed to: Analytical Sciences, Inc., Attn: FSO P.O. Box 341809, Bethesda, MD 20827-1809.

(d) Assistance in completing the form available on the Internet may be requested by calling (301) 734-3222. Assistance in completing the machine-readable form may be obtained by calling (866) 567-4232.

(Approved by the Office of Management and Budget under control number 0579-0201)

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

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 02-20354 Filed 8-9-02; 8:45 am]

BILLING CODE 3410-34-P

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 989**

[Docket No. FV02-989-6 IFR]

**Raisins Produced From Grapes Grown In California; Decrease in Desirable Carryout Used to Compute Trade Demand****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the desirable carryout used to compute the yearly trade demand for raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). This rule decreases the amount of tonnage available early in the season and is expected to help the industry reduce an oversupply of California raisins.

**DATES:** Effective August 13, 2002. Comments must be received by August 22, 2002.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, or Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs,

AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone (202) 720-2491; Fax: (202) 720-8938; or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified in the order, and is used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. This rule decreases the desirable carryout for Natural (sun-dried) Seedless (NS) raisins from a rolling average of 3 to 2 months of prior year's shipments over the past 5 years,

dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. This rule also decreases the desirable carryout for all other varietal types of raisins covered under the order from a rolling average of 3 to 2-1/2 months of prior year's shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by three. These actions were recommended by the Committee at meetings held on June 27 and July 24, 2002.

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Funds generated from sales of reserve raisins are also used to support handler sales to export markets. Net proceeds from sales of reserve raisins are ultimately distributed to the reserve pool's equity holders, primarily producers.

Section 989.54 of the order prescribes procedures to be followed in establishing volume regulation and includes methodology used to calculate volume regulation percentages. Trade demand is based on a computed formula specified in this section, and is also part of the formula used to determine volume regulation percentages. Trade demand is equal to 90 percent of the prior year's shipments, adjusted by the carryin and desirable carryout inventories.

At one time, § 989.54(a) also specified actual tonnages for desirable carryout for each varietal type regulated. However, in 1989, these tonnages were suspended from the order, and flexibility was added so that the Committee could adopt a formula for desirable carryout in the order's rules and regulations. The formula has allowed the Committee to periodically adjust the desirable carryout to better

reflect changes in each season's marketing conditions.

The formula for desirable carryout has been specified since 1989 in § 989.154. Initially, the formula was established so that desirable carryout was based on shipments for the first 3 months of the prior crop year—August, September, and October (the crop year runs from August 1 through July 31). This amount was gradually reduced to 2½ months in 1991–92, 2¼ months in 1995–96, and to 2 months in 1996–97. The Committee reduced the desirable carryout between 1991–1997 because it believed that an excessive supply of raisins was available early in a new crop year creating unstable market conditions.

In 1998, the Committee determined that, because of the reduced desirable carryout, not enough raisins were being made available for growth. Thus, the desirable carryout was increased to 2½ months of prior year's shipments to allow for a higher trade demand figure and, thus, a higher free tonnage percentage, making more raisins available to handlers, especially for immediate use early in the season when supplies are often tight. This action also allowed desirable carryout to move towards what handlers actually hold in inventory at the end of a crop year, or about 100,000 tons. The Committee continued this practice and, in 2000, desirable carryout was changed to equal a rolling average of 3 months of prior year's shipments (August, September, and October) over the past 5 years, dropping the high and low figures.

#### June 27, 2002, Recommendation

At a meeting on June 27, 2002, the Committee reviewed the desirable carryout level. Most Committee members believe that the supply of free tonnage raisins on the market has once again become excessive and is contributing to unstable market conditions. The following table illustrates how handler inventories for NS raisins have been building in recent years:

CARRYOUT INVENTORY OVER PAST 5 YEARS

Crop years	<sup>1</sup> Inventory
2001–02 .....	2 133,815
2000–01 .....	116,131
1999–2000 .....	101,946
1998–99 .....	98,291
1997–98 .....	92,769

<sup>1</sup> Carryout inventory (natural condition tons).

<sup>2</sup> Estimated.

To moderate the oversupply of marketable tonnage early in the crop year, the Committee recommended

reducing the desirable carryout level for all varietal types of raisins from a rolling average of 3 months (August, September, and October) to 2½ months (August, September, and one-half of October) of prior year's shipments over the past 5 years, dropping the high and low figures. Committee staff estimated that this change to the desirable carryout level would reduce the 2002 trade demand for NS raisins by 15,000 tons. Decreasing the trade demand will reduce the free tonnage percentage, thus, making less free tonnage available to handlers for immediate use.

The Committee's vote on this action was 41 in favor and 5 opposed. Two of the members voting no commented that the large carryout at the end of the current crop year was due mainly to an extra 32,000 tons of reserve raisins that were purchased by handlers in September 2001. They believe that the carryout problem will correct itself next season. Other members commented that this action would create a hardship on producers by reducing the free tonnage percentage, thereby reducing producer payments. After much deliberation, the majority of Committee members supported reducing the desirable carryout from a rolling average of 3 to 2½ months of shipments over the past 5 years, dropping the high and low figures.

Most of the discussion at the Committee's meeting concerned the desirable carryout level for NS raisins. NS raisins are the major commercial varietal type of raisin produced in California. With the exception of the 1998–99 crop year, volume regulation has been implemented for NS raisins for the past several seasons. However, the Committee also believes that the decrease in desirable carryout should apply to the other varietal types of raisins covered under the order.

#### July 24, 2002, Revised Recommendation for NS Raisins

The raisin industry continued to explore other avenues to reduce the oversupply of California raisins, including implementing a "surplus pool and non-harvest" program for the 2002 crop year. However, rulemaking would be required as appropriate.

The Committee met on July 24, 2002, and revisited its oversupply situation and the desirable carryout issue. As a result, the Committee voted to further reduce the NS supply by decreasing the NS desirable carryout to a rolling average of 2 months (August and September) of prior year's shipments over the past 5 years, dropping the high and low figures, or 60,000 natural condition tons, whichever is higher.

Committee staff estimated that this would reduce the 2002 trade demand for NS raisins by another 15,000 tons, or a total of 30,000 tons. The desirable carryout for all other varietal types would remain at the 2½ month level recommended in June 2002.

The Committee's vote on this action was 32 in favor, 10 opposed, and 2 abstentions. The members voting no were primarily concerned that this action would reduce the free tonnage percentage and producer payments.

Although this action will tighten the supply of raisins available early in the season, handlers will still be provided an opportunity to increase their inventories, if necessary, by purchasing raisins from the reserve pool under order-mandated 10 plus 10 offers and other releases of reserve raisins available under the order. The 10 plus 10 offers are two offers of reserve pool raisins, which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use. Although this rule tends to tighten the supply of raisins early in the season, handlers will still have the opportunity to obtain additional raisins from the 10 plus 10 offers. Thus, paragraph (a) in § 989.154 is modified accordingly.

#### Initial Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least \$5,000,000, and

the remaining 7 handlers have sales less than \$5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule reduces the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified under § 989.54(a) of the order. It is also part of another formula used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. This rule reduces the desirable carryout specified in paragraph (a) of § 989.154 for NS raisins from a rolling average of 3 months (August, September, and October) to 2 months (August and September) of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. This rule also reduces the desirable carryout for all other varietal types covered under the order from 3 months (August, September, and October) to 2½ months (August, September, and one-half of October) of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three.

The desirable carryout level applies uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. As previously mentioned, reducing the desirable carryout will reduce the trade demand and free tonnage percentage, thus making less raisins available to handlers early in the season. This action is expected to help reduce the burdensome supply of California raisins, thereby improving market conditions. Handlers will be provided opportunities throughout the crop year to purchase raisins from the reserve pool to increase their inventories.

The Committee considered a number of alternative levels of desirable carryout. The Committee has an appointed subcommittee, which periodically holds public meetings to discuss changes to the order and other issues. The subcommittee met on June 26, 2002, and discussed desirable carryout. Some industry members supported maintaining the status quo. Others supported an incremental reduction to the desirable carryout, reducing the level to a rolling average of

2¾ months in 2002, and to a rolling average of 2½ months in 2003. The subcommittee ultimately recommended to the full Committee in June that the desirable carryout be reduced for all varietal types to a rolling average of 2½ months of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three. The full Committee adopted the subcommittee's June recommendation.

As mentioned earlier, the raisin industry continued to explore other avenues to reduce the oversupply of California raisins, including implementing a "surplus pool and non-harvest" program for the 2002 crop year. However, rulemaking would be required as appropriate.

The Committee revisited the desirable carryout issue on July 24, 2002. At that meeting, the Committee reviewed an alternative proposal that would revise the trade demand formula by eliminating the adjustment for carryin and carryout inventory. The Committee also reviewed the merits of reducing the desirable carryout for NS raisins to a rolling average of 2 months of prior year's shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. After much discussion, the majority of Committee members supported further reducing the desirable carryout for NS raisins to this level. Committee staff estimated that this would reduce the 2002 trade demand for NS raisins by another 15,000 tons, or a total of 30,000 tons. The desirable carryout for all other varietal types would remain at the 2½ month level recommended in June 2002.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's subcommittee meeting on June 26, 2002, and the Committee's meetings on June 27 and July 24, 2002, where this action was deliberated, were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and

informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on reducing the desirable carryout level specified under the order's regulations. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule needs to be in effect as soon as possible because the order specifies that the Committee must meet and compute trade demand on or before August 15 each year; (2) this action was recommended by more than two-thirds of the Committee members; (3) producers and handlers are aware of this action which was recommended by the Committee at a public meeting; and (4) this interim final rule provides a comment period for written comments and all comments timely received will be considered prior to finalization of this rule. Further, in view of the above, a ten-day comment period is deemed appropriate.

#### **List of Subjects in 7 CFR Part 989**

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

#### **PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA**

1. The authority citation for 7 CFR part 989 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In § 989.154, paragraph (a) is revised to read as follows:

**989.154 Marketing policy computations.**

(a) *Desirable carryout levels.* The desirable carryout level to be used in computing and announcing a crop year's marketing policy for Natural (sun-dried) Seedless raisins shall be equal to the total shipments of free tonnage during August and September for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. The desirable carryout level to be used in computing and announcing a crop year's marketing policy for all other varietal types of raisins specified in § 989.110 shall be equal to the total shipments of free tonnage during August, September, and one-half of October for each of the past 5 crop years, for each such varietal type, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three.

\* \* \* \* \*

Dated: August 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-20440 Filed 8-8-02; 12:46 pm]

BILLING CODE 3410-02-P

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 93**

[Docket No. 01-023-2]

**Microchip Implants as an Official Form of Identification for Pet Birds**

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

**ACTION:** Final rule.

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**SUMMARY:** We are amending the regulations to allow the use of microchip implants as an acceptable form of identification for pet birds of U.S. origin returning to this country after being outside the United States. The regulations have previously provided only for the use of leg bands or tattoos to identify such birds, but microchips have become the preferred method of identification used by avian veterinary practitioners. This action provides for the use of an additional means of identifying certain U.S. origin pet birds while continuing to provide protection against the introduction of

communicable poultry diseases into the United States.

**EFFECTIVE DATE:** September 11, 2002.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR part 93 (referred to below as the regulations) regulate the importation of certain animals and birds, including pet birds, to prevent the introduction of communicable diseases of livestock and poultry.

On January 11, 2002, we published in the **Federal Register** (67 FR 1418-1419, Docket No. 01-023-1) a proposal to amend the regulations to allow the use of microchip implants as an acceptable form of identification for pet birds of U.S. origin returning to this country after being outside the United States.

We solicited comments concerning our proposal for 60 days ending March 12, 2002. We received four comments by that date. They were from private citizens, one breeder, and one group of students who had conducted an informal survey of seven local avian veterinarians and pet stores. All of the commenters were in favor of allowing the use of microchip implants as an acceptable form of identification for pet birds of U.S. origin returning to this country after being outside the United States. One commenter did suggest that a public hearing might be necessary "to provide affected parties an opportunity to present information that will later go into consideration as the final amendment is made." Given the limited scope of the rulemaking and the small number of commenters who responded to the proposal, we find that a public hearing is unnecessary.

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

**Executive Order 12866 and Regulatory Flexibility Act**

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

We are amending the regulations to allow the use of microchip implants as an acceptable form of identification for pet birds of U.S. origin returning to this

country after being outside the United States. The regulations have previously provided only for the use of leg bands or tattoos to identify such birds, but microchips have become the preferred method of identification used by avian veterinary practitioners. This action provides for the use of an additional means of identifying certain U.S. origin pet birds.

The groups affected by this action are pet bird owners who travel with their birds outside the United States and microchip manufacturers. According to the port of entry records of the Animal and Plant Health Inspection Service (APHIS), approximately 400 bird owners traveled outside of the United States with their pet birds in calendar year 2000. Under this final rule, those bird owners will be allowed to use microchip identification instead of the leg bands or tattoos that had been provided for by the regulations. Bird owners will benefit from this change because it is becoming more difficult to find a veterinarian who carries leg bands for pet bird identification, and tattoos are rarely used to identify birds any more. Microchips will thus make the task of identifying a pet bird before leaving the United States more convenient. In most cases, an APHIS inspector at the port of entry will be able use a microchip scanner to confirm the identity of the bird without handling the bird or removing it from the cage, thus avoiding additional stress on the bird.

Bird owners who choose to identify their birds with a microchip will have to pay \$25 to \$40 per microchip plus the cost of the veterinary office visit to insert the microchip. The cost of the microchips is projected to be slightly higher than the conventional leg band, although current costs for leg bands and tattoos are not available due to the lack of veterinarians who will perform these services.

Microchip manufacturers may benefit from a slight increase in microchip sales generated by this rule. It appears that all potentially affected microchip manufacturers (NAICS code 334111) are small entities, according to Small Business Administration criteria (i.e., 1,000 or fewer employees).

In summary, this rule provides pet bird owners with an additional means of identifying their pet birds while allowing APHIS to maintain the high level of security required in order to keep avian diseases, such as exotic Newcastle disease and highly pathogenic avian influenza, from entering the United States.

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

#### Executive Order 12988

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

#### Paperwork Reduction Act

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

#### List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

#### PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

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

#### § 93.101 [Amended]

2. In § 93.101, paragraph (c)(2)(i) is amended by removing the words “leg band or tattoo number” and adding the words “number from the leg band, tattoo, or microchip” in their place and by removing the words “leg band or tattoo on” and adding the words “number from the leg band, tattoo, or microchip on” in their place.

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

**Peter Fernandez,**

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

[FR Doc. 02–20329 Filed 8–9–02; 8:45 am]

BILLING CODE 3410–34-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002–NM–135–AD; Amendment 39–12841; AD 2002–16–02]

RIN 2120–AA64

#### Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to all Bombardier Model CL–600–2B19 series airplanes. This action requires revising the Airworthiness Limitations section of the maintenance requirements manual to incorporate life limits for certain horizontal stabilizer trim actuators (HSTAs), and replacing the HSTAs with new or serviceable HSTAs. This action is necessary to prevent failure of key components of the HSTAs, which could result in loss of horizontal trim control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective August 27, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 27, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 11, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–135–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: [9-anm-iarcomment@faa.gov](mailto:9-anm-iarcomment@faa.gov). Comments sent via the Internet must contain “Docket No. 2002–NM–135–AD” in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace

Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on all Bombardier Model CL–600–2B19 series airplanes. TCCA advises that endurance test results indicate that Appendix B—Airworthiness Limitations, Part 2, of the Canadair Regional Jet Maintenance Requirements Manual must be revised to incorporate life limits for certain horizontal stabilizer trim actuators (HSTAs), and replacement of those HSTAs to prevent failure of key components. Such failure, if not corrected, could result in loss of horizontal trim control and consequent reduced controllability of the airplane.

#### Explanation of Relevant Service Information

Bombardier has issued Canadair Regional Jet Temporary Revision (TR) 2B–816, dated November 28, 2001, which describes procedures for incorporating life limits for the HSTAs, Canadair part number (P/N) 601R92305–1 (vendor P/N 8396–2), and Canadair P/N 601R92305–3 (vendor P/N 8396–3), into Appendix B—Airworthiness Limitations, Part 2, of the Canadair Regional Jet Maintenance Requirements Manual. Accomplishment of the action specified in the TR is intended to adequately address the identified unsafe condition. TCCA classified this service information as mandatory and issued Canadian airworthiness directive CF–2002–20, dated March 20, 2002, in order to assure the continued airworthiness of these airplanes in Canada.

#### FAA’s Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal

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

#### Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of key components of the HSTAs, which could result in loss of horizontal trim control and consequent reduced controllability of the airplane. This AD requires revising Appendix B—Airworthiness Limitations, Part 2, of the Canadair Regional Jet Maintenance Requirements Manual to incorporate life limits for certain HSTAs, and replacing the HSTAs with new or serviceable HSTAs. The actions are required to be accomplished per the service information described previously, except as discussed below.

#### Difference Between This AD and Service Information

Operators should note that the previously referenced Canadair airworthiness directive and TR do not include specific procedures for the replacement action. However, this AD requires replacement of the HSTAs with new or serviceable HSTAs per a method approved by the FAA.

#### Explanation of Action Taken by the FAA

In accordance with airworthiness standards requiring “damage tolerance assessments” for transport category airplanes [§ 25.571 of the Federal Aviation Regulations (14 CFR 25.571), and the Appendices referenced in that section], all products certificated to comply with that section must have Instructions for Continued

Airworthiness (or, for some products, maintenance manuals) that include an Airworthiness Limitations Section (ALS). That section must set forth:

- Mandatory replacement times for structural components,
- Structural inspection intervals, and
- Related approved structural inspection procedures necessary to show compliance with the damage-tolerance requirements.

Compliance with the terms specified in the ALS is required by §§ 43.16 (for

persons maintaining products) and 91.403 (for operators) of the Federal Aviation Regulations (14 CFR 43.16 and 91.403).

In order to require compliance with these inspection intervals and life limits, the FAA must engage in rulemaking, namely the issuance of an AD. For products certificated to comply with the referenced part 25 requirements, it is within the authority of the FAA to issue an AD requiring a revision to the ALS that includes reduced life limits, or new or different structural inspection requirements. These revisions then are mandatory for operators under § 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403), which prohibits operation of an airplane for which airworthiness limitations have been issued unless the inspection intervals specified in those limitations have been complied with.

After that document is revised, as required, and the AD has been fully complied with, the life limit or structural inspection change remains enforceable as a part of the airworthiness limitations. (This is analogous to ADs that require changes to the Limitations Section of the Airplane Flight Manual.)

Requiring a revision of the airworthiness limitations, rather than requiring individual inspections, is advantageous for operators because it allows them to record AD compliance status only once—at the time they make the revision—rather than after every inspection. It also has the advantage of keeping all airworthiness limitations, whether imposed by original certification or by AD, in one place within the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion.

#### Determination of Rule's Effective Date

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

#### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted

in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket Number 2002–NM–135–AD.” The postcard will be date stamped and returned to the commenter.

#### Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a “significant regulatory action” under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency

regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2002-16-02 Bombardier, Inc. (Formerly Canadair):** Amendment 39-12841.  
Docket 2002-NM-135-AD.

**Applicability:** All Model CL-600-2B19 series airplanes, certificated in any category.

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

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

To prevent failure of key components of the horizontal stabilizer trim actuators (HSTAs), which could result in loss of horizontal trim control and consequent reduced controllability of the airplane, accomplish the following:

#### Airworthiness Limitations Revision

(a) Within 14 days after the effective date of this AD, revise Appendix B—Airworthiness Limitations, Part 2, of the Canadair Regional Jet Maintenance Requirements Manual to include life limits for the HSTAs, Canadair part number (P/N) 601R92305-1 (vendor P/N 8396-2), and

Canadair P/N 601R92305-3 (vendor P/N 8396-3), as specified in Canadair Regional Jet Temporary Revision (TR) 2B-816, dated November 28, 2001. This may be accomplished by inserting the TR into the specified section of the maintenance requirements manual.

#### Replacement

(b) Prior to the accumulation of 19,200 flight hours or within 500 flight hours on the HSTAs, Canadair part number (P/N) 601R92305-1 (vendor P/N 8396-2) and Canadair P/N 601R92305-3 (vendor P/N 8396-3), after the effective date of this AD, whichever occurs later: Replace the HSTAs with new or serviceable HSTAs, per a method approved by the Manager, FAA, New York Aircraft Certification Office (ACO).

(c) Except as provided by paragraph (d) of this AD: After the replacement specified in paragraph (b) of this AD has been accomplished, no alternative replacement times may be approved for the life limits for the HSTAs, Canadair part number (P/N) 601R92305-1 (vendor P/N 8396-2) and Canadair P/N 601R92305-3 (vendor P/N 8396-3), as specified in Canadair Regional Jet TR 2B-816, dated November 28, 2001.

#### Alternative Methods of Compliance

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

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

#### Special Flight Permits

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

#### Incorporation by Reference

(f) The Airworthiness Limitations revision to the maintenance requirements manual required by paragraph (a) of this AD shall be done in accordance with Canadair Regional Jet Temporary Revision 2B-816, dated November 28, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Canadian airworthiness directive CF-2002-20, dated March 20, 2002.

#### Effective Date

(g) This amendment becomes effective on August 27, 2002.

Issued in Renton, Washington, on July 29, 2002.

**Vi L. Lipski,**

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

[FR Doc. 02-19877 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-148-AD; Amendment 39-12842; AD 2002-16-03]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 737-600, -700, -700C, -800, and -900 Series Airplanes

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737-600, -700, -700C, -800, and -900 series airplanes. This action requires determining exposure to runway debris containing fluids containing potassium formate, and, for certain airplanes, repetitive inspections of certain electrical connectors in the wheel well of the main landing gear for corrosion, and follow-on actions. This action is necessary to prevent such corrosion, which could result in incorrect functioning of critical airplane systems essential to safe flight and landing of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective August 27, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 27, 2002.

Comments for inclusion in the Rules Docket must be received on or before October 11, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-148-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted

via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002-NM-148-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2890; fax (425) 227-1181.

**SUPPLEMENTARY INFORMATION:** The FAA has received reports indicating that significant corrosion of the electrical connectors located in the main wheel well was found on some Boeing Model 737 series airplanes. Those airplanes land on runways treated with deicing fluids containing potassium formate, which has been determined as the cause of the corrosion. Tests conducted by the airplane manufacturer revealed that corrosion inhibiting compounds (CIC) can be used to form a shield against such corrosion and will not affect the electrical components or the systems. Corrosion of the electrical connectors could result in incorrect functioning of critical airplane systems essential to safe flight and landing of the airplane.

#### **Explanation of Relevant Service Information**

We have reviewed and approved Boeing Alert Service Bulletin 737-24A1148, dated December 6, 2001, which recommends determining if airplanes have been exposed to runway deicing fluids containing potassium formate (by reviewing airport data on the type of components in deicing fluid used at airports that support their operations), and follow-on actions. If any airplane has been exposed, the service bulletin describes procedures for inspecting the line replaceable unit (LRU) electrical connectors (including the contacts and backshells) for corrosion. Signs of corrosion are the presence of moisture, corrosion pits, or

white-colored material buildup on the connectors; black or reddish discoloration on the contacts; or loss of the olive-drab conversion coating on the backshells. The follow-on actions include cleaning the LRU connectors and applying CIC if no corrosion is found; and, if corrosion is found, replacing the LRU with a new LRU and applying CIC. The service bulletin also recommends an operational test of the affected systems after doing the applicable actions. Accomplishment of the inspections and follow-on actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

#### **Explanation of the Requirements of the Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

#### **Differences Between Service Information and This AD**

The service bulletin specifies an examination of the electrical connectors in the wheel well of the main landing gear for corrosion. For the purposes of this AD, we have determined that the procedures in the service bulletin constitute a "detailed inspection." Note 2 of this AD defines such an inspection.

The service bulletin specifies that no work is necessary for airplanes that have not been exposed to runways using deicing fluids containing potassium formate (this is determined by reviewing airport data, as specified previously). We have concluded that such airplanes, although not presently using those runways, could use them in the future due to changes in routes. Therefore, this AD requires operators of those airplanes to repeat the data review every 12 months.

The service bulletin states that airplane exposure to runway deicing fluids containing potassium formate may be determined by reviewing airport data on the type of components in the deicing fluid used. This AD specifies that the determination be made in accordance with a review of the airport data, rather than specifying the determination in accordance with the service bulletin.

#### **Determination of Rule's Effective Date**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good

cause exists for making this amendment effective in less than 30 days.

#### **Comments Invited**

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-148-AD." The postcard will be date stamped and returned to the commenter.

#### **Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is

determined that this final rule does not have federalism implications under Executive Order 13132.

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

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

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

**2002-16-03 Boeing:** Amendment 39-12842.

Docket 2002-NM-148-AD.

**Applicability:** All Model 737-600, -700, -700C, -800, and -900 series airplanes, certificated in any category.

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

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

To prevent corrosion of the electrical connectors and contacts in the wheel well of the main landing gear (MLG), which could result in incorrect functioning of critical airplane systems essential to safe flight and landing of the airplane, accomplish the following:

#### Determination of Exposure/Inspections/Follow-On Actions

(a) Within 90 days after the effective date of this AD, do the requirements specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) Determine airplane exposure to runway deicing fluids containing potassium formate by reviewing airport data on the type of components in the deicing fluid used at airports that support airplane operations.

(i) For airplanes that have not been exposed: Repeat the requirements in paragraph (a)(1) of this AD at least every 12 months.

(ii) For airplanes that have been exposed: Before further flight, do a detailed inspection of the line replaceable unit (LRU) electrical connectors (including the contacts and backshells) in the wheel well of the MLG for corrosion (the presence of moisture, corrosion pits, or white-colored material buildup), per Boeing Alert Service Bulletin 737-24A1148, dated December 6, 2001. Repeat the detailed inspection at least every 12 months.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Do a detailed inspection of the LRU electrical connectors (including the contacts and backshells) in the wheel well of the MLG for corrosion (the presence of moisture, corrosion pits, or white-colored material buildup), per the service bulletin. Repeat the detailed inspection at least every 12 months.

(b) Before further flight after doing any inspection specified in paragraph (a)(1)(ii) or (a)(2) of this AD, as applicable; do the requirements specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD, as applicable, per Boeing Alert Service Bulletin 737-24A1148, dated December 6, 2001.

(1) If no corrosion is found, clean the LRU connector.

(2) If any corrosion is found, replace the LRU connector with a new connector.

(3) Apply D5026NS corrosion inhibiting compound, or equivalent, to the affected areas.

#### Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through

an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

#### Special Flight Permits

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

#### Incorporation by Reference

(e) Except as provided by paragraph (a)(1) of this AD: The actions shall be done in accordance with Boeing Alert Service Bulletin 737-24A1148, dated December 6, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### Effective Date

(f) This amendment becomes effective on August 27, 2002.

Issued in Renton, Washington, on July 29, 2002.

**Vi L. Lipski,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-19878 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-166-AD; Amendment 39-12845; AD 2002-16-06]

RIN 2120-AA64

#### Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135 and -145 Series Airplanes

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB-135 and -145 series airplanes. This action requires determining whether a defective auxiliary power unit (APU) exhaust silencer is installed

on the airplane; and corrective actions, if necessary. This action is necessary to prevent separation of the aft baffle assembly from the APU exhaust silencer and consequent separation of the assembly from the airplane, which could cause damage to other airplanes during takeoff and landing operations, or injury to people on the ground. This action is intended to address the identified unsafe condition.

**DATES:** Effective August 27, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 27, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 11, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-166-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-iarcomment@faa.gov](mailto:9-anm-iarcomment@faa.gov). Comments sent via the Internet must contain "Docket No. 2002-NM-166-AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tom Groves, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1503; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB-135 and -145 series airplanes. The DAC advises that

one report indicated that the aft baffle assembly separated from the shell assembly of auxiliary power unit (APU) exhaust silencer, part number 4503801B. This separation was caused by the poor quality of some spot welds used in the aft joint of the APU exhaust silencer. This condition, if not corrected, could result in consequent separation of the aft baffle assembly from the airplane, which could cause damage to other airplanes during takeoff and landing operations, or injury to people on the ground.

#### Explanation of Relevant Service Information

EMBRAER has issued Alert Service Bulletin 145-49-A021, Change 01, dated May 13, 2002, which describes procedures for determining whether a defective APU exhaust silencer is installed on the airplane; and corrective actions, if necessary. If a defective APU exhaust silencer is found installed, corrective actions include reinforcing the spot welds on the exhaust silencer assembly with fasteners to ensure that the components are secure. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition.

The EMBRAER service bulletin references Hamilton Sundstrand ASB-4503801-49-2, Revision 01, dated May 13, 2002, as a secondary source of information for the corrective actions required by this AD.

The DAC classified the EMBRAER service bulletin as mandatory and issued Brazilian airworthiness directive 2002-05-01, dated May 17, 2002, in order to assure the continued airworthiness of these airplanes in Brazil.

#### FAA's Conclusions

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

#### Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same

type design registered in the United States, this AD is being issued to prevent separation of the aft baffle assembly from the APU exhaust silencer and consequent separation of the assembly from the airplane, which could cause damage to other airplanes during takeoff and landing operations, or injury to people on the ground. This AD requires determining whether a defective exhaust silencer for the auxiliary power unit is installed on the airplane; and corrective actions, if necessary. The actions are required to be accomplished in accordance with the EMBRAER service bulletin described previously, except as discussed below.

#### Difference Between the Service Bulletin/Brazilian Airworthiness Directive and This AD

Operators should note that the EMBRAER service bulletin and Brazilian airworthiness directive specify certain serial numbers and airplanes on which the APU cowling was replaced during maintenance between January and April 2002. Regarding the specified dates, we contacted the Brazilian airworthiness authorities about why the applicability was limited to certain dates, and whether there was a change in maintenance practices after April 2002 that would prevent the installation of a defective APU exhaust silencer. In response, we were informed that no change was made to the maintenance practices after April 2002. For that reason, we cannot be sure that a defective assembly was not installed after that date. Therefore, the applicability of this AD also includes those airplanes on which the APU cowling has been replaced between January 1, 2002, and the effective date of this AD.

#### Determination of Rule's Effective Date

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

#### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified

under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-166-AD." The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be

significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2002-16-06 Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Amendment 39-12845. Docket 2002-NM-166-AD.

**Applicability:** Model EMB-135 and -145 series airplanes, certificated in any category; having the serial numbers listed in the table below; and those airplanes on which the auxiliary power unit (APU) cowling has been replaced between January 1, 2002, and the effective date of this AD:

TABLE.—AIRPLANE SERIAL NUMBERS

145003	145149	145292	145311
145005	145151	145295	145318
145009	145159	145296	145323
145011	145238	145298	145562
			through
			145572
			inclusive.
145110	145267	145302	145574
			through
			145585
			inclusive.
145123	145269	145303	145587
145125	145274	145307	145588
145131	145281	145309	

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent separation of the aft baffle assembly from the APU exhaust silencer and consequent separation of the assembly from the airplane, which could cause damage to other airplanes during takeoff and landing operations, or injury to people on the ground, accomplish the following:

### Inspection and Corrective Actions

(a) Within 50 flight hours after the effective date of this AD, inspect the APU exhaust silencer to determine whether part number (P/N) 4503801B, serial number L01-0314 through L01-0326 inclusive, and serial number M01-0327 through N01-0336 inclusive, is installed on the airplane; per the Accomplishment Instructions of **EMBRAER** Alert Service Bulletin 145-49-A021, Change 01, dated May 13, 2002.

(1) If the APU exhaust silencer identified in paragraph (a) of this AD is not found installed, no further action is required by this paragraph.

(2) If the APU exhaust silencer identified in paragraph (a) of this AD is found installed, before further flight, do the corrective actions (including reinforcing the spot welds on the exhaust silencer assembly with fasteners to ensure that the components are secure) per the **EMBRAER** service bulletin.

**Note 2:** **EMBRAER** Alert Service Bulletin No. 145-49-A021, Change 01, dated May 13, 2002, references Hamilton Sundstrand ASB-4503801-49-2, Revision 01, dated May 13, 2002, as an additional source of information for the inspection and corrective actions required by this AD.

### Spares

(b) As of the effective date of this AD, no person shall install on any airplane an APU exhaust silencer, part number 4503801B, serial numbers L01-0314 through L01-0326 inclusive, and M01-0327 through M01-0336 inclusive, unless it has been modified in accordance with the requirements of paragraph (a)(2) of this AD.

### Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

**Special Flight Permits**

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

**Incorporation by Reference**

(e) The actions shall be done in accordance with **EMBRAER** Alert Service Bulletin 145-49-A021, Change 01, dated May 13, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (**EMBRAER**), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in Brazilian airworthiness directive 2002-05-01, dated May 17, 2002.

**Effective Date**

(f) This amendment becomes effective on August 27, 2002.

Issued in Renton, Washington, on August 1, 2002.

**Vi Lipski,**

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. 02-20017 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2002-NM-141-AD; Amendment 39-12844; AD 2002-16-05]

**RIN 2120-AA64**

**Airworthiness Directives; Boeing Model 767 Series Airplanes**

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This action requires a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. This action is necessary to detect missing, loose, or cracked bolts on the supports of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane. This action is

intended to address the identified unsafe condition.

**DATES:** Effective August 27, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 27, 2002.

Comments for inclusion in the Rules Docket must be received on or before October 11, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-141-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-iarcomment@faa.gov](mailto:9-anm-iarcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2002-NM-141-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

**FOR FURTHER INFORMATION CONTACT:**

**Technical Information:** Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2772; fax (425) 227-1181.

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

**SUPPLEMENTARY INFORMATION:** The FAA has received a report indicating that an operator found one missing bolt and two loose bolts out of four bolts at the aft attachment locations on the outboard support of the inboard main flap on a

Boeing Model 767 series airplane. There was evidence that the bolts were not installed tightly, though when the improper installation occurred has not been determined. The outboard support for the inboard main flap cannot carry limit load with one bolt missing in the aft attachment locations. Prior to this report, an evaluation by the airplane manufacturer had revealed that the titanium bolts on the inboard main flap on Model 767 series airplanes did not have an acceptable fatigue life or damage-tolerance rating. Missing, loose, or cracked bolts in this location, if not detected, could lead to loss of the inboard main flap, which could result in loss of control of the airplane.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-27A0176, Revision 1, dated June 6, 2002, which describes procedures for a one-time general visual inspection for missing bolts on the inboard and outboard support of the inboard main flap. If no bolt is missing, the service bulletin also describes a detailed inspection for gaps between the nut and surrounding structure or between shim and joint, which would indicate a loose bolt. (For airplanes listed in Group 1 in the service bulletin, the service bulletin recommends that this inspection for gaps be done repetitively.) If any gap is found, the service bulletin describes procedures for a torque check of the bolts. If any bolt is missing or any loose bolt is found, the service bulletin recommends removal of all bolts in the area, accomplishment of a fluorescent dye penetrant inspection for cracking of the bolts, and/or installation of new or serviceable bolts. For Group 1 airplanes, the service bulletin also provides instructions for replacement of the existing titanium bolts with new steel bolts, which eliminates the need for accomplishment of the inspections. For Group 1 airplanes, replacing the titanium bolts with new steel bolts is intended to adequately address the identified unsafe condition.

**Explanation of the Requirements of the Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect missing, loose, or cracked bolts on the inboard and outboard support of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane. This AD requires accomplishment of the actions specified in the service bulletin

described previously, except as discussed below.

### Differences Between This AD and Service Bulletin

The effectivity listing of the service bulletin includes all Boeing Model 767 series airplanes, line numbers 1 through 879, except Model 767-400ER series airplanes. However, this AD is applicable to all Model 767 series airplanes with those line numbers, including Model 767-400ER series airplanes. The FAA finds that, because the attachment joints of the supports for the inboard main flap on Model 767-400ER series airplane are similar to those on other Model 767 series airplanes, Model 767-400ER series airplanes may be subject to the same unsafe condition. If any bolt is missing or any gap is found on a Model 767-400ER series airplane, this AD requires repairs to be accomplished before further flight per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative authorized by the FAA to make such findings.

Although the recommended compliance time for the general visual inspection described in Boeing Alert Service Bulletin 767-27A0176, Revision 1, dated June 6, 2002, is 60 days from the issue date of the service bulletin, this AD requires the inspection within 90 days after the effective date of this AD. During the development of this AD, the FAA received information demonstrating that a 60-day compliance time would impose significant difficulties for the operators and a loss of in-service time. Additionally, the individuals both stated that the actions required would necessitate unscheduled intermediate maintenance visits, including specific facilities, resources, and scheduling. Two individuals point out that, since there have been no reported flap losses associated with the attachment bolts of the inboard main flap, a compliance time fairly longer than 60 days should provide an acceptable level of safety. One individual suggests that the compliance time be specified as, "within 9 months after the last inspection per Maintenance Planning Data items 5753-655-02E and 5753-555-02E, or 180 days after the effective date of the AD, whichever occurs later." The other individual requests that the compliance time be specified as, "within 6 months." (Copies of these comments are available in the Rules Docket for examination by interested persons.)

The FAA has determined that the compliance time may be extended somewhat from the 60-day compliance time suggested in the alert service bulletin. However, we have determined that the Maintenance Planning Data inspections are not sufficient to detect loose bolts. Therefore, the compliance times may not be based on the "last inspection per Maintenance Planning Data items \* \* \*." The required 90-day compliance time will provide an acceptable level of safety, yet still decrease the burden on operators. However, under the provisions of paragraph (f) of this AD, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

For all airplanes, the service bulletin specifies that an operator should submit a report to Boeing if any bolt is missing or cracked or any gap is found. This AD only requires a report to the FAA if any bolt is missing or any gap is found on a Model 767-400ER series airplane. For those airplanes, the report must contain the airplane's serial number, the total number of flight cycles and flight hours on the airplane, the number and specific location of discrepant bolts, and the nature of the discrepancy (*i.e.*, missing bolt or gap found).

Also, for Group 1 airplanes, the service bulletin specifies repetitive inspections for gaps between the nut and surrounding structure or between shim and joint, a torque check of the bolts, and eventual replacement of the existing bolts with steel bolts. This AD does not require accomplishment of these actions.

### Interim Action

This is considered to be interim action. We are currently considering requiring the repetitive inspections for gaps, the torque check for loose bolts, and the replacement of existing titanium bolts with steel bolts described in the referenced service bulletin. However, the compliance time for these actions would be sufficiently long so that notice and opportunity for prior public comment will be practicable.

### Determination of Rule's Effective Date

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

### Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-141-AD." The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

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

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

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2002-16-05 Boeing:** Amendment 39-12844. Docket 2002-NM-141-AD.

**Applicability:** Model 767 series airplanes, including Model 767-400ER series airplanes, line numbers 1 through 879 inclusive, certificated in any category.

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

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

To detect missing, loose, or cracked bolts on the outboard support of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane, accomplish the following:

#### Group 1 and 2 Airplanes: One-Time Inspection for Missing or Loose Bolts

(a) Within 90 days after the effective date of this AD, do a one-time general visual inspection to determine if any bolt is missing from the outboard support of the inboard main flap, per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767-27A0176, Revision 1, dated June 6, 2002. Group 1 airplanes may comply with the replacement specified in paragraph (c) of this AD in lieu of the inspection in this paragraph, provided that the replacement per paragraph (c) of this AD is accomplished within the compliance time specified in this paragraph.

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

(1) If no bolt is missing, before further flight, do a general visual inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of the service bulletin. If no bolt is missing and no gap is found, no further action is required by this AD.

(2) If any bolt is missing, before further flight, do paragraph (b) of this AD. In lieu of paragraph (b) of this AD, airplanes in Group 1 may comply with paragraph (c) of this AD.

#### Group 1 and 2 Airplanes: Missing Bolts or Gaps—Follow-On Actions

(b) For Group 1 or 2 airplanes as listed in Boeing Alert Service Bulletin 767-27A0176, Revision 1, dated June 6, 2002: If any bolt is missing or any gap is found during the inspections per paragraph (a) of this AD, before further flight, remove all of the bolts in the subject area and replace them with new or serviceable bolts, per Figure 6, 7, or 8 of the service bulletin, as applicable. For any attachment hole where the bolt was missing, install a new or serviceable bolt made from the same material as the other bolts, per the Accomplishment Instructions of the service bulletin.

(1) An existing bolt may be reinstalled if a fluorescent dye penetrant inspection for cracking is done per Part 5 of the Accomplishment Instructions of the service bulletin, and the bolt is found to be free of any crack.

(2) Do not intermix BACB30MR\*K\* bolts with BACB30LE\*K\* or BACB30US\*K\* bolts in the joints subject to this AD.

#### Group 1 Airplanes: Optional Action

(c) For Group 1 airplanes as listed in Boeing Alert Service Bulletin 767-27A0176, Revision 1, dated June 6, 2002: Replacement of all subject titanium bolts with new steel bolts per Part 6 of the Accomplishment Instructions of the service bulletin is acceptable for compliance with paragraph (a) of this AD and eliminates the need for the inspections required by that paragraph. Do not intermix BACB30MR\*K\* bolts with BACB30LE\*K\* or BACB30US\*K\* bolts in the joints subject to this AD.

#### Model 767-400ER Series Airplanes: Initial Inspection and Corrective Actions

(d) For Model 767-400ER series airplanes: Within 90 days after the effective date of this AD, do a one-time general visual inspection to determine if any bolt is missing from the inboard and outboard support of the inboard main flap, and do a detailed inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Figure 2 of Boeing Alert Service Bulletin 767-27A0176, Revision 1, dated June 6, 2002.

(1) If no bolt is missing and no gap is found: No further action is required by this AD.

(2) If any bolt is missing or any gap is found: Do paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

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

(ii) Within 10 days after the inspection, submit a report of inspection findings to the Manager, Boeing Certificate Management Office, FAA, Transport Airplane Directorate, 2500 East Valley Road, Suite C2, Renton, Washington 98055; fax (425) 227-1159. The report must include the airplane's serial number, the total number of flight cycles and flight hours on the airplane, the number and specific location of discrepant bolts, and the nature of the discrepancy (*i.e.*, missing bolt or gap found). Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

#### Previously Accomplished Inspections and Bolt Replacements

(e) Inspections and bolt replacements accomplished before the effective date of this AD per Boeing Alert Service Bulletin 767-27A0176, dated November 16, 2001, are acceptable for compliance with the corresponding actions required by this AD.

#### Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

#### Special Flight Permits

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

#### Incorporation by Reference

(h) Except as provided by paragraph (d)(2)(i) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767-27A0176, Revision 1, dated June 6, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### Effective Date

(i) This amendment becomes effective on August 27, 2002.

Issued in Renton, Washington, on August 1, 2002.

#### Vi Lipski,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. 02-20018 Filed 8-9-02; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-CE-79-AD; Amendment 39-12843; AD 2002-16-04]

RIN 2120-AA64

#### Airworthiness Directives; Univair Aircraft Corporation Models (ERCO) 415-C, (ERCO) 415-CD, (ERCO) 415-D, (ERCO) 415-E, (ERCO) 415-G, (Forney) F-1, and (Forney) F-1A Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes two different airworthiness directives that require you to inspect the fuel line nipple for damage, replace any suspect

part, and replace the elbow fitting on certain Univair Aircraft Corporation (Univair) Models (ERCO) 415-C, (ERCO) 415-CD, (ERCO) 415-D, (ERCO) 415-E, (ERCO) 415-G, (Forney) F-1, and (Forney) F-1A airplanes. This AD requires you to accomplish the following on airplanes with the gascolator connected to the side of the carburetor: Replace any aluminum fuel line nipple or elbow fitting with a brass or steel fuel line nipple or elbow fitting, inspect for double support tubes on the gascolator, install these tubes if they do not exist, and inspect the fuel line fittings between the carburetor and gascolator for cracks or misalignment and replace as necessary. This AD will not affect those airplanes with the gascolator mounted on the firewall. This AD is a result of cracks in the subject area on airplanes in compliance with the current ADs. The actions specified by this AD are intended to prevent failure of the fuel line fittings or the gascolator because of the current airplane design configuration (aluminum fuel line nipples, aluminum fuel line elbows, and/or no double support tubes on the gascolator). Such failure could result in a lack of fuel to the engine with consequent loss of control of the airplane.

**DATES:** This AD becomes effective on September 13, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 13, 2002.

**ADDRESSES:** You may get the service information referenced in this AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011; telephone: (303) 375-8882; facsimile: (303) 375-8888. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE-79-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Bumann, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249; telephone: (303) 342-1083; facsimile: (303) 342-1088.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

*Has FAA Taken Any Action to This Point?*

Reports of fuel leakage due to cracked fuel line nipples on Univair 415 series

and Models F1 and F1A airplanes caused FAA to issue AD 86-22-09, Amendment 39-5457. This AD requires you to do the following on Univair Models (ERCO) 415-C, (ERCO) 415-CD, (ERCO) 415-D, (ERCO) 415-E, (ERCO) 415-G, (Forney) F-1, and (Forney) F-1A airplanes:

- inspect the fuel line nipple between the gascolator and the carburetor for cracks, incorrect alignment, or over torque; and
- replace any suspect part.

These actions are specified in Univair Service Bulletin No. 24A, dated August 22, 1986.

In addition, the potential for fuel system failures due to the installation of part number (P/N) 914-2D dural elbow fittings on Erco (now Univair) Models 415-C, 415-CD, and 415-D airplanes caused FAA to issue AD 46-38-03. This AD requires you to replace this P/N 914-2 D dural elbow fitting with a P/N 914-2 elbow fitting.

#### *What Has Happened To Initiate This Action?*

The FAA has received reports of failure of the aluminum fuel line nipple, part number AN911-2D, on airplanes that were in compliance with AD 86-22-09. In one instance, a Model (ERCO) 415-C made an emergency landing because the failure led to engine fuel starvation.

AD 86-22-09 requires a one-time inspection of the part number AN911-2D fuel line nipple. Since 15 years have passed since issuance of that AD, most of the affected airplanes have had this inspection accomplished. If the fuel line nipple was not suspect at the time of inspection, then final AD compliance was obtained. In 15 years, cracks could develop in the aluminum fuel line nipple on these airplanes in compliance with AD 86-22-09.

In addition, Univair Service Bulletin No. 24A, dated August 22, 1986, also specifies replacing any aluminum fuel line nipple with a brass or steel fuel line nipple and installing double support tubes on the gascolator for those airplanes with a gascolator connected to the side of the carburetor. AD 86-22-09 required the fuel line nipple replacement only if damage was found during the one-time inspection and did not require installation of the double support tubes.

The installation of these parts would eliminate the need for AD 46-38-03.

#### *What Is the Potential Impact if FAA Took No Action?*

This condition, if not corrected, could result in failure of the fuel line nipple or the gascolator because of the current

airplane design configuration (aluminum fuel line nipples or no double support tubes on the gascolator). Such failure could result in a lack of fuel to the engine with consequent loss of control of the airplane.

*Has FAA Taken Any Action to This Point?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Univair (ERCO) 415-C, (ERCO) 415-CD, (ERCO) 415-D, (ERCO) 415-E, (ERCO) 415-G, (Forney) F-1, and (Forney) F-1A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 4, 2001 (66 FR 50578). The NPRM proposed to supersede AD 86-22-09 with a new AD that would require you to accomplish the following on airplanes with the gascolator connected to the side of the carburetor:

- replace any aluminum fuel line nipple with a brass or steel fuel line nipple; and
- inspect for the existence of double support tubes on the gascolator and install these tubes if they do not exist.

The proposed AD would not affect those airplanes with the gascolator mounted on the firewall.

*Was the Public Invited To Comment?*

The FAA encouraged interested persons to participate in the making of this amendment. Comments received on the NPRM caused us to revise the proposed action to add requirements to replace the elbow fittings with brass or steel elbow fittings and inspect the fuel line fittings between the carburetor and gascolator for cracks or misalignment and replace as necessary.

Because these additions increased the burden upon the public above that already proposed, we issued a supplemental NPRM on April 5, 2002 (67 FR 18141, April 15, 2002).

We then encouraged interested persons to again participate in the making of this amendment. We did not receive any comments on the supplemental NPRM.

**FAA's Determination**

*What Is FAA's Final Determination on This Issue?*

After careful review of all available information related to the subject

presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed in the supplemental NPRM except for minor editorial corrections. We have determined that these minor corrections:

- provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- do not add any additional burden upon the public than was already proposed in the NPRM.

**Cost Impact**

*How Many Airplanes Does This AD Impact?*

We estimate that this AD affects 2,500 airplanes in the U.S. registry.

*What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?*

We estimate the following costs to accomplish the replacement and installation:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × \$60 per hour = \$120 .....	\$70.	\$190 per airplane .....	\$475,000.

**Regulatory Impact**

*Does This AD Impact Various Entities?*

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

*Does This AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is

contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

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

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 46-38-03 and AD 86-22-09, Amendment 39-5457, and by adding a new AD to read as follows:

**2002-16-04 Univair Aircraft Corporation:**

Amendment 39-12843; Docket No. 2000-CE-79-AD; Supersedes AD 46-38-03 and AD 86-22-09, Amendment 39-5457.

(a) *What airplanes are affected by this AD?* This AD affects all serial numbers of Models (ERCO) 415-C, (ERCO) 415-CD, (ERCO) 415-D, (ERCO) 415-E, (ERCO) 415-G, (Forney) F-1, and (Forney) F-1A airplanes that:

- (1) are certificated in any category; and
- (2) have the gascolator connected to the side of the carburetor. This AD does not affect those airplanes with the gascolator mounted on the firewall.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the fuel line fittings or the gascolator because of the current airplane design configuration (aluminum fuel line nipples, aluminum fuel line elbows, and/or no double support tubes on the gascolator). Such failure could result in a lack of fuel to the engine with consequent loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Visually inspect the fuel line nipple and elbow located between the carburetor and gascolator for cracks or misalignment, and replace as necessary.	Inspect within the next 25 hours time-in-service (TIS) after September 13, 2002 (the effective date of this AD) and replace prior to further flight after the inspection. You must inspect even if you have inspected previously.	In accordance with Univair Service Bulletin No. 24B, dated January 29, 2002.
(2) Replace any aluminum fuel line nipple with one made of brass or steel.	Within the next 25 TIS after September 13, 2002 (the effective date of this AD), unless already accomplished (compliance with AD 86-22-09 and/or Univair Service Bulletin No. 24A, dated August 22, 1986).	In accordance with Univair Service Bulletin No. 24B, dated January 29, 2002.
(3) Replace any aluminum fuel elbow fitting with one made of brass or steel. Manufacturer replacement parts numbers are referenced in the service information.	Within the next 25 hours TIS after September 13, 2002 (the effective date of this AD), unless already accomplished (compliance with AD 46-38-03).	In accordance with Univair Service Bulletin No. 24B, dated January 29, 2002.
(4) Inspect for the existence of double support tubes on the gascolator and install these tubes if they do not exist, as follows: (i) For all affected airplanes except for (Forney) F-1 and (Forney) F-1A airplanes, install part numbers 48076 and 48096 (or FAA-approved equivalent part numbers) double support tubes; and (ii) For all affected (Forney) F-1 and (Forney) F1-A airplanes, install part numbers 48098 and 48099 (or FAA-approved equivalent part numbers) double support tubes.	Inspect within the next 25 hours TIS after September 13, 2002 (the effective date of this AD) and install the double support tubes prior to further flight after the inspection, unless already accomplished (compliance with Univair Service Bulletin No. 24A, dated August 22, 1986).	In accordance with Univair Service Bulletin No. 24B, dated January 29, 2002.
(5) Do not install, on any affected airplane, an aluminum fuel line nipple or aluminum elbow.	As of September 13, 2002 (the effective date of this AD).	Not Applicable.
(6) Do not install a gascolator on the side of the carburetor on any affected airplane, unless the double support tubes specified in paragraph (d)(4)(i) or (d)(4)(ii) of this AD are installed.	As of September 13, 2002 (the effective date of this AD).	Not Applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Denver Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Denver ACO.

(2) Alternative methods of compliance approved in accordance with AD 46-38-03 and/or AD 86-22-09, which are superseded by this AD, are not approved as alternative methods of compliance with this AD.

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

eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Elizabeth Bumann, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249; telephone: (303) 342-1083; facsimile: (303) 342-1088.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Univair Service Bulletin No. 24B, dated January 29, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 46-38-03 and AD 86-22-09, Amendment 39-5457.

(j) *When does this amendment become effective?* This amendment becomes effective on September 13, 2002.

Issued in Kansas City, Missouri, on July 30, 2002.

**Michael Gallagher,**  
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-19874 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 375 and 390

[Docket No. RM02-10-000; Order No. 891]

#### Electronic Registration

Issued August 5, 2002.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations to establish a system of electronic registration (eRegistration) for persons and companies submitting documents to, and receiving documents from, the Commission. This system will enable the Commission to comply with paperwork elimination mandates and, combined with other rulemakings to take place in the near future, will result in cost savings to the Commission and the public while enhancing the accessibility of information relating to Commission programs and proceedings. The eRegistration system will become mandatory on January 7, 2003, but will be operated on a voluntary basis beginning in late August 2002.

**EFFECTIVE DATE:** The rule will become effective on January 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cook (information technology advisor), Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-1131.

Wilbur Miller (legal advisor), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-0953.

**SUPPLEMENTARY INFORMATION:**

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

## I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is amending its regulations to establish a system of electronic registration for persons and companies wishing to submit documents to or receive documents from the Commission (collectively customers).

## II. Background

2. This order initiates a series of measures that will largely eliminate the transmission of paper documents between the Commission and its customers. Collectively, these measures will ensure the Commission's compliance with the Government Paperwork Elimination Act;<sup>1</sup> result in cost savings, such as elimination of mailing costs and courier services, to the Commission and its customers; facilitate the Commission's management of information about the persons and entities that do business with it; and make information submitted to and

issued by the Commission available more promptly and in more accessible formats.

3. This measure follows several initiatives undertaken by the Commission to begin the transition to an electronic environment. On May 26, 1999, the Commission revised its rules to permit parties to Commission proceedings to serve documents upon one another electronically. Electronic Service of Documents, 64 FR 31493, FERC Stats. & Regs., Regulations Preambles ¶ 31,074 (June 11, 1999). On September 14, 2000, the Commission revised its rules to permit participants in Commission proceedings to begin, on a voluntary basis, filing submissions via the Internet (eFiling). Electronic Filing of Documents, 65 FR 57088, FERC Stats. & Regs., Regulations Preambles ¶ 31,107 (Sept. 21, 2000). At first, the Commission applied this initiative only to a limited range of document types, but has gradually permitted other types of submissions to be made electronically. See [www.ferc.gov/documents/makeanelectronicfiling/doorbell.htm](http://www.ferc.gov/documents/makeanelectronicfiling/doorbell.htm). In addition, electronic submission and dissemination of structured data, including FERC Forms 1, 2, 6, and 423, are possible through the Commission's web page.

4. This order will resolve difficulties the Commission has encountered in updating various lists that it maintains of customers to whom it sends various types of information. These include, for example, service lists of persons who are required to receive documents in connection with Commission proceedings<sup>2</sup> and mailing lists of persons who receive informational copies of various documents. Many of the entries on the various lists that the Commission maintains are obsolete or duplicative, resulting, among other problems, in extensive waste in mailing out unneeded or unwanted copies of documents. The eRegistration system will allow the Commission to compile a comprehensive, more accurate list of its customers.

## III. Discussion

### A. General

5. Electronic registration will serve as the gateway to a number of electronic services at the Commission that are designed to transmit documents electronically between the Commission and its customers. These services, some of which are already in use, will permit the electronic submission of information to the Commission, including tariffs, forms, and documents submitted in

docketed proceedings. Electronic registration also will apply to services that the Commission will be instituting that will allow customers to sign up to receive information about or be notified of events in docketed proceedings. The registration system implemented pursuant to this rulemaking will enable customers to submit necessary information once, rather than having to register separately to use each system. A brief description of the services to which electronic registration will pertain is included in Section III. C.

6. Electronic registration will apply only to specified applications; it will not be required for all submissions to the Commission. For example, it will not be required for correspondence that does not relate to docketed proceedings from members of Congress or the general public. It will not be required for a customer searching for documents on the Federal Energy Regulatory Records and Information System (FERRIS). It will not apply to requests under the Freedom of Information Act.<sup>3</sup> It also will not apply to certain correspondence in docketed proceedings that the Office of the Secretary finds to qualify for an exemption because the submissions are from members of the public who likely are one-time submitters.

7. The registration process will be brief and simple. Customers will input a few lines of information, generally a name, address, phone number and fax number. They will then input the information that the system will use to identify them: An e-mail address a password and a password hint. There will be a paper registration process for customers submitting paper documents to the Commission as the result of a waiver of electronic filing requirements for good cause shown. Customers will be able to access and manipulate their own data, thus keeping it current to ensure reliable service. Separate rulemakings will address other FERC information systems.

### B. The Registration Process

8. Customers wishing to transact business at the Commission through any of the electronic services described in section III. C. will register via the Internet at <http://www.ferc.gov>. It will be possible for multiple persons or entities to be associated with one another. Thus, for example, a company that is a participant in a proceeding at the Commission may be represented by one or more persons or entities, such as attorneys or law firms, so that Commission issuances will be

<sup>1</sup> 44 U.S.C. 3504 (2002).

<sup>2</sup> 18 CFR 385.2010(b)(2002).

<sup>3</sup> 5 U.S.C. 552 (2001).

distributed to all the persons or entities representing that company.

9. When a customer seeks to conduct an electronic transaction through the Commission's Web site, if that customer is not already registered, the customer will be automatically transferred to the eRegistration page. Alternately, the customer will be able to access the eRegistration page directly to register or to update registration information. The eRegistration page will contain data fields that must be filled in with specified identifying data.

10. Generally speaking, an individual customer—as opposed to an entity like a company or law firm—will receive a user ID, which will be the customer's e-mail address. All electronic services will also require a password selected by the user. For services requiring a higher level of security and authentication, further security requirements may be necessary as well. The exact nature of this security will be described at a later time, when filing of sensitive information becomes functional.

11. All customers also will receive a unique numeric identifier. This identifier may be used in identifying the customer in connection with electronic applications.

12. When an individual customer registers, that customer will, if appropriate, designate the entity—again, such as a company or law firm—with which that customer is associated. The first time that eRegistration information is entered on behalf of an entity, that entity will be assigned its own unique numeric identifier. Other identifying information, such as a Dun & Bradstreet number, may also be entered. If the entity has already been registered, the individual customer may select it from an index. If the individual is not aware that the entity has already been registered and tries to enter information about the entity, the system will alert the individual to the possibility that the entity is already registered and make an index available from which he or she may choose.

13. When an individual registers an entity with eRegistration, there will be an opportunity to list an additional contact for the entity—most likely another employee or official of the entity. This will ensure that the entity will receive necessary information should the individual who initially registers for the entity become unavailable. Customers will bear the responsibility of managing their own eRegistration information, just as a participant in a Commission proceeding is responsible for monitoring its affairs to ensure that the persons claiming to

represent it are in fact authorized to do so.

14. Upon successful eRegistration, the customer will receive an e-mail containing the customer's user ID and numeric identifier, and any other identifying information that has been entered.

15. The process of associating an individual customer with multiple entities will not be a part of the eRegistration system, but instead will take place in the individual electronic services. For example, an attorney will be able to represent several different clients in multiple proceedings, but the attorney need not "register" on behalf of every client or in connection with every proceeding. Instead, the attorney will register once as an individual, if appropriate also designating a law firm as the entity with which the attorney is associated. When the attorney submits a document for filing in a particular proceeding, he or she will designate the appropriate client as part of the eFiling process. The attorney will receive service through the functions of the eService and eList services (described below), which will be addressed in a later rulemaking. Customers using eRegistration to represent other persons or entities are subject to Rule 2005,<sup>4</sup> and thus will be regarded as representing that they have the authority to undertake such representation.

16. The Commission understands that some customers will lack the means for submitting and receiving documents electronically and will provide for waiver of the mandatory aspects of electronic submissions and distribution. This rulemaking includes a delegation of authority to the Secretary to grant waivers of the eRegistration requirement. It will be possible for a customer to submit documents in hard copy by applying for a waiver for good cause shown. Registration, however, will still be required and will be accomplished by a paper process. Like electronic customers, customers registering through the paper process will receive a unique numeric identifier. This identifier must appear on paper submissions; without it, submissions will be rejected. Waivers of electronic registration will be valid for one year. It then will be necessary for a customer to register electronically or apply for another waiver. Customers registering by paper will be notified approximately three months prior to the expiration of their registration.

17. In addition to the waiver provision, the Commission is exempting from the registration requirement

certain situations where registration would not be practical for, or beneficial to, the customer. The Commission often receives letters and other communications from individual citizens who are not familiar with, and do not regularly participate in, Commission proceedings. When such communications pertain to a particular proceeding, they are accepted for filing in that proceeding, become part of the official record, and are considered by the Commission in making the ultimate decision in the case. Registration in such situations would be an unnecessary formality because the customer often is unlikely to participate further in Commission proceedings. In some such cases, however, the customer may have the capability to register electronically and thus might not qualify for a waiver. The rulemaking thus exempts such communications from the registration requirements.<sup>5</sup>

18. This rulemaking will become effective January 7, 2003. Electronic registration thus will not be required prior to that time. The eRegistration system will, however, become operational, and available for use on a voluntary basis in late August 2002. Customers should check the Commission's Web site at <http://www.ferc.gov> for information about when eRegistration will become operational. This period of voluntary use will give both the Commission and its customers the opportunity to observe the system's functions. The Commission strongly urges customers to register well in advance of the effective date so as to familiarize themselves with the system. In addition, the Commission invites informal comments and suggestions regarding the system prior to the effective date. Comments or suggestions may be sent to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, or to [ERegComments@FERC.gov](mailto:ERegComments@FERC.gov). The Commission requests that informal comments and suggestions be submitted by October 1, 2002, so as to give Commission staff time to implement any needed changes before this rule takes effect.

<sup>5</sup> Customers found to be exempt from the eRegistration requirements will not be able to receive electronic issuances and notifications from the Commission or otherwise be included in electronic distribution lists, nor will they be able to intervene as they will not be able to employ eFiling. In other words, they will not have access to the FERC online services, which necessarily require individualized registration, including a specific e-mail address.

<sup>4</sup> 18 CFR 385.2005(2002).

### C. Overview of Electronic Information Services

19. The following is a brief summary of the services for which electronic registration will be required:

20. *eFiling*. The Commission has instituted electronic filing of documents in its proceedings on a voluntary basis. Currently, many categories of documents may be submitted via the Internet, although some documents still may not.<sup>6</sup> Some time prior to October 1, 2003, however, the Commission will extend electronic filing to all documents submitted in Commission proceedings and will require all participants in those proceedings to submit documents electronically. There will be a waiver for participants for whom electronic submissions are impractical.

21. *eForms*. The Commission will establish an integrated interface for its customers to file structured data. The forms that will be filed electronically include, but may not be limited to, Forms 1, 2, 6 and 423. Customers filing such forms will be required to register electronically.

22. *eReports*. This system will provide an interface for customers submitting structured data in connection with Order No. 2001, issued by the Commission on April 25, 2002.<sup>7</sup>

23. *eTariffs*. This system will provide an interface for customers filing tariffs with the Commission.<sup>8</sup>

24. *eDistribution*. Electronic distribution refers to documents being distributed by the Commission, or with the Commission's assistance, as opposed to electronic filing, forms, reports and tariffs, all of which refer to documents being submitted to the Commission. There are several sub-categories of electronic distribution:

*eService*: Electronic service means the electronic distribution by the Commission of documents to participants in Commission proceedings, as required by 18 CFR 385.2010(b) (2001). After October 1, 2003, only electronic service will meet the Commission's legal service requirements under regulatory revisions that the Commission will implement prior to that time. The Commission will include a waiver provision for participants who show that it is impractical for them to receive service of documents electronically. With respect to legal service requirements among participants in Commission proceedings, the Commission's rules already allow participants to agree

among themselves to serve documents electronically rather than serving paper copies.<sup>9</sup>

*eList*: The Commission will maintain a list of participants in each Commission proceeding that participants will use to serve documents upon one another as required by 18 CFR 385.2010(a) (2002). Electronic Registration will become a pre-requisite for addition to the Service List (eList) by the Secretary, sometime prior to October 1, 2003, although provision will be made for participants for whom sending and receiving electronic documents is impractical.

*eNotification*: The Commission currently distributes issuances in Commission proceedings to various interested persons who are not participants. Such recipients include state and federal elected officials, state commissions, and other state and federal resource agencies. The Commission will take steps to ensure that these persons continue to receive such information.

*eSubscription*: The Commission will establish a service that allows interested persons to subscribe to categories of documents published by FERC and receive e-mail stating when documents pertaining to subscribed-for categories are published. The first implementation of this service will permit customers to subscribe to individual FERC proceedings, *i.e.*, dockets; access (FERRIS) online; and automatically receive documents published therein. Participation in this service is voluntary. A customer choosing to participate in eSubscription, however, will have to access the service through eRegistration. That customer will be required to supply eRegistration with an e-mail address and password, and may provide other registration information on a voluntary basis.

### IV. Information Collection Statement

25. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule.<sup>10</sup> OMB regulations provide an exemption where a person is required to provide only facts that are necessary for identification.<sup>11</sup> This rulemaking requires only such information and thus OMB approval is not required.

### V. Environmental Analysis

26. The Commission is required to prepare an Environmental Assessment

or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>12</sup> This Final Rule will not have such an effect. Part 380 of the Commission's regulations lists a number of situations in which an Environmental Analysis or Environmental Impact Statement will not be done. Included are exemptions for procedural, ministerial or internal administrative actions, and for information gathering, analysis and dissemination.<sup>13</sup> This rulemaking is exempt under those provisions.

### VI. Regulatory Flexibility Act Certification

27. The Regulatory Flexibility Act of 1980 (RFA)<sup>14</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission finds that this rule will not have such an impact on small entities. The Commission anticipates that its customers will achieve savings from the elimination of paper documents. The large majority of the Commission's customers already employ the technology that will be necessary for compliance with this rulemaking. For customers for whom the use of such technology is impractical, registration by paper will be possible.

### VII. Document Availability

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

29. From FERC's Home Page on the Internet, this information is available in FERRIS. The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

30. User assistance is available for FERRIS and the FERC's Web site during normal business hours from our Help

<sup>12</sup> Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

<sup>13</sup> 18 CFR 380.4(a)(1) and (5) (2002).

<sup>14</sup> 5 U.S.C. 601-612 (2002).

<sup>6</sup> See 18 CFR 385.2003(c)(2)(2002).

<sup>7</sup> See Revised Public Utility Filing Requirements, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 5 CFR Part 1320 (2002).

<sup>11</sup> 5 CFR 1320.3(h)(1).

line at (202) 208-2222 or the Public Reference Room at (202) 208-1371 Press 0, TTY (202) 208-1659. E-Mail the Public Reference Room at [public.reference.room@ferc.gov](mailto:public.reference.room@ferc.gov).

### VIII. Effective Date and Congressional Notification

31. This Final Rule will take effect on January 7, 2003. Pursuant to 5 U.S.C. 804(3)(C) (2002), agencies are not required to notify Congress of any Final Rule that concerns matters of "agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties." This rulemaking falls within that provision. Furthermore, 5 U.S.C. 804(3)(A) exempts rules that provide for registration and permit new or improved applications of technology from the Congressional review requirements. Provisions governing Congressional review of agency rulemaking,<sup>15</sup> therefore do not apply.

32. The Commission is issuing this as a final rule without a period for public comment. Under 5 U.S.C. 553(b) (2002), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of agency procedure and will not significantly affect regulated entities or the general public. In addition, the Commission is inviting informal comments about electronic registration during the voluntary period that will run from late August 2002, to January 7, 2003. Therefore, the Commission finds notice and comment procedures to be unnecessary.

#### List of Subjects

##### 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

##### 18 CFR Part 390

Administrative practice and procedure, Electronic filing, Reporting and recordkeeping requirements.

By the Commission.

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

*Deputy Secretary.*

In consideration of the foregoing, the Commission amends part 375 and adds part 390, Chapter I, Title 18, of the *Code of Federal Regulations* as follows:

### PART 375—THE COMMISSION

1. In part 375, the authority citation continues to read as follows:

**Authority:** 5 U.S.C. 551-557; 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 791-825r, 2601-2645; 42 U.S.C. 7101-7352.

2. In § 375.302, paragraph (x) is added to read as follows:

#### § 375.302 Delegations to the Secretary.

\* \* \* \* \*

(x) Issue instructions for electronic registration pursuant to, grant applications for waivers of the requirements of, and make determinations regarding exemptions from 18 CFR part 390.

3. Part 390 is added to read as follows:

### PART 390—ELECTRONIC REGISTRATION

Sec.

- 390.1 Electronic registration.
- 390.2 Activities requiring registration.
- 390.3 Waiver applications.
- 390.4 Exemptions.

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

#### § 390.1 Electronic registration.

Any person who wishes to engage in any of the activities listed in § 390.2 must register electronically through the Commission's web site, in compliance with instructions located on the Web site, at <http://www.ferc.gov>.

#### § 390.2 Activities requiring registration.

(a) Electronic registration is a requirement for the following activities:

- (1) Submission of all documents in proceedings governed by 18 CFR part 385;
- (2) Submission of Forms 1, 2, 6 and 423 pursuant to 18 CFR 141.1, 141.61, 260.1, and 357.2.
- (3) Submission of reports in compliance with Order No. 2001.
- (4) Filing of tariffs pursuant to 18 CFR 385.205.
- (5) Receipt of service pursuant to 18 CFR 385.2010(a) or (b).

(b) Any person who wishes to subscribe to the Commission's automated document delivery system may register electronically but is not required to do so.

#### § 390.3 Waiver applications.

(a) A person may satisfy the requirement of § 390.1 by submitting a paper registration form to be prescribed by the Secretary, together with a written statement showing good cause why the person is unable to register electronically. The form and statement must be mailed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426,

or hand delivered to Room 1A at the same address.

(b) Persons who register using the paper form prescribed under paragraph (a) of this section will receive a unique numeric identifier that must appear on all paper submissions to the Commission. A submission that does not include the identifier will be rejected. Notification of such rejection will be sent to the submitter at the address indicated on the paper submission. A request for a waiver may be submitted simultaneously with a document submitted for filing. If the waiver is granted, the Secretary will add the assigned numeric identifier to the submitted document(s), but will not do so for subsequent submissions.

(c) A waiver under paragraph (a) of this section will be valid for one year from the date of issuance by the Secretary. The Secretary will send notice of the pending expiration to the registered person's address of record approximately three months prior to the expiration of the waiver. After the waiver expires, a person wishing to engage in any of the activities listed in § 390.2 must comply with § 390.1, or must apply for another waiver under paragraph (a) of this section.

#### § 390.4 Exemptions.

In instances in which the Commission receives communications from persons who are not registered under this part that relate to docketed proceedings and in which it appears that registration under this part offers no value to the person submitting the communication, the Commission may accept the communication for filing without requiring the person to comply with § 390.1 or § 390.3.

[FR Doc. 02-20283 Filed 8-9-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 385

[Docket No. RM02-11-000; Order No. 890]

#### Civil Monetary Penalty Inflation Adjustment Rule

August 5, 2002.

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is issuing a final rule for a Civil Monetary Penalty Inflation Adjustment as

<sup>15</sup> 5 U.S.C. 801-808 (2002).

mandated by the Debt Collection Improvement Act of 1996 (DCIA) to adjust the Commission's civil monetary penalties for inflation on a periodic basis. Prior to the enactment of this law, the Commission's penalties had never been adjusted for inflation. This rule will allow the Commission's penalties to keep pace with inflation and thereby maintain the deterrent effect Congress intended when it originally specified penalties.

The first mandatory adjustment, as mandated by the DCIA, increases all of the Commission's penalty provisions by ten percent. The Commission is required to review its penalties again at least once every four years thereafter and adjust them as necessary for inflation according to a specified formula.

**DATES:** This final rule is effective August 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Van Der Jagt, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-2246.

**SUPPLEMENTARY INFORMATION:**

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

**I. Background**

1. The Federal Civil Penalties Inflation Adjustment Act of 1990<sup>1</sup> (Adjustment Act) as amended by the Debt Collection Improvement Act of 1996<sup>2</sup> (DCIA) provided for the regular evaluation of civil monetary penalties

(CMP) to ensure that they continued to maintain their deterrent value and that penalty amounts due to the Federal Government were properly accounted for and collected. On April 26, 1996, the Adjustment Act was amended by the DCIA to require that each agency issue regulations to adjust its CMPs for inflation at least every four years. The amendment further provides that any resulting increases in a CMP due to the inflation adjustment should apply only to the violations that occur subsequent to the date of the publication in the **Federal Register** of the increased amount of the CMP. The first inflation adjustment of any penalty shall not exceed ten percent of such penalty.

**II. Discussion**

2. A CMP is defined as any penalty, fine, or other sanction that: (1) Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. This final rule adjusts the civil penalties that are established by law and assessed or enforced by the Commission.

3. Section 5 of the DCIA sets forth the formula for adjusting the penalties for inflation: The inflation adjustment described under Section 4 [of the DCIA] shall be determined by increasing the maximum CMP or the range of minimum and maximum CMPs as applicable, for each

CMP by the cost-of-living adjustment. The term "cost of living" adjustment is the percentage for each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law.

However, the DCIA also sets a ten percent cap on the first adjustment for inflation. Since the Commission's penalties have never previously been adjusted for inflation, this first statutorily required adjustment will be limited to ten percent.

4. The DCIA rounding rules require that an increase be rounded as follows:

1. If the increase is greater than \$0 and less than or equal to \$100, round to the nearest multiple of \$10.
  2. If the increase is greater than \$100 and less than or equal to \$1,000, round to the nearest multiple of \$100.
  3. If the increase is greater than \$1,000 and less than or equal to \$10,000, round to the nearest multiple of \$1,000.
  4. If the increase is greater than \$10,000 and less than or equal to \$100,000, round to the nearest multiple of \$5,000.
  5. If the increase is greater than \$100,000 and less than or equal to \$200,000, round to the nearest multiple of \$10,000.
  6. If the increase is greater than \$200,000, round to the nearest multiple of \$25,000.
5. The Commission is implementing the following adjustments:

United States Code citation	Civil Monetary Penalty description	Current maximum penalty amount	New adjusted maximum penalty amount
15 U.S.C. 3414(b)(6)(A)(i), Sec. 504 Natural Gas Policy Act.	Failure to comply with NPGA's provisions.	\$5,000.00 .....	\$5,500.00
16 U.S.C. 823b(c), Sec. 31 Federal Power Act.	Failure to comply with rule, license, and permit requirements under Subchapter 12.	10,000.00 per day .....	11,000.00 per day
16 U.S.C. 825n(a), Sec. 315 Federal Power Act.	Failure to comply with Commission orders and rules, failure to submit required reports.	1,000.00 .....	1,100.00
16 U.S.C. 825(o)-1(b), Sec. 316a Federal Power Act.	Violation of Sec. 211, 212, 213, 214 of FPA.	10,000.00 .....	11,000.00

**III. Administrative Findings**

6. The Administrative Procedure Act (APA) requires rulemakings to be published in the **Federal Register** and also mandates that an opportunity for comments be provided when an agency promulgates regulations. However, the APA exempts certain rules of agency procedures from its notice and comment

requirements.<sup>3</sup> The Commission is required by the DCIA to adjust CMPs for inflation. Additionally, the formula for the amount of the penalty adjustment is prescribed by Congress and is not subject to the exercise of discretion by the Commission. The Commission is only required to determine the amount of inflation adjustments by performing

administrative computations. Accordingly, the Commission has determined for good cause that public notice and comment are unnecessary, impractical, or contrary to the public interest and that the rule should be published in final form.

<sup>1</sup> 28 U.S.C. 2461.

<sup>2</sup> 31 U.S.C. 3701.

<sup>3</sup> 5 U.S.C. 553(b).

#### IV. Regulatory Flexibility Statement

7. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,<sup>4</sup> (SBREFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because notice and opportunity for comment are not required by 5 U.S.C. 553, or any other law, a Regulatory Flexibility Analysis is not required and was not prepared for purposes of the RFA.

8. This action will not have a significant impact on a substantial number of small entities. As stated, the Commission is required by the DCIA to adjust civil monetary penalties for inflation. The formula for the amount of the penalty adjustment is prescribed by Congress and is not subject to the exercise of discretion by the Commission. The Commission's action implements this statutory mandate and does not substantively alter the existing regulatory framework. This rule does not affect mechanisms already in place, including statutory provisions and the Commission's policies, that address the special circumstances of small entities when assessing penalties in enforcement actions.

#### V. Effective Date

9. For the same reasons the Commission has determined that public notice and comment is unnecessary, impractical, and contrary to the public interest, the Commission finds that it has good cause to adopt an effective date that is less than 30 days after the date of publication in the **Federal Register** pursuant to the APA,<sup>5</sup> and therefore, the regulation is effective upon publication.

#### VI. Congressional Review Act

10. The Congressional Review Act,<sup>6</sup> as added by the SBREFA, 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. The Commission will submit a report containing the 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**. The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), that this is not a "major rule" as defined in section 251 of the SBREFA. Therefore, for the reasons outlined above, this action will take effect August 12, 2002.

#### VII. Information Collection Statement

11. The OMB regulations require that OMB approve certain information collection requirements imposed by agency rules.<sup>7</sup> However, this final rule contains no information reporting requirements, and therefore is not subject to OMB approval.

#### VIII. Environmental Assessment

12. Commission regulations describe the circumstances where preparation of an environmental assessment or an environmental impact statement will be required.<sup>8</sup> The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.<sup>9</sup> This final rule promulgates a procedural rule that is considered a categorical exclusion under section 380.4(a)(2)(ii) of the Commission's regulations. Therefore, no environmental assessment or environmental impact statement is necessary.

#### IX. Document Availability

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

14. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number

excluding the last three digits of this document in the docket number field.

15. User assistance is available for FERRIS and the FERC's website during normal business hours from our Help line at (202) 208-2222 or the Public Reference Room at (202) 208-1371 Press 0, TTY (202) 208-1659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

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

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

By the Commission.

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

*Deputy Secretary.*

In consideration of the foregoing, the Commission is amending Part 385, Title 18 of the Code of Federal Regulations, as follows:

#### PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 385 is revised to read as follows:

**Authority:** 5 U.S.C. 551-557; 15 U.S.C. 717-717z, 3301-3432; 16 U.S.C. 791a-825r, 2601-2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85 (1988).

2. In part 385, subpart P is added to read as follows:

#### Subpart P—Civil Monetary Penalty Inflation Adjustment

Sec.

385.1601 Scope and purpose (Rule 1601).

385.1602 Civil penalties, as adjusted (Rule 1602).

#### § 385.1601 Scope and purpose (Rule 1601).

The purpose of this subpart is to make inflation adjustments to the civil monetary penalties provided by law within the jurisdiction of the Commission. These penalties shall be subject to review and adjustment as necessary at least every four years in accordance with the Federal Civil Penalties Inflation Act of 1990, as amended.

#### § 385.1602 Civil penalties, as adjusted (Rule 1602).

The civil monetary penalties provided by law within the jurisdiction of the Commission are:

(a) 15 U.S.C. 3414(b)(6)(A)(1), Natural Gas Policy Act: from \$5,000 to \$5,500.

(b) 16 U.S.C. 823b(c), Federal Power Act: from \$10,000 to \$11,000.

(c) 16 U.S.C. 825n(a), Federal Power Act: from \$1,000 to \$1,100.

<sup>4</sup> 5 U.S.C. 801 *et seq.*

<sup>5</sup> 5 U.S.C. 553(b)(3)(B).

<sup>6</sup> 5 U.S.C. 801 *et seq.*

<sup>7</sup> 5 CFR Part 1320.

<sup>8</sup> Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), *codified at* 18 CFR Part 380.

<sup>9</sup> 18 CFR 380.4.

(d) 16 U.S.C. 825(o)–1(b), Federal Power Act: from \$10,000 to \$11,000.

[FR Doc. 02–20284 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 9

RIN 2900–AJ80

#### Accelerated Benefits Option for Servicemembers' Group Life Insurance and Veterans' Group Life Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

**SUMMARY:** The Veterans Programs Enhancement Act of 1998 authorized the payment of accelerated benefits to terminally ill persons insured under Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI). This document amends the Department of Veterans Affairs (VA) regulations to establish a mechanism for implementing these statutory provisions.

**DATES:** *Effective Date.* August 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Greg Hosmer, Senior Attorney/Insurance Specialist, Insurance Program Administration and Oversight, Department of Veterans Affairs Regional Office and Insurance Center, PO Box 8079, Philadelphia, Pennsylvania 19101, (215) 842–2000, ext. 4280 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on July 20, 2000 (65 FR 44999), the Department of Veterans Affairs proposed to establish a mechanism for the payment of accelerated death benefits to terminally ill Servicemembers' Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) policyholders. We requested comments for a 60-day period that ended September 18, 2000. We received no comments. Based on the rationale set forth in the proposed rule, we are adopting the proposed rule as a final rule with minor nonsubstantive changes.

At the time of the publication of the proposed rule, the accelerated benefit provisions were only authorized for servicemembers and veterans. Recently, Public Law 107–14 amended 38 U.S.C. 1965 and 1967 to expand the provisions to SGLI family coverage. Accordingly, the final rule would apply also to SGLI family coverage. SGLI family coverage is provided as a rider to an insured member's SGLI coverage and therefore

only the insured member may apply for SGLI family coverage accelerated benefits.

The final rule also reflects a change in the address for submitting an application for accelerated benefits. For consistency, this change also revises § 9.1(b). In addition, changes are made for purposes of clarification.

#### Paperwork Reduction Act

This document contains provisions constituting collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520) approved by OMB under Control No. 2900–0618.

#### Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

#### Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only persons insured under the government's SGLI and VGLI programs could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this regulatory amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for the program affected by this document is 64.103.

#### List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Approved: June 6, 2002.

**Anthony J. Principi,**  
*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 9 is amended as set forth below:

## PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

1. The authority citation for part 9 is revised to read as follows:

**Authority:** 38 U.S.C. 501, 1965–1980, unless otherwise noted.

2. Section 9.1(b) is revised to read as follows:

#### § 9.1 Definitions.

\* \* \* \* \*

(b) The term *administrative office* means the Office of Servicemembers' Group Life Insurance located at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

\* \* \* \* \*

3. Section 9.14 is added to read as follows:

#### § 9.14 Accelerated Benefits.

(a) *What is an Accelerated Benefit?*

An Accelerated Benefit is a payment of a portion of your Servicemembers' Group Life Insurance or Veterans' Group Life Insurance to you before you die.

(b) *Who is eligible to receive an Accelerated Benefit?* You are eligible to receive an Accelerated Benefit if you have a valid written medical prognosis from a physician of 9 months or less to live, and otherwise comply with the provisions of this section.

(c) *Who can apply for an Accelerated Benefit?* Only you, the insured member, can apply for an Accelerated Benefit. No one can apply on your behalf.

(d) *How much can you request as an Accelerated Benefit?* (1) You can request as an Accelerated Benefit an amount up to a maximum of 50% of the face value of your insurance coverage.

(2) Your request for an Accelerated Benefit must be \$5,000 or a multiple of \$5000 (for example, \$10,000, \$15,000).

(e) *How much can you receive as an Accelerated Benefit?* You can receive as an Accelerated Benefit the amount you request up to a maximum of 50% of the face value of your insurance coverage, minus the interest reduction. The interest reduction is the amount the Office of Servicemembers' Group Life Insurance actuarially determines to be the amount of interest that would be lost because of the early payment of part of your insurance coverage. This means that if you have \$100,000 in coverage and you request the maximum amount that you are eligible to request as an Accelerated Benefit, you will be paid \$50,000 minus the interest reduction.

(f) *How do you apply for an Accelerated Benefit?* (1) You can obtain an application form entitled "Claim for Accelerated Benefits" by writing the

Office of Servicemembers' Group Life Insurance, 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039; calling the Office of Servicemembers' Group Life Insurance toll-free at 1-800-219-1473; or downloading the form from the Internet at www.insurance.va.gov. You must submit the completed application form to the Office of Servicemembers' Group Life Insurance, 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

(2) As stated on the application form, you will be required to complete part of the application form and your physician will be required to complete part of the application form. If you are an active duty servicemember, your branch of service will also be required to complete part of the form.

To Be Completed by Insured

Claim for Accelerated Benefits

Your name:
Social Security Number:
Your home address:
Date of birth:
Branch of Service (if covered under SGLI):
Your mailing address (if different from above):
Amount of SGLI coverage: \$
Amount of claim (can be no more than one-half of coverage in increments of \$5,000):
Type of coverage (check one):
SGLI (circle one of the following): Active Duty Ready Reserve Army or Air National Guard Separated or Discharged VGLI

Note: If you checked SGLI, you must also have your military unit complete the attached form.

I acknowledge that I have read all of the attached information about the accelerated benefit. I understand that I can get this benefit only once during my lifetime and that I can use it for any purpose I choose. I further understand that the face amount of my coverage will reduce by the amount of accelerated benefit I choose to receive now.

Your signature:
Date:

Authorization To Release Medical Records

To all physicians, hospitals, medical service providers, pharmacists, employers, other insurance companies, and all other agencies and organizations:

You are authorized to release a copy of all my medical records, including examinations, treatments, history, and prescriptions, to the Office of Servicemembers' Group Life Insurance (OSGLI) or its representatives.

Printed name:
Signature:
Date:

A photocopy of this authorization will be considered as effective and valid as the original.

Valid for one year from date signed.

To Be Completed by Physician

Attending Physician's Certification

Patient's name:
Patient's Social Security Number:
Diagnosis:
ICD-9-CM Disease Code \*:
Description of present medical condition (please attach results of x-rays, E.K.G. or other tests):

Is the patient capable of handling his/her own affairs? Yes No

The patient applied for an accelerated benefit under his/her government life insurance coverage. To qualify, the patient must have a life expectancy of nine (9) months or less.

Does your patient meet this requirement? Yes No

Attending Physician's name (please print):
State in which you are licensed to practice:
Specialty:
Mailing address:
Telephone number:
Fax Number:
Signature:
Date:

\*ICD-9-CM is an acronym for International Classification of Diseases, 9th revision, Clinical Modification.

To Be Completed by Personnel Office of Servicemember's Unit

(Complete this form only if the applicant for Accelerated Benefits is covered under SGLI.)

Branch of Service Statement

Servicemember's name:
Social Security Number:
Branch of Service:
Amount of SGLI coverage: \$
Monthly premium amount: \$
Name of person completing this form:
Telephone Number:
Fax Number:
Title of person completing this form:
Duty Station and address:
Signature of person completing this form:
Date:

Notice: It is fraudulent to complete these forms with information you know to be false or to omit important facts. Criminal and/or civil penalties can result from such acts.

(g) Who decides whether or not an Accelerated Benefit will be paid to you? The Office of Servicemembers' Group Life Insurance will review your application and determine whether you meet the requirements of this section for receiving an Accelerated Benefit.

(1) They will approve your application if the requirements of this section are met.

(2) If the Office of Servicemembers' Group Life Insurance determines that your application form does not fully and legibly provide the information requested by the application form, they will contact you and request that you or your physician submit the missing information to them. They will not take action on your application until the information is provided.

(h) How will an Accelerated Benefit be paid to you? An Accelerated Benefit will be paid to you in a lump sum.

(i) What happens if you change your mind about an application you filed for Accelerated Benefits? (1) An election to receive the Accelerated Benefit is made at the time you have cashed or deposited the Accelerated Benefit. After that time, you cannot cancel your request for an Accelerated Benefit. Until that time, you may cancel your request for benefits by informing the Office of Servicemembers' Group Life Insurance in writing that you are canceling your request and by returning the check if you have received one. If you want to change the amount of benefits you requested or decide to reapply after canceling a request, you may file another application in which you request either the same or a different amount of benefits.

(2) If you die before cashing or depositing an Accelerated Benefit payment, the payment must be returned to the Office of Servicemembers' Group Life Insurance. Their mailing address is 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

(j) If you have cashed or deposited an Accelerated Benefit, are you eligible for additional Accelerated Benefits? No.

(Approved by the Office of Management and Budget under control number 2900-0618)

(Authority: 38 U.S.C. 1965, 1966, 1967, 1980)

[FR Doc. 02-20278 Filed 8-9-02; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 112-0052c; FRL-7253-7]

Interim Final Determination That the State of Arizona Has Corrected Deficiencies and Stay of Sanctions, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's Federal Register, EPA has published a direct final rulemaking fully approving the State of Arizona's submittal of a revision to the Maricopa County Environmental Services Department (MCESD) portion of the State Implementation Plan (SIP). We have also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse

comments on our direct final action, we will withdraw our direct final rule and will consider any comments received before taking final action on the State's submittal. Based on the proposed full approval, we are making an interim final determination by this action that the State has corrected the deficiencies for which a sanctions clock began on February 4, 2001. This action will stay the imposition of the offset sanction and defer the imposition of the highway sanction. Although this action is effective upon publication, we will take comment. If no comments are received on our approval of the State's submittal and on our interim final determination, the direct final action published in today's **Federal Register** will also finalize our determination that the State has corrected the deficiencies that started the sanctions clock. If comments are received on our approval or on this interim final determination, we will publish a final rule taking into consideration any comments received.

**DATES:** This interim final determination is effective August 12, 2002. Comments must be received by September 11, 2002.

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

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

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, AZ 85007.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North central Avenue, Suite 201, Phoenix, AZ 85004.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

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

## I. Background

On January 4, 1990, the State of Arizona submitted a revision to Rule 314 in the MCESD portion of the SIP, which we disapproved in part on January 4, 2001 (66 FR 730). Our disapproval action started an 18-month clock beginning on February 4, 2001 for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted amended Rule 314 on March 22, 2002. We have taken direct final action on this submittal pursuant to our modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules and Regulations section of today's **Federal Register**, we have issued a direct final full approval of the State of Arizona's submittal of its SIP revision. In addition, in the Proposed Rules section of today's **Federal Register**, we have proposed full approval of the State's submittal. Based on the proposed full approval set forth in today's **Federal Register**, we believe that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, we are taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, we are also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on our proposed full approval of the State's submittal, we determine that the State's submittal is not fully approvable and this final action was inappropriate, we will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, we will also issue an interim final determination or a final determination that the deficiency has been corrected.

This action does not stop the sanctions clock that started for this area on February 4, 2001. However, this action will stay the imposition of the offsets sanction and will defer the imposition of the highway sanction. If our direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. If we must withdraw the direct final action based on adverse comments and we subsequently determine that the State, in fact, did not correct the disapproval deficiencies, we will also determine that the State did not correct the deficiencies and the sanctions consequences described in the

sanctions rule will apply. See 59 FR 39832 (August 4, 1994), codified at 40 CFR 52.31.

## II. EPA Action

We are taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of the offset sanction will be stayed and imposition of the highway sanction will be deferred until our direct final action fully approving the State's submittal becomes effective or until we take action proposing or finally disapproving in whole or part the State submittal. If our direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed, stayed, or deferred sanctions will be permanently lifted.

Because we have preliminarily determined that the State has an approvable submittal, relief from sanctions should be provided as quickly as possible. Therefore, we are invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

## III. 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. This action merely stays and defers federal sanctions. 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 only stays an imposed sanction and defers the imposition of another, 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). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely stays a sanction and defers another one, 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 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not contain technical standards, thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 12, 2002. 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Environmental protection, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 16, 2002.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 02-20222 Filed 8-9-02; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[AZ 112-0052a; FRL-7253-5]

**Revision to the Arizona State Implementation Plan, Maricopa County Environmental Services Department**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a local rule that regulates open outdoor fires.

**DATES:** This rule is effective on October 11, 2002, without further notice, unless EPA receives adverse comments by September 11, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal

business hours. You may also see a copy of the submitted SIP revision at the following locations:

- Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, AZ 85007.
- Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, AZ 85004.

A copy of the rule may also be available via the Internet at <http://www.maricopa.gov/envsvc/air/ruledesc.asp>. This is not an EPA Web site and it may not contain the same version of the rule that was submitted to EPA. Readers should verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval and be aware that the official submittal is only available at the agency addresses listed above.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

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

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**I. The State's Submittal**

*A. What Rule Did the State Submit?*

Table 1 lists the rule we are approving with the dates that it was revised by the local air agency and submitted by the Arizona Department of Environmental Quality.

**TABLE 1.—SUBMITTED RULE**

Local agency	Rule No.	Rule title	Revised	Submitted
MCESD .....	314	Open Outdoor Fires .....	12/19/01	03/22/02

On June 12, 2002, this rule submittal was found to meet the completeness

criteria in 40 CFR part 51 Appendix V,

which must be met before formal EPA review.

### B. Are There Other Versions of This Rule?

A version of Rule 314 was finalized as a limited approval into the SIP and limited disapproval with sanctions on January 4, 2001 (66 FR 730).

### C. What Is the Purpose of the Submitted Rule?

Rule 314 prohibits open outdoor fires unless a permit is obtained and the Control Officer has not declared a restricted burn period. The following are exemptions from these requirements:

- Fires for cooking, warmth for humans, recreation, branding of animals, the use of orchard heaters for frost protection, and fire extinguisher training.

Exemptions from only the permit requirement are as follows:

- Disposal of dangerous material, testing of explosive or flammable material, and fire fighting training.

The TSD has more information about this rule.

## II. EPA's Evaluation and Action

### A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). Section 189(a) of the CAA requires moderate PM-10 nonattainment areas to implement reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources of PM-10. Section 189(b) requires that serious PM-10 nonattainment areas, in addition to meeting the RACM/RACT requirements, implement best available control measures (BACM), including best available control technology (BACT). The Phoenix metropolitan area is a serious PM-10 nonattainment area. The MCESD regulates certain sources of PM-10 in the nonattainment area.

EPA's guidance for both moderate and serious PM-10 nonattainment areas provides that RACM/RACT and BACM/BACT are required to be implemented for all source categories unless the State demonstrates that a particular source category does not contribute significantly to PM-10 levels in excess of the NAAQS (*i.e.*, de minimis sources). See *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998, 42011 (August 16, 1994). PM-10 emissions from the source categories that are the subject of this direct final action are de minimis according to the December 1999 *Revised MAG 1999 Serious Area Particulate*

### Plan for PM-10 for the Maricopa County Nonattainment Area (PM-10 Plan).

Therefore, Rule 314 is not required to meet BACM/BACT control levels. However, the State submitted Rule 314 as a RACM/RACT rule on which the PM-10 Plan relies to achieve attainment. Thus EPA is evaluating Rule 314 to determine if it meets RACM/RACT requirements, but not for BACM/BACT.

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

We believe the rule is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling RACM/RACT. All of the deficiencies identified in our previous limited approval and limited disapproval action of Rule 314 on January 4, 2001 have been adequately addressed as follows:

- We disapproved the exemption to burn dangerous materials, because the "dangerous material" is not defined. A satisfactory definition was added to the rule. § 314.202.

- We disapproved the exemption permitting open burning with a stipulation of conditions and time of day, because criteria for allowing exemptions were not specified and were subject to the discretion of the Control Officer. A requirement was added for a permittee to call the fire agency with jurisdiction and the Control Officer for permission to commence burning. The Control Officer must base his decision to allow burning on National Weather Service forecasts or other meteorological analyses. We have determined that this approach fulfills the requirements of RACM/RACT. § 314.302.

- We disapproved an exemption to burn with an air curtain destructor, because the Control Officer had unrestricted discretion. An appendix was added to Rule 314 to describe procedures and guidelines for air curtain destructors and burn pits to make the rule approvable.

The TSD has more information about our evaluation.

### C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements and corrects the deficiencies in the previous version. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by

September 11, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 11, 2002. This will incorporate this rule into the federally enforceable SIP and will terminate all sanctions and sanction clocks associated with our January 4, 2001 action.

## III. Background Information

### A. Why Was This Rule Submitted?

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

TABLE 2.—PM-10 NONATTAINMENT MILESTONES

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

## IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 (Pub. L. 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 CAA. 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 CAA. 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 CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not

apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

#### List of Subjects in 40 CFR Part 52

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

Dated: July 16, 2002.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(105) to read as follows:

#### § 52.120 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(105) Amended rule for the following agency was submitted on March 22, 2002, by the Governor’s designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(1) Rule 314, revised on December 19, 2001.

\* \* \* \* \*

[FR Doc. 02–20223 Filed 8–9–02; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary of Transportation

#### 49 CFR Part 1

[OST Docket No. OST 1999–6189]

RIN 9991–AA26

### Organization and Delegation of Powers and Duties; Delegation to the Federal Highway Administrator

**AGENCY:** Office of the Secretary, U.S. DOT.

**ACTION:** Final rule.

**SUMMARY:** In this action, the Secretary of Transportation delegates to the Federal Highway Administrator limited authority to determine a Federal share of the costs, other than 80 percent, for Federal Highway Administration (FHWA) transportation research projects or activities that are funded under section 5001 of the Transportation Equity Act for the 21st Century (TEA–21). The Federal Highway Administrator is delegated this authority only with respect to the use of section 5001(b) funds for FHWA projects and activities, and exercises no authority with regard to cost share determinations with respect to projects or activities administered by the other U.S. Department of Transportation operating administrations. This delegation of authority is necessary because the Federal Highway Administration has the expertise and staff to administer the Highway Research Program and to make funding decisions in accordance with the statutory requirements. The Federal Highway Administrator may further redelegate this authority.

**EFFECTIVE DATE:** This rule is effective August 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Wilbert Baccus, Office of the Chief Counsel (HCC–40), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–0780.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

You can view and download this document by going to the web page of the Department's Docket Management System (<http://dms.dot.gov>). On that page, click on "search." On the next page, type in the last four digits of the docket number that appears in the heading of this document. Then click on "search." An electronic copy of this document may also be downloaded from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661 by using a computer, modem, and suitable communications software. Internet users may also reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

**Background**

Section 5001 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 419, Authorizations and Appropriations, provides funding for transportation research authorized to be appropriated out of the Highway Trust Fund. Subsection 5001(a) provides for sums that are authorized to be appropriated for seven categories of transportation research and subsection 5001(b) provides that these funds shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code. Subsection 5001(b) also states that the Federal share of the cost of the project or activity carried out using these funds shall be 80 percent, unless otherwise expressly provided in title 5 of the TEA-21 or otherwise determined by the Secretary with respect to a project or activity.

In this action, the Secretary delegates to the Federal Highway Administrator the authority to determine a Federal share of the costs, other than 80 percent, for FHWA transportation research projects or activities that are funded under section 5001 of TEA-21. The Federal Highway Administrator is delegated this authority only with respect to the use of section 5001(b) funds for FHWA projects and activities, and exercises no authority with regard to cost share determinations with respect to projects or activities administered by the other U.S. Department of Transportation operating administrations. The reason for the delegation is that the FHWA has the expertise and staff to carry out these programs and make funding decisions according to the statutory requirements.

The FHWA's Office of Acquisition Management approves the cooperative agreements to which this cost sharing provision applies. Additionally, the FHWA works with the smaller entities, such as not-for-profit organizations and universities, on a regular basis and is familiar with which organizations have the ability to cost share and which ones do not.

**Notice and Comment Exemption**

Since this rule relates to Departmental organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b).

**Justification for Immediate Adoption**

Certain programs and activities are to be conducted over the course of a given fiscal year, and this delegation of authority assists the FHWA in ensuring the use of those funds during that year for transportation research. This amendment enhances the FHWA's ability to meet statutory deadlines in order that funds do not lapse. Since the rule expedites the Federal Highway Administration's ability to administer the Highway Research Program, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

**List of Subjects in 49 CFR Part 1**

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons set forth in the preamble, the Office of the Secretary of Transportation amends 49 CFR part 1 as follows:

**PART 1—[AMENDED]**

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

**Authority:** 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101-552, 104 Stat. 2736; Pub. L. 106-159, 113 Stat. 1748.

2. In § 1.48, add paragraph (oo) to read as follows:

**§ 1.48 Delegations to Federal Highway Administrator.**

\* \* \* \* \*

(oo) Exercise the authority vested in the Secretary by subsection 5001(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 420, titled Applicability of Title 23, United States Code to determine a Federal share of the costs, other than 80 percent, for a transportation research project or activity administered by the FHWA that is funded under section 5001 of TEA-21. This authority may be redelegated.

Issued on this 29th day of July, 2002.

**Norman Y. Mineta,**

*Secretary, U.S. Department of Transportation.*  
[FR Doc. 02-20000 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-62-P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

**RIN 1018-AH08**

**Endangered and Threatened Wildlife and Plants; Designating Critical Habitat for Plant Species From the Island of Molokai, HI**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designations of critical habitat for plant species from the island of Molokai, Hawaii. We are also providing notice of the reopening of the comment period for the proposal to determine prudence and to designate critical habitat for these plants to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this reopened comment period and will be fully considered in preparation of the final rule.

**DATES:** We will accept public comments until September 11, 2002.

**ADDRESSES:** Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., PO Box 50088, Honolulu, HI 96850-0001. For further instructions on commenting, refer to Public Comments Solicited section of this document.

**FOR FURTHER INFORMATION CONTACT:** Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541-3441; facsimile: 808/541-3470).

**SUPPLEMENTARY INFORMATION:****Background**

A total of 51 plant species historically found on Molokai were listed as endangered or threatened species under

the Endangered Species Act of 1973, as amended (Act), between 1991 and 1999. Sixteen of these species are endemic to the island of Molokai, while 35 species are reported from one or more other islands, as well as Molokai.

In other published proposals we proposed that critical habitat was prudent for 48 of the 51 species (*Adenophorus periens*, *Alectryon macrococcus*, *Bidens wiebkei*, *Bonamia menziesii*, *Brighamia rockii*, *Canavalia molokaiensis*, *Centaurium sebaeoides*, *Clermontia oblongifolia* ssp. *brevipes*, *Ctenitis squamigera*, *Cyanea dunbarii*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea mannii*, *Cyanea procera*, *Cyperus trachysanthos*, *Diellia erecta*, *Diplazium molokaiense*, *Eugenia koolauensis*, *Flueggea neowawraea*, *Hedyotis mannii*, *Hesperomannia arborescens*, *Hibiscus arnottianus* ssp. *immaculatus*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendron pyrifolium*, *Labordia triflora*, *Lysimachia maxima*, *Mariscus fauriei*, *Marsilea villosa*, *Melicope mucronulata*, *Melicope reflexa*, *Neraudia sericea*, *Peucedanum sandwicense*, *Phyllostegia mannii*, *Phyllostegia mollis*, *Plantago princeps*, *Platanthera holochila*, *Pteris lidgatei*, *Schiedea lydgatei*, *Schiedea nuttallii*, *Schiedea sarmentosa*, *Sesbania tomentosa*, *Silene alexandri*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Stenogyne bifida*, *Tetramolopium rockii*, *Vigna o-wahuensis*, and *Zanthoxylum hawaiiense*) from the island of Molokai (65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940, 67 FR 9806, 67 FR 16492). In addition, we proposed that critical habitat was not prudent for *Pritchardia munroi* because it would likely increase the threats from vandalism or collection of this species on Molokai (65 FR 83158). At the time we listed *Labordia triflora* and *Melicope munroi* we determined that the designation of critical habitat was prudent for these two taxa from Molokai (64 FR 48307).

In the April 5, 2002, revised prudency and critical habitat proposal, we proposed critical habitat for 46 of the 51 species from the island of Molokai (67 FR 16492). Critical habitat was not proposed for 4 of the 51 species (*Bonamia menziesii*, *Cyperus trachysanthos*, *Melicope munroi*, and *Solanum incompletum*) which no longer occur on the island of Molokai and for which we are unable to identify any habitat that is essential to their conservation on the island of Molokai. Critical habitat was not proposed for *Pritchardia munroi* for the reasons given above.

We have proposed to designate a total of 10 critical habitat units covering approximately 17,614 hectares (ha) (43,532 acres (ac)) on the island of Molokai.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for plant species from Molokai, and comments received during the previous comment period, we have prepared a draft economic analysis of the proposed critical habitat designations. The draft economic analysis is available on the Internet and from the mailing address in the Public Comments Solicited section below.

#### Public Comments Solicited

We will accept written comments and information during this re-opened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., PO Box 50088, Honolulu, HI 96850-0001.

(2) You may send comments by electronic mail (e-mail) to: [Molokai\\_Crithab@1.fws.gov](mailto:Molokai_Crithab@1.fws.gov). If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018-AH08" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Honolulu Fish and Wildlife Office at telephone number 808/541-3441.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis

are available on the Internet at <http://pacificislands.fws.gov> or by request from the Field Supervisor at the address and phone number under (1 and 2) above.

#### Author(s)

The primary author of this notice is John Nuss, U.S. Fish and Wildlife Service, Regional Office, 911 NE 11th Avenue, 4th floor, Portland, OR 97232-4181.

#### Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 1, 2002.

#### Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02-20340 Filed 8-9-02; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AF96

#### Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Population Status and Reintroduction of Four Fishes in the Tellico River

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), plan to reintroduce two federally listed endangered fishes—the duskytail darter (*Etheostoma percnurum*) and smoky madtom (*Noturus baileyi*)—and two federally listed threatened fishes—the yellowfin madtom (*Noturus flavipinnis*) and spotfin chub (=turquoise shiner) (*Cyprinella (=Hybopsis) monacha*)—into the Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile (TRM) 19 (30.4 kilometers (km))) and TRM 33 (52.8 km), near the Tellico Ranger Station, Monroe County, Tennessee.

These reestablished populations will be classified as nonessential experimental populations (NEPs) in accordance with section 10(j) of the Endangered Species Act of 1973, as amended (Act). Based on an evaluation by species experts, none of these species are currently known to exist in this river reach or its tributaries.

These reintroductions are recovery actions and are part of a series of reintroductions and other recovery actions that the Service, Federal and State agencies, and other partners are considering and conducting throughout the species' historic ranges. This rule provides a plan for establishing the NEPs and provides for limited allowable legal taking of the aforementioned fishes within the defined NEP area.

**DATES:** The effective date of this rule is September 11, 2002.

**ADDRESSES:** The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Butler at 828/258-3939, Ext. 235; facsimile 828/258-5330; or e-mail bob\_butler@fws.gov.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

1. *Legislative:* Congress made significant changes to the Act with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as "experimental populations." Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about the placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as "experimental."

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of endangered wildlife. "Take" is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibition of take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further

the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' designation elsewhere in its range. Threatened designation gives us more discretion in developing and implementing management programs and special regulations for such a population and allows us to develop any regulations we consider necessary to provide for the conservation of a threatened species. In situations where we have experimental populations, most of the section 9 prohibitions that normally apply to threatened species no longer apply, and the special rule contains the prohibitions and exceptions necessary and appropriate to conserve that species. Regulations for NEPs may be developed to be more compatible with routine human activities in the reintroduction area.

Based on the best available information, we must determine whether experimental populations are "essential" or "nonessential" to the continued existence of the species. An experimental population that is essential to the survival of the species is treated as a threatened species. An experimental population that is nonessential to the survival of the species is also treated as a threatened species. However, for section 7 interagency cooperation purposes, if the NEP is located outside of a National Wildlife Refuge or National Park, it is treated as a species proposed for listing.

For the purposes of section 7 of the Act, in situations where there is an NEP located within a National Wildlife Refuge or National Park (treated as threatened), section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act would apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies consult with the Service before authorizing, funding, or carrying out any activity that would likely jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs

are located outside a National Wildlife Refuge or National Park, only two provisions of section 7 apply—section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, since we determined that the experimental population is not essential to the continued existence of the species, it is very unlikely that we would ever determine jeopardy for a project impacting a species within an NEP outside a National Wildlife Refuge or National Park.

Individuals used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal.

2. *Biological:* Since the mid-1980s, Conservation Fisheries, Inc. (CFI), with support from us, the Tennessee Wildlife Resources Agency (TWRA), U.S. Forest Service (USFS), National Park Service (NPS), Tennessee Valley Authority (TVA), and Tennessee Aquarium (TA), has reintroduced the smoky madtom, duskytail darter, yellowfin madtom, and spotfin chub into Abrams Creek, within the Great Smoky Mountains National Park, Blount County, Tennessee. We have evidence that all four species are becoming reestablished in Abrams Creek (Rakes *et al.* 1998). Based on this success and CFI's intimate knowledge of the fishes' habitat needs, we contracted them to survey the Tellico River to determine if we could expand the recovery program for these fishes into the Tellico River.

CFI determined that the Tellico River appears to contain ideal habitat for the reintroduction of the four fishes, between the backwaters of the Tellico Reservoir (approximately TRM 19 (30.4 km) and TRM 33 (52.8 km), near the Tellico Ranger Station, Monroe County, Tennessee (Rakes and Shute 1998). CFI concluded that the Tellico River's overall water quality and clarity, combined with substrate quality, were somewhat less optimal than Citico Creek, where three of the four species currently exist. However, they also concluded that the Tellico River contains as good or better habitat than that which exists in Abrams Creek, where reintroductions of all four species are apparently succeeding.

Rakes and Shute (1998) reported that there are no confirmed historical collection records for these fishes from the Tellico River. However, they believe that all four species probably occurred in the river historically. They based their conclusion on two facts: (1) That the Tellico River is a Little Tennessee tributary just downstream from the mouths of Abrams and Citico Creeks (all four fishes historically occurred in these creeks) and (2) that all three streams drain the same physiographic provinces (Blue Ridge and Ridge and Valley). Additionally, all four species historically had access to the Tellico River. Prior to the construction of reservoirs on the main stem of the Little Tennessee River, no physical barriers prevented the movement of these fishes among Abrams Creek, Citico Creek, and the Tellico River (Peggy Shute, TVA, personal communication, 1998).

3. *Recovery Efforts:* We listed the duskytail darter (*Etheostoma percnurum*) (Jenkins 1994) as an endangered species on April 27, 1993 (58 FR 25758), and completed the recovery plan for this species in March 1994 (Service 1994). Although likely once more widespread in the upper Tennessee and middle Cumberland River systems, the species was historically known from only six populations—Little River and Abrams Creek, Blount County, Tennessee; Citico Creek, Monroe County, Tennessee; Big South Fork Cumberland River, Scott County, Tennessee, and McCreary County, Kentucky; Copper Creek and the Clinch River (this is one population), Scott County, Virginia; and the South Fork Holston River, Sullivan County, Virginia (Service 1994). The South Fork Holston River population is apparently extirpated. The Little River, Copper Creek/Clinch River, and Big South Fork Cumberland River populations are extant but small. CFI has reintroduced the duskytail darter into Abrams Creek, where a population is apparently becoming reestablished (Rakes *et al.* 1998).

The downlisting (reclassification from endangered to threatened status) criteria in the Duskytail Darter Recovery Plan are: (1) Protect and enhance existing populations and reestablish a population so that at least three distinct viable duskytail darter populations exist, (2) complete studies of the species' biological and ecological requirements, (3) develop management strategies from these studies that are or are likely to be successful, and (4) ensure that no foreseeable threats exist that would likely threaten the continued existence of the three aforementioned viable populations. The delisting

criteria in the recovery plan are: (1) Protect and enhance existing populations and reestablish populations so that at least five distinct viable duskytail darter populations exist, (2) complete studies of the species' biological and ecological requirements, (3) develop management strategies from these studies that are or are likely to be successful, and (4) ensure that no foreseeable threats exist that would likely threaten the continued existence of the five aforementioned viable populations.

We listed the smoky madtom (*Noturus baileyi*) (Taylor 1969) as an endangered species on October 26, 1984 (49 FR 43065), and finalized the recovery plan for this species in August 1985 (Service 1985). Although once probably more widespread in tributaries to the lower Little Tennessee River system, this species was historically collected from only two creeks—Abrams Creek, Blount County, Tennessee, and Citico Creek, Monroe County, Tennessee (Service 1985). The Citico Creek population is still extant. CFI has reintroduced the smoky madtom into Abrams Creek, and a population is apparently becoming reestablished (Rakes *et al.* 1998).

The downlisting criteria in the Smoky Madtom Recovery Plan are: (1) Protect the existing Citico Creek population and reintroduce the species into Abrams Creek so that at least two distinct viable smoky madtom populations exist, and (2) eliminate threats to the species by implementing management activities. The delisting criteria in the recovery plan are: (1) Protect and enhance existing populations and reestablish populations so that at least four distinct viable smoky madtom populations (Abrams and Citico Creeks, plus two others) exist; (2) implement successful management plans for the populations in Abrams and Citico Creeks; and (3) protect all four populations and their habitat from present and foreseeable threats that could interfere with the survival of any of the populations.

We listed the yellowfin madtom (*Noturus flavipinnis*) (Taylor 1969) as a threatened species on September 9, 1977 (42 FR 45527), and finalized the recovery plan for this species in June 1983 (Service 1983a). This fish was probably once widely distributed in the Tennessee drainage, from the Chickamauga system upstream (Service 1983a). However, the yellowfin madtom was historically known from only six streams—South Chickamauga Creek, Catoosa County, Georgia; Hines Creek, a Clinch River tributary, Anderson County, Tennessee; North Fork Holston River, Smyth County, Virginia; Copper

Creek, Scott and Russell Counties, Virginia; Powell River, Hancock County, Tennessee; and Citico Creek, Monroe County, Tennessee (Service 1983a). Although there are no historical yellowfin madtom records from Abrams Creek, Blount County, Tennessee, Lennon and Parker (1959) reported that the brindled madtom (the name given by early collectors for the yellowfin) was collected during a reclamation project of lower Abrams Creek in 1957. Based on this observation, Dinkins and Shute (1996) and others believe the species once occurred in the middle and lower reaches of Abrams Creek. Three small populations still persist—Citico Creek, Copper Creek, and the Powell River. CFI has reintroduced the species into Abrams Creek, and a population is apparently becoming reestablished (Rakes *et al.* 1998).

The delisting criteria in the Yellowfin Madtom Recovery Plan are: (1) Protect and enhance existing populations and/or reestablish populations so that viable populations exist in Copper Creek, Citico Creek, and the Powell River; (2) recreate and/or discover two additional viable populations; (3) ensure that noticeable improvements in coal-related problems and substrate quality exist in the Powell River; and (4) protect the species and its habitat in all five rivers from present and foreseeable threats that may adversely affect essential habitat or the survival of any of the populations.

We listed the spotfin chub (=turquoise shiner) (*Cyprinella (=Hybopsis) monacha*) (Cope 1868) as a threatened species on September 9, 1977 (42 FR 45527), and finalized the recovery plan for this species in November 1983 (Service 1983b). This once widespread species was historically known from 24 streams in the upper and middle Tennessee River system. It is now extant in only four rivers/river systems—the Buffalo River at the mouth of Grinders Creek, Lewis County, Tennessee; Little Tennessee River, Swain and Macon Counties, North Carolina; Emory River system (Obed River, Clear Creek, and Daddys Creek) Cumberland and Morgan Counties, Tennessee; Holston River and its tributary, the North Fork Holston River, Hawkins and Sullivan Counties, Tennessee, and Scott and Washington Counties, Virginia (Service 1983b; P. Shute, TVA, personal communication, 1998). CFI has reintroduced the species into Abrams Creek, and indications are that it may become reestablished (Rakes *et al.* 1998).

The delisting criteria in the Spotfin Chub Recovery Plan are: (1) protect and enhance existing populations and/or reestablish populations so that viable populations exist in the Buffalo River

system, upper Little Tennessee River, Emory River system, and lower North Fork Holston River and (2) ensure, through reintroductions and/or the discovery of new populations, that two other viable populations exist.

The recovery criteria for all four of these fishes generally agree that, to reach recovery, we must: (1) Restore existing populations to viable levels, (2) reestablish viable populations in historical habitats, and (3) eliminate foreseeable threats that would likely threaten the continued existence of any viable populations. The number of secure, viable populations (existing and restored) needed to achieve recovery varies by species and depends on the extent of the species' probable historical range (*i.e.*, species that were once widespread require a greater number of populations for recovery than species that were historically more restricted in distribution). However, the reestablishment of historical populations is a critical component to the recovery of all four species.

4. *Reintroduction Site*: In March 1998, the Executive Director of the TWRA stated that he supports the conclusions of Rakes and Shute (1998) and requested that we consider designating the Tellico River an NEP area for reintroducing the four fishes. He further stated that: (1) The Tellico River was the probable historical habitat of the duskytail darter, smoky madtom, yellowfin madtom, and spotfin chub, and (2) the Tellico River appeared to have almost ideal habitat for the reintroduction of all four fishes.

Dr. David Etnier, Department of Ecology and Evolutionary Biology, University of Tennessee, Knoxville, Tennessee, stated in April 1998 that he supports the reintroduction of the four species into the Tellico River. Dr. Etnier presented several reasons for his support: (1) The mouth of the Tellico River is approximately 10 miles (16 km) downstream of the mouth of Citico Creek, which historically supported all four species and currently supports all but the spotfin chub; (2) CFI's habitat analysis indicated that the reintroduction of these fishes into the Tellico River has a greater potential for success than reintroductions into any other tributary of the Little Tennessee River system, except Abrams Creek, where apparently successful reintroductions are already occurring; (3) apparently, no fish collections were made from the Tellico River prior to the 1960s, so the extirpation of these fishes could have occurred prior to the 1960s due to siltation caused by heavy logging in the watershed around the turn of the century; and (4) none of these species display any biological attributes that

suggest they could become a problem if successfully established into the Tellico River.

We will reintroduce populations of the duskytail darter, smoky madtom, yellowfin madtom, and spotfin chub (=turquoise shiner) into the Tellico River, between the backwaters of the Tellico Reservoir (approximately TRM 19 (30.4 km)) and TRM 33 (52.8 km), near the Tellico Ranger Station, Monroe County, Tennessee, and designate these populations as NEPs. This area is identified as the NEP area.

5. *Reintroduction Procedures*: At this time we cannot determine the dates for these reintroductions, the specific sites where the fish species will be released, and the actual number of individuals to be released. We will release primarily artificially propagated juveniles, but we could release some wild adult stock. Propagation and juvenile rearing technology is available for the spotfin chub and the duskytail darter. Limited numbers of smoky and yellowfin madtom juveniles can be reared using eggs and larvae taken from the wild. However, madtom artificial propagation technology, which is needed to produce large numbers of juvenile madtoms, is still in development.

The parents of the juveniles reintroduced into the NEP area will come from existing wild populations. The two madtoms and duskytail darters will come from a nearby Little Tennessee River tributary—Citico Creek, Monroe County, Tennessee. The spotfin chubs will come from upstream in the Little Tennessee River, Swain County, North Carolina. In some cases, the parents will be returned to the wild population from which they were taken. However, in most cases the parents will be permanently relocated to propagation facilities.

#### **Status of Reintroduced Populations**

The status of the extant populations of the duskytail darter, smoky madtom, yellowfin madtom, and spotfin chub is such that individuals can be removed to provide a donor source for reintroduction without appreciably reducing the likelihood of the species' survival in the wild. Therefore, we have determined that these reintroduced fish populations are not essential to the continued existence of the species. We will ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of animals from any donor population for these reintroductions is not likely to jeopardize the continued existence of the species.

In addition, the anticipated success of these reintroductions will enhance the

conservation and recovery potential of these species by extending their present ranges into currently unoccupied historic habitat. These species are not known to exist in the Tellico River or its tributaries at the present time.

#### **Location of Reintroduced Populations**

Sites for the reintroduction of these four fish species into the Tellico River, Monroe County, Tennessee, will be within the designated NEP area. This area is totally isolated from existing populations of these species by large reservoirs, and none of these fishes are known to occur or move through large reservoir habitat. Therefore, these reservoirs will act as barriers to the downstream expansion of these species into the main stem of the Little Tennessee River and its tributaries and ensure that these populations will remain geographically isolated.

#### **Management**

We do not believe these reintroductions will conflict with existing or proposed human activities or hinder public utilization of the NEP area. Special rules for experimental populations contain all the prohibitions and exceptions regarding the taking of individual animals. These special rules are more compatible with routine human activities in the reintroduction area.

Based on the habitat requirements of these four fishes, we do not expect them to become established outside the NEP area. However, if any of the four species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that the animals had come from the reintroduced populations. The rule would then be amended, and the boundaries of the NEP area would be enlarged to include the entire range of the expanded population.

#### **Previous Federal Actions**

On June 26, 1998, we mailed letters to 67 potentially affected congressional offices, Federal and State agencies, local government offices, and interested parties that we were considering proposing NEP status for four fish species in the Tellico River. We received four written responses.

The USFS, which is significantly involved in reintroduction efforts for these fishes into Abrams Creek, supported the proposed reintroductions into the Tellico River as NEPs and offered to cooperate with us and TWRA in the reintroductions.

The Tennessee Department of Environment and Conservation, Division of Natural Heritage (TDEC),

supported the proposed reintroduction of the four fishes into the Tellico River. They believed that designating the reintroduced populations as NEPs is appropriate because it should enable Federal, State, and local authorities to continue to promote the conservation and recovery of these fishes.

The Tennessee Chapter of the American Fisheries Society supported the proposed reintroduction of these fishes into the Tellico River under NEP status. They concluded that: (1) Although there is little information on the historical environmental conditions in the Tellico River, the river now supports a relatively healthy native fish community with respect to species diversity, species composition, fish abundance, and fish health; (2) the river appears to contain suitable habitat for the survival of all four species; (3) all four species probably historically occupied the river; and (4) designating reintroductions as NEPs greatly relaxes regulatory requirements and makes introduced populations more compatible with other resource use in the watershed.

The Southeast Aquatic Research Institute (SARI) fully supported the proposed reintroductions.

On June 8, 2001, we published the proposed rule in the **Federal Register** (66 FR 30853) to designate NEP status, under section 10(j) of the Act, for the reintroduction of the aforementioned four fishes into the Tellico River, Monroe County, Tennessee. Additionally, we announced this proposal in facsimiles dated June 7, 2001; in letters dated June 8, 2001; and in a legal notice published in the *Knoxville News-Sentinel*, Knoxville, Tennessee, on June 21, 2001. Those documents notified affected congressional offices, the Governor of Tennessee, Federal and State agencies, local government offices, scientific organizations, and interested parties of the proposed action and requested comments and information that might contribute to the development of a final determination.

### Summary of Comments and Recommendations

In the June 8, 2001, proposed rule (66 FR 30853), we opened a 60-day comment period. We received eight responses—five supported the designation as an NEP, one supported the reintroduction but requested the experimental population be designated “essential” rather than “nonessential,” and two respondents expressed concern that the designation would adversely impact recreational activities in the Tellico River watershed. These

comments did not result in any changes to the final rule. Key issues raised and our responses are presented below.

*Issue 1:* Two respondents expressed concern that the NEP designation would adversely impact recreational activities in the Tellico River watershed. They were especially concerned with the impact to off-road-vehicle use in the Cherokee National Forest portion of the watershed.

*Response:* Because of the regulatory flexibility provided through an NEP designation, we do not believe the reintroduction of these fishes will have any adverse impact on recreational or other legal activities in the Tellico River watershed (see “Required Determinations” and “Management” sections). Federal agencies, like the USFS, are not required under the Act to change any recreational uses in the Cherokee National Forest to protect the continued existence of these fishes in the Tellico River watershed. State and local agencies, communities, and private citizens would not be required to change current uses in the watershed to protect the fishes in this NEP.

*Issue 2:* One respondent stated that we should classify the experimental populations as “essential” instead of “nonessential.”

*Response:* In our August 27, 1984, final rule regarding experimental populations (49 FR 33885), we stated that, in some situations, the status of the extant population is such that individuals can be removed to provide a donor source for reintroduction without creating adverse impacts on the parent population. This is especially true if captive propagation efforts are providing individuals for release into the wild. Further, we cannot ignore Congressional intent in explaining the “essential” determination:

“\* \* \* The Secretary shall consider whether the loss of the experimental population would be *likely to appreciably reduce the likelihood of survival of that species in the wild*. If the Secretary determines that it would, the population will be considered essential to the continued existence of the species. The level of reduction necessary to constitute “essentiality” is expected to vary among listed species, and *in most cases, experimental populations will not be essential.*” H.R. Conf. Rep. No. 835, supra at 34 [emphasis added]. An “essential” population will be a special case, not the general rule.

The status of the extant populations of the duskytail darter, smoky madtom, yellowfin madtom, and spotfin chub is such that individuals can be removed to

provide a donor source for reintroduction without appreciably reducing the likelihood of the species’ survival in the wild. Therefore, we have determined that these reintroduced fish populations are not essential to the continued existence of the species. We will ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of animals from any donor population for these reintroductions is not likely to jeopardize the continued existence of the species.

*Issue 3:* Four respondents (TVA, TWRA, TDEC, and SARI) expressed support for the designation of the experimental population as “nonessential” because it provides greater management flexibility.

*Response:* We agree that an NEP designation provides more management flexibility than an essential experimental population designation. We also believe that the NEP designation is appropriate for the reasons discussed in our response to Issue 2 above.

### Peer Review

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we provided copies of the proposed rule to ten specialists in order to solicit comments on the scientific data and assumptions relating to the supportive biological and ecological information for this NEP rule. The purpose of such review is to ensure that the NEP designation decision is based on the best scientific information available, as well as to ensure that reviews by appropriate experts and specialists are included into the review process of rulemakings. Although comments were solicited from ten specialists, none of these reviewers provided comments on the proposed rule. However, we did receive comments expressing support for the designation from the State (e.g., TWRA, TDEC), Tennessee Chapter of the American Fisheries Society, and SARI, and we are working closely with TWRA, USFS, NPS, TVA, and the TA on our reintroduction efforts, as mentioned above.

### Required Determinations

#### Regulatory Planning and Review

This rule is not a significant rule as determined by the Office of Management and Budget (OMB) under Executive Order 12866. This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition,

jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The area affected by this rule consists of a very limited and discrete geographic segment (only 14 river miles [22.4 km]) of the Tellico River in Monroe County, Tennessee. No significant impacts to existing human activities are expected as a result of this rule.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements regarding the reintroduced listed species. Because of the substantial regulatory relief, we do not believe the reintroduction of these fishes will conflict with existing or proposed human activities or hinder public use of the Tellico River.

This rule does not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. No entitlements, grants, user fees, or loan programs are associated with this rule.

This rule does not raise novel legal or policy issues. We have previously promulgated section 10(j) rules for experimental populations of other listed threatened or endangered species in various localities since 1984. The rules are designed to reduce the regulatory burden that would otherwise exist when reintroducing listed species to the wild.

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Although most, if not all, of the identified businesses engaged in activities along the affected stream reaches are small businesses, this rule will have no economic effect in that it will operate to reduce or remove regulatory restrictions (see above for discussion of expected impacts).

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million or more on local or State governments or private entities. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule does not have significant adverse

effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The intent of this special rule is to facilitate and continue the existing commercial activities along the affected stream reaches, while providing for the conservation of species through reintroduction into suitable habitat.

#### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The TWRA, which manages the fishes in the Tellico River, requested that we consider this reintroduction under an NEP designation. However, this rule will not require the TWRA to specifically manage for any of these reintroduced species. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

#### *Takings (E.O. 12630)*

In accordance with Executive Order 12630, this rule does not have significant takings implications. When reintroduced populations of federally listed species are designated as NEPs, the Act's regulatory requirements regarding the reintroduced listed species within the NEP are significantly reduced. Section 10(j) of the Act can provide regulatory relief with regard to the taking of reintroduced species within an NEP area. For example, this rule allows for the taking of these reintroduced fishes when such take is incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of these fishes will conflict with existing or proposed human activities or hinder public use of the Tellico River system. A takings implication assessment is not required.

#### *Federalism (E.O. 13132)*

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule will not have substantial direct effects on the States, in the relationship between the Federal Government and the States, or on the

distribution of power and responsibilities among the various levels of government. We have coordinated extensively with the State of Tennessee regarding the reintroduction of these fishes into the Tellico River. We are undertaking this rulemaking at the request of the State wildlife agency (TWRA) in order to assist the State in restoring and recovering its native aquatic fauna. Achieving the recovery goals for these four fish species will contribute to the eventual delisting of these species and, thus, the return of these species to State management. We do not expect any intrusion on State policy or administration; the roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. This special rule operates to maintain the existing relationship between the States and the Federal Government and is being undertaken at the request of a State agency. We have endeavored to cooperate with the TWRA in the preparation of this final rule.

#### *Civil Justice Reform (E.O. 12988)*

In accordance with Executive Order 12988, the Department of the Interior has determined that this rule does not unduly burden the judicial system and meets the applicable standards provided in sections (3)(a) and (3)(b)(2) of the order.

#### *Paperwork Reduction Act*

This rule does not require an information collection from ten or more parties, and a submission under the Paperwork Reduction Act is not required. 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.

#### *National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act (NEPA) is not required. We have determined that the issuance of a final rule for these NEPs is categorically excluded under our NEPA procedures (516 DM 6, Appendix 1.4 B (6)).

#### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive

Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

*Energy Supply, Distribution or Use (E.O. 13211)*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this final rule is not a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**Literature Cited**

Dinkins, G. R., and P. W. Shute. 1996. Life history of *Noturus baileyi* and *N. flavipinnis* (Pisces: Ictaluridae), two rare madtom catfishes in Citico Creek, Monroe County, Tennessee. Bull. Alabama Mus. Nat. His. 18:43-69.  
 Lennon, R. E., and P. S. Parker. 1959. The reclamation of Indian and Abrams Creeks, Great Smoky Mountains National Park. U.S. Fish

and Wildlife Service Scientific Report 306. 22 pp.  
 Rakes, P. L., and J. R. Shute. 1998. Results of an assay of portions of the Tellico and Hiwassee Rivers for suitable habitat to support reintroductions of rare fish. January 23, 1998, unpublished report prepared by Conservation Fisheries, Inc., Knoxville, Tennessee, for U.S. Fish and Wildlife Service, Asheville, North Carolina. 14 pp.  
 Rakes, P. L., P. W. Shute, and J. R. Shute. 1998. Captive propagation and population monitoring of rare Southeastern fishes. Final Report for 1997. Field Season and Second Quarter Report for Fiscal Year 1998, prepared for Tennessee Wildlife Resources Agency, Contract No. FA-4-10792-5-00. 32 pp.  
 U.S. Fish and Wildlife Service. 1983a. Yellowfin Madtom Recovery Plan. Atlanta, GA. 33 pp.  
 —1983b. Spotfin Chub Recovery Plan. Atlanta, GA. 46 pp.  
 —1985. Smoky Madtom Recovery Plan. Atlanta, GA. 28 pp.  
 —1994. Duskytail Darter Recovery Plan. Atlanta, GA. 25 pp.

**Author**

The principal author of this final rule is Richard G. Biggins. Please contact

Bob Butler (see ADDRESSES section) for further information.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Final Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as follows:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h), revise entries in the table under FISHES for “Chub, spotfin”; “Darter, duskytail”; “Madtom, smoky”; and “Madtom, yellowfin” to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
 (h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* FISHES	*	*	*	*	*		*
* Chub, spotfin (=turquoise shiner).	* <i>Cyprinella (=Hybopsis monacha).</i>	* U.S.A. (AL, GA, NC, TN, VA).	* Entire, except where listed as an experimental population.	* T	* 28, 732		* 17.44(c)
Do .....do .....	do .....do .....	do .....do .....	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 [30.4 km]) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	732	NA	17.84(m)
* Darter, duskytail ....	* <i>Etheostoma percnurum</i>	* U.S.A. (TN, VA) .....	* Entire, except where listed as an experimental population.	* E	* 502, 732		* NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do .....	.....do .....	.....do .....	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 [30.4 km]) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	732	NA	17.84(m)
* Madtom, smoky .....	* <i>Noturus baileyi</i> .....	* U.S.A. (TN) .....	* Entire, except where listed as an experimental population.	* E	* 163, 732	* 17.95(e)	* NA
Do .....	.....do .....	.....do .....	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 [30.4 km]) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	732	NA	17.84(m)
Madtom, yellowfin	<i>Noturus flavipinnis</i> .....	U.S.A. (TN, VA) .....	Entire, except where listed as an experimental population.	T	28, 317, 732	17.95(e)	17.44(c)
Do .....	.....do .....	.....do .....	N. Fork Holston River Watershed, VA, TN; S. Fork Holston R., upstream to Ft. Patrick Henry Dam, TN; Holston R. down-stream to John Sevier Detention Lake Dam, TN; and all tributaries thereto.	XN	317	NA	17.84(e)
Do .....	.....do .....	.....do .....	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 [30.4 km]) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	732	NA	17.84(e)
*	*	*	*	*	*	*	*

3. Amend § 17.84 by revising paragraph (e) and adding paragraph (m) as set forth below:

**§ 17.84 Special rules-vertebrates.**

\* \* \* \* \*

(e) Yellowfin madtom (*Noturus flavipinnis*).

(1) Where is the yellowfin madtom designated as a nonessential experimental population (NEP)? We

have designated two populations of this species as NEPs: the North Fork Holston River Watershed NEP and the Tellico River NEP.

(i) The North Fork Holston River Watershed NEP area is within the species' historic range and is defined as follows: The North Fork Holston River watershed, Washington, Smyth, and Scott Counties, Virginia; South Fork Holston River watershed upstream to Ft.

Patrick Henry Dam, Sullivan County, Tennessee; and the Holston River from the confluence of the North and South Forks downstream to the John Sevier Detention Lake Dam, Hawkins County, Tennessee. This site is totally isolated from existing populations of this species by large Tennessee River tributaries and reservoirs. As the species is not known to inhabit reservoirs and because individuals of the species are not likely

to move 100 river miles through these large reservoirs, the possibility that this population could come in contact with extant wild populations is unlikely.

(ii) The Tellico River NEP area is within the species' historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe County, Tennessee. This species is not currently known to exist in the Tellico River or its tributaries. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this rule and enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(2) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP areas. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(3) What activities are not allowed in the NEP areas?

(i) Except as expressly allowed in paragraph (e)(4) of this section, all the prohibitions of § 17.31 (a) and (b) apply to the fishes identified in paragraph (e)(1) of this section.

(ii) Any manner of take not described under paragraph (e)(4) of this section is prohibited in the NEP area. We may refer unauthorized take of these fishes to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (e)(3) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (e)(3) of this section.

(4) What take is allowed in the NEP area? Take of this species that is incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(5) How will the effectiveness of these reintroductions be monitored? We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

\* \* \* \* \*

(m) Spottin chub (=turquoise shiner) (*Cyprinella (=Hybopsis) monacha*), duskytail darter (*Etheostoma percnurum*), smoky madtom (*Noturus baileyi*).

(1) Where are populations of these fishes designated as nonessential experimental populations (NEPs)?

(i) The NEP area for these three fishes is within the species' probable historic ranges and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe County, Tennessee.

(ii) None of the fishes named in paragraph (m) of this section are currently known to exist in the Tellico River or its tributaries. Based on the habitat requirements of these fishes, we do not expect them to become established outside the NEP area. However, if any individuals of any of the species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced populations. We would then amend paragraph (m)(1)(i) of this section and enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) What activities are not allowed in the NEP area?

(i) Except as expressly allowed in paragraph (m)(3) of this section, all the prohibitions of § 17.31 (a) and (b) apply to the fishes identified in paragraph (m)(1) of this section.

(ii) Any manner of take not described under paragraph (m)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of these species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (m)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (m)(2) of this section.

(3) What take is allowed in the NEP area? Take of this species that is incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) How will the effectiveness of these reintroductions be monitored? We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

Dated: July 23, 2002.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02-20341 Filed 8-9-02; 8:45 am]

**BILLING CODE 4310-55-P**

# Proposed Rules

Federal Register

Vol. 67, No. 155

Monday, August 12, 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 HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 201

[Docket No. 02N-0241]

#### Amendment of Regulations on Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) proposes to amend its regulations to change the labeling requirements concerning aluminum in small volume parenterals (SVPs) and pharmacy bulk packages (PBPs) used in total parenteral nutrition (TPN). FDA proposes that the immediate container labels of SVPs and PBPs containing 25 micrograms per liter ( $\mu\text{g/L}$ ) or less of aluminum may state: "Contains no more than 25  $\mu\text{g/L}$  of aluminum" instead of stating the exact amount of aluminum they contain. FDA is taking this action in response to a request from industry.

**DATES:** Submit written or electronic comments by October 28, 2002.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments at <http://www.fda.gov/dockets/ecomments>. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Christine F. Rogers, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In the **Federal Register** of January 26, 2000 (65 FR 4103), FDA published a final rule amending its regulations in § 201.323 (21 CFR 201.323) to enact certain requirements regarding aluminum levels in large volume parenterals (LVPs), SVPs, and PBPs used in TPN. The final rule was originally scheduled to become effective on January 26, 2001. In the **Federal Register** of January 26, 2001 (66 FR 7864), the agency published a document extending the effective date to January 26, 2003.

Current § 201.323(c) requires the product's maximum level of aluminum at expiry to be stated on the immediate container label of SVPs and PBPs used in the preparation of TPN solutions. The statement on the immediate container label currently must read as follows: "Contains no more than  $\mu\text{g/L}$  of aluminum." For those SVPs and PBPs that are lyophilized powders used in the preparation of TPN solutions, the maximum level of aluminum at expiry must be printed on the immediate container label as follows: "When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than  $\mu\text{g/L}$ ." The maximum level of aluminum must be stated as the highest of: (1) The highest level for the batches produced during the last 3 years; (2) the highest level for the latest five batches; or (3) the maximum historical level, but only until completion of production of the first five batches after the effective date of the rule. The labeling requirement applies to all SVPs and PBPs used in the preparation of TPN solutions, including, but not limited to: Parenteral electrolyte solutions, such as calcium chloride, calcium gluceptate, calcium gluconate, magnesium sulfate, potassium acetate, potassium chloride, potassium phosphate, sodium acetate, sodium lactate, and sodium phosphate; multiple electrolyte additive solutions; parenteral multivitamin solutions; single-entity parenteral vitamin solutions, such as vitamin K injection, folic acid, cyanocobalamin, and thiamine; and trace mineral solutions, such as chromium, copper, iron, manganese, selenium, and zinc.

On June 1, 2000, the agency met with the Health Industry Manufacturers Association (HIMA, now called

AdvaMed). HIMA requested that FDA permit SVPs and PBPs containing less than 25  $\mu\text{g/L}$  to be labeled "Contains no more than 25  $\mu\text{g/L}$  of aluminum" rather than requiring such products to be labeled with the exact amount of aluminum as required by § 201.323© (Ref. 1). In support of this proposal, participants made the following points: (1) 25  $\mu\text{g/L}$  of aluminum is a safe level of aluminum for SVPs because the agency has already determined that amount of aluminum to be safe for LVPs; (2) it would make no clinical difference to know the precise amount less than 25  $\mu\text{g/L}$  that an SVP contained; and (3) permitting the label to state "Contains no more than 25  $\mu\text{g/L}$ " rather than the exact amount of aluminum would avoid the need for labels to be reprinted in the future with the exact amounts of aluminum at expiry.

One comment to the proposed rule had asked FDA to set a minimum level below which the amount of aluminum in SVPs and PBPs would not have to be declared. In the final rule, the agency responded that it was important for health care practitioners to know as much as possible about aluminum levels so that practitioners could calculate the total aluminum exposure from multiple sources and would be able to prepare low-aluminum parenteral solutions for patients in high risk groups.

HIMA's request has caused the agency to reconsider its position on whether it is appropriate to set a minimum level of aluminum in SVPs and PBPs that would not have to be declared. While the comment to the proposed rule did not suggest a particular minimum level, HIMA has now proposed a specific level, 25  $\mu\text{g/L}$  of aluminum. FDA has already determined that 25  $\mu\text{g/L}$  is a safe upper limit for manufacturers to include in LVPs and believes that it is similarly appropriate for SVPs and PBPs.

An important factor for the agency when reconsidering its position was that if an SVP or PBP that contains 25  $\mu\text{g/L}$  of aluminum is added to a TPN solution that contains 25  $\mu\text{g/L}$  of aluminum, the concentration of aluminum in the mixture will still be 25  $\mu\text{g/L}$ . Consistent with its approach to LVPs (to which SVPs and PBPs are added) that are permitted to contain 25  $\mu\text{g/L}$ , FDA believes health care practitioners will be provided with sufficient information on the aluminum

content of SVPs and PBPs if the label states that the product contains no more than 25 µg/L of aluminum. For this reason, the agency does not believe it is necessary for SVPs and PBPs that contain 25 µg/L or less of aluminum to be labeled with the precise concentration of aluminum. Therefore, the agency proposes to modify the required labeling as requested.

## II. Description of the Proposed Rule

The proposed rule would add new § 201.323(d) to permit SVPs and PBPs that contain 25 µg/L or less of aluminum to be labeled "Contains no more than 25 µg/L" rather than requiring such products to state the exact amount of aluminum.

## III. Proposed Implementation Plan

FDA proposes that the effective date of any final rule that may issue based on this proposed rule coincide with the effective date of the aluminum final rule that published in the **Federal Register** of January 26, 2000 (66 FR 7864). As discussed in section I of this document, the agency has extended this effective date to January 26, 2003. The agency intends to further extend this effective date as necessary to provide time for this proposed rule to be finalized.

## IV. Environmental Impact

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

## V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is

consistent with the regulatory philosophy and principles identified in the Executive order.

The proposed rule would relax the requirements of the final rule for labeling aluminum content in SVPs and PBPs used in TPN. Specifically, manufacturers would be allowed to use a standard statement of quantity of aluminum content in place of the exact amount for affected products that contain no more than 25 µg/L of aluminum. Thus, the proposed rule is not a significant action as defined by the Executive order.

In the Analysis of Impacts section of the final rule published on January 26, 2000, the agency relied on the Eastern Research Group (ERG) report entitled "Addendum to Compliance Cost Analysis for a Regulation for Parenteral Drug Products Containing Aluminum." In that report, ERG calculated the total relabeling costs for SVPs and PBPs to be about \$523,000, or about \$3,500 per product (equivalent to annualized costs totaling \$128,000, or about \$850 per product, discounted at 7 percent over 5 years). To the extent that manufacturers of SVPs and PBPs containing no more than 25 µg/L of aluminum use the added flexibility in labeling this proposal provides, the compliance burden cited above could be reduced.

Because this proposed rule could slightly decrease current compliance costs for the affected industry without imposing any additional costs, FDA has determined that the proposed rule is not a significant action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact on a substantial number of small entities. FDA made the determination for the final rule published January 26, 2000, that very few small firms, if any, would be significantly impacted. Thus, the agency certified that the final rule would not have a significant impact on a substantial number of small entities. This proposed rule could slightly lessen the economic impact of the final rule published on January 26, 2000.

Accordingly, FDA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (as amended).

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of

\$100 million or more in any one year (adjusted annually for inflation).

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule because the rule is not expected to result in any 1-year expenditure that would exceed \$100 million adjusted for inflation. The current inflation-adjusted statutory threshold is \$110 million.

## VII. Federalism

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

## VIII. Request for Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this proposal. 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 may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

## IX. Reference

The following reference has been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Minutes of June 1, 2000, HIMA meeting, slide 10.

## List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

## PART 201—LABELING

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 201 be amended as follows:

1. The authority citation for 21 CFR part 201 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.323 is amended by revising the first two sentences of the introductory text of paragraph (c); by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively; and by adding new paragraph (d) to read as follows:

**§ 201.323 Aluminum in large and small volume parenterals used in total parenteral nutrition.**

\* \* \* \* \*

(c) The maximum level of aluminum present at expiry must be stated on the immediate container label of all small volume parenteral (SVP) drug products and pharmacy bulk packages (PBPs) used in the preparation of TPN solutions. Except as provided in paragraph (d) of this section, the aluminum content must be stated as follows: “Contains no more than \_\_ µg/L of aluminum.” \* \* \*

(d) If the maximum level of aluminum is 25 µg/L or less, instead of stating the exact amount of aluminum as required in paragraph (c) of this section, the immediate container label may state: “Contains no more than 25 µg/L of aluminum.” If the SVP or PBP is a lyophilized powder, the immediate container label may state: “When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than 25 µg/L.”

\* \* \* \* \*

Dated: July 17, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–20300 Filed 8–9–02; 8:45 am]

**BILLING CODE 4160–01–S**

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**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**29 CFR Part 1626**

**RIN 3046–AA54**

**Procedures—Age Discrimination in Employment Act**

**AGENCY:** Equal Employment Opportunity Commission (EEOC).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes to amend its regulations on the processing of age discrimination charges to provide that it will issue a notice, when it has dismissed or otherwise terminated the processing of an age discrimination charge, that the right to file a lawsuit on the charge under the ADEA will expire in 90 days. These amendments also

delete references to the previously applicable two- or three-year limitations period for filing a civil action. Finally, EEOC is deleting its list of ADEA referral states because the list is obsolete and unnecessary. These changes will conform the Commission’s regulations to the procedures adopted by the Commission to implement section 115 of the Civil Rights Act of 1991.

**DATES:** Comments must be received by October 11, 2002.

**ADDRESSES:** Written comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507. As a convenience to commenters, the Executive Secretariat will accept comments of six pages or less transmitted by facsimile (“FAX”) machine. The telephone number of the FAX receiver is (202) 663–4114. This is not a toll free number. The six-page limitation is necessary to assure access to the equipment. Receipt of FAX transmissions will not be acknowledged although a sender may request confirmation by calling the Executive Secretariat at (202) 663–4078 (voice) or (202) 663–4077 (TTY). These are not toll free numbers. Copies of comments submitted by the public will be available for review at the Commission’s library, Room 6502, 1801 L Street NW., Washington, DC, between the hours of 9:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Thomas J. Schlageter, Assistant Legal Counsel at (202) 663–4669 (voice) or (202) 663–7026 (TTY). This proposed rule is also available in the following formats: large print, braille, audiocassette and electronic file on computer disk. Requests for this proposed rule in an alternative format should be made to EEOC’s Publication Center at 1–800–669–3362.

**SUPPLEMENTARY INFORMATION:** This notice of proposed rulemaking contains EEOC’s proposed revisions to part 1626 of its regulations. These changes are proposed in order to conform the Commission’s regulations to the procedures it adopted for the processing of charges under the Age Discrimination in Employment Act (ADEA) following passage of section 115 of the Civil Rights Act of 1991. Section 7(e) of the ADEA no longer incorporates the two- or three-year statute of limitations on civil actions in section 6 of the Portal to Portal Act nor does it incorporate the exemption to the Portal to Portal Act’s limitations period during EEOC’s conciliation efforts. Instead, upon dismissal or termination of proceedings,

the Commission must notify the aggrieved person that his or her right to file a civil action under the ADEA will expire 90 days after receipt of the notice. This notice is denominated a “Notice of Dismissal or Termination.” The Commission is also taking this opportunity to delete an obsolete and unnecessary list of State Fair Employment Practices Agencies to which EEOC will send copies of ADEA charges.

The current § 1626.7(a) provides that charges will not be rejected as untimely provided that they are not barred by the statute of limitations contained in section 6 of the Portal to Portal Act. This provision recognized the Commission’s authority to file suit within the Portal to Portal Act’s limitation period even if the charging party did not have a private right of action because the charge was filed more than 180 days (or 300 days in a referral jurisdiction) after the discriminatory event took place. Following passage of the Civil Rights Act of 1991, the statute of limitations contained in the Portal to Portal Act is no longer applicable to ADEA lawsuits filed by either the charging party or the Commission. We therefore propose to delete the current § 1626.7(a). The Commission will dismiss ADEA charges filed more than 180 days (or 300 days in a referral jurisdiction) after the discriminatory act, absent waiver, estoppel or equitable tolling.

The current § 1626.9(b) and (c) contain a list of states to which the Commission refers charges under section 14(b) of the ADEA. These lists were created when there were relatively few such agencies. Since almost all states now have laws prohibiting age discrimination, the lists are being deleted as obsolete and unnecessary. The regulation continues to provide that the Commission will refer age charges to appropriate state agencies.

Section 7(d) of the ADEA requires that, upon receipt of a charge, the Commission shall promptly attempt to eliminate any alleged unlawful practice by informal methods of conciliation, conference and persuasion. Under current § 1626.12, EEOC issues a notice if this attempt at conciliation fails. To eliminate any possible confusion between this failure of conciliation notice and the new Notice of Dismissal or Termination (NDT), we propose to add a sentence to § 1626.12 stating that notice under this section is not a Notice of Dismissal or Termination under § 1626.20.

The second sentence and last two sentences of the current § 1626.15(b) concern the tolling of the ADEA’s statute of limitations during EEOC

conciliation. Because this tolling provision no longer applies, we propose to delete these sentences. An editorial change is proposed to the third sentence, eliminating a reference to the current second sentence that we are proposing to delete.

The Commission is also proposing to add three new sections. Proposed § 1626.17 is modeled on 29 CFR 1601.28 and provides for issuance of a Notice of Dismissal or Termination to an aggrieved person when EEOC dismisses or otherwise terminates its processing of an ADEA charge. Notification will be made by issuing a Notice of Dismissal or Termination to each aggrieved person. In the case of a charge concerning more than one aggrieved person, Notices of Dismissal or Termination will only be issued when the charge is dismissed or EEOC's proceedings are terminated as to all aggrieved persons.

Proposed § 1626.18 concerns the institution of private civil actions. Paragraph (a) states that a civil action may be filed by an aggrieved person in either federal or state court under section 7 of the ADEA. Paragraph (b) makes clear that an aggrieved person need not wait for a Notice of Dismissal or Termination to be issued in order to file a civil action, but can file suit on a pending charge any time after 60 days have elapsed from the filing of the charge. Paragraph (c) provides that the right to file a private suit under the ADEA expires 90 days after receipt of a Notice of Dismissal or Termination. Paragraph (d) provides that when the Commission becomes aware that an aggrieved person has filed a private lawsuit under the ADEA against the respondent named in the charge, the Commission may terminate further processing of the charge or the portion of the charge affecting that person unless it is determined that further proceedings will effectuate the purposes of the ADEA.

Proposed § 1626.19 clarifies that, unlike Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, and Title I of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, the ADEA does not require the filing of a charge before the Commission has authority to investigate and litigate a possible violation of the ADEA. In addition, the termination of proceedings on an age discrimination charge and the issuance of a Notice of Dismissal or Termination does not prevent the Commission from investigating or litigating a matter that may have been the subject of or related to a charge on which a Notice of Dismissal or Termination was issued.

## Regulatory Procedures

### *Executive Order 12866*

Pursuant to Executive Order 12866, EEOC has coordinated this proposed rule with the Office of Management and Budget. Under section 3(f)(1) of Executive Order 12866, EEOC has determined that the regulation will not 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 or local tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

### *Paperwork Reduction Act*

This proposal contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### *Regulatory Flexibility Act*

The Commission certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities, because it implements a statutory change in the time limits for filing suit. For this reason, a regulatory flexibility analysis is not required.

### *Unfunded Mandates Reform Act of 1995*

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

### List of Subjects in 29 CFR Part 1626

Administrative practice and procedure, aged, equal employment opportunity.

For the Commission,  
**Cari M. Dominguez,**  
*Chair.*

For the reasons set forth in the preamble, EEOC proposes to amend 29 CFR part 1626 as follows:

## **PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT**

1. The authority citation for Part 1626 continues to read as follows:

**Authority:** Sec. 9, 81 Stat. 605, 29 U.S.C. 628; sec. 2, Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

### **§ 1626.7 [Amended]**

2. Section 1626.7 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b).

### **§ 1626.9 [Amended]**

3. Section 1626.9 is amended by removing the paragraph designation (a) and by removing paragraphs (b) and (c).

4. Section 1626.12 is amended by adding a sentence at the end of the section to read as follows:

### **§ 1626.12 Conciliation efforts pursuant to section 7(d) of the Act.**

\* \* \* Notification under this section is not a Notice of Dismissal or Termination under § 1626.17.

### **§ 1626.15 [Amended]**

5. Paragraph (b) of § 1626.15 is amended by:

- a. removing the second sentence;
- b. removing the words "Such notice will" and adding in their place, the words "Notice of commencement of conciliation will"; and
- c. removing the last two sentences.

### **§§ 1626.17, 1626.18, 1626.19 [Redesignated as §§ 1626.20, 1626.21, 1626.22]**

6. Sections 1626.17, 1626.18 and 1626.19 are redesignated as §§ 1626.20, 1626.21 and 1626.22.

7. A new § 1626.17 is added to read as follows:

### **§ 1626.17 Notice of Dismissal or Termination.**

(a) *Issuance of Notice of Dismissal or Termination.* (1) Where a charge filed with the Commission under the ADEA is dismissed or the Commission's proceedings are otherwise terminated, the Commission will issue a Notice of Dismissal or Termination on the charge as described in paragraph (c) of this section to the person(s) claiming to be aggrieved. In the case of a charge concerning more than one aggrieved person, the Commission will only issue a Notice of Dismissal or Termination when the charge is dismissed or proceedings are otherwise terminated as to all aggrieved persons.

(2) Where the charge has been filed under the ADEA and Title VII or the Americans with Disabilities Act (ADA), the Commission will issue a Notice of Dismissal or Termination under the ADEA at the same time it issues the Notice of Right to Sue under Title VII or the ADA.

(3) The issuance of a Notice of Dismissal or Termination does not

preclude the Commission from offering such assistance to a person receiving the notice as the Commission deems necessary or appropriate. The issuance does not preclude or interfere with the Commission's continuing right to investigate and litigate the same matter or any ADEA matter under its enforcement authority.

(b) *Delegation of authority to issue Notices of Dismissal or Termination.* The Commission hereby delegates authority to issue Notices of Dismissal or Termination, in accordance with this section, to: District Directors; Area Directors; Local Directors; the Director of the Office of Field Programs; the Associate General Counsel for Systemic Investigations and Review Programs; the Director of Field Management Programs, Office of Field Programs; or their designees.

(c) *Contents of the Notice of Dismissal or Termination.* The Notice of Dismissal or Termination shall include:

- (1) A copy of the charge;
- (2) Notification that the proceedings of the Commission have been dismissed or otherwise terminated; and
- (3) Notification that the aggrieved person's right to file a civil action against the respondent on the subject charge under the ADEA will expire 90 days after receipt of such notice.

8. A new § 1626.18 is added to read as follows:

**§ 1626.18 Filing of private lawsuit.**

(a) An aggrieved person may file a civil action against the respondent named in the charge in either federal or state court under section 7 of the ADEA.

(b) An aggrieved person whose claims are the subject of a timely pending charge may file a civil action at any time after 60 days have elapsed from the filing of the charge with the Commission without waiting for a Notice of Dismissal or Termination to be issued.

(c) The right of an aggrieved person to file suit expires 90 days after receipt of the Notice of Dismissal or Termination.

(d) If the Commission becomes aware that the aggrieved person whose claim is the subject of a pending ADEA charge has filed an ADEA lawsuit against the respondent named in the charge, it may terminate further processing of the charge or portion of the charge affecting that person unless the District Director; Area Director; Local Director; Director of the Office of Field Programs; the Associate General Counsel for Systemic Investigation and Review Programs; the Director of Field Management Programs; or their designees determine at that time or at a later time that it would effectuate

the purpose of the ADEA to further process the charge.

9. A new § 1626.19 is added to read as follows:

**§ 1626.19 Filing of Commission lawsuit.**

The right of the Commission to file a civil action under the ADEA is not dependent on the filing of a charge and is not affected by the issuance of a Notice of Dismissal or Termination to any aggrieved person.

[FR Doc. 02-20126 Filed 8-9-02; 8:45 am]

**BILLING CODE 6570-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[AZ 112-0052b; FRL-7253-6]

**Revision to the Arizona State Implementation Plan, Maricopa County Environmental Services Department**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve a local rule that regulates open outdoor fires.

**DATE:** Any comments on this proposal must arrive by September 11, 2002.

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

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

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

Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, AZ 85007.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North central Avenue, Suite 201, Phoenix, AZ 85004.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office(AIR-4),

U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the approval of local MCESD Rule 314. In the Rules section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 16, 2002.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 02-20224 Filed 8-9-02; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[AZ-106-0062; FRL-7257-6]

**Approval and Promulgation of Implementation Plans; Arizona; Motor Vehicle Inspection and Maintenance Programs**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve two State Implementation Plan (SIP) revisions submitted by the Arizona Department of Environmental Quality (ADEQ). These revisions consist of several changes that have been made to Arizona's Basic and Enhanced Vehicle Emissions Inspection Programs since the programs were originally approved by EPA. Arizona's Basic Vehicle Emissions Inspection (VEI) Program is implemented in the Tucson Air Planning Area carbon monoxide (CO) nonattainment area (Area B). The Enhanced VEI Program is implemented in the Maricopa County ozone and (CO) nonattainment area (the Phoenix area or Area A). These revisions include a modeling demonstration that shows that the VEI program implemented in Area A meets EPA's high enhanced performance standard for inspection and maintenance (I/M) programs. Also included in these revisions are various program changes including the

incorporation into the VEI programs of on-board diagnostic (OBD) testing, an exemption of the first five model year vehicles from the programs on a rolling basis, replacement of the previously approved remote sensing program implemented in Area A with an on-road testing study, and changes to the waiver provisions. Today's action proposes approval of Arizona's enhanced VEI program, implemented in Area A, as meeting EPA's high enhanced program requirements and proposes approval of changes to Arizona's previously approved basic VEI program implemented in Area B.

**DATES:** Comments must be received on or before September 11, 2002.

**ADDRESSES:** Mail comments to Sylvia Dugré, Office of Air Planning (AIR-2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Region 9 office and the Arizona Department of Environmental Quality, Library, 1110 W. Washington Street, Phoenix, Arizona 85012.

#### Electronic Availability

This document and the Technical Support Document (TSD) for this rulemaking are also available as electronic files on EPA's Region 9 Web Page at <http://www.epa.gov/region09/air>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On May 8, 1995 (60 FR 22518), EPA fully approved Arizona's Basic and Enhanced VEI Programs as meeting the applicable requirements of the Clean Air Act (CAA) and the federal I/M rule as amended. A basic I/M program was required in the Tucson Air Planning Area CO nonattainment area and in the Maricopa County CO and ozone nonattainment area (the Phoenix area). At that time, Arizona was not required to have an enhanced I/M program, although Arizona was implementing most elements of an enhanced program in the Phoenix area (Area A). Arizona's program as implemented in Area A, however, was not approved as an enhanced program, because the program did not satisfy all the provisions of EPA's I/M rule for enhanced programs. An enhanced I/M program became a requirement for the Phoenix area when the area was reclassified from a "low" moderate CO nonattainment area (with a design value less than 12.7 ppm) to a serious CO nonattainment area effective August 28, 1996 (61 FR 39343, July 29,

1996), and when the area was reclassified from a moderate to a serious nonattainment area for ozone effective February 13, 1998 (63 FR 7290, February 13, 1998). Since the Arizona VEI programs were originally approved in May 1995, EPA has amended the federal I/M regulations<sup>1</sup> several times to provide states with more flexibility in designing their programs and to require testing of the on-board diagnostic (OBD) system. Since that time, Arizona has also made a number of changes to its enhanced and basic VEI programs.

##### II. Summary of Arizona's Submittals

ADEQ submitted the changes to its Basic and Enhanced Vehicle Emissions Inspection and Maintenance Programs as a revision to its SIP on July 6, 2001. The July 6, 2001 SIP revision package includes, among various other program changes, ADEQ's revised rule which extends the exemption for newer model year vehicles from the current model year to the first five model year vehicles and the revised rules incorporating legislative changes to the provisions for issuing a waiver. Also included in the SIP revision is State legislation that discontinues the remote sensing program that had been implemented in Area A and authorizes a study to determine the most effective on-road testing program for Arizona.

A SIP revision supplementing the July 6, 2001 SIP revision was submitted by ADEQ on April 10, 2002. This submittal contains the ADEQ rule revisions incorporating on-board diagnostics (OBD) testing and, in accordance with the State legislation, deleting the previously approved remote sensing program from the ADEQ regulations. It also contains a modeling demonstration, with adjustments for the IM147 transient loaded-mode emissions test, showing the I/M program implemented in Area A meets EPA's high enhanced performance standard. EPA found this submittal complete on May 2, 2002.

##### III. EPA Review of the SIP Revisions

EPA's requirements for basic and enhanced I/M programs are contained in 40 CFR part 51 Subpart S. The SIP revisions submitted by ADEQ must be consistent with these requirements and must meet EPA's requirements for enforceability, as well as, CAA section 110(l) requirements.

###### A. Geographic Coverage

EPA's I/M regulations require that state I/M programs be implemented in

the entire urbanized area, based on the 1990 census. 40 CFR 51.350. Since EPA approved the VEI programs into the SIP in 1995, Arizona has extended the boundaries of Area A<sup>2</sup>, where the Phoenix VEI program is implemented, to incorporate high-growth areas surrounding metropolitan Phoenix. The Maricopa County geographic area covered by the VEI program was increased and portions of Yavapai and Pinal Counties were included for the first time. Inspection of subject vehicles included within the Maricopa and Yavapai County portions of expanded Area A began on December 31, 1998. Inspection of subject vehicles in the Pinal County portion of Area A began January 1, 2001. By expanding the boundaries of Area A, ADEQ projected that 60,676 vehicles were covered by the program in the geographic area that was added to the program.

###### B. Vehicle Coverage

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and trucks. Light duty trucks are not included in the performance standard for basic I/M programs. Other levels of coverage may be approved if the necessary emission reductions are achieved. CFR 51.356.

The VEI programs approved by EPA in 1995 exempted vehicles manufactured in the current model year from inspection. Senate Bill 1427, enacted in 1998, expanded the exemption from testing for current model year vehicles to the prior four model years, making the first five model year vehicles exempt from testing on a rolling basis in both Area A and Area B. Implementation of this revision to the VEI programs began September 1, 1998. The exemption of newer model year vehicles from emissions testing results in a relatively small loss in emission benefit since newer vehicles are generally anticipated to be cleaner than older vehicles. Furthermore, recent data suggest that newer vehicles stay cleaner longer due to the slower rate of emission control system deterioration. An analysis of Arizona data done by Sierra Research shows that this portion of the vehicle fleet is responsible for only a small fraction of identifiable excess emissions.<sup>3</sup>

The federal regulations also require basic and enhanced I/M programs to

<sup>2</sup> The TSD for this proposed rulemaking contains the boundaries for Area A as defined by township and range.

<sup>3</sup> Sierra Research Draft Final Report, "Determination of Emissions Credit and Average Test Times for IM147 Testing," November 9, 1998, p. 59.

<sup>1</sup> See the Technical Support Document (TSD) for this proposed rulemaking for the list of federal register notices amending EPA's I/M regulations.

include inspection of all 1996 and later motor vehicles equipped with OBD systems. EPA required I/M programs to begin OBD checks on January 1, 2002. 40 CFR 51.373. OBD consists of a computer which performs checks of a number of different vehicle systems for malfunctions or deterioration which could result in the vehicle exceeding its emissions standards and a malfunction indicator light which is required to be illuminated when the system detects a problem. In accordance with EPA's requirements, Arizona began OBD testing 1996 and newer OBD-equipped vehicles in Area A and Area B in January 2002. Vehicles which receive an OBD inspection do not receive an IM147 tailpipe test, which is described below.

### C. On-Road Testing

On-road testing is required in enhanced I/M programs and is optional for basic I/M programs. The on-road testing requirement may be met by measuring on-road emissions through the use of remote sensing devices or through roadside pullovers including tailpipe or evaporative emission testing or a check of the OBD system. The federal regulations require on-road testing to evaluate annually the emission performance of 0.5% of the subject fleet statewide or 20,000 vehicles, whichever is less. 40 CFR 51.371.

Arizona began an on-road testing program using remote sensing devices (RSD) in Area A in 1995. Vehicles identified by RSD as high emitters were required to have a follow-up emissions test at a state run station and to undergo repairs if necessary. The State found that the program resulted in relatively small emissions reductions. Twenty-nine percent of the vehicles initially identified as high emitters were found to be meeting the applicable standards upon retest. Arizona estimated the cost effectiveness of the program as approximately \$800–\$1000 per ton of carbon monoxide and \$16,000 to \$20,000 per ton for volatile organic compounds (VOCs). In Arizona House Bill (HB) 2104, enacted in 2000, the State legislature replaced the RSD program with a requirement to conduct a study to identify more accurate and cost-effective on-road testing methods. The legislation authorized the analysis of alternative technologies, including remote sensing, to evaluate the performance of in-use vehicle emissions control systems. The goals of the study include improving methods of identifying high emission vehicles and increasing compliance with the annual/biennial inspection program. HB 2104 also provided dedicated funding to

complete the study and develop the new program.

ADEQ has amended its VEI program rules to remove the RSD provisions. ADEQ has contracted with Eastern Research Group, Inc. (ERG) in Austin, Texas to conduct the baseline assessment and evaluation of alternative testing technologies for the Arizona Alternative Compliance and Testing Study. Under the provisions of the contract with ERG, Arizona continues to meet EPA's requirement for on-road testing of 0.5% of the subject fleet statewide or 20,000 vehicles, whichever is less, annually.<sup>4</sup> Arizona has also committed to submit a VEI program SIP revision when the study is completed and the new on-road testing program designed. EPA is proposing to find that the Arizona Alternative Compliance and Testing Study satisfies EPA's requirements for on-road testing.

### D. Waivers

EPA's requirements permit I/M programs to provide a waiver which allows the motorist to comply with the program without meeting applicable test standards as long as certain prescribed criteria are met. 40 CFR 51.360. In basic programs, a minimum of \$75 for pre-1981 vehicles and \$200 for 1981 and newer vehicles must be spent by the motorist for appropriate repairs in order to qualify for a waiver. 40 CFR 51.360(a)(6). Beginning January 1, 1998, enhanced programs must require motorists to spend at least \$450 for appropriate repairs. 40 CFR 51.360(a)(7).

Arizona's rules provide that a waiver from the applicable standards may only be issued after a retest is failed after qualifying repairs, including performance of a low-emissions tune-up, are made. Although the required expenditures under Arizona's enhanced I/M program for Area A differ from those described in EPA's I/M requirements for enhanced programs, a side-by-side comparison demonstrates that, overall, they are not less stringent.

For enhanced programs EPA requires a minimum expenditure of at least \$450 to qualify for a waiver, but allows for an extension of time to repair a failed vehicle for the period of one test cycle for "economic hardship." 40 CFR 51.360(a)(9). EPA's regulations also allow a vehicle to receive multiple waivers as long as the vehicle fully passes the applicable test standards between such waivers. *Id.*

Arizona's program recognizes that the burden of repairs is greatest on owners

of older vehicles. The Arizona program includes minimum expenditures that decrease with the age of the vehicle, *i.e.*, \$450 for 1980+ model year vehicles, \$300 for 1975–79 model years, and \$200 for pre-1975 model years. The costs of repair due to tampering do not apply to the waiver cost limit. Under the State's program, waivers are denied to gross polluting vehicles, which are vehicles failing the emissions inspection at more than twice the applicable standard. A waiver may be granted only once in a vehicle's life. Waivers are denied if the vehicle has an inoperable catalytic converter. Thus, unlike the federal program where relief may be allowed for "economic hardship" and multiple waivers may be granted for failure during subsequent test cycles, the Arizona program includes more limited allowances for waivers and allows only a single such waiver. Therefore, EPA proposes to conclude that, taken as a whole, Arizona's waiver requirements are not less stringent than those required by the federal I/M regulations.

The provisions which deny a waiver to vehicles failing the emissions test at more than twice the applicable standard and limit the issuance of a waiver to once in a vehicle's lifetime also apply to the Area B basic I/M program. These provisions strengthen the program and provide additional emissions reductions.

### E. Enhanced I/M Performance Standard

EPA's I/M regulations require that the state perform modeling using the most current version of EPA's mobile source emissions model to determine that the emissions levels achieved by the state I/M program design meet the minimum performance standard provided in the federal regulations. 40 CFR 51.351(f). The elements of EPA's high enhanced program model program are contained in 40 CFR 51.351(f).

On January 1, 2000, ADEQ began using a revised test procedure called the IM147 for vehicles undergoing the transient, loaded emissions test in Area A. The IM147 test is derived from the IM240 test which had been used in Area A since 1995. The IM240 transient, loaded emissions test includes two phases. The IM147 is based on the second phase, which has a driving cycle that is longer and has significantly higher speeds than the first phase. The IM147 was developed to allow more vehicles to be tested per lane at the I/M testing facilities and to reduce the incidence of false failures due to

<sup>4</sup> A copy of the contract with ERG was included in the SIP revision and is part of the docket for this proposed rulemaking.

inadequate preconditioning,<sup>5</sup> while maintaining stringency close to the level of the I/M240 test.

Because the IM147 test type was not available as an input option in the MOBILE5b emission factor model, Arizona performed its modeling using the closest available test type, the IM240. The resulting credit was then adjusted based upon the analysis of a 2,518 vehicle sample of paired IM240 and IM147 emission tests. Based on this analysis and previous work done by ADEQ, EPA, and Sierra Research, it was determined that multiplying the IM240 modeling output CO, HC and NO<sub>x</sub> results by .994, .987, and .954 respectively,<sup>6</sup> was an appropriate surrogate for modeling the IM147 test directly.

At the time the Arizona SIP revision was developed, MOBILE5b was EPA's latest available approved emission factor model, and was therefore the model used to project the emission reductions attributable to Arizona's IM147 enhanced program. Because of the complexity of the program, i.e., different tests for different model year vehicles and types of vehicles, several different modeling scenarios were combined to determine the level of emission reductions achieved by the State's program. These emission reductions were then compared to the emission reductions associated with EPA's high enhanced I/M performance standard. The modeling demonstrated that Arizona's enhanced program with the IM147 test meets EPA's high enhanced I/M performance standard.

#### F. Legal Authority for the Program

The federal I/M rule requires the state I/M program to remain in operation until it is no longer necessary. 40 CFR 51.372. State legislation enacted in 1999 added Arizona Revised Statute (ARS) 41-3009.01 which extends the I/M program to January 1, 2009, well beyond the date of expected attainment of the CO and ozone national ambient air quality standards (NAAQS) for the Phoenix area. With respect to this sunset date, in a letter<sup>7</sup> to EPA, dated August 23, 1998, ADEQ stated that ARS 41-2955 limits to ten years the existence of an agency such as ADEQ before it undergoes a sunset review. Therefore the Vehicle Emissions Inspection Program (VEIP) has been extended for the maximum time that is consistent

<sup>5</sup> If a vehicle is not thoroughly warmed up, high emissions can be caused by air-fuel ratio enrichment or an inactive catalytic converter.

<sup>6</sup> See the TSD in the docket for this proposed rulemaking for further information.

<sup>7</sup> See the TSD for this proposed rulemaking for a copy of the letter.

with ARS 41-2955, i.e., ten years. The letter supplies a recent history of legislative changes to the VEIP, concluding that "The VEIP has consistently received support for necessary program updates from the Legislature." In the final rule redesignating the Tucson area to attainment for CO and approving the Tucson maintenance plan, EPA concluded that, on the basis of this legislative history, it is reasonable to assume that the program will be extended when it expires at the end of 2008.<sup>8</sup> We continue to believe that ADEQ has demonstrated that the Arizona I/M programs will remain in operation as long as necessary and the requirements of 40 CFR 51.372 have been satisfied.

#### G. Effect of Program Changes on Emission Benefits

CAA section 110(l) states, in part, that EPA shall not approve a SIP revision if it would "interfere with any applicable requirement concerning attainment and reasonable further progress\* \* \* or any other applicable requirement of [the Act]." One of the tests that EPA has used historically to determine whether a SIP revision would interfere with attainment or reasonable further progress (RFP) is the "no relaxation" test. Under this test, if a SIP revision does not reduce or delay emission reductions when compared to the unrevised SIP, then EPA can conclusively find that it will not interfere with the area's applicable requirements concerning attainment or RFP.

In a recent court decision (*Hall v. EPA*, 273 F.3d 1146 (9th Cir. 2001)), the Ninth Circuit Court of Appeals determined that EPA cannot invariably rely on the "no relaxation" test in determining if a SIP revision is allowed under section 110(l)'s prohibition on interference with attainment and RFP. Rather, the court determined that, before EPA can conclude that the SIP revision is allowed under section 110(l), EPA must first conclude that "the particular plan revision before it is consistent with the development of an overall plan capable of meeting the Act's attainment requirements." (*Hall*, 273 F.3d at 1160). However, the court also found that the "no relaxation" test would "clearly be appropriate in areas that achieved attainment under preexisting rules." (*Hall*, 273 F.3d at 1160 n.11).

As described above, the changes to Arizona's VEI programs contained in the proposed SIP revision affect both the Phoenix and Tucson areas. Therefore,

<sup>8</sup> 65 FR 36356, June 8, 2000.

EPA needs to address the proposed SIP revision's effect in both of these areas before we can determine whether we can approve this revision under CAA section 110(l).

*Tucson.* Arizona implemented its VEI program in the Tucson area as part of the control strategy to attain and maintain the CO standard in the area. Under the 1990 CAA Amendments, the Tucson area was designated "nonattainment" and "not classified" for carbon monoxide. 56 FR 56694 (November 6, 1991). In 2000, EPA redesignated the area to attainment for CO. See 65 FR 36353 (June 8, 2000).

EPA can use here, per *Hall*, the "no relaxation" test to determine if the proposed SIP revision is allowed under section 110(l)'s prohibition on interference with attainment because the Tucson area attained under a pre-existing rule. In this case, the pre-existing rule is the VEI program in place at the time the area was redesignated to attainment in June 2000. The program in place in 2000 is the same revised VEI program being proposed for approval today. Therefore, EPA proposes to conclude that this SIP revision, if approved, will not interfere with any applicable requirement concerning CO attainment in the Tucson area.

As an attainment area, the Tucson area has neither a requirement to demonstrate RFP nor one for an I/M program; therefore, the proposed SIP revision does not interfere with any applicable requirement for RFP or any other applicable requirement of the CAA.

*Phoenix.* The Phoenix-area VEI program is an important component of the area's control strategies for both carbon monoxide and ozone.<sup>9</sup>

*Carbon monoxide.* In March, 2001, Arizona submitted a revised serious nonattainment area CO plan for the Phoenix area. This plan relied in part on the VEI program being proposed for approval today to demonstrate both progress toward and attainment of the CO standard in the area. See *Revised MAG 1999 Serious Area Carbon Monoxide Plan for the Maricopa County Nonattainment Area*, Maricopa

<sup>9</sup> The Phoenix area is also a PM-10 nonattainment area; however, the VEI program plays a very minor roll in the control strategy for this pollutant. Moreover, the area's recently-approved PM-10 plan was prepared based on the VEI program that we are proposing to approve today. See 66 FR 50136 (October 2, 2001). Therefore, this SIP revision is consistent with and supports the development of the Phoenix area's plan for meeting the Act's attainment, RFP and control requirements (i.e., reasonably available control measures, best available control measures, and most stringent measures). There is no CAA requirement for I/M programs in PM-10 nonattainment areas.

Association of Governments, March 2001, Chapter 9. Therefore, these revisions to the VEI program are consistent with and support the development of the Phoenix area's plan for meeting the Act's attainment and RFP requirements. Also, the revisions to the program collectively provide a further reduction in total area CO emissions of around 3.0 percent over those achieved by the program as implemented prior to 2000. *Id.* As discussed above, the revised VEI program meets the CAA's requirements for enhanced I/M programs for serious CO nonattainment areas. Therefore, we propose to conclude that this SIP revision, if approved, will not interfere with any applicable requirements for attainment and RFP or any other applicable requirements of the CAA and is approvable under section 110(l).

*Ozone.* In April 2001, EPA determined that the Phoenix area had attained the 1-hour ozone standard by its statutory deadline of November 15, 1999. See 66 FR 29230 (May 30, 2001). The area has continued in attainment since 1999 with no recorded exceedances of the 1-hour ozone standard and an overall downward trend in ozone levels. See Letter, Nancy Wrona, ADEQ to Colleen McKaughan, EPA, June 12, 2002.

Because of its clean air record, Arizona was not required to submit a serious area attainment demonstration<sup>10</sup>; therefore, we are unable to judge whether the proposed revisions are consistent with the area's formal plan to attain the standard by its applicable statutory deadline. However, because the area has achieved attainment under the pre-existing program, we can use, per *Hall*, the "no relaxation" test to determine if the proposed SIP revision is allowed under section 110(l)'s prohibition on interference with attainment.

For the purposes of section 110(l), EPA compares the proposed revisions to the "pre-existing" VEI program which was in place during the 1997 to 1999 time frame when the area achieved attainment.<sup>11</sup> The most substantial changes to the VEI program are: (1) The

change from the IM240 to the IM147 emission test; (2) the elimination of the remote sensing program; and (3) the expansion of the program into Pinal County. Collectively, these three program revisions reduce VOC, CO, and NO<sub>x</sub> emissions as compared to emissions reductions achieved by the VEI program over the 1997–1999 attainment period by approximately 1,400 metric tons per year (mtpy), 16,000 mtpy, and 95 mtpy, respectively. See Email, Teresa Pella, ADEQ to Frances Wicher, EPA, June 14, 2002.

While the VOC and CO reductions contribute to reducing ozone levels, the decrease in NO<sub>x</sub> emissions may have the effect of potentially increasing ozone levels in the Phoenix area. However, the NO<sub>x</sub> reductions are so small (less than 0.2 percent of the total NO<sub>x</sub> inventory, *Id.*) that any increase in ozone levels resulting from the NO<sub>x</sub> reductions will be negligible and more than offset by a decrease in ozone levels resulting from the much more substantial VOC and CO reductions.<sup>12</sup> Therefore, EPA proposes to conclude that this SIP revision, if approved, will not adversely affect the area's clean air status and is allowed under section 110(l)'s prohibition on interfering with any applicable requirement pertaining to attainment.

The only existing RFP demonstration for the area is the 15 percent rate-of-progress (ROP) demonstration required by CAA section 182(b)(1). See 64 FR 36243 (July 6, 1999). This ROP requirement addresses VOC only. Emission reductions from the VEI program are credited in the Phoenix area's 15% ROP plan, but that credit is based on the program as implemented in 1996. See 63 FR 3687, 3690. This proposed SIP revision results in additional reductions in VOC over the reductions achieved from the VEI program implemented in 1996; therefore, EPA proposes to conclude that the revision, if approved, will not interfere the area's applicable requirement to demonstrate RFP.

Finally, as discussed above, EPA has concluded that the revised program meets the enhanced I/M program

requirements for serious ozone nonattainment areas.

#### IV. Proposed Action

In today's action EPA is proposing to find that the Arizona enhanced I/M program implemented in Area A meets CAA and EPA requirements for a high enhanced program. We are also proposing to find that the VEI program implemented in Area B continues to meet EPA's I/M requirements for basic programs. In addition, we are proposing to approve various Arizona statutes amending the VEI programs and the latest revisions to the basic and enhanced VEI program regulations. Specifically, the Arizona statutes are:

Amendments to A.R.S. 49–541, 49–542.05, 49–544, 49–545, 49–551 and the repeal of 49–542.01 submitted to EPA as a SIP revision on July 6, 2001.

Amendments to A.R.S. 49–542, 49–543, and the repeal of 49–541.01 submitted to EPA as a SIP revision on April 10, 2002.

The Arizona regulations are: Arizona Administrative Code (AAC), Title 18, Chapter 2, Article 10 "Motor Vehicles; Inspection and Maintenance" as of December 31, 2000 except for AAC R 18–2–1020, submitted to EPA as a SIP revision on July 6, 2001.

Amendments to AAC R 18–2–1006 and 18–2–1019, and the repeal of AAC R 18–2–1014 and R 18–2–1015 submitted to EPA as a SIP revision on April 10, 2002.

#### V. Administrative Requirements

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

<sup>10</sup> See *Memorandum*, John S. Seitz, Director, OAQPS, EPA, to Regional Air Directors, "Reasonable Further Progress, Attainment Demonstrations, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," May 10, 1995.

<sup>11</sup> Attainment of the 1-hour ozone standard is demonstrated when the average number of exceedances per year over a three-year period is 1 or less. Thus, to demonstrate attainment by November 1999, the Phoenix area had to average 1 or fewer exceedances per year over the 1997 to 1999 time period.

<sup>12</sup> Two previous analyses of the effect of NO<sub>x</sub> reductions on 1-hour ozone levels in the Phoenix area show uncompensated NO<sub>x</sub> reduction of 3.7 percent and 9 percent of the total NO<sub>x</sub> inventory resulted a 0.001 ppm and 0.004 ppm, respectively, increase in peak 1-hour ozone levels. See *Memorandum*, Cari Anderson, MAGTPO, to Sharon G. Douglas and others, SAI, re: NO<sub>x</sub> RACT Simulation for the 9–10 August 1992 Episode, March 29, 1994 and "Reanalysis of the Metropolitan Phoenix Voluntary Early Ozone Plan," ENSR, October 1997, p. 5–2. The 1-hour ozone standard is 0.12 ppm; current peak 1-hour ozone levels in Phoenix area are 0.115 ppm.

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and

does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the

requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental Regulations, Ozone, Reporting and recordkeeping requirements.

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

Dated: August 1, 2002.

**Laura Yoshii,**

*Acting Regional Administrator, Region 9.*

[FR Doc. 02-20353 Filed 8-9-02; 8:45 am]

**BILLING CODE 6560-50-P**

# Notices

Federal Register

Vol. 67, No. 155

Monday, August 12, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

[Docket No. 02-017N]

#### The National Advisory Committee on Meat and Poultry Inspection; Nominations for Membership

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Department of Agriculture (USDA) is soliciting nominations for membership on the National Advisory Committee on Meat and Poultry Inspection. The full Committee consists of 16-18 members, and each person selected is expected to serve a 2-year term.

**DATES:** The names of the nominees and their typed curricula vitae or resumes must be postmarked no later than September 26, 2002. Applications are available on-line at: <http://www/fsis.usda.gov/OPPDE/nacmpi/>.

**ADDRESSES:** Nominating materials should be submitted to Mr. William J. Hudnall, Acting Administrator, Food Safety and Inspection Service, USDA, Room 615—Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250-3700.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sonya L. West, Meat and Poultry Advisory Committee Staff, FSIS, Room 615—Annex Building, 300 12th Street SW., Washington, DC 20250-3700; telephone (202) 205-0256; FAX (202) 205-0157; e-mail: [sonya.west@usda.gov](mailto:sonya.west@usda.gov).

**SUPPLEMENTARY INFORMATION:** USDA again is seeking nominees for membership on the National Advisory Committee on Meat and Poultry Inspection. The Committee provides advice and recommendations to the Secretary on the meat and poultry inspection programs, pursuant to sections 7(c), 24, 301(a)(3), 301(a)(4), and 301(c) of the Federal Meat

Inspection Act (21 U.S.C. 607(c), 624, 645, 661(a)(3), 661(a)(4), and 661(c)) and to sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(3), 454(a)(4), 454(c), 457(b), and 460(e)). Nominations for membership are being sought from persons representing producers; processors; exporters and importers of meat and poultry products; academia; Federal and State government officials; and consumers.

Appointments to the Committee will be made by the Secretary. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, persons with demonstrated ability to represent minorities, women, and persons with disabilities. It is anticipated that the Committee will meet at least twice annually.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720-9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at

<http://www.fsis.usda.gov/oa/update/update.htm>. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC on: August 7, 2002.

**William J. Hudnall,**

*Acting Administrator.*

[FR Doc. 02-20331 Filed 8-9-02; 8:45 am]

**BILLING CODE 3410-DM-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Flathead National Forest, Tally Lake Ranger District, Flathead County, State of Montana; Logan Creek Ecosystem Restoration Project Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement (EIS) for a proposal to harvest timber; reclaim, rehabilitate, and construct roads; change road and trail access; place large logs in streams; construct large pool habitat; re-vegetate habitat; and burn brushfields or forest understory trees within the Logan Creek watershed. The area is located northwest of Whitefish, Montana and southwest of Olney, Montana.

The Forest Service is seeking further information and comments from federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. These comments will be used to prepare the draft and final EIS.

**DATES:** Comments concerning the scope of the analysis must be received by September 12, 2002. The draft EIS is expected to be filed with the Environmental Protection Agency and made available for public review in December, 2002. The comment period on the draft EIS will end 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. No date has yet been determined for filing the final EIS.

**ADDRESSES:** You may request to be placed on the project mailing list or direct questions, comments, and

suggestions about the proposed action and EIS to Bryan Donner, EIS Team Leader, or Jane Kollmeyer, District Ranger, at Tally Lake Ranger District, 1335 Highway 93 West, Whitefish, MT 59937. Phone: (406) 863-5400.

**FOR FURTHER INFORMATION CONTACT:**

Bryan Donner, EIS Team Leader, or Jane Kollmeyer, District Ranger, at Tally Lake Ranger District, 1335 Highway 93 West, Whitefish, MT 59937. Phone: (406) 863-5400.

**SUPPLEMENTARY INFORMATION:**

**Affected Area**

The Logan Creek assessment area, west of Whitefish, Montana, encompasses approximately 61,200 acres of which the Forest Service administers 48,300 acres. Private land accounts for 6047 acres, with the remainder evenly split between corporate (3553 acres) and state lands (3300 acres). Elevation ranges from 3100 feet at Round Meadow to 6300 feet at Ashley Mountain. Numerous recreational activities exist in this area and logging has been, and continues to be, active in the drainage. There are no existing wilderness or inventoried roadless areas within the watershed boundary.

The watershed assessment area includes eight major streams in addition to Logan Creek. The drainage supports several species of native and non-native fish as well as many amphibians and reptiles. Temperate coniferous forests dominate the landscape and provide habitat for terrestrial wildlife that includes several threatened, endangered, and sensitive species.

**Purpose and Need for Action**

A variety of current conditions in the watershed, identified from a recent Logan Creek watershed analysis, have generated a purpose and need for management action in this area. High fuel accumulations threatening public and private lands; undesirable vegetation composition, density, cover types, and structure classes; high tree mortality due to a Douglas-fir bark beetle epidemic; altered wildlife habitat; less than optimal fish habitat; and local economic issues have created a need for this project.

The purpose of this proposal is to reduce hazardous fuels to varying degrees across the landscape; to enhance fire suppression control efforts by reducing fire intensity; restore or maintain a historical pattern of vegetation cover and diversity; reduce the vulnerability of the forest to large scale, dramatic disturbance such as insects, disease, and unwanted fire;

provide an ecosystem that sustains habitat for wildlife; improve water quality and reduce sediment delivery; improve aquatic habitat to enhance the recreational fishery; and meet the social and economic needs of the local communities.

**Proposed Action**

The proposed action to reduce accumulated fuels, manage insect infested stands, and improve fisheries and wildlife habitat are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

The proposed action describes 10,057 acres of vegetation treatments and fuel reductions that combine varying intensities of timber harvest, pre-commercial thinning, and prescribed burns. Sixteen miles of road reclamation, 5.0 miles of temporary roads, 4.4 miles of new specified road construction, and 143.9 miles of road rehabilitation (drainage improvements) would be included in this project. An additional 7.5 miles of road are proposed for access change. Large woody debris would be placed in 3.8 miles of streams, distributed between 12 different streams, and 5 large pools would be constructed on lower Logan Creek to improve fish habitat. Shrubs would be planted (500 acres) and slashed (25 acres) to improve ungulate browse. Harvested areas would also be re-vegetated with trees and shrubs to improve wildlife habitat.

**Responsible Official**

Cathy Barbouletos, Forest Supervisor, Flathead National Forest, 1935 3rd Ave. East, Kalispell, MT 59901

**Nature of Decision To Be Made**

The responsible official will decide if the Forest Service should implement the proposed action or any action to meet the purpose and need or to defer any action at this time within the Logan Creek watershed.

**Scoping Process**

Public and internal scoping on this project has consisted of one open house; one mailing to federal, state and local agencies, organizations, and individuals; personal conversations between interdisciplinary team members and the public, and news media releases. A public field trip is planned for October 23, 2002.

**Preliminary Issues**

Based on public and internal scoping, the following main issues emerged:

1. Effects of timber harvest, prescribed burning and road and trail access on wildlife security
2. Effects of vegetation treatment on fragmentation of existing and future old growth habitat
3. Effects of vegetation treatments on the size, shape, continuity, and edge effect on some late seral patches of trees
4. Effects of proposed action on forest connectivity that serves as a link for wildlife movement between important habitat such as riparian forests and ridgelines
5. Effects of timber harvest and road building on water quality, water yields, fish habitat, and stream channel stabilization
6. Effects of road reclamation on future management opportunities, fire suppression, and public recreation opportunities

**Comment Requested**

This notice of intent is a major component of the scoping process and guides the development of the EIS. A draft EIS will be prepared and open for public comment for 45 days from the date that the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. Comments received will be analyzed, considered, and responded to by the Forest Service in the final EIS.

**Early Notice of Importance of Public Participation in Subsequent Environmental Review**

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 EIS 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 EIS stage, but that are not raised until after completion of the final EIS, 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 EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS 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 (NEPA) at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection (*Authority*: NEPA 40 CFR 1501.7, 1508.22; Forest Service Handbook 1909.15, Section 21). The responsible official for the preparation of the EIS will make a decision regarding this proposal by considering the comments and responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. The rationale for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations.

Dated: August 5, 2002.

**Earl Applekamp,**

*Acting Forest Supervisor.*

[FR Doc. 02-20297 Filed 8-9-02; 8:45 am]

**BILLING CODE 3410-11-P**

**DEPARTMENT OF COMMERCE**

[I.D. 080702A]

**Submission for OMB Review;  
Comment Request**

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency*: National Oceanic and Atmospheric Administration (NOAA).

*Title*: Surf Clam/Ocean Quahog Transfer Log.

*Form Number(s)*: None.

*OMB Approval Number*: 0648-0238.

*Type of Request*: Regular submission.

*Burden Hours*: 52.

*Number of Respondents*: 206.

*Average Hours Per Response*: 5 minutes.

*Needs and Uses*: Persons holding Individual Transferable Quotas (ITQs)

in the surf clam/ocean quahog fishery are annually issued a quota for harvest. To facilitate enforcement and tracking, sequentially numbered tags are issued to each owner on an annual basis and all cages of product must be tagged, with tag use reported by both the harvesting vessel and the purchasing dealer. Individual allocations are transferable, and owners may transfer their allocation on a permanent basis or may transfer tags to other vessel owners to use on a temporary basis. This transferability means that the allocation ownership changes constantly, and the ITQ Allocation Transfer Form is used by allocation holders to register these transfers with the National Marine Fisheries Service. Once processed, new allocation permits are issued and all databases are updated. The information registered is used for enforcement purposes.

*Affected Public*: Business or other for-profit organizations, individuals or households.

*Frequency*: On occasion.

*Respondent's Obligation*: Mandatory.

*OMB Desk Officer*: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 5, 2002.

**Gwellnar Banks,,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 02-20378 Filed 8-9-02; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

[I.D. 080702B]

**Submission for OMB Review;  
Comment Request**

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency*: National Oceanic and Atmospheric Administration (NOAA).

*Title*: List of Gear by Fisheries and Fishery Management Council.

*Form Number(s)*: None.

*OMB Approval Number*: 0648-0346.

*Type of Request*: Regular submission.

*Burden Hours*: 30.

*Number of Respondents*: 20.

*Average Hours Per Response*: 1.5.

*Needs and Uses*: Under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. *et. seq.*) as amended by the Sustainable Fisheries Act (P.L. 104-297), the Secretary of Commerce is required to publish a list of all fisheries under the authority of each Fishery Management Council and of all fishing gear to be used in such fisheries. This list has been published. Any person wishing to use gear not on the list, or engage in a fishery not on the list, must provide the appropriate Fishery Management Council (or in some cases the Secretary) with 90 days advance written notice. If the Secretary takes no action to prohibit such a fishery or use of such gear, the person may proceed.

*Affected Public*: Business or other for-profit organizations, individuals or households.

*Frequency*: On occasion.

*Respondent's Obligation*: Required to obtain or retain a benefit.

*OMB Desk Officer*: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 5, 2002.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 02-20379 Filed 8-9-02; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

[I.D. 080702C]

**Submission for OMB Review;  
Comment Request**

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the

following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).  
*Title:* Vessel-Marking Requirements in Antarctic Fisheries.

*Form Number(s):* None.  
*OMB Approval Number:* 0648-0368.  
*Type of Request:* Regular submission.  
*Burden Hours:* 2.  
*Number of Respondents:* 3.  
*Average Hours Per Response:* 15 minutes for each of three markings.

*Needs and Uses:* Vessels participating in Antarctic fisheries must display the vessel's official identification number or international radio call sign in three locations. The information is used for enforcement purposes. The authority for this requirement comes from the Magnuson-Stevens Fishery Management and Conservation Act and the Antarctic Marine Living Resources Convention Act of 1984.

*Affected Public:* Business or other for-profit organizations, individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 5, 2002.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 02-20380 Filed 8-9-02; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**

[I.D. 080702D]

**Submission for OMB Review;  
Comment Request**

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Application to Shuck Surf Clam/Ocean Quahogs At Sea.

*Form Number(s):* None.

*OMB Approval Number:* 0648-0240.

*Type of Request:* Regular submission.

*Burden Hours:* 1.

*Number of Respondents:* 2.

*Average Hours Per Response:* 5 minutes.

*Needs and Uses:* Vessel owners who wish to shuck their surf clam/ocean quahog catch while at sea must apply for a permit to do so. The National Marine Fisheries Service (NMFS) requires a permit so that it can identify vessels seeking to do so and to place a NMFS-approved observer aboard those vessels. An observer is necessary because the shucking of catch at sea makes it difficult to track the catch against harvest quotas.

*Affected Public:* Business or other for-profit organizations, individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 5, 2002.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 02-20381 Filed 8-9-02; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-848]

**Notice of Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China**

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

**SUMMARY:** The Department of Commerce (the Department) is conducting new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to requests from North Supreme Seafood (Zhejiang) Co., Ltd. (North Supreme) and Shouzhou Huaxiang Foodstuffs Co., Ltd. (Shouzhou Huaxiang). Shouzhou Huaxiang's period of review (POR) is September 1, 2000 through August 31, 2001. North Supreme's POR is September 1, 2000 through October 15, 2001.

We preliminarily determine that sales by Shouzhou Huaxiang have been made below normal value (NV). We also preliminarily determine that sales by North Supreme have not been made below NV. The preliminary results are listed below in the section titled "Preliminary Results of Reviews." If these preliminary results are adopted in our final results, for entries made by Shouzhou Huaxiang, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) and NV. Interested parties are invited to comment on these preliminary results. (See the "Preliminary Results of Reviews" section of this notice.)

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

**FOR FURTHER INFORMATION CONTACT:**

Thomas Gilgunn or Scott Lindsay, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4236 or (202) 482-0780, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute**

Unless otherwise indicated, all citations are to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

## Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the People's Republic of China on September 15, 1997 (62 FR 48218). On September 18, 2001 the Department received a properly filed request for a new shipper review, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, from North Supreme under the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. On September 26, 2001 the Department received a properly filed request for a new shipper review, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, from Shouzhou Huaxiang under the antidumping duty order on freshwater crawfish tail meat from the PRC.

The new shipper requests were made pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations, which state that, if the Department receives a request for review from an exporter or producer of the subject merchandise stating that it did not export the merchandise to the United States during the period of investigation (POI) and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer.

The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (i) the date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (ii) a list of the firms with which it is affiliated; (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the period of investigation (POI); and (iv) in an antidumping proceeding involving inputs from a non-market-economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the

central government. See 351.214(b)(2) of the Department's Regulations.

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), in its September 18, 2001 request for review, North Supreme certified that it did not export the subject merchandise to the United States during the POI and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), North Supreme further certified that its export activities are not controlled by the central government of the PRC.

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), in its September 26, 2001 request for review, Shouzhou Huaxiang certified that it did not export the subject merchandise to the United States during the POI and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Shouzhou Huaxiang further certified that its export activities are not controlled by the central government of the PRC. These requests for new shipper reviews also included all documentation required under 19 CFR 351.214(b)(2)(iv).

The Department determined that each request met all of the requirements stipulated in section 351.214 of the regulations. On November 8, 2001, the Department published its initiation of these new shipper reviews for the period September 1, 2000 through August 31, 2001. See *Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Reviews*, 66 FR 56536 (November 8, 2001).

On April 25, 2002, the Department received a request from North Supreme to extend its POR to include the entry date for its sales of crawfish tail meat. The Department determined that such an extension would not prevent the completion of the review within the regulatory time limits in accordance with section 351.214(f)(2)(ii) of the regulations. The Department extended the POR for North Supreme in this new shipper review by forty-five days, until October 15, 2001. See *Memorandum to Barbara E. Tillman through Dana S. Mermelstein, from Holly Hawkins: Extension of the Period of Review in the New Shipper Administrative Review of Freshwater Crawfish Tail Meat From the People's Republic of China*, dated April 29, 2002.

On April 30, 2002 the Department published an extension of the deadline for completion of the preliminary results of these new shipper reviews

until August 5, 2002. See *Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 FR 21219 (April 30, 2002).

## Scope of the Antidumping Duty Order

The product covered by these reviews is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service in 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

## Verification

As provided in section 782(i) of the Act, we conducted verification of the responses of North Supreme and Shouzhou Huaxiang. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (CRU) located in room B-099 of the Main Commerce Building. (See the public versions of *New Shipper Review of Freshwater Crawfish Tail Meat (tail meat) from the People's Republic of China (PRC) (A-570-848): Sales and Factors Verification Report for Shouzhou Huaxiang Foodstuffs Co., Ltd.*, and *New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China (PRC) (A-570-848): Sales and Factors Verification Report for North Supreme Seafood Zhejiang Co., Ltd.*, dated July 17, 2002. (*Shouzhou Huaxiang Verification Report and North Supreme Verification Report*, respectively).)

### New Shipper Status

Based on the questionnaire responses received from North Supreme and Shouzhou Huaxiang, and our verification thereof, we preliminarily determine that these companies have met the requirements to qualify as new shippers during the POR. We have determined that both companies made their first sale or shipment of subject merchandise to the United States during the POR, that these sales were *bona fide* sales, and that these companies were not affiliated with any exporter or producer that previously shipped to the United States.

### Separate Rates

North Supreme and Shouzhou Huaxiang both requested a separate, company-specific rate. In their questionnaire responses, both companies stated that each is an independent legal entity.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the

government regarding the selection of management.

### De Jure Control

With respect to the absence of *de jure* government control over the export activities of all the companies reviewed, evidence on the record supports the claims by both North Supreme and Shouzhou Huaxiang that their export activities are not controlled by the government. Both North Supreme and Shouzhou Huaxiang submitted evidence of their legal rights to set prices independently of all government oversight. The business licenses of both companies indicate that they are permitted to engage in the exportation of crawfish. We find no evidence of *de jure* government control restricting these companies' exportation of crawfish.

In general, no export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity-specific export licenses required and no quotas for the seafood category "Other," which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities*. (See *Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999) (*Ningbo New Shipper Review*).)

*The Administrative Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons (Legal Persons Law)*, issued on June 13, 1988 by the State Administration for Industry and Commerce of the PRC and provided for the record of this review, indicates a lack of *de jure* government control over privately-owned companies, such as North Supreme and Shouzhou Huaxiang, and that control over these enterprises rests with the enterprises themselves. *The Legal Persons Law* provides that, to qualify as legal persons, companies must have the "ability to bear civil liability independently" and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. See *Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the*

*People's Republic of China*, 60 FR 56045 (November 6, 1995) (*Manganese Metal*). At verification, we saw that the business licenses for North Supreme and Shouzhou Huaxiang were granted in accordance with this law. The results of verification support the information provided regarding the *Legal Persons Law*. (See *Shouzhou Huaxiang Verification Report and North Supreme Verification Report*.) Therefore, we preliminarily determine that there is an absence of *de jure* control over export activity with respect to these firms.

### De Facto Control

With respect to the absence of *de facto* control over export activities, the information submitted on the record and reviewed at verification, indicates that the management of North Supreme and Shouzhou Huaxiang are responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for these companies. In addition, we have found that the respondents' pricing and export strategy decisions are not subject to the review or approval of any outside entity, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of export earnings. The company general managers of both North Supreme and Shouzhou Huaxiang have the right to negotiate and enter into contracts, and may delegate this authority to employees within their respective companies. There is no evidence that this authority is subject to any level of governmental approval. North Supreme and Shouzhou Huaxiang both stated that their management is selected by a board of directors and/or their employees, and that there is no government involvement in the selection process. Finally, decisions made by each respondent concerning purchases of subject merchandise from other suppliers are not subject to government approval. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the companies' export activities, we preliminarily determine that separate rates should be applied to both North Supreme and Shouzhou Huaxiang.

### Application of Partial Adverse Facts Available

During the course of this new shipper review, the Department issued questionnaires to Shouzhou Huaxiang requesting that they provide factor of

production information for our preliminary results. At verification, we found that Shouzhou Huaxiang's reported crawfish scrap and water factors were unverifiable. As a result, the Department has determined that it is appropriate to use facts otherwise available for the crawfish scrap and water factors of production in the calculation of normal value for Shouzhou Huaxiang's sales of crawfish tail meat.

Furthermore, section 776(b) of the Act provides that the Department may use an inference that is adverse to the interests of a party in selecting among the facts otherwise available if the Department finds that the party had failed to cooperate to the best of its ability. In this case, the Department has found that Shouzhou Huaxiang has failed to cooperate by not acting to the best of its ability by reporting unverifiable crawfish scrap and water factors of production. Shouzhou Huaxiang neither provided an explanation or notified the Department of any discrepancies or problems regarding its crawfish scrap and water factors. This information is within the sole possession of Shouzhou Huaxiang and cannot be obtained by the Department unless it is reported by Shouzhou Huaxiang. Moreover, this information is integral to our margin calculation for Shouzhou Huaxiang. We therefore determine that Shouzhou Huaxiang has failed to cooperate to the best of its ability in this new shipper review. Therefore, for the preliminary results of this review, we have made an inference that is adverse to Shouzhou Huaxiang in selecting from facts otherwise available for Shouzhou Huaxiang's crawfish scrap and water factors of production.

In addition, section 776(b) of the Act states that adverse facts available may include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Section 776(c) of the Act provides that when the Department relies on secondary information, the Department shall, to the extent practicable, corroborate that information with independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA) accompanying the URAA clarifies that the petition is secondary information. See SAA, H.R. Doc. 103-316 at 870 (1994). The SAA also clarifies that "corroborate" means to determine whether the information used has probative value. *Id.*

In this review, we are using, as adverse facts available, the lowest

reported crawfish scrap to whole crawfish ratio and the highest reported water factor from the *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546, (April 22, 2002) (*Crawfish Final 1999/2000*). See memorandum to file dated August 5, 2002, which places on the record of these reviews the "Freshwater Crawfish Tail Meat from The People's Republic of China Placement of Yancheng Haiteng's and Huaiyin30's factors of production from the 1999-2000 Administrative Review on to the Record of the Current Review" on the record of these new shipper reviews. These factors are corroborated, in accordance with section 776(c) of the Act, because each factor is based on actual information from a previous review. See the proprietary memorandum, "Determination of Partial Adverse Facts Available for Shouzhou Huaxiang Foodstuffs Co., Ltd. in the New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China," dated August 5, 2002 which is in the CRU.

#### Normal Value Comparisons

To determine whether respondents' sales of the subject merchandise to the United States were made at prices below NV, we compared their United States prices to NV, as described in the "United States Price" and "Normal Value" sections of this notice.

#### United States Price

For North Supreme and Shouzhou Huaxiang, we based United States price on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated purchaser in the United States. We deducted foreign inland freight from the starting price (gross unit price) in accordance with section 772(c) of the Act. Since the terms of sale for both Shouzhou Huaxiang's and North Supreme's sales were FOB China port, no other deductions for movement expenses were necessary.

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2)

available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the companies contested such treatment in these reviews. Accordingly, we have applied surrogate values to the factors of production to determine NV. See *Factor Values Memo for the Preliminary Results of the Antidumping Duty New Shipper Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China*, August 5, 2002 (*Factor Values Memo*).

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation and the subsequent administrative reviews of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. With the exceptions of the whole live crawfish input and the crawfish scrap by-product, we valued the factors of production using publicly available information from India. We adjusted the Indian import prices by adding freight expenses to make them delivered prices.

We valued the factors of production as follows:

To value the input of whole crawfish we used publicly available Spanish import data of whole live crawfish from Portugal for September 2000 through August 2001. See *Selection of Surrogate for the Valuation of Whole, Live Freshwater Crawfish in the 2000 - 2001 Administrative and New Shipper Reviews for Freshwater Crawfish Tail Meat from the People's Republic of China*, dated August 5, 2002. We adjusted the values of whole live crawfish to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on whole live crawfish, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. See *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From*

the People's Republic of China, 62 FR 51410 (October 1, 1997) (*Roofing Nails*).

To value the by-product of wet crawfish scrap, we used a price quote from Indonesia for wet crab and shrimp shells. See *Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC)*, *Administrative Review 9/1/00-8/31/01 and New Shipper Reviews 9/1/00-8/31/01 and 9/1/00-10/15/01*, dated August 5, 2002.

To calculate a value for steam, we derived the values by: 1) noting the BTU equivalent of the steam, then 2) obtaining a ratio of steam to the BTU equivalent of natural gas, and 3) multiplying this ratio by the surrogate value of natural gas.

To value coal, we used the average 1996 total price of "steam coal for industry" as published in the International Energy Agency's publication, *Energy Prices and Taxes, First Quarter, 2000*. We adjusted the cost of coal to include an amount for transportation. To value electricity, we used the average of the 1997 total cost per kilowatt hour (KWH) for "Electricity for Industry" as reported in the International Energy Agency's publication, *Energy Prices and Taxes, First Quarter, 2000*. For water, we relied upon public information from the October 1997 *Second Water Utilities Data Book: Asian and Pacific Region*, published by the Asian Development Bank.

To achieve comparability of energy and water prices to the factors reported for the crawfish tail meat processing

periods applicable to the companies under review, we adjusted these factor values to reflect inflation to the applicable crawfish processing season during the POR using the Wholesale Price Index (WPI) for India, as published in the 2001 *International Financial Statistics (IFS)* by the International Monetary Fund (IMF).

To value packing materials (plastic bags, cardboard boxes and adhesive tape), we relied upon Indian import data for the period August 2000 through January 2001 as reported in the *Monthly Statistics of the Foreign Trade of India (Monthly Statistics)*. We adjusted these prices to reflect inflation to the crawfish processing season during the POR. We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on packing materials, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. See *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997) (*Roofing Nails*).

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we continued to use simple average derived from the publicly available 1996-97 financial statements of four Indian seafood processing companies. We applied these

rates to the calculated cost of manufacture. See *Factor Values Memorandum*.

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2001. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics 2000*, International Labour Office (Geneva: 1998), Chapter 5: Wages in Manufacturing.

We valued movement expenses as follows: To value truck freight expenses we used seventeen price quotes from six different Indian trucking companies which were used in the antidumping investigation of *Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000). We adjusted the rates to reflect inflation to the month of sale of the finished product using the WPI for India from the IFS.

**Currency Conversion**

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

**Preliminary Results of Reviews**

We preliminarily determine that the following dumping margins exist:

Manufacturer and Exporter	Time Period	Margin (percent)
North Supreme Seafood (Zhejiang) Co., Ltd. ....	9/1/00-10/15/01	0.00
Shouzhou Huaxiang Foodstuffs Co., Ltd. ....	9/1/00-8/31/01	14.18

**Cash-Deposit Requirements**

If these preliminary results are not modified in the final results of these reviews, the following deposit rates will be effective upon publication of the final results of these new shipper reviews for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act. The cash deposit rate for shipments produced and exported by Shouzhou Huaxiang will be the total amount of dumping duties divided by the total quantity exported during the POR. Since the margin for North Supreme is zero, no cash deposits would be required for shipments produced and exported by North

Supreme. If these preliminary results are not changed in the final results, no other cash deposits under this order would be changed.

The Department will disclose calculations performed in connection with these preliminary results of reviews within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Individuals who

wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 351.309(c)(ii) of the Department's regulations. As part of the

case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of these new shipper reviews, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of these preliminary results, unless the time limit is extended.

#### Assessment Rates

Upon completion of these new shipper reviews, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the U.S. Customs Service upon completion of these reviews. For assessment purposes, we calculated importer-specific assessment rates for freshwater crawfish tail meat from the PRC. We divided the total dumping margins (calculated as the difference between NV and EP) for each importer by the total quantity of subject merchandise sold to that importer during the POR. Upon the completion of these reviews, we will direct Customs to assess the resulting quantity-based rates against the weight in kilograms of each entry of the subject merchandise by the importer during the POR. See memorandum to file dated August 5, 2002, which places on the record of these reviews the "Memorandum to Barbara E. Tillman through Maureen Flannery, from Mark Hoadley: Collection of Cash Deposits and Assessment of Duties on Freshwater Crawfish from the PRC, dated August 27, 2001" on the record of these new shipper reviews.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could

result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These new shipper reviews and this notice are published in accordance with sections 751(a)(2)(B) and 777 (i)(1) of the Act.

Dated: August 5, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 02-20388 Filed 8-9-02; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-412-803]

#### Industrial Nitrocellulose From the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom (U.K.) in response to a request by Imperial Chemical Industries PLC and its affiliates (ICI). This review covers sales of subject merchandise made by one manufacturer/exporter, ICI, to the United States during the period July 1, 2000, through June 30, 2001.

We have preliminarily determined that sales of subject merchandise have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the United States Customs Service (Customs) to assess antidumping duties, as appropriate.

We invite interested parties to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

**FOR FURTHER INFORMATION CONTACT:** Howard Smith or Michele Mire, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-5193 or (202) 482-4711, respectively.

#### SUPPLEMENTARY INFORMATION:

#### The Applicable Statute and Regulations

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

#### Background

The Department published in the **Federal Register** the antidumping duty order on INC from the United Kingdom on July 10, 1990 (55 FR 28270). On July 2, 2001, we published in the **Federal Register** (66 FR 34910), a notice of "Opportunity to Request Administrative Review" of this order covering the period July 1, 2000, through June 30, 2001, here after, referred to as the POR.

In accordance with 19 CFR 351.213(b), on July 31, 2001, ICI requested that we conduct an administrative review of its sales and shipments of subject merchandise to the United States for the aforementioned period. The Department is now conducting this administrative review pursuant to section 751 of the Act.

On August 20, 2001, we published in the **Federal Register** a notice of initiation of administrative review (66 FR 43570, 43572). On March 12, 2002, we published in the **Federal Register** a notice of extension of time limit for the preliminary results (66 FR 11095). We issued the antidumping duty and supplemental questionnaires to respondent during the months of September 2001, and January and May 2002.<sup>1</sup> We received ICI's responses to these questionnaires in the months of November 2001, and February and May 2002, respectively.

<sup>1</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

### Scope of Review

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item number 3912.20.00. While the HTSUS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

### Product Comparisons

To determine whether sales of INC from the United Kingdom to the United States were made at less than NV, we compared the constructed export price (CEP) to the NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice. When making product comparisons in accordance with section 771(16) of the Act, we considered all products within the scope of the order that were sold by the respondent in the home market in the ordinary course of trade during the POR to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales, on a model-specific basis, to sales made in the home market during the same month. When there were no home market sales of comparable merchandise occurring in the same month as the U.S. sale, we compared U.S. sales to monthly average home market sales one month prior, two months prior, three months prior to the month of the U.S. sale. If unsuccessful, we looked one month after and finally two months after the month of the U.S. sale. Where there were no sales of identical or similar merchandise in the home market within this time to compare to U.S. sales, we compared U.S. sales to the constructed value (CV) of the product sold in the home market during the comparison period.

### Constructed Export Price

For the price to the United States, we used CEP, as defined in section 772(b) of the Act, because all sales to the first unaffiliated purchaser in the United States took place after importation. We calculated CEP based on packed, delivered prices to unaffiliated

customers in the United States. In accordance with sections 772(c) and (d) of the Act, we made deductions from the starting price, where appropriate, for rebates, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, U.S. duties, and direct and indirect selling expenses to the extent that they were associated with economic activity occurring in the United States. Direct selling expenses include credit expenses and commissions, where applicable. ICI reported that it had no U.S. dollar denominated debt during the POR, and thus it calculated its U.S. credit expenses and inventory carrying costs based on an interest rate published by the British Bankers Association. Consistent with Department policy, we recalculated ICI's reported U.S. imputed credit expenses and inventory carrying costs using the Federal Reserve's weighted-average interest rate for commercial and industrial loans maturing between one month and one year. Finally, we made an adjustment for CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.

### Further Manufacturing

For INC that was imported by a U.S. affiliate of ICI and then further processed into lacquer and sealer products before being sold to unaffiliated parties in the United States, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applies. Where appropriate, in accordance with section 772(d)(2) of the Act, the Department calculates the CEP by deducting from U.S. price the cost of any further manufacture or assembly in the United States, except where the special rule provided in section 772(e) of the Act is applied. Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise sold in the United States if there is a sufficient quantity of sales to provide a reasonable basis for comparison. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP. To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added, pursuant to section 351.402(c)(2) of the

Department's regulations, based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. Based on this analysis, we determined that the estimated value added in the United States by ICI's U.S. affiliate accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. Therefore, in accordance with 19 CFR 351.402(c)(2), we determined that the value added is likely to exceed substantially the value of the subject merchandise. We also determined that there was a sufficient quantity of sales of other subject merchandise available in the U.S. market to provide a reasonable basis for comparison and that the use of such sales is appropriate in accordance with section 772(e) of the Act. Accordingly, for purposes of determining dumping margins for this sale, we have used the weighted-average dumping margins calculated on sales of subject merchandise sold to unaffiliated persons in the United States. See 19 CFR 351.402(c)(3). For a complete discussion of the information used by the Department in making this determination, which is proprietary, see *Memorandum on Whether It Is Appropriate to Use the Special Rule for Certain Further-Manufactured Merchandise Sold by Imperial Chemical Industries PLC (ICI) in the United States During the Period of Review Under Section 772(e) of the Act* dated July 31, 2002, on file in the Central Records Unit (CRU), Room B-099 of the main Department building.

### Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because ICI's aggregate volume of home market sales of the foreign like product is greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that sales in the home market provide a viable basis for calculating NV.

ICI reported that all home market sales during the POR were to unaffiliated parties. Therefore, we did not conduct the arm's length test. We calculated NV based on packed, delivered prices to unaffiliated

purchasers in the home market. In accordance with section 773(a)(6) of the Act, we adjusted the starting price by deducting home market packing costs and adding U.S. packing costs. Where applicable, we deducted inland freight and inland insurance from the starting price. In addition, we made a circumstance of sale adjustment for direct selling expenses, in accordance with section 773(a)(6)(C)(iii) of the Act. Furthermore, we made adjustments, where appropriate, for physical differences in merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We based this adjustment on the difference between the variable costs of manufacturing the foreign like product and the subject merchandise.

Finally, we reduced NV by the CEP offset. This offset equals the amount of the indirect selling expenses incurred on sales in the home market limited by the amount of the indirect selling expenses deducted from CEP pursuant to section 772(d) of the Act. *See the Level of Trade* section of this notice.

#### Cost of Production (COP) Analysis

In the 1999 - 2000 administrative review of INC from the United Kingdom, the most recently completed segment of this proceeding, the Department disregarded ICI's home market sales that were found to have failed the cost test. *See Industrial Nitrocellulose from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 66 FR 40978 (August 6, 2001). Accordingly, the Department, pursuant to section 773(b)(2)(A)(ii) of the Act, initiated a COP investigation of ICI for purposes of this administrative review. We conducted the COP analysis as described below.

#### Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, by adding to the cost of materials and fabrication employed in producing the foreign like product, amounts for home market selling, general and administrative (SG&A) expenses and packing costs. We based these costs on the home market sales data and COP information provided by ICI in its questionnaire responses. ICI calculated its reported interest expense ratio using interest expenses incurred by its affiliate, Nobel's Explosives Company, Ltd. (Nobel's). Consistent with Department policy, and as requested in the Department's antidumping duty questionnaire, we recalculated ICI's reported net interest expense ratio based on the interest expenses reported on the

parent's consolidated audited fiscal year financial statements.

#### 1. Test of Home Market Prices

After calculating a weighted-average COP in accordance with section 773(b)(1) of the Act, we tested whether home market sales of INC were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices permitted recovery of all costs within a reasonable period of time. We compared model-specific COP figures to the reported home market sales prices less any applicable movement charges, discounts, direct and indirect selling expenses, and packing costs.

#### 2. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of ICI's sales of a given model were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." In accordance with section 773(b)(2)(B) and (D) of the Act where 20 percent or more of the home market sales of a given product during the POR were at prices less than the COP, we found that such sales were made in substantial quantities within an extended period of time. In such cases, because we compared prices to POR-average costs, we also determined that the sales prices would not permit recovery of all costs within a reasonable period of time. Therefore, we disregarded those below-cost sales and used the remaining sales to determine NV in accordance with section 773(b)(1) of the Act. For those models of INC for which there were no home market sales available for matching purposes, we compared CEP to CV.

#### Constructed Value

In accordance with section 773(e)(2)(A) of the Act, we calculated CV by adding to ICI's cost of materials and fabrication employed in producing the subject merchandise, U.S. packing costs, SG&A expenses and profit incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

In calculating CV, we used the cost of materials and fabrication, and the SG&A expenses reported in the CV portion of ICI's questionnaire response. In addition, we used the U.S. packing costs reported in the U.S. sales portion of ICI's questionnaire response. For profit, we first calculated the difference between the total home market net sales

value and total home market COP for all home market sales in the ordinary course of trade, and divided the sum of this difference by the total home market COP for these sales. We then multiplied this percentage by the COP for each U.S. model to derive the profit amount.

#### Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market (in this case the home market) at the same level of trade (LOT) as the EP or CEP transactions. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. When U.S. price is based on CEP transactions, the LOT is the level of the constructed sale from the exporter to the importer.<sup>2</sup> *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997) (*Carbon Steel Plate*).

To evaluate whether different LOTs exist in the U.S. and home markets, we examine information regarding the chain of distribution between the producer and the customers in both markets, including information on stages in the marketing process, selling functions, classes of customer, and the level of selling expenses incurred for each type of sale. Customer categories such as distributors, retailers, or end-users are commonly used by petitioners and respondents to describe different LOTs, but, without substantiation, they are insufficient to establish that a claimed LOT is valid. An analysis of the chain of distribution and the selling functions substantiates or invalidates the claimed LOTs.

Unless we find that there are different selling functions for sales to the United States and home market, we will not determine that there are different LOTs. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not sufficient alone to establish a difference in LOTs. Differences in LOTs are characterized by purchasers at different marketing stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to those purchasers. If the home market sale is at a different LOT than the U.S. sale, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the U.S. sale, we make a LOT adjustment

under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences between the LOTs for NV and CEP affect price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See *Carbon Steel Plate*, 62 FR at 61732, 61733.

ICI did not claim a LOT adjustment. Nevertheless, we evaluated whether a LOT adjustment was appropriate by examining ICI's distribution system, including selling functions, classes of customers, and selling expenses. In reviewing ICI's home market distribution channels, we found that the same selling functions were performed for all sales of the foreign like product; and thus all home market sales were made at only one LOT. Moreover, ICI made all of its U.S. sales to unaffiliated U.S. customers through its affiliate, ICI Americas, Inc. (ICIA). With respect to U.S. sales, after making deductions to the CEP pursuant to section 772(d) of the Act, we found that the selling activities performed by ICI for all CEP sales to its affiliate were limited to demand forecasting, order processing, arranging transportation, and invoicing. Therefore, we found one LOT in the U.S. market and determined that the selling functions performed for the NV LOT (*i.e.*, sales solicitation, price negotiation, customer visits, advertising, technical support, invoicing, rebate administration and billing adjustment) were different from the U.S. selling functions and constituted a more advanced LOT than the U.S. LOT. We, therefore, evaluated whether we could determine if the difference in these LOTs affected price comparability. The effect on price comparability must be demonstrated by a pattern of consistent price differences between sales at the two relevant LOTs in the home market. Because there is only one home market LOT, we are unable to determine whether there is a pattern of consistent price differences based on home market sales of foreign like product, and, therefore, are unable to quantify a LOT adjustment. Therefore, in accordance with section 773(a)(7)(B) of the Act, we have preliminarily granted ICI a CEP offset. See *Memorandum Re: Industrial Nitrocellulose from the United Kingdom Level of Trade Analysis Imperial Chemical Industries, PLC* dated July 31, 2002, on file in the CRU.

### Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. See *Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996).

### Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Exporter/Manufacturer	Weighted-Average Margin
Imperial Chemical Industries PLC .....	3.64 percent

We will disclose the calculations used in our analysis to parties to this proceeding in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. See 19 CFR 351.310(c). We will issue a memorandum detailing the dates of a hearing, if any, and deadlines for submission of written comments and rebuttal comments, limited to issues raised in such comments, after verification of ICI. Parties who submit comments are requested to submit with the comments (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 120 days from the publication of these preliminary results.

### Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the entered value of the same merchandise. Upon completion of this review, where the importer-specific assessment rate is

above *de minimis*, the Department will instruct Customs to assess antidumping duties on all entries of subject merchandise by that importer during the POR.

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the case deposit rate for the reviewed company will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.13 percent, the "all-others" rate established in the LTFV investigation (55 FR 21058, May 22, 1990).

### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 02-20389 Filed 8-9-02; 8:45 am]

**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE****International Trade Administration****[C-535-001]****Cotton Shop Towels from Pakistan: Final Results of Countervailing Duty Administrative Review**

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

**ACTION:** Notice of Final Results of Countervailing Duty Administrative Review.

**SUMMARY:** On April 8, 2002, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on cotton shop towel from Pakistan for the period January 1, 2000, through December 31, 2000. See *Cotton Shop Towels From Pakistan: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 67 FR 16718 (April 8, 2002) (*Preliminary Results*).

Based on our analysis of the comments received, we have not made changes to the net subsidy rates. Therefore, the final results do not differ from the preliminary results. The final net subsidy rates for the reviewed companies are listed below in the section entitled "Final Results of Review."

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

**FOR FURTHER INFORMATION CONTACT:** Gayle Longest at (202) 482-3338, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:****The Applicable Statute and Regulations**

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

**Background**

On April 8, 2002, the Department published its preliminary results of administrative review of the countervailing duty order on cotton

shop towels from Pakistan. See *Preliminary Results*. This review covers 14 manufacturers/exporters: Mehtabi Towel Mills Ltd. (Mehtabi), Quality Linen Supply Corp. (Quality), Fine Fabrico (Fabrico), Ranjha Linen (Ranjha), Iftikhar Corporation (Iftikhar), Faisalabad Cotton Products (Pvt.) Ltd. (Faisalabad), Shahi Textiles (Shahi), United Towel Exporters (United), R.I. Weaving (R.I.), Universal Linen (Universal), Ishaq Towel Factory (Ishaq), Jawwad Industries (Jawwad), Silver Textile Factory (Silver), and Sultex Industries (Sultex). The review covers the period January 1, 2000, through December 31, 2000, and seven programs. We did not conduct verification of the questionnaire response.

On May 7, 2002, the Government of Pakistan, Mehtabi, Fabrico, Iftikhar, Ranjha, Quality, Faisalabad, Shahi, Ishaq, Universal, R.I. and United filed a brief. Petitioner did not file a brief or a rebuttal brief. The Department did not conduct a hearing in this review because none was requested.

**Scope of the Review**

The merchandise subject to this review is cotton shop towels. The product covered in this review is provided for under item number 6307.10.20 of the *Harmonized Tariff Schedule of the United States* (HTSUS). The HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

**Analysis of Comments Received**

All issues raised in the case briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) dated concurrent with this notice which is hereby adopted by this notice. A list of issues which parties have raised, and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit in room B-099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at <http://ia.ita.doc.gov>, under the heading "Federal Register Notices." The paper copy and electronic version of the Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have not made any changes to the subsidy rate calculations from the preliminary results.

**Final Results of Review**

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for each producer/exporter subject to this review. We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated below on all appropriate entries. For the period January 1, 2000, through December 31, 2000, we determine the net subsidy rates for the reviewed companies to be as follows:

Company	Ad Valorem Rate
Mehtabi .....	3.57%
Quality .....	3.57%
Fabrico .....	3.57%
Ranjha .....	3.57%
Iftikhar .....	3.57%
Faisalabad .....	3.57%
Shahi .....	2.23%
United .....	2.81%
R.I. ....	2.81%
Universal .....	2.81%
Ishaq .....	2.81%
Jawwad .....	4.53%
Silver .....	1.75%
Sultex .....	3.42%

We will instruct Customs to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. See 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash

deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. See *Federal-Mogul Corporation and the Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993); *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the Act, as amended by the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding, pursuant to the statutory provisions that were in effect prior to the URAA amendments, is applicable. See *Cotton Shop Towels From Pakistan: Final Results of Countervailing Duty Administrative Reviews*, 62 FR 24082 (May 2, 1997). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 2000, through December 31, 2000, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: August 6, 2002.

**Faryar Shirzad**,  
Assistant Secretary for Import  
Administration.

#### Appendix I - Issues Discussed in Decision Memorandum

<http://ia.ita.doc.gov>, under the heading ("Federal Register Notices").

#### Methodology and Background Information

##### I. Use of Facts Available

##### II. Analysis of Programs

##### A. Programs Conferring Subsidies

1. Export Finance Scheme
2. Sales Tax Rebate Program
3. Customs Duty Rebate Program

##### B. Program Determined Not to Confer a Benefit

1. Income Tax Reduction on Export Income Program

##### III. Programs Determined To Be Not Used

- A. Rebate of Excise Duty
- B. Export Credit Insurance
- C. Import Duty Rebates

##### IV. Total Ad Valorem Rate

##### V. Analysis of Comments

Comment 1 - Export Finance Scheme

Comment 2 - Customs Duty Rebate Program

Comment 3 - Sales Tax Rebate Program

Comment 4 - EFS Benefits Attributed to Cross-Owned Companies

[FR Doc. 02-20386 Filed 8-9-02; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-475-819]

#### Certain Pasta from Italy: Final Results of the Fifth Countervailing Duty Administrative Review

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

**ACTION:** Notice of Final Results of Countervailing Duty Administrative Review.

**SUMMARY:** On April 8, 2002, the Department of Commerce published in the Federal Register its preliminary results of the fifth administrative review of the countervailing duty order on certain pasta from Italy for the period January 1 through December 31, 2000.

We have made no changes to our preliminary findings as a result of either our analysis of the comments received or of any new information or evidence

of changed circumstances. Therefore, the final results do not differ from the preliminary results of this review.

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

**FOR FURTHER INFORMATION CONTACT:** Craig Matney, Audrey Twyman, or Stephen Cho, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-1778, 482-3534, or 482-3798, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995 ("the Act"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR 351 *et seq.* (2002).

#### Background

On July 24, 1996, the Department of Commerce ("the Department") published in the **Federal Register** (61 FR 38544) the countervailing duty order on certain pasta from Italy.

In accordance with 19 CFR 351.213(b), this review of the order covers the following producers or exporters of the subject merchandise for which a review was specifically requested: F.lli De Cecco di Filippo Fara S. Martino S.p.A. ("De Cecco"); Delverde S.p.A. ("Delverde"); Italian American Pasta Company, S.r.L. ("IAPC"); and Labor S.r.L. ("Labor").

Based on withdrawal of the request for review, we rescinded this administrative review for N. Puglisi & F. Industria Paste Alimentari S.p.A. ("Puglisi"). (See, *Certain Pasta from Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 67 FR 16722 (April 8, 2002) ("Preliminary Results").

Since the publication of the *Preliminary Results*, a case brief was submitted on May 8, 2002, by Delverde. The Department did not conduct a hearing in this review because none was requested.

#### Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins,

coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, Bioagricoop Scrl, QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.L.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

**Scope Rulings**

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the countervailing duty order. (See August 25, 1997, memorandum from Edward Easton to Richard Moreland, which is on file in the Central Records Unit ("CRU") in Room B-099 of the main Commerce building.)

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the countervailing duty order. (See July 30, 1998, letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., which is on file in the CRU.)

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the countervailing duty order. On May 24, 1999, we issued a final scope ruling finding that,

effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the countervailing duty order. (See May 24, 1999, memorandum from John Brinkmann to Richard Moreland, which is on file in the CRU.)

**Period of Review**

The period of review ("POR") for which we are measuring subsidies is from January 1 through December 31, 2000.

**Analysis of Comments Received**

All issues raised in the case brief by the interested party to this administrative review are addressed in the August 6, 2002, *Issues and Decision Memorandum* ("Decision Memorandum") from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the CRU, Room B-099 of the Department. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/> under the heading "Italy." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

**Changes Since the Preliminary Results**

We have made no changes to our preliminary findings as a result of either our analysis of the comments received or of any new information or evidence of changed circumstances. Therefore, the final results do not differ from the preliminary results of this review.

**Final Results of Review**

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1 through December 31, 2000, we determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below.

Company	Ad valorem rate
F.lli De Cecco di Filippo Fara San Martino, S.p.A. ....	1.90 percent

Company	Ad valorem rate
Delverde S.p.A. ....	2.83 percent
Italian American Pasta Company, S.r.L. ....	0.00 percent
Labor, S.r.L. ....	1.57 percent

We will instruct the U.S. Customs Service ("Customs") to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentage detailed above of the f.o.b. invoice prices on all shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

The cash deposit rates for all companies not covered by this review are not changed by the results of this review. Thus, we will instruct Customs to continue to collect cash deposits for non-reviewed companies, except Barilla G. e R. F.lli S.p.A. ("Barilla") and Gruppo Agricoltura Sana S.r.L. ("Gruppo") (which were excluded from the order during the investigation), at the most recent rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of the companies assigned these rates is completed. In addition, for the period January 1 through December 31, 2000, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.301. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

DATED: August 6, 2002.

**Faryar Shirzad,**  
Assistant Secretary for Import Administration.

**Appendix I Issues discussed in the Decision Memorandum**

- I. Subsidies Valuation Methodology
  - 1. Change in Ownership
  - 2. Benchmarks for Long-term Loans and Discount Rates

3. Allocation Period
4. Attribution

## II. Analysis of Programs

### A. Programs Previously Determined to Confer Subsidies

1. Law 64/86 Industrial Development Grants
2. Law 488/92 Industrial Development Grants
3. Industrial Development Loans Under Law 64/86
4. Law 341/95 Interest Contributions on Debt Consolidation Loans
5. Social Security Reductions and Exemptions - Sgravi
6. IRAP Exemptions
7. Law 304/90 Export Marketing Grants
8. Export Restitution Payments
9. IRPEG Exemptions

### B. Programs Determined to Be Not Used

1. Law 64/86 VAT Reductions
2. Export Credits under Law 227/77
3. Capital Grants under Law 675/77
4. Retraining Grants under Law 675/77
5. Interest Contributions on Bank Loans under Law 675/77
6. Interest Grants Financed by IRI Bonds
7. Preferential Financing for Export Promotion under Law 394/81
8. Urban Redevelopment under Law 181
9. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market ("PRISMA")
10. Law 183/76 Industrial Development Grants
11. Law 598/94 Interest Subsidies
12. Law 236/93 Training Grants
13. European Regional Development Fund ("ERDF")
14. Duty-Free Import Rights
15. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77
16. Law 1329/65 Interest Contributions ("Sabatini Law")
17. European Social Fund ("ESF")

### III. Analysis of Comments

*Comment 1:* Application of the Department's privatization methodology to Delverde (Delverde)

*Comment 2:* Presumption that subsidies continue after a change in ownership (Delverde)

*Comment 3:* Privatization and the U.K. Lead Bar Panel (Delverde)

*Comment 4:* Sale of shares vs. assets (Delverde)

*Comment 5:* Continuity of business operations (Delverde)

[FR Doc. 02-20387 Filed 8-9-02; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on Tuesday, August 20, 2002. The meeting will be from 10 a.m. to 12:30 p.m. at the Greensboro-High Point Marriott (Airport Marriott), Greensboro, North Carolina.

The Committee provides advice and guidance to Department officials on the identification and surmounting of barriers to the expansion of textile exports, and on methods of encouraging textile firms to participate in export expansion.

The Committee functions solely as an advisory body in accordance with the provisions of the Federal Advisory Committee Act.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Monica Montavon, telephone: (202) 482-2257. Dated: August 7, 2002.

#### D. Michael Hutchinson,

*Acting Chairman, Committee for Implementation of Textile Agreements.*

[FR Doc. 02-20385 Filed 8-9-02; 8:45 am]

BILLING CODE 3510-DR-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Federal Approval of the Indiana Coastal Management Program

**AGENCY:** National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

**ACTION:** Notice of the National Oceanic and Atmospheric Administration, National Ocean Service's approval of the Indiana Coastal Management Program pursuant to the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

**SUMMARY:** Notice is hereby given that the National Oceanic and Atmospheric Administration (NOAA) approved the Indiana Lake Michigan Coastal Management Program (LMCP) on August 5, 2002, pursuant to the provisions of section 306 of the Federal Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1455 (CZMA). The LMCP is described in the Indiana Coastal Management Program and Final Environmental Impact Statement (P/FEIS) published on June 21, 2002.

Indiana is the 34th state to receive Federal approval of its coastal management program. Indiana submitted a proposed coastal program to NOAA in April 2001. Upon reaching a preliminary decision that the program met the requirements of the CZMA, and in order to meet its responsibilities under the National Environmental Policy Act, NOAA published the Indian Coastal Management Program and Draft Environmental Impact Statement (P/DEIS) for public review on September 21, 2001. NOAA published the P/FEIS including public comments on the P/DEIS and responses to those comments on June 21, 2001. NOAA has also fulfilled the responsibilities under the Endangered Species Act through consultations with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Upon completion of the 30-day review period, NOAA will prepare a Record of Decision in accordance with the requirements of 40 CFR 1502.2 of regulations to implement the National Environmental Policy Act.

The LMCP is the culmination of several years of development by the State of Indiana, in consultation with interest groups, the general public, Federal agencies, and NOAA. The LMCP consists of numerous state policies on diverse coastal management issues which are prescribed by statute and other legal mechanisms and made enforceable under state law. The LMCP will improve the decision making process for determining appropriate coastal land and water uses in light of resource consideration and increase public awareness of coastal resources and processes. The LMCP will increase long term protection of the state's coastal resources, while providing for sustainable economic development.

NOAA approval of the LMCP makes the state eligible for federal financial assistance for program administration and enhancement under sections 305, 306A, 308, 309 and 310 of the CZMA (16 U.S.C. Sec. 1455, 1455a, 1456a, and 1456b). Indiana has submitted an application for \$1,150,000 in FY 2002 Federal CZMA funds, which are available for Indiana. These funds will generally be used to assist the state in administering the various state authorities included in the LMCP, as well as be used to fund local management efforts.

NOAA approval of the LMCP also makes operational, as of the date of this **Federal Register** Notice, the CZMA federal consistency requirement with respect to the LMCP (16 U.S.C. 1456; 15 CFR part 930). Therefore, as of today, direct federal activities occurring within

or outside the Indiana coastal zone that are reasonably likely to affect any land or water use or natural resources of the Indiana coastal zone must be consistent to the maximum extent practicable with the enforceable policies of the LMCP. In addition, activities within or outside the Indiana coastal zone requiring a federal license or permit listed in the P/FEIS, and federal financial assistance to state agencies and local governments, that are reasonably likely to affect any land or water use or natural resource of the Indiana coastal zone must be consistent with the enforceable policies of the LMCP.

Chapter 5 of the P/FEIS identifies the enforceable policies of the Indian program. Chapter 11 of the P/FEIS identifies federally licensed or permitted activities subject to the federal consistency requirements. Chapter 4 of the P/FEIS, as well as the CZMA regulations at 15 CFR Part 930, provide specific procedures to be used in the Federal/State coordination process.

**ADDRESSES:** For further information and for a copy of the Record of Decision, please contact Diana Olinger at (301) 713-3155, Extension 149, or electronic mail at [diana.olinger@noaa.gov](mailto:diana.olinger@noaa.gov).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: August 5, 2002.

**Alan Neuschatz,**

*Associate Assistant Administrator, Management and Budget Office, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.*

[FR Doc. 02-20294 Filed 8-9-02; 8:45 am]

**BILLING CODE 3510-08-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 080502J]

#### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting via conference call of the Reef Fish Advisory Panel (AP) and Reef Fish Scientific and Statistical Committee (SSC).

**DATES:** The AP meeting will be via conference call on August 26, 2002 beginning at 10 a.m. EST. The SSC meeting will be via conference call on August 28, 2002 beginning at 10 a.m. EST.

**ADDRESSES:** A listening station will be available at the following locations: NMFS Southeast Regional Office, 9721 Executive Center Drive, North, St. Petersburg, FL 33702, Contact: Joyce Mochrie at 727-570-5305; NMFS Pascagoula Laboratory, 3909 Frederic Street, Pascagoula, MS 39567, Contact: Cheryl Hinkel at 228-762-4591, ext. 267.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813-228-2815.

**SUPPLEMENTARY INFORMATION:** The AP and SSC will be convened to review the Council's proposed Secretarial Amendment 2 to the Reef Fish Fishery Management Plan (FMP) to set greater amberjack Sustainable Fisheries Act (SFA) targets and thresholds and to set a rebuilding plan. The AP and SSC will be convened via conference call beginning at 10 a.m. EST on August 26, 2002 and August 28, 2002, respectively. The greater amberjack resource in the Gulf of Mexico was declared overfished by NMFS on February 9, 2001 based on the 2000 greater amberjack stock assessment. The results of several analyses indicated that the stock biomass was below the level needed to sustain harvest at maximum sustainable yield (MSY), with the best estimate indicating that the stock biomass was at less than half the biomass needed to sustain MSY, below the minimum level allowed under the 1998 NMFS National Standard Guidelines. However, NMFS concluded that overfishing is not currently occurring due to the recent implementation of management measures that were not reflected in the stock assessment. These measures included: (1) a reduction in the greater amberjack recreational bag limit from 3 to 1 fish (implemented 1997); (2) a commercial closed season during March, April and May (implemented 1998); and (3) partial protection of misidentified juvenile greater amberjack by establishment of a slot limit on lesser amberjack/banded rudderfish of 14 and 22 inches fork length plus an aggregate 5-fish recreational bag limit. As a result of this finding, additional measures to end overfishing are not needed, but a plan to rebuild the stock is needed.

Because NMFS has declared the stock overfished, the Council is required to rebuild the stock to a level where it is no longer considered overfished. Before a plan can be put into effect, management targets and thresholds that the stock needs to achieve must be defined. These are: definitions for maximum sustainable yield (MSY), optimum yield (OY), the minimum stock size threshold (MSST) below which a stock is considered to be overfished, the maximum fishing mortality threshold (MFMT) above which a stock is considered to be undergoing overfishing. The proposed amendment also provides alternative rebuilding plans that will rebuild the stock within 10 years or less and are based on various rebuilding strategies.

A copy of the agenda can be obtained by contacting the Council (see **ADDRESSES**).

Although non-emergency issues not contained in the agenda may come before the AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

The listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 19, 2002.

Dated: August 7, 2002.

**Richard W. Surdi,**

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

[FR Doc. 02-20382 Filed 8-9-02; 8:45am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 080502H]

#### New England Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Oversight Committee and Scientific and Statistical Committee in August, 2002 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meetings will be held August 27-28, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held in Mansfield and Newburyport, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 52, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465-0492.

**SUPPLEMENTARY INFORMATION:**

**Meeting Dates and Agendas**

*Tuesday, August 27, 2002, 10 a.m.—Scientific and Statistical Committee Meeting*

Location: Rossi's Restaurant, 50 Water Street, Mill #2, Newburyport, MA 01950; telephone: (978) 499-0240.

The committee will elect a chair and vice-chair. The agenda will include providing guidance to the Council on scallop management reference points as well as monkfish management reference points.

*Wednesday, August 28, 2002, 9:30 a.m.—Habitat Oversight Committee Meeting*

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339-2200.

The agenda will include consideration and approval of methods for minimizing the effects of scallop fishing on essential fish habitat for Amendment 10 to the Scallop Fishery Management Plan (FMP). There will also be discussion of habitat issues in Scallop Framework 15. The committee will also discuss ongoing analyses for Amendment 13 to the Multispecies FMP.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues

arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 7, 2002.

**Richard W. Surdi,**

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

[FR Doc. 02-20383 Filed 8-9-02; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[I.D. 080502G]

**Pacific Fishery Management Council; Public Meeting**

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) and the Groundfish Subcommittee of the Scientific and Statistical Committee (SSC GF Subcommittee) will hold a working meeting which is open to the public.

**DATES:** The GMT and the SSC GF Subcommittee working meeting will begin Tuesday, August 27, 2002, at 10 a.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to noon on Wednesday, August 28.

**ADDRESSES:** The meeting will be held at the Shilo Inn, 11707 NE Airport Way, Portland, OR 97220; telephone: (503) 252-5800.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384.

**FOR FURTHER INFORMATION CONTACT:** Mr. John DeVore, Groundfish Fishery Management Coordinator; telephone: (503) 820-2280.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the GMT and SSC GF Subcommittee meeting is to discuss a new yelloweye rockfish stock

assessment and any other pertinent information in order to prepare final recommendations regarding groundfish harvest levels and management measures for 2003.

Although nonemergency issues not contained in this agenda may come before the GMT and SSC GF Subcommittee for discussion, those issues may not be the subject of formal GMT and SSC GF Subcommittee action during this meeting. GMT and SSC GF Subcommittee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT and SSC GF Subcommittee's intent to take final action to address the emergency.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820-2280 at least 5 days prior to the meeting date.

Dated: August 7, 2002.

**Richard W. Surdi,**

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

[FR Doc. 02-20384 Filed 8-9-02; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF DEFENSE**

**Department of the Army**

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to amend a system of records.

**SUMMARY:** The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The amendment consists of correcting a duplicate system identifier assigned to a system of records notice that was published on July 31, 2002, at 67 FR 49679. The system identifier for A0351 HSC-AHS, U.S. Army Medical Department School and Academy of Health Sciences Academic Records (February 15, 2002, 67 FR 7140) should have been changed to 'A0351a DASG'. This amendment corrects this oversight.

**DATES:** This proposed action will be effective without further notice on

September 11, 2002, unless comments are received which result in a contrary determination.

**ADDRESSES:** Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060-5603.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806-4390 or DSN 656-4390 or Ms. Christie King at (703) 806-3711 or DSN 656-3711.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 5, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

#### **A0351 HSC-AHS**

##### **SYSTEM NAME:**

U.S. Army Medical Department School and Academy of Health Sciences Academic Records (February 15, 2002, 67 FR 7140).

##### **CHANGES:**

##### **SYSTEM IDENTIFIER:**

Delete entry and replace with 'A0351a DASG'.

\* \* \* \* \*

#### **A0351a DASG**

##### **SYSTEM NAME:**

U.S. Army Medical Department School and Academy of Health Sciences Academic Records.

##### **SYSTEM LOCATION:**

U.S. Army Medical Department Center and School, Academy of Health Sciences, Department of Academic Support, 2250 Stanley Road, Fort Sam Houston, TX 78234-6100.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Resident and correspondence students enrolled in courses at the Academy.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Student's name, Social Security Number, grade/rank, academic qualifications, progress reports, academic grades, ratings attained, aptitudes and personal qualities, including corporate fitness results; faculty board records pertaining to class standing/rating/classification/proficiency of students; class academic records maintained by instructors indicating attendance and progress of class members.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; Army Regulation 351-3, Professional Education and Training Programs of the Army Medical Department; and E.O. 9397 (SSN).

##### **PURPOSE(S):**

To determine eligibility for enrollment/attendance, monitor student progress, record accomplishments, and serve as record of courses which may be prerequisite for other formal courses of instruction, licensure, certification, and employment.

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to civilian medical institutions for the purpose of accrediting the individual's training and instruction.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

##### **POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

##### **STORAGE:**

Paper records, microfiche, cards, magnetic tape and/or disc, and computer printouts.

##### **RETRIEVABILITY:**

By individual's name and Social Security Number.

##### **SAFEGUARDS:**

Access to all records is restricted to designated individuals whose official duties dictate the need therefore.

##### **RETENTION AND DISPOSAL:**

Academic records are maintained 40 years at the Academy of Health Sciences. Except for the master file,

automated data are erased after the fourth updating cycle.

##### **SYSTEM MANAGER(S) AND ADDRESS:**

Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234-6000.

##### **NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234-6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/enrolled, current address, and signature.

##### **RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234-6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/enrolled, current address, and signature.

##### **CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

##### **RECORD SOURCE CATEGORIES:**

From the individual and Academy of Health Sciences' staff and faculty.

##### **EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 02-20270 Filed 8-9-02; 8:45 am]

BILLING CODE 5001-08-P

## **DEPARTMENT OF DEFENSE**

### **Uniformed Services University of the Health Sciences**

#### **Sunshine Act Meeting**

##### **AGENCY HOLDING THE MEETING:**

Uniformed Services University of the Health Sciences.

**TIME AND DATE:** 8 a.m. to 4 p.m., August 13, 2002.

**PLACE:** Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814-4799

**STATUS:** Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3))

##### **MATTERS TO BE CONSIDERED:**

- 8 a.m. Meeting—Board of Regents  
 (1) Approval of Minutes—May 17, 2002  
 (2) Faculty Matters  
 (3) Departmental Reports  
 (4) Financial Report  
 (5) Report—President, USUHS  
 (6) Report—Dean, School of Medicine  
 (7) Report—Dean, Graduate School of Nursing  
 (8) Comments—Chairman, Board of Regents  
 (9) New Business

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295-3116.

Dated: August 8, 2002.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer,  
 Department of Defense.*

[FR Doc. 02-20498 Filed 8-8-02; 3:07 pm]

**BILLING CODE 5001-03-M**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Acting Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by September 11, 2002.

**ADDRESSES:** Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the

requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: August 6, 2002.

**Joseph Schubart,**

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

### Federal Student Aid

*Type of Review:* New.

*Title:* Approval to Implement Consent for IRS to Disclose Your Tax Information Web Site.

*Abstract:* The "Consent for IRS to Disclose Your Tax Information" Web site will provide student aid applicants and their families a mechanism for electronically authorizing the IRS to disclose taxpayer information to participating pilot schools.

*Additional Information:* To review the Consent For IRS to Disclose Your Tax Information Web site, please go to: <http://consentpilot.sfa.ed.gov/IRSForm/home.jsp>.

*Frequency:* At the end of the pilot.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

Responses: 600.

Burden Hours: 400.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2077. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or to the e-mail address [vivian.reese@ed.gov](mailto:vivian.reese@ed.gov). Requests may also be electronically mailed to the Internet address [OCIO\\_RIMG@ed.gov](mailto:OCIO_RIMG@ed.gov) or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Joseph Schubart at his Internet address [Joe.Schubart@ed.gov](mailto:Joe.Schubart@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 02-20277 Filed 8-9-02; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

[CFDA No: 84.051B]

### Office of Vocational and Adult Education; College and Career Transitions Initiative (CCTI)—Cooperative Agreement; Notice inviting Applications for New Awards for Fiscal Year (FY) 2002

*Purpose of Program:* The purpose of the college and career transitions initiative (CCTI) is to strengthen the role of community and technical colleges in easing student transitions between secondary and postsecondary education, and improving academic performance at both the secondary and postsecondary levels.

*Eligible Applicants:* Consortia that include both: (1) a national or international, non-profit, private membership organization—chiefly comprised of institutions of higher education that offer a two-year, associate degree or certificate program—and (2) two or more individual institutions of higher education that offer a two-year associate degree or certificate program.

*Applications Available:* August 12, 2002.

*Deadline for Transmittal of Applications:* September 11, 2002.

*Deadline for Intergovernmental Review:* September 11, 2002.

*Estimated Available Funds:* \$2,500,000.

*Estimated Amount of Award:* \$2,500,000.

*Estimated Number of Awards:* 1, in the form of a cooperative agreement.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months, depending upon the availability of appropriations in subsequent years under the current statutory authorization.

*Applicable Statute and Regulations:* (a) The relevant provisions of the Carl D. Perkins Vocational and Technical Education Act of 1998 (the Act), 20 U.S.C. 2301 *et seq.*, in particular section 114(c)(1)(A) of the Act (20 U.S.C. 2324(c)(1)(A)).

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, 86, 97, 98, and 99.

**SUPPLEMENTARY INFORMATION:** This initiative is designed to support the principles established in the No Child Left Behind Act of 2001 by investing in strategies to (1) close the achievement gap, (2) create meaningful educational options that help students with diverse backgrounds and needs reach uniformly high standards, and (3) ensure that students attain these high standards at each level of their educational careers.

The initiative will further the development, by postsecondary institutions in partnership with secondary schools, of academically rigorous programs of study organized around broad occupational areas. These programs of study, connecting course offerings at the secondary level with increasingly advanced academic and technical courses at the postsecondary level, will equip students with the skills and credentials required for success in high-demand, high-wage career fields.

Anticipated outcomes for participating students include: Increased success rates for entry into, and completion of postsecondary education; acceleration of attainment of postsecondary certificate or degree; decreased need for remediation; and improved levels of academic and skill achievement.

### Program Activities

The consortium must carry out the following activities with the assistance provided under the cooperative agreement:

(a) *Proposal and Partnership with Promising Programs.*

(1)(i) The consortium must retain control of and responsibility for the

Federal funds awarded under CCTI, and must be responsible for carrying out the various required activities specified in this notice.

(ii) The consortium must propose in its application, and—in consultation with the Department—enter into at least 10 but no more than 20 partnerships, for the purpose of expanding promising career and college transition programs.

(iii) These programs must focus on one or more broad, high-growth, occupational areas.

(iv) The consortium must enter into partnerships at secondary or postsecondary sites, or both, to provide students with a coherent sequence of high-level academic and technical skills, ensure seamless connections between students' secondary and postsecondary coursework, and culminate in joint credit or a certificate.

(v) Each partnership must be led by an institution of higher education that is a member of the consortium submitting the application, in partnership with (A) one or more secondary schools or local educational agencies (LEAs), and (B) two or more local employers.

(vi) If the consortium regards it as beneficial to the project, the partnership may also include (A) the eligible State agency responsible for administering vocational and technical education, and (B) the State agency responsible for administering institutions of higher education that offer a two-year associate degree or certificate program.

(vii) Of the partnerships entered into by the consortium—

(A) Two must include a focus on health science;

(B) Two must include a focus on information technology; and

(C) The remaining partnerships must be focused on other occupational areas that are, at a minimum, high-growth and high-demand, and reflect the needs of national, State, or regional labor markets.

(2)(i) If selection of partnerships is possible before the application deadline, the consortium must list in its application each proposed partnership, including—

(A) The lead institution and all participating partners; and

(B) The occupational focus area or areas of each from section (a)(1)(vii)(A)–(C) of this notice.

(ii) If selecting partnerships is not possible before the application deadline, the consortium must state a specific timeframe within which it proposes to select partnerships.

(iii) In either case, the consortium must clearly describe the criteria and process for selecting the partnerships, including, at a minimum—

(A) Evidence of high academic and technical standards calibrated to the most rigorous State standards for which the State holds students, teachers, and administrators accountable;

(B) Evidence of curriculum alignment;

(C) Evidence of existing articulation agreements among the postsecondary institution and its secondary partner or partners; and

(D) Evidence of institutional commitment and capacity on the part of all partners to enhance and expand their programs of study in keeping with the requirements of this notice.

(3) To the extent practicable, the consortium must ensure that selected partnerships represent geographical dispersion, a variety of delivery mechanisms, and a range of strategies to connect the secondary and postsecondary levels, to facilitate student transitions.

(4) To solicit input from representatives of institutions of higher education, secondary schools, employers representing the selected broad occupational area or areas, and other relevant parties, the consortium may encourage each partnership to collaborate or consult with existing local advisory boards or business-education partnerships.

(b) *Project Activities.* The consortium must do the following:

(1) Describe in its application and implement on receipt of the CCTI cooperative agreement, a management plan.

(i) The management plan must be designed to ensure effective implementation of activities conducted together with each partnership.

(ii) The management plan must include, at a minimum, convening representatives of the partnerships—by telephone quarterly and in person yearly—possibly in coordination with other annual consortium events, to—

(A) Discuss the progress of implementation and share promising practices and lessons learned;

(B) Provide technical assistance to individual partnerships in addressing challenges and identifying successful strategies; and, if common needs are identified, to the partnerships as a group; and

(C) Provide for regular electronic communications to and among the partnerships to ensure that relevant information, research, news, reminders and other items of interest are shared in a consistent manner.

(2) (i) Through its collaboration with the partnerships, develop and refine practices that help students move effectively from high school to college by better aligning and improving the

quality of secondary and postsecondary programs in high-demand career areas.

(ii) Specifically, the consortium and the partnerships must implement and enhance strategies such as—

(A) Curriculum development and course sequencing;

(B) Rigorous instructional strategies based on appropriate existing State standards;

(C) Regular, high-quality professional development for teachers;

(D) Academic assessments, assessment of employability skills, and industry-based assessments and certifications;

(E) Dual or concurrent enrollment for academic and technical courses;

(F) Academic and career-related counseling and other student support services;

(G) Distance learning using computer-based and internet-based technologies; and

(H) Articulation with postsecondary baccalaureate programs.

(3) Issue a contract for the documentation of program outcomes. This includes the following:

(i) The use of existing data sources or the establishment of systems for collecting data about participating students on a set of identified anticipated outcomes, including, at a minimum—

(A) Enrollment and persistence in postsecondary education;

(B) Academic and skill achievement;

(C) Rates of remediation;

(D) Postsecondary certificate or degree attainment; and

(E) Entry into employment.

(ii) Rigorous case studies of each partnership, describing each of the partners, selected occupational program or programs of study, and development and implementation activities. Each case study must include, but is not limited to, a description of the following:

(A) Governance structures.

(B) Faculty development.

(C) Strategies to coordinate activities among secondary, postsecondary, and other partners.

(D) Efforts to align postsecondary requirements to the State's established standards for secondary school students.

(E) Facilitators and barriers to project implementation.

(c) *Advisory Working Group and Outside Consultation.*

(1)(i) In carrying out the CCTI project, the consortium must establish an advisory working group to provide ongoing input to the project partners regarding the project activities.

(ii) The advisory working group must include among its members a

representative of the Department, representatives of secondary and postsecondary career occupational areas, representatives of business and industry, and researchers whose expertise and counsel may contribute to the success of the project.

(iii) At a minimum, the consortium must convene the advisory working group in person at least once annually, and must make use of technology to ensure regular, timely, and cost-effective communication.

(iv) The advisory working group must—

(A) Provide advice to the consortium on the implementation of the project;

(B) Help ensure that the project results are useful to a larger audience;

(C) Make recommendations to the consortium and the Department on possible enhancements;

(D) Review and comment on draft evaluation instruments and consortium products; and

(E) Advise on dissemination activities listed in section (d) of this notice.

(d) *Dissemination.* As the project progresses, the consortium must do the following:

(1) Package and disseminate the findings of the case studies in formats appropriate for each audience to interested entities, such as: postsecondary and secondary institutions and their representative organizations; employer organizations; State agencies responsible for secondary education; State agencies responsible for vocational and technical education; LEAs; and secondary schools.

(2) (i) Assist institutions of higher education that offer a two-year degree or certificate and LEAs to implement or adapt promising programs and strategies developed by the partnerships in ways that meet local needs.

(ii) The consortium may accomplish this through such means as—

(A) Offering professional development activities for States and outlying areas;

(B) Developing training institutes and materials designed to promote the replication of these activities by other partnerships across the country;

(C) If appropriate, organizing a limited number of site visits for practitioners, policymakers, and other interested parties, to demonstrate how these activities work in practice; and

(D) Hosting sessions at conferences, workshops, and other events that provide opportunities to share the promising practices and implementation approaches developed through this cooperative agreement.

(3) Link this project with other efforts of the Department of Education, the Department of Labor, and the National

Science Foundation to improve the preparation of individuals for postsecondary and career success.

(e) *Evaluation.* At the Department's request, the consortium and its partnerships must make available the data collected under section (b)(3)(i)(A)–(E) and (ii)(A)–(E), and participate in all evaluation activities the Department conducts related to this initiative.

(f) *Interim Reports.* Within 45 days after the conclusion of each project year— except for the final project year in which a final report must be submitted as described in paragraph (g) of this notice— the consortium must prepare and submit to the Department a progress report that—

(1) Provides an update on the completion of project goals and activities;

(2) Offers baseline and updated data on project participants;

(3) Outlines major challenges to achieving project goals, and strategies for addressing these challenges; and

(4) Describes major changes, if any, in project activities.

(g) *Final Report.* Within six months after the conclusion of the cooperative agreement, the consortium must prepare and submit to the Department a final technical report that—

(1) Outlines the activities and accomplishments of the partnerships;

(2) Provides evidence of the promising practices developed through the cooperative agreement;

(3) Includes the findings of the case studies and products based on these findings;

(4) Offers final data on student participants; and

(5) Includes the plan for disseminating the products and knowledge gained from the project, to appropriate audiences.

#### **Selection Criteria**

The Department will apply the following selection criteria in evaluating cooperative agreement applications under this competition.

The maximum total score any applicant may receive is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Local Partner Support.* (20 points)

(1) (i) The extent to which the applicant has in place a network of institutions that demonstrate capacity and support for the project.

(ii) The extent to which the applicant has demonstrated its capacity to obtain commitments and support from each partnership, such as support from eligible agencies, participating institutions of higher education, secondary schools, LEAs, and local employers.

*(b) Technical Approach. (50 points)*

(1) The extent to which the applicant presents—

(i) A clear justification for the occupational areas selected;

(ii) A clear delineation of academic and skill standards calibrated to the most rigorous State standards; and

(iii) The purpose and scope of the project. (15 points)

(2) The extent to which the applicant comprehensively addresses in its application each required activity, clearly defining the functions to be undertaken to accomplish each activity. (10 points)

(3) The extent to which the applicant—

(i) Identifies potential improvements in design and additional activities that may enhance the proposed project; and

(ii) Describes any anticipated problems and recommends solutions to these problems. (10 points)

(4) The extent to which the proposed project demonstrates its capacity to gather baseline and annual data on program participants under each partnership. (15 points)

*(c) Management Plan. (20 points)*

(1) The extent to which—

(i) The applicant includes a description, in a clear and sequential fashion, of the plan for managing the project; and

(ii) The plan provides credible evidence that the management of personnel, physical resources, activities, and work production will result in orderly and timely completion of work within the project performance period. (15 points)

(2) The extent to which the time commitments of the Project Director for the overall project and the time commitments of project personnel at each site are appropriate to the tasks assigned. (5 points)

*(d) Project Management. (10 points)*

The extent to which the Project Director for the overall project and project personnel at each site have clearly identified and documented qualifications, competencies, and experiences that are appropriate for the tasks to be carried out under this cooperative agreement.

**Definitions**

The definitions in section 3 of the Act apply to this competition. Specifically, the term “institution of higher education” has the meaning given the

term in section 101 of the Higher Education Act of 1965.

In addition, the term “occupational area” means a group of related jobs and occupations within an industry sector, such as the following:

(a) *Health Science.* (1) This term comprises courses or programs or both related to planning, managing, and providing diagnostic, therapeutic, information, and environmental services in health care.

(2) The term includes the following programs of study: Therapeutic Services, Diagnostic Services, Information and Communication Services, Environmental Supportive Services, and Biotechnology and Pharmaceutical Services.

(b) *Information Technology.* (1) This term comprises courses or programs or both related to the design, development, support, and management of hardware, software, multimedia, and systems integration services.

(2) This term includes the following programs of study: Network Systems, Information and Support Services, Interactive Media, and Program and Software Development.

**Waiver of Proposed Rulemaking**

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations and selection criteria. However, in order to make timely cooperative agreement awards in FY 2002, the Assistant Secretary has decided to issue this application notice with program requirements and selection criteria without first publishing the notice for public comment. These requirements and criteria will apply to the FY 2002 cooperative agreement competition only. The Assistant Secretary takes this action under authority of section 437(d)(1) of the General Education Provisions Act (GEPA).

Section 437(d)(1) of GEPA exempts from formal rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). The program authority for Vocational Education Research Activities (20 USC 2324 (c)) was substantially revised on October 31, 1998 by Pub. L. 105–332. This is the first competition under section 114(c)(1)(A) of the Act. Any requirements or criteria that the Department establishes in future years related to this authority will be

published in proposed form in the **Federal Register** with an opportunity for interested parties to comment.

*For Applications and Further Information Contact:* Scott Hess, U.S. Department of Education, 400 Maryland Avenue, SW., room 4332, Mary Switzer Building, Washington, DC 20202–7241. Telephone: (202) 205–9422, or via Internet: *Scott.Hess@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 program contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

**Electronic Access to This Department**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: [www.ed.gov/legislation/FedRegister](http://www.ed.gov/legislation/FedRegister).

You may also view this document and the application package in text or PDF at the following site: [www.ed.gov/offices/OVAE](http://www.ed.gov/offices/OVAE). To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

**Program Authority:** 20 U.S.C. 2324 (c)(1)(A).

Dated: August 7, 2002.

**Carol D'Amico,**

*Assistant Secretary for Vocational and Adult Education.*

[FR Doc. 02–20359 Filed 8–9–02; 8:45 am]

**BILLING CODE 4000–01–P**

**DEPARTMENT OF ENERGY**

**National Nuclear Security Administration; Notice of Comment Period Extension for the Notice of Intent To Prepare a Site-Wide Environmental Impact Statement for Lawrence Livermore National Laboratory**

**AGENCY:** Department of Energy, National Nuclear Security Administration.  
**ACTION:** Notice of comment period extension.

**SUMMARY:** On June 17, 2002, the National Nuclear Security Administration (NNSA) published, in the *Federal Register*, the Notice of Intent (NOI) to prepare a Site-Wide Environmental Impact Statement for Lawrence Livermore National Laboratory (67 FR 41224). The comment period for that NOI was scheduled to end on August 13, 2002. The NNSA has decided to extend the comment period until September 16, 2002. Written comments on the scope of the SWEIS or requests for information should be sent to Mr. Thomas Grim, Document Manager, 1301 Clay Street, Oakland, CA 94612-5208. Comments may also be sent by e-mail ([tom.grim@oak.doe.gov](mailto:tom.grim@oak.doe.gov)) or facsimile (925-422-1776). Additionally, any agency, state, pueblo, tribe, or units of local government that

desire to be designated a cooperating agency should contact: Mr. Thomas Grim at (925) 422-0704 by September 16, 2002.

Issued in Washington, DC, this 6th day of August, 2002.

**James J. Rose,**  
*Deputy NEPA Compliance Office, National Nuclear Security Administration.*  
 [FR Doc. 02-20304 Filed 8-9-02; 8:45 am]  
**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY**

**[Certification Notice—208]**

**Office of Fossil Energy; Notice of Filings of Coal Capability Powerplant and Industrial Fuel Use Act**

**AGENCY:** Office of Fossil Energy, DOE.  
**ACTION:** Notice of filings.

**SUMMARY:** The owners/operators of 10 baseload electric powerplants have submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended, in accordance with 10 CFR 501.60, 61.

**ADDRESSES:** Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Import/Export, Fossil Energy, Room 4G-039, FE-27, Forrestal

Building, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell at (202) 586-9624.

**SUPPLEMENTARY INFORMATION:** Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy (DOE). The Secretary is required to publish a notice in the *Federal Register* that a certification has been filed. The following owners/operators of proposed new baseload electric powerplants have filed self-certifications pursuant to section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61.

Owner/operator	Capacity	Plant location	In-service date
Tenaska Virginia Partners, L.P .....	885 MW ...	Palmyra, VA .....	June 1, 2004.
CalPeak Power—El Cajon LLC .....	49.5 MW ..	San Diego Cty, CA .....	May 21, 2002.
FPL Energy Marcus Hook, L.P .....	744 MW ...	Delaware City, PA .....	2nd Qrt. 2004.
Feather River Energy Ctr. LLC .....	45 MW ....	Sutter County, CA .....	4th Qrt. 2002.
Lambie Energy Center, LLC .....	45 MW ....	Solano County, CA .....	4th Qrt. 2002.
Goose Haven Energy Ctr, LLC .....	45 MW ....	Solano County, CA .....	4th Qrt. 2002.
Creed Energy Facility, LLC .....	45 MW ....	Solano County, CA .....	4th Qrt. 2002.
Pajaro Energy Center, LLC .....	45 MW ....	Monterey County, CA .....	4th Qrt. 2002.
Sunrise Power Company, LLC .....	585 MW ...	Fellows, CA .....	July 2003 Phase II.
Metcalfe Energy Center, LLC .....	600 MW ...	Santa Clara Cty., CA .....	Summer 2004.

Issued in Washington, DC, on August 1, 2002.

**Anthony J. Como,**  
*Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.*  
 [FR Doc. 02-20305 Filed 8-9-02; 8:45 am]  
**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket No. RP02-397-000]**

**ANR Pipeline Company; Notice of Tariff Filing**

August 6, 2002.

Take notice that on July 29, 2002, ANR Pipeline Company (ANR) filed revised tariff sheets that propose changes to the procedures applicable to the Right of First Refusal ("ROFR") in ANR's FERC Gas Tariff. The changes are designed to (1) allow Shippers to exercise ROFR with respect to a

specified level of expiring capacity; and (2) provide for notice periods that allow ANR sufficient time to resell capacity that shippers do not wish to retain. ANR has proposed Primary Tariff Sheets that revise the currently effective tariff sheets and an Alternate Tariff Sheet that revises the pending tariff sheets that have been filed as part of ANR's Order No. 637 settlement in Docket No. RP00-332-000. ANR proposes that the Primary Sheets be placed into effect on September 1, 2002, and that the Alternate Sheet be placed into effect upon acceptance of the pending sheets in Docket No. RP00-332-000.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-20320 Filed 8-9-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-403-000]

#### ANR Pipeline Company; Notice of Tariff Filing

August 6, 2002.

Take notice that on July 31, 2002, ANR Pipeline Company (ANR) filed revised tariff sheets to allow it to agree to minimum pressure commitments upon specified conditions to ensure that such commitments do not have any adverse effect on its system. ANR requests an effective date of September 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-20324 Filed 8-9-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER99-3288-007]

#### Arizona Public Service Company; Notice of Filing

August 6, 2002.

Take notice that on July 30, 2002, Arizona Public Service Company (APS) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Quarterly Refund payments to eligible wholesale customers under the Company's Fuel Cost Adjustment Clause (FAC).

A copy of this filing has been served upon the affected parties, the California Public Utilities Commission, and the Arizona Corporation Commission.

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. The Commission strongly encourages electronic filings.

*Comment Date:* August 20, 2002.

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

*Deputy Secretary.*

[FR Doc. 02-20311 Filed 8-9-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP02-417-000]

#### Colorado Interstate Gas Company; Notice of Application

August 6, 2002.

Take notice that on July 31, 2002, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado, 80944, in Docket No. CP02-417-000 filed an application pursuant to section 7(b) of the Natural Gas Act (NGA) and the Commission's Rules and Regulations, for permission and approval for CIG to abandon by sale and transfer certain certificated and non-certificated facilities, involved in the gathering of natural gas, located in Carson, Moore, Potter, Hartley, Hutchinson and Oldham Counties, Texas, which are part of the Panhandle Field, to Pioneer Natural Resources USA, Inc. (Pioneer), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502-8222 or for TTY, (202) 208-1659.

Any questions regarding CIG's application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs, Colorado Interstate Gas Company, P. O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520-3788 or by fax at (719) 667-7534 or Judy A. Heineman, Vice President and General Counsel, Colorado Interstate Gas Company, Post Office Box 1087 Colorado Springs, Colorado, 80944 at

(719) 520-4829 or by fax at (719) 520-4898.

CIG and Pioneer have entered into an agreement for the transfer of these facilities at a value at the time of transfer of \$19.5 million. CIG states that the facilities to be transferred consists of: (i) Approximately 700 miles of pipeline ranging in size from 2-inches to 24-inches in diameter with approximately 781 wells attached, (ii) approximately 49,000 horsepower of field compression, (iii) approximately 42 miles of fuel gas lines ranging in size from 2-inch to 20-inch diameter, and (iv) appurtenant facilities. CIG explains that the transfer to Pioneer consists of certain certificated facilities in addition to certain non-jurisdictional facilities that participate in the gathering of natural gas and the operation of a non-jurisdictional gathering system. CIG requests that the Commission issue an order approving the abandonment to be effective January 1, 2003, or earlier. CIG states that the transfer to Pioneer will not adversely affect customers as Pioneer will continue to provide the services that CIG previously provided.

As a result of the proposed abandonment, CIG also proposes to revise Volume No. 1 of its FERC Gas Tariff to remove references to gathering services and gathering rates and charges, and to cancel Rate Schedule X-5 and Volume No. 2 of its FERC Gas Tariff. Subsequently, Pioneer will file an application for a Declaratory Order with the Commission regarding these facilities.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 27, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to

participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**Linwood A. Watson, Jr.,**  
*Deputy Secretary.*

[FR Doc. 02-20309 Filed 8-9-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-389-063]

### Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

August 6, 2002.

Take notice that on July 30, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction: FTS-2 Service Agreement No. 73220 between Columbia Gulf Transmission Company and Florida Power & Light Company dated July 25, 2002.

Transportation service is to commence August 1, 2002 under the agreement.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96-389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections

385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-20327 Filed 8-9-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC02-65-001]

### Erie Boulevard Hydropower, L.P. and Orion Power New York GP II, Inc.; Notice of Filing

August 6, 2002.

Take notice that on July 25, 2002, Erie Boulevard Hydropower, L.P. (Erie) and Orion Power New York GP II, Inc. (Orion) pursuant to Section 203 of the Federal Power Act, filed with the Federal Energy Regulatory Commission an application seeking an order amending the Commission's Order of June 11, 2002, in this docket so as to authorize Orion instead of Erie to acquire the transmission facilities associated with the 2.2 MW Newton Falls hydroelectric project owned by Newton Falls Holdings, LLC.

Orion is a Delaware Corporation and, like Erie, is an indirect wholly-owned subsidiary of Reliant Resources, Inc. The facilities to be acquired are located on a tributary of the Oswegatchie River in St. Lawrence County, NY.

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. The Commission strongly encourages electronic filings.

*Comment Date:* August 15, 2002.

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

*Deputy Secretary.*

[FR Doc. 02-20310 Filed 8-9-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. GT02-32-000]

#### Horizon Pipeline Company, L.L.C.; Notice of Negotiated Rate

August 6, 2002.

Take notice that on August 1, 2002, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 7C, to be effective August 1, 2002.

Horizon states that the purpose of this filing is to implement a new negotiated rate transaction between Horizon and Natural Gas Pipeline Company of America under Horizon's Rate Schedule ITS pursuant to Section 33 of the General Terms and Conditions of Horizon's Tariff.

Horizon states that copies of the filing are being mailed to Horizon's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's

rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-20312 Filed 8-9-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER02-2388-000]

#### ISO New England Inc.; Notice of Filing

August 2, 2002.

Take notice that on July 31, 2002, ISO New England Inc., submitted as a Section 205 filing in the above docket revisions to Market Rule 11, with a requested effective date of three days following a Commission order accepting the proposed revisions.

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. The Commission strongly encourages electronic filings.

*Comment Date:* August 12, 2002.

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

*Deputy Secretary.*

[FR Doc. 02-20290 Filed 8-8-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. RP00-337-004 and RP01-93-004]

#### Kern River Gas Transmission Company; Notice of Tariff Filing

August 6, 2002.

Take notice that on July 30, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective January 1, 2003:

Substitute Original Sheet No. 201

Substitute Original Sheet No. 202

Kern River states that the purpose of this filing is to revise Kern River's pending segmentation procedures to clarify proposed restrictions on overlapping, out-of-path nominations submitted by a releasing shipper and a related replacement shipper.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the

instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-20319 Filed 8-9-02; 8:45 am]

BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-401-000]

#### National Fuel Gas Supply Corporation; Notice of Tariff Filing

August 6, 2002.

Take notice that on July 31, 2002, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective August 1, 2002: Forty Seventh Revised Sheet No. 9

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. Further, National is required to charge the recalculated monthly rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of \$0.18 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-20323 Filed 8-9-02; 8:45 am]

BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-406-000]

#### Natural Gas Pipeline Company of America; Notice of Filing Final GSR Reconciliation Report

August 6, 2002.

Take notice that on August 1, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing its Final Reconciliation Report relating to Gas Supply Realignment (GSR) cost recovery.

Natural states that the purpose of this filing is to comply with section 38.10(b)(3) of the General Terms and Conditions of Natural's FERC Gas Tariff which requires Natural to file a Final Reconciliation Report within 9 months after the close of Natural's GSR extended collection period, which ended on November 30, 2001.

Natural states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before August 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. The Commission strongly encourages electronic filings. 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. 02-20325 Filed 8-9-02; 8:45 am]

BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-452-000]

#### Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 6, 2002.

Take notice that on August 1, 2002, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective October 1, 2002:

Ninth Revised Sheet No.  
231 Ninth Revised Sheet No. 231-A  
Fourth Revised Sheet No. 231-B

Northwest states that the purpose of this filing is to change Northwest's current tariff provisions which require the fuel use requirements factor (Factor) applicable to its transportation rate schedules to be determined annually and instead provide for this Factor to be determined semi-annually.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-20326 Filed 8-9-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-407-000]

#### Pine Needle LNG Company, L.L.C.; Notice of Tariff Filing

August 6, 2002.

Take notice that on August 1, 2002 Pine Needle LNG Company, L.L.C. (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, Fourth Revised First Revised Sheet No. 4, to become effective September 1, 2002.

Pine Needle states that the tariff sheet submitted in the filing reflects a general rate increase. Pine Needle states that the cost of service proposed in the filing is \$21,074,411, compared to a cost of service of \$20,332,566 underlying Pine Needle's rates found just and reasonable in Docket No. CP96-52, as more fully described in the filing. Pine Needle states that the principal factor supporting the increase in cost of service is an increase in rate of return and related taxes.

Pine Needle further states that the filing reflects the following as related to its pre-filed methods: (1) A proposal to leave unchanged the annual depreciation rate of 2.5% for its operating facilities and (2) proposes an amortization rate of 10% for its in-house developed software—major systems Pine Needle states that copies of the filing are being mailed to each of its affected customers, interested State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's

rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-20318 Filed 8-9-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-398-000]

#### TransColorado Gas Transmission Company; Notice of Tariff Filing

August 6, 2002.

Take notice that on July 30, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective September 1, 2002,

Eighth Revised Sheet No. 247  
Third Revised Sheet No. 247A  
Second Revised Sheet No. 247B  
Original Sheet No. 247C

TransColorado is proposing that it be permitted to assess a zero charge for the fuel component of its fuel gas reimbursement percentage (FGRP) and only charge the lost or gained and unaccounted-for gas component of its FGRP for specific backhaul and displacement transportation that it has specified in its revised tariff. TransColorado states that the backhaul and displacement transportation described in Section 12.9(d) to the General Terms and Conditions of its tariff will require no compression or consumption of fuel for any other purpose on TransColorado's system and

therefore should not be subjected to the fuel component of TransColorado's FGRP.

TransColorado states that a copy of this filing, with the privileged material removed, has been served upon TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-20321 Filed 8-9-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97-255-050]

#### TransColorado Gas Transmission Company; Notice of Compliance Filing

August 6, 2002.

Take notice that on August 1, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Forty-Ninth Revised Sheet No. 21 and Twenty-Second Revised Sheet No. 22A, to be effective August 1, 2002.

TransColorado states that the filing is being made in compliance with the

Commission's letter order issued March 20, 1997, in Docket No. RP97-255-000. The tendered tariff sheets propose to revise TransColorado's Tariff to reflect one amended negotiated-rate contract with Sempra Energy Trading, one new contract with ExxonMobil Gas Marketing Company (Exxon) and the deletion of the expired contract with Duke Energy Trading and Marketing, L.L.C.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-20328 Filed 8-9-02; 8:45 am]

BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-399-000]

#### Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

August 6, 2002.

Take notice that on July 30, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as become part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixth Revised Twenty-First Revised

Sheet No. 28, with a proposed effective date of August 1, 2002.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X-28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S-2. This filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-20322 Filed 8-9-02; 8:45 am]

BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-494-001]

#### Williams Gas Pipelines Central, Inc.; Notice of Compliance Filing

August 6, 2002.

Take notice that on August 1, 2002, Williams Gas Pipelines Central, Inc.

(Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets listed on Appendix A to the filing.

Williams states that this filing is being made to comply with the Commission's Order on Compliance with Order Nos. 637, 587-G and 587-L issued on July 3, 2002 (100 FERC ¶ 61,034 (2002)). The tariff sheets incorporate changes directed by the Commission in its July 3 Order.

Williams states that copies of the revised tariff sheets are being mailed to Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-20317 Filed 8-9-02; 8:45 am]

BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER98-4138-002, et al.]

#### Potomac Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

August 2, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Potomac Electric Power Company**

[Docket No. ER98-4138-002]

Take notice that Potomac Electric Power Company, on July 30, 2002, tendered for filing a triennial update of market-based rate authority.

*Comment Date:* August 20, 2002.

**2. Tampa Electric Company**

[Docket No. ER02-1177-002]

Take notice that on July 30, 2002, Tampa Electric Company (TEC) tendered for filing in compliance with the July 1, 2002 letter order a revised Interconnection and Operating Agreement between TEC and Auburndale Peaker Energy Center, L.L.C. as a service agreement under TEC's open access transmission tariff.

*Comment Date:* August 20, 2002.

**3. Progress Energy Inc. on behalf of Progress Ventures, Inc.**

[Docket No. ER02-2337-000]

Take notice that on July 19, 2002, Progress Ventures, Inc., (Progress Ventures) tendered for filing an executed Service Agreement between Progress Ventures and the following eligible buyer, The Energy Authority, Inc. Service to this eligible buyer will be in accordance with the terms and conditions of Progress Ventures Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Progress Ventures requests an effective date of June 19, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, the Florida Public Service Commission and the Georgia Public Service Commission.

*Comment Date:* August 19, 2002.

**4. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC**

[Docket No. ER02-2340-001]

Take notice that on July 30, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) amended its filing of Service Agreement No. 156 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply continues to request a waiver of notice requirements for an effective date of June 24, 2002 for Indianapolis Power & Light Company.

Copies of the filing have been provided to the Customer.

*Comment Date:* August 20, 2002.

**5. Power Choice, Inc.**

[Docket No. ER02-2382-000]

Take notice that on July 30, 2002, Power Choice, Inc. (Power Choice) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Power Choice Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Power Choice intends to engage in wholesale electric power and energy purchases and sales as a marketer. Power Choice is not in the business of generating or transmitting electric power. Power Choice is a Texas corporation with no affiliates.

*Comment Date:* August 20, 2002.

**6. Allegheny Energy Unit 1 and Unit 2, L.L.C.**

[Docket No. ER02-2383-000]

Take notice that on July 30, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Unit 1 and Unit 2, L.L.C. (Units 1 and 2, L.L.C.) filed a Notice of Cancellation of its Market-Based Rate Schedule, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-7.

Units 1 and 2, L.L.C. requests an effective date for the cancellation of June 1, 2001.

*Comment Date:* August 20, 2002.

**7. UGI Development Company**

[Docket No. ER02-2384-000]

Take notice that on July 26, 2002, UGI Development Company (UGID) tendered for filing a Second Revised Service Agreement No. 2 for wholesale power sales transactions under UGID's Wholesale Power Sales Tariff, FERC Electric Tariff First Revised Volume No. 1, by and between UGID and UGI Utilities, Inc.

UGID requests an effective date of June 30, 2001 for the Second Revised Service Agreement No. 2.

*Comment Date:* August 16, 2002.

**8. Pinnacle West Capital Corporation**

[Docket No. ER02-2385-000]

Take notice that on July 30, 2002, Pinnacle West Capital Corporation (PWCC) tendered for filing a Service Agreement, Rate Schedule FERC No. 7, under PWCC's Rate Schedule FERC No. 1 for service to Phelps Dodge Energy Services (PDES).

A copy of this filing has been served on PDES.

*Comment Date:* August 20, 2002.

**9. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company**

[Docket No. ER02-2386-000]

Take notice that on July 30, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with Maclaren Energy Inc.

Ameren Energy seeks Commission acceptance of these service agreements effective July 1, 2002. Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

*Comment Date:* August 20, 2002.

**10. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-2387-000]

Take notice that on July 30, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a proposed Schedule 15 (Power Factor Correction Service) of the Midwest ISO's Open Access Transmission Tariff (OATT), which, among other things, requires a Transmission Customer supplying capacity and energy to loads within the Midwest ISO's Control Area to maintain a power factor within the same range as applicable to comparably configured and located loads on the Transmission System.

The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at [www.midwestiso.org](http://www.midwestiso.org) under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

*Comment Date:* August 20, 2002.

**Standard Paragraph**

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

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

*Deputy Secretary.*

[FR Doc. 02-20285 Filed 8-9-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EF02-3011-000, et al.]

#### **Southeastern Power Administration, et al.; Electric Rate and Corporate Regulation Filings**

August 5, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

#### **1. Southeastern Power Administration**

[Docket No. EF02-3011-000]

Take notice that on July 29, 2002, the Secretary of Energy confirmed and approved Rate Schedules SOCO-1-A, SOCO-2-A, SOCO-3-A, SOCO-4-A, ALA-1-J, MIS-1-J, Duke-1-A, Duke-2-A, Duke-3-A, Duke-4-A, Santee-1-A, Santee-2-A, Santee-3-A, Santee-4-A, SCE&G-1-A, SCE&G-2-A, SCE&G-3-A, SCE&G-4-A, Regulation 1, Replacement 1, Pump-1-A, and Pump-2 for power from Southeastern Power Administration's (Southeastern) Georgia-Alabama-South Carolina System. The approval extends through September 30, 2007.

The Secretary of Energy states that the Federal Energy Regulatory Commission

(Commission) by order issued November 9, 2000, in Docket No. EF98-3031-000, confirmed and approved Rate Schedules SOCO-1, SOCO-2, SOCO-3, SOCO-4, ALA-1-1 MISS-1-1, Duke-1, Duke-2, Duke-3, Duke-4, Santee-1, Santee-2, Santee-3, Santee-4, SCE&G-1, SCE&G-2, SCE&G-3, SCE&G-4, and Pump 1. On April 23, 1999, in Docket No. EF98-3011-001, the Commission issued an order granting rehearing for further consideration. On July 31, 2001, the Commission issued an order denying rehearing on the same docket number.

Southeastern proposes in the instant filing to replace these rate schedules.

*Comment Date:* August 28, 2002.

#### **2. Southeastern Power Administration**

[Docket No. EF02-3031-000]

Take notice that on July 29, 2002, the Secretary of Energy confirmed and approved Rate Schedules JW-1-G and JW-2-D for power from Southeastern Power Administration's (Southeastern) Jim Woodruff System. The approval extends through September 19, 2005.

The Secretary of Energy states that the Commission, by order issued November 9, 2000, in Docket No. EF00-3031-000, confirmed and approved Rate Schedules JW-1-F and JW-2-C.

Southeastern proposes in the instant filing to replace these rate schedules.

*Comment Date:* August 28, 2002.

#### **3. Lower Mount Bethel Energy, LLC**

[Docket No. EG02-174-000]

Take notice that on August 1, 2002, Lower Mount Bethel Energy, LLC (Applicant), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Delaware limited liability company formed for the purpose of constructing, leasing and operating the Lower Mount Bethel Energy generating plant, located in Lower Mount Bethel Township, Northampton County, Pennsylvania, which will generate up to 600 MW. The Applicant is an indirect subsidiary of PPL Corporation, a public utility holding company exempt from registration under Section 3(a)(1) of the Public Utility Holding Company Act of 1935.

*Comment Date:* August 26, 2002.

#### **4. Minergy Detroit, LLC**

[Docket No. EG02-175-000]

Take notice that on August 1, 2002, Minergy Detroit, LLC filed an Application for Determination of

Exempt Wholesale Generator Status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, all as more fully explained in the Application.

*Comment Date:* August 26, 2002.

#### **5. Riverside Generating Company, L.L.C.**

[Docket No. ER01-1044-003]

Take notice that on July 31, 2002, Riverside Generating Company, L.L.C. (Riverside) tendered for filing a notice of change in status.

*Comment Date:* August 21, 2002.

#### **6. Arizona Public Service Company**

[Docket No. ER02-2105-001]

Take notice that on July 31, 2002, Arizona Public Service Company (APS) tendered for filing a compliance with FERC Order No. 614 as directed in the above Docket for the Service Agreement to provide point-to-point transmission service to Southwest Transmission Cooperative, Inc. under APS' Open Access Transmission Tariff.

*Comment Date:* August 21, 2002.

#### **7. Entergy Services, Inc.**

[Docket No. ER02-2243-001]

Take notice that on July 31, 2002, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Mississippi, Inc. (Entergy Mississippi), tendered for filing an amendment to Entergy Services' July 2, 2002, filing of an unexecuted, amended Interconnection and Operating Agreement between Entergy Mississippi and Reliant Energy Choctaw County, LLC (Reliant). The amendment supplies the one-line diagram that was originally submitted in Docket No. ER02-164-000 with the original Interconnection and Operating Agreement between Entergy Mississippi, Inc., and Reliant.

*Comment Date:* August 21, 2002.

#### **8. California Independent System Operator Corporation**

[Docket No. ER02-2321-001]

Take notice that on July 30, 2002, the California Independent System Operator Corporation (ISO) submitted an errata filing concerning the ISO's July 15, 2002 filing of Amendment No. 46 to the ISO Tariff. The ISO has served copies of this filing upon all entities that are on the official service list for Docket No. ER02-2321-000.

*Comment Date:* August 20, 2002.

#### **9. TransCanada Energy Ltd. (NorthernLights Transmission Project)**

[Docket No. ER02-2389-000]

Take notice that on July 31, 2002, TransCanada Energy Ltd. (TCE) on

behalf of one or more to be named affiliate companies, referred to as "NorthernLights", submitted for filing, pursuant to Section 205 of the Federal Power Act, an application requesting that the Federal Energy Regulatory Commission (the Commission) (1) authorize NorthernLights to sell transmission service at negotiated rates; and (2) grant certain waivers in connection with their proposed NorthernLights transmission project.

TCE requests that the Commission issue its approval no later than September 30, 2002, so that the initial open season can commence by November 1, 2002.

*Comment Date:* August 21, 2002.

#### 10. West Texas Utilities Company

[Docket No. ER02-2390-000]

Take notice that on July 31, 2002, West Texas Utilities Company (WTU) submitted for filing the Interconnection Agreement, dated June 4, 2002, between WTU and the City of Coleman, Texas (Coleman) amended to include an additional point of interconnection to be established between the parties at WTU's East Coleman Substation.

WTU seeks an effective date of June 4, 2002, for the Interconnection Agreement. WTU served copies of the filing on Coleman and the Public Utility Commission of Texas.

*Comment Date:* August 21, 2002.

#### 11. Southern California Edison Company

[Docket No. ER02-2391-000]

Take notice that on July 31, 2002, Southern California Edison Company (SCE) tendered for filing a Service Agreement For Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff, an Interconnection Facilities Agreement, and a Reliability Management System Agreement (Agreements) between SCE and Sierra Power Corporation (Sierra Power).

These Agreements specify the terms and conditions under which SCE will interconnect Sierra Power's Terra Bella generating facility to its electrical system and provide Distribution Service for up to 9 MW of power produced by the generating facility. Copies of this filing were served upon the Public Utilities Commission of the State of California and Sierra Power.

*Comment Date:* August 21, 2002.

#### 12. Orion Power Midwest, L.P. FirstEnergy Operating Companies

[Docket No. ER02-2392-000]

Take notice that on July 31, 2002, Orion Power Midwest, L.P. and certain

of FirstEnergy Corp.'s operating company subsidiaries tendered for filing with the Federal Energy Regulatory Commission a Notice of Cancellation of three Must-Run Agreements between Orion Power Holdings, Inc. and American Transmission Systems, Incorporated, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company. One agreement is for the Avon Lake generating facility, currently designated as Rate Schedule FERC No. 4, together with Supplement No. 1 to Rate Schedule FERC No. 4. The second agreement is for the New Castle generating facility, and is designated as Rate Schedule FERC No. 5, together with Supplement No. 1 to Rate Schedule FERC No. 5. The final agreement is for the Niles generating facility, designated as Rate Schedule FERC No. 6, together with Supplement No. 1 to Rate Schedule FERC No. 6.

*Comment Date:* August 21, 2002.

#### 13. Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company

[Docket No. ER02-2393-000]

Take notice that Boston Edison Company (BECO), Cambridge Electric Light Company (Cambridge), and Commonwealth Electric Company (Commonwealth) (collectively, the NSTAR Companies), on July 31, 2002, tendered for filing three executed service agreements under their respective market-based rate tariffs with Constellation Power Source, Inc.

*Comment Date:* August 21, 2002.

#### 14. California Independent System Operator Corporation

[Docket No. ER02-2394-000]

Take notice that on July 31, 2002, the California Independent System Operator Corporation (ISO) submitted for Commission filing and acceptance an amendment (Amendment No. 2) to the Utility Distribution Company Operating Agreement (UDC Operating Agreement) between the ISO and the City of Anaheim, California, as well as the revised UDC Operating Agreement incorporating the terms of Amendment No. 2 to the UDC Operating Agreement. The ISO requests that the filing be made effective as of May 16, 2002. The ISO requests privileged treatment, pursuant to 18 CFR 388.112, with regard to portions of the filing.

The ISO has served copies of this filing upon the City of Anaheim, California, the Public Utilities Commission of the State of California, and all parties in Docket No. ER98-1923.

*Comment Date:* August 21, 2002.

#### 15. New England Power Pool

[Docket No. ER02-2395-000]

Take notice that on July 31, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Allied Utility Network LLC (Allied Utility), and to terminate the memberships of PSEG Energy Technologies Inc. and Public Service Electric and Gas Company (the PSEG Affiliates) and Enron Energy Marketing Corp. (EEMC). The Participants Committee requests an August 1, 2002 effective date for commencement of participation in NEPOOL by Allied Utility, and a July 1, 2002 effective date for the termination of the PSEG Affiliates and EEMC.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

*Comment Date:* August 21, 2002.

#### 16. Northwestern Energy

[Docket No. ER02-2396-000]

Take notice that on July 31, 2002, NorthWestern Energy (NWE, formally The Montana Power Company) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 executed Network Integration Transmission Service Agreements with Barretts Minerals Inc. (Barretts) and Stillwater Mining Company (Stillwater) under NWE's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Barretts and Stillwater.

*Comment Date:* August 21, 2002.

#### 17. Great Lakes Hydro America, LLC

[Docket No. ER02-2397-000]

Take notice that on July 31, 2002, GNE, LLC (GNE) tendered for filing with the Federal Energy Regulatory Commission (Commission) changes to its Commission-approved market-based rate tariff to reflect its legal name change to Great Lakes Hydro America, LLC. on July 26, 2002.

*Comment Date:* August 21, 2002.

#### 18. Westar Energy, Inc.

[Docket No. ER02-2398-000]

Take notice that on July 31, 2002, Westar Energy, Inc., filed a Notice of Succession whereby Westar Energy adopted, ratified and made its own, in every respect all applicable rate schedules, and supplements thereto, listed below, heretofore filed with the

Federal Energy Regulatory Commission (Commission) by Western Resources, Inc. The purpose of the filing is to recognize the change in name of Western Resources, Inc., to Westar Energy, Inc., adopted effective June 19, 2002. Westar Energy states in its Notice that no change in ownership or operation of jurisdictional facilities occurred as a result of the name change.

Westar Energy notes in its filing that its Notice of Succession was inadvertently filed out-of-time. Westar Energy requests waiver of the 30-day filing requirement and for a limited waiver of Order No. 614. Westar Energy submits that since this filing involves only name change with no change in ownership or operation of jurisdictional facilities, that no party has been harmed or prejudice by the short delay in filing.

*Comment Date:* August 21, 2002.

#### Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

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

*Deputy Secretary.*

[FR Doc. 02-20286 Filed 8-9-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 10855-002, Michigan; Project No. 2589-024, Michigan]

#### Upper Peninsula Power Company; Marquette Board of Light and Power; Notice of Availability of Final Environmental Assessment

August 5, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects Staff (Staff) has reviewed the application for an initial license for the Dead River Project and a new license for the Marquette Project, both located on the Dead River in Marquette County, Michigan, and has prepared a final environmental assessment (FEA) for the projects. In this FEA, the Staff has analyzed the potential environmental effects of the existing projects and has concluded that licensing the projects, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA 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. This FEA may also be viewed on the Internet at <http://www.ferc.gov> using the "RIMS" link; select "Docket#" and follow the instructions. Please call (202) 208-2222 for assistance.

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

*Deputy Secretary.*

[FR Doc. 02-20288 Filed 8-8-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP02-387-000]

#### Petal Gas Storage, L.L.C.; Notice of Intent to Prepare an Environmental Assessment for the Proposed Natural Gas Storage Cavern Expansion Project and Request for Comments on Environmental Issues

August 6, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an

environmental assessment (EA) that will discuss the environmental impacts of Petal Gas Storage, L.L.C.'s (Petal) proposed natural gas storage cavern expansion project in Forrest County, Mississippi.<sup>1</sup> This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a Petal representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Petal could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" should have been attached to the project notice Petal provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (<http://www.ferc.gov>).

This Notice of Intent (NOI) is being sent to landowners along Petal's proposed pipeline route; Federal, state, and local government agencies; national elected officials; regional environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and the Commission's list of parties to the proceeding.

Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally, with this NOI we<sup>2</sup> are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated Petal's proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should

<sup>1</sup> Petal's application was filed under section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations on June 18, 2002.

<sup>2</sup> "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

follow the instructions for filing comments described below.

#### *Summary of the Proposed Project*

Petal proposes to expand its existing natural gas storage facilities to meet projected future market demands. To accomplish this, Petal would:

- convert existing liquefied petroleum gas Cavern No. 3 into a storage cavern for natural gas, with a capacity up to 3 billion cubic feet (Bcf);
- construct new Cavern No. 8, with a working capacity up to 5 Bcf;
- add a 5,000 horsepower unit to Petal's existing Compressor Station No. 2;
- construct about 3,683 feet of 16-inch-diameter natural gas pipelines between Cavern No. 3, Cavern No. 8, and Compressor Station No. 2;
- construct about 3,575 feet of 12-inch-diameter water and brine lines; and
- install dehydration and pressure regulation facilities at Compressor Station No. 2.

Cavern No. 3 is about 0.2 mile west of Petal's existing storage plant, on property Petal recently acquired from Suburban Propane, L.P. (Suburban). The former Suburban parcel contains existing leach plant facilities, brine disposal facilities, and water wells necessary for the conversion and expansion of Cavern No. 3. Cavern No. 8 is situated on a 23 acre parcel owed by Petal at the northwest corner of its existing storage plant. The water wells, leach plant, and brine disposal facilities necessary for the creation of Cavern No. 8 are extant within the Dynegy, Inc. property adjacent to Petal's storage plant. The new compressor unit, dehydration facilities, and regulation facilities would be installed within Petal's existing Compressor Station No. 2. The general location of the facilities proposed by Petal is shown on the map attached as appendix 1.<sup>3</sup>

#### *Land Requirements for Construction*

Construction of the facilities proposed by Petal would affect about 21 acres of land. The permanent facilities would occupy about 6 acres. The remaining land would only be used temporarily, and after construction would be restored

<sup>3</sup> The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available for review at the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208-1371, or on the FERC Internet website ([www.ferc.gov](http://www.ferc.gov)) using the FERRIS link. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

to their previous condition and uses. About 65 percent of the land to be affected by construction is owned in fee by Petal. Petal claims to have reached agreements for all other necessary rights-of-way with adjacent landowners.

#### *The EA Process*

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. We will also evaluate possible alternatives to the proposed action, or portions of the project, and make recommendations on how to lessen or avoid impacts on various environmental resources.

Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

#### *Currently Identified Environmental Issues*

The EA will discuss impacts that could occur as a result of construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Petal. This preliminary list of issues may be changed based on your comments and our analysis.

- **Geology and Soils**
  - Crossing soils with high erosion and poor revegetation potential.
  - Crossing prime farmland soils.
- **Water Resources and Wetlands**
  - Drilling for Cavern No. 8 will extend through the Miocene aquifer.

—Four wetlands were identified in the project area.

- **Vegetation and Wildlife**
  - About 9 acres of upland forest would be affected.
  - May affect the federally-listed threatened gopher tortoise.

#### *Public Participation*

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentator, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas/Hydro Branch, PJ-11.3;
- Reference Docket No. CP02-387-000; and
- Mail your comments so that they will be received in Washington, DC on or before September 9, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments, interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet website at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

We may mail the EA for comments. If you are interested in receiving it, please return the Information Request (appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

#### *Becoming an Intervenor*

In addition to involvement in the EA scoping process, you may want to become an official party to the

proceeding known as an “intervenor.” Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission’s service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.214).<sup>4</sup> Only intervenors have the right to seek rehearing of the Commission’s decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

#### *Additional Information*

Additional information about the proposed project is available from the Commission’s Office of External Affairs at 1–866–208–FERC or on the FERC Internet website ([www.ferc.gov](http://www.ferc.gov)) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at (202) 502–8222, TTY (202) 208–1659. The FERRIS link on the FERC Internet website also provides access to the text of formal documents issued by the Commission, such as orders, notices, and rulemakings.

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

*Deputy Secretary.*

[FR Doc. 02–20308 Filed 8–9–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12188–000.

c. *Date Filed:* June 10, 2002.

d. *Applicant:* Bumping Lake Hydro, LLC.

e. *Name of Project:* Bumping Lake Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by Roza Irrigation District on the Bumping River in Yakima County, Washington. The proposed project would not occupy Federal land or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442, Telephone: (208) 745–8630.

i. *FERC Contact:* Mr. Lynn R. Miles, Sr. (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission’s web site under the “e-Filing” link. The Commission strongly encourages electronic filings. Please include the project number (P–12188–000) on any comments or motions filed.

The Commission’s Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an 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. *Description of Project:* The proposed project would consist of: (1)

the existing 44-foot-high, 2,925-foot-long earthfill dam, (2) the existing Bumping Lake with a surface area of 1,303 acres and a storage capacity of 37,700 acre-feet at a normal maximum water surface elevation of 3,426 feet, (3) a 108-inch-diameter, 600-foot-long steel penstock, (4) a powerhouse with an installed capacity of 3 megawatts, (5) a 25-kv transmission line approximately 1 mile in length, and (6) appurtenant facilities. The project would have an annual generation of 16 GWh.

l. 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). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

<sup>4</sup> Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

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

*Deputy Secretary.*

[FR Doc. 02-20054 Filed 8-9-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Intent To File Application for a New License

August 5, 2002.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No:* 2545.

c. *Date filed:* July 29, 2002.

d. *Submitted By:* Avista Corporation.

e. *Name of Project:* Spokane River Hydroelectric Project.

f. *Location:* The project consists of five developments located on Spokane River in eastern Washington and north Idaho.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from Debbie Biggs, Avista Utilities, 1411 E. Mission Ave., Spokane, Washington 99202, 509-495-2858.

i. *FERC Contact:* Alan Mitchnick, 202-219-2826. Alan Mitchnick@Ferc.Gov.

j. *Expiration Date of Current License:* July 31, 2007.

k. *Project Description:* The five developments includes a dam or dams (where multiple river channels are involved), an operating reservoir, a powerhouse, and various appurtenant structures and components. Total installed capacity of the five developments is 137 megawatts.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2545. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2005.

A copy of the Notice of Intent is on file with the Commission and is

available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link—select "Docket #" and follow the instructions (call 202-208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

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

*Deputy Secretary.*

[FR Doc. 02-20287 Filed 8-8-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Request for Extension of Time to Commence and Complete Project Construction and Soliciting Comments, Motions to Intervene, and Protests

August 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Extension of Time.

b. *Project No.:* 10455-023.

c. *Date Filed:* July 3, 2002.

d. *Applicant:* JDJ Energy Company.

e. *Name of Project:* River Mountain Pumped Storage Project.

f. *Location:* The project is located on the Arkansas River in Logan County, near Dardanelle, Arkansas. The project utilizes Federal lands on the shoreline of Lake Dardanelle.

g. *Pursuant to:* Public Law 105-283, 112 Stat. 2100.

h. *Applicant Contact:* Donald H. Clarke, Esquire, Law Offices of GKRSE, 1500 K Street, NW., Suite 330, Washington, DC 20005, (202) 408-5400.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219-2671, or e-mail address: [lynn.miles@ferc.fed.us](mailto:lynn.miles@ferc.fed.us).

j. *Deadline for filing comments and or motions:* September 2, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P-10455-023) on any comments or motions filed.

k. *Description of Request:* The licensee requests a two-year extension

of time to commence and complete construction of the River Mountain Pump Storage Project. The licensee has filed monthly progress reports this year summarizing its pre-construction activities and requests the additional time to select a new engineering contractor to commence project. If granted, this would be the licensee's final extension authorized by Public Law No. 105-283, 112 Stat. 2100.

l. 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). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

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

*Deputy Secretary.*

[FR Doc. 02-20313 Filed 8-9-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12217-000.

c. *Date Filed:* June 17, 2002.

d. *Applicant:* Bayou D'Arbonne Hydro, LLC.

e. *Name of Project:* Bayou D'Arbonne Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by D'Arbonne Lake Commission, on the Bayou D'Arbonne in Union Parish, Louisiana. The proposed project would not occupy Federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442, (208) 745-8630.

i. *FERC Contact:* Mr. Lynn R. Miles, Sr. (202) 219-2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P-12217-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) the existing 54-foot-high, 2,445-foot-long dam, (2) the existing Bayou D'Arbonne Reservoir, which has a surface area of 15,250 acres and a storage capacity of 130,000 acre-feet at a normal maximum water surface elevation of 80 feet, (3) an 84-inch-diameter, 100-foot-long steel penstock, (4) a powerhouse with an installed capacity of 1.8 megawatts, (5) a 15-kv transmission line approximately 1 mile in length, and (6) appurtenant facilities. The project would have an annual generation of 6.6 GWh.

l. 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). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to

submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the

Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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

*Deputy Secretary.*

[FR Doc. 02-20314 Filed 8-9-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* Preliminary Permit.
- b. *Project No:* 12222-000.
- c. *Date Filed:* June 17, 2002.
- d. *Applicant:* De Cordova Hydro, LLC.
- e. *Name of Project:* De Cordova Dam Hydroelectric Project.
- f. *Location:* The proposed project would be located on an existing dam owned by the Brazos River Authority, on the Brazos River in Hood County, Texas. The proposed project would not occupy federal lands or facilities.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442, (208) 745-8630.
- i. *FERC Contact:* Mr. Lynn R. Miles, Sr. (202) 219-2671.
- j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P-12222-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list

for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) the existing 84-foot-high, 2,200-foot-long dam, (2) the existing Lake Granbury, which has a surface area of 1,350 acres with a storage capacity of 240,640 acre-feet at a normal maximum water surface elevation of 692 feet, (3) a 120-inch-diameter, 200-foot-long steel penstock, (4) a powerhouse with an installed capacity of 4 megawatts, (5) a 25-kv transmission line approximately 1 mile in length, and (6) appurtenant facilities. The project would have an annual generation of 27.5 GWh.

l. 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). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include

an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be

obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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

*Deputy Secretary.*

[FR Doc. 02-20315 Filed 8-9-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12244-000.

c. *Date Filed:* June 17, 2002.

d. *Applicant:* Town Lake Hydro, LLC.

e. *Name of Project:* Town Lake Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the City of Austin, on the Colorado River in Travis County, Texas. The proposed project would not occupy Federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745-8630.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219-2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P-12244-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission

to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the City of Austin's existing Town Lake Dam would consist of: (1) the existing 65-foot-high, 1,240-foot-long dam and Lake Travis, which has a 900-acre surface area at a normal water surface elevation of 428 feet, (2) a 108-inch-diameter, 200-foot-long steel penstock, (2) a powerhouse containing one generating unit with an installed capacity of 2.5 MW, (3) a 15-kv transmission line approximately 1 mile long, and (4) appurtenant facilities. The project would have an annual generation of 9.2 GWh.

l. 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). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*: A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*: Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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

*Deputy Secretary.*

[FR Doc. 02-20316 Filed 8-9-02; 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**

August 5, 2002.

This constitutes notice, in accordance with 18 CAR 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 CAR 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 CAR 1501.6, made under 18 CAR 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).

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Project No. 1494-215 .....	7-01-02	Jim Burroughs (B. Peter Yarrington).
2. Project No. 1494-215 .....	7-01-02	B. Peter Yarrington.
3. Project Nos. 1494-232, -237 amd -240 .....	7-2-02	Jack and Cheryl Lenhart.
4. CP01-361-000 .....	7-30-02	Alex Brady.
5. Project No. 1864-016 .....	7-31-02	Wayne Borseth.
6. CP02-396-000 PF01-1-000 .....	7-31-02	Kenneth Frye /Tony Froomjian.
7. CP02-396-000 .....	8-2-02	Kenneth Frye (Dana Beegle).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-20289 Filed 8-8-02; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FR L-7256-4]

### Agency Information Collection Activities: Proposed Collection; Comment Request; Construction Grants Program.

**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 Program Information Collection Request, EPA ICR No. 0827.06, OMB Control Number 2040-0027, 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 11, 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](mailto: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](mailto:singh.gajindar@epa.gov) or faxed to (202) 501-2396.

Electronic comments must be submitted as a Corel Word Perfect or Word file. Electronic comments must be identified by the use of words

“Construction Grants Program 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 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Municipal Assistance Branch, 1201 Constitution Ave., NW., Washington, DC 20004. 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 receive construction grants from EPA.

**Title:** Construction Grants Program Information Collection Request, OMB Control No. 2040-0027, EPA ICR No. 0827.06, 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 EPA Construction Grants Program, 40 CFR part 35, subpart I, 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 States.

In order to obtain a construction grant, a municipality must submit information describing the project and its ability to manage it. Municipal managers use the information to plan, design, build, operate, and maintain treatment works that protect public health and the environment. In addition, the appropriate State or EPA Regional office reviews the information to determine if the project is necessary, reasonable, in accordance with sound planning principles, and a prudent use of Federal funds.

EPA collects information from the State to meet statutory and administrative program management requirements. Under this ICR, the only requirement for States is the listing of projects for funding in priority order. State program managers would develop this type of list for their own administrative needs. EPA reviews the information to determine if the State's

program meets CWA requirements and evaluates the effectiveness of the State's program management. Under Title II, construction grant programs may be administered by EPA or delegated States. The requirements for the construction grants program are at 40 CFR part 35, subpart I, and Title II of the CWA. These provisions require grantees to submit information to EPA or delegated States, and also require States that award construction grants to submit information to EPA. Authority for collecting this information comes from the Construction Grants Information Collection Request (OMB No. 2040-0027, ICR 0827.06).

EPA is currently phasing out the Construction Grants Program. The program is being replaced by the State Revolving Loan Fund (SRF) Program (Title VI of the Clean Water Act). Established in the 1987 amendment to the CWA, the SRF program provides a continuous source of funding for publicly owned treatment works (POTWs). Because most States are now funding construction projects through the SRF program rather than the Construction Grants Program, the burden associated with the Construction Grants Program has decreased significantly.

The information collection activities described in this ICR are authorized under Section 205(g) of the Clean Water Act as amended, and under 40 CFR part 35 subpart I. The requested information provides the minimum data necessary for the Federal government to maintain appropriate fiscal accountability for use of 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.

EPA is also revising ICR for Construction Grants Delegation to

States, OMB Control No. 2040-0095. First **Federal Register** notice for this ICR was published on July 5, 2002.

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 part 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:** 30.

**Frequency of Response:** Variable.

**Estimated Total Annual Hour Burden:** 26,558 hours.

**Estimated Total Annualized Cost Burden:** \$0.0.

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: July 25, 2002.

**Jane S. Moore,**

*Deputy Director, Office of Wastewater Management.*

[FR Doc. 02-19799 Filed 8-9-02; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7257-5]

### Agency Information Collection Activities: Proposed Collection; Comment Request; Emergency Planning and Release Notification Requirements Under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304

**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): Emergency Planning and Release Notification Requirements (EPCRA sections 302, 303, and 304), EPA ICR Number 1395.05, OMB Control Number 2050-0092, expiring January 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 October 11, 2002.

**ADDRESSES:** Chemical Emergency Preparedness and Prevention Office, Mailcode 5104A, U.S. EPA, 1200 Pennsylvania Avenue NW., Washington DC 20004. Interested persons may obtain a copy of the ICR without charge by contacting the person in **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Sicy Jacob, 202-564-8019, fax no. 202-564-8233, or e-mail: [jacob.sicy@epamail.epa.gov](mailto:jacob.sicy@epamail.epa.gov).

#### SUPPLEMENTARY INFORMATION:

**Affected entities:** Entities potentially affected by this action are those which have a threshold planning quantity of an extremely hazardous substance (EHS) listed in 40 CFR part 355, appendix A and those which have a release of any of the EHS above a reportable quantity. Entities more likely to be affected by this action may include chemical, non-chemical manufacturers, retailers, petroleum refineries, utilities, *etc.*

**Title:** Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304, OMB Control No. 2050-0092, EPA ICR No. 1395.05.

**Abstract:** The authority for these requirements is sections 302, 303, and 304 of the Emergency Planning and

Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11002, 11003, and 11004). EPCRA established broad emergency planning and facility reporting requirements. Section 302 requires facilities to notify their state emergency response commission (SERC) that the facility is subject to emergency planning. This activity has been completed; only new facilities are subject to this requirement. Section 303 requires the local emergency planning committees (LEPCs) to prepare emergency plans for facilities that are subject to section 302. This activity has been also completed; this ICR only covers any updates needed for these emergency response plans. Section 304 requires facilities to report to SERCs and LEPCs releases in excess of the reportable quantities listed for each extremely hazardous substance (EHS). This ICR also covers the notification and the written follow-up required under this section.

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.

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 average reporting burden for emergency planning under 40 CFR 355.30 is 16.15 hours for new and newly regulated facilities and less than 1 hour for existing facilities. For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine reporting status, notify the SERC that the facility is subject to emergency planning, designate a facility representative and otherwise participate in initial planning activities. For a limited number of existing facilities, there may be a burden to inform the LEPC of any changes at a facility that may affect emergency planning (2 hours), and provide information to the LEPC for planning purposes (11 hours). The average reporting burden for facilities reporting releases under 40 CFR 355.40 is estimated to average approximately 5 hours per release, including the time for determining if the release is a reportable quantity, notifying the LEPC and SERC, or the 911 operator, and developing and submitting a written follow-up notice. There are no recordkeeping requirements for facilities under EPCRA sections 302-304.

The average burden for emergency planning activities under 40 CFR 300.215 is 21 hours per plan for LEPCs, 16 hours per plan for SERCs. Each SERC and LEPC is also estimated to incur an annual recordkeeping burden of 10 hours.

The total burden to facility respondents over three years is 264,560 hours (88,190 hours annually) at a cost of \$8.8 million (\$2.9 million annually). The total burden to LEPC and SERC respondents over three years is 372,820 hours (124,275 hours annually) at a cost of \$9.5 million (\$3.1 million annually).

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: August 2, 2002.

**Deborah Y. Dietrich,**

*Director, Chemical Emergency Preparedness and Prevention Office.*

[FR Doc. 02-20348 Filed 8-9-02; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 02-179; DA 02-1550]

### Resort Aviation Services, Inc. and Kootenai County Coeur d'Alene Airport

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Notice.

**SUMMARY:** In this document the Commission designates for comparative hearing the applications of Resort Aviation Services, Inc. (Resort Aviation) for renewal of aeronautical advisory (unicom) Station WYT9, Hayden, Idaho, and Kootenai County Coeur d'Alene Airport (Kootenai County) for a new unicom station at the same location. The comparative hearing will enable the Commission to determine the best qualified applicant.

**DATES:** August 13, 2002 at 9:30 a.m.

**ADDRESSES:** Federal Communications Commission, Hearing Room A TW A-363, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey Tobias, Wireless Telecommunications Bureau, at (202) 418-0680.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Hearing Designation Order, FCC 02-1550, adopted on July 1, 2002 and released on July 2, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete

text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov) via the Internet. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

1. On October 15, 2001, Resort Aviation Services, Inc. (Resort Aviation) filed an application for renewal of aeronautical advisory (unicom) Station WYT9, Hayden, Idaho. Unicom stations provide information concerning flying conditions, weather, availability of ground services, and other information to promote the safe and expeditious operation of aircraft. On November 5, 2001, Kootenai County Coeur d'Alene Airport (Kootenai County) filed the above-captioned application for a new unicom station at the same location. Both applicants propose to provide service at Coeur d'Alene Airport, where there is no control tower or FAA flight service station. Under section 87.215(b) of the Commission's Rules, only one unicom station may be licensed at such airports. Accordingly, the applicants are basically qualified, but these applications are mutually exclusive and must therefore be designated for comparative hearing.

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), and section 1.221(a) of the Commission's Rules, 47 CFR 1.221(a), the above-captioned applications are designated for hearing in a consolidated proceeding before an FCC Administrative Law Judge to resolve the following issues:

a. To determine which applicant would provide the public with better unicom service based on the following considerations:

(1) location of the fixed-based operation and proposed radio station in relation to the landing area and traffic patterns;

(2) hours of operation;

(3) personnel available to provide unicom service;

(4) experience of applicant and employees in aviation and aviation communications;

(5) ability to provide information pertaining to primary and secondary communications as specified in § 87.257 of the Commission's Rules;

(6) proposed radio system including control and dispatch points; and

(7) the availability of the radio facilities to other fixed-based operators;

b. To determine, in light of the evidence presented, which application, if any, should be granted to best serve

the public interest, convenience, and necessity.

The burden of proceeding with the introduction of evidence with respect to all the issues listed here shall be upon Resort Aviation and Kootenai County with respect to their applications.

3. The applicants, Resort Aviation and Kootenai County, must each file with the Commission, within 20 days of the mailing of this Hearing Designation Order, a written notice of appearance in triplicate, stating their intentions to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order, in accordance with §§ 1.221(c), (f) and (g) of the Commission's Rules, 47 CFR 1.221(c), (f), (g). The written notice of Resort Aviation must be accompanied by a hearing fee of \$9,020.00. Because it is a governmental entity, Kootenai County is exempt from the hearing fee.

4. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02-20437 Filed 8-9-02; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:46 a.m. on Tuesday, August 6, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, litigation, and enforcement activities.

In calling the meeting, the Board determined, on motion of Director John D. Hawke, Jr. (Comptroller of the Currency), seconded by Director John M. Reich (Appointive), and concurred in by Richard Riccobono, acting in the place and stead of James E. Gilleran (Director, Office of Thrift Supervision), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than August 1, 2002, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the

"Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Federal Deposit Insurance Corporation.

Dated: August 7, 2002.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 02-20426 Filed 8-8-02; 10:31 am]

**BILLING CODE 6714-01-M**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

**SUMMARY:** The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

*Title:* National Earthquake Hazard Reduction Program Publications Survey.  
*Type of Information Collection:* New.  
*Abstract:* FEMA will undertake this effort through an Internet-based survey to determine which publications are effective, which are in need of modification and which should be retired. In addition, FEMA will determine the need for additional publications, filling the information gaps identified in the review process.

*Affected Public:* Business or other for-profit; State, Local, or Tribal Government; Federal Government; Not-for-profit institutions; Individuals and households.

*Number of Respondents:* 1,150.

*Estimated Time per Respondent:* 15 minutes.

*Frequency of Response:* One-time.

*Estimated Total Annual Burden*

*Hours:* 288.

### Comments

Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems

Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency via e-mail at

*InformationCollections@fema.gov.* or by telephone at (202) 646-2625.

Dated: August 6, 2002.

**Reginald Trujillo,**

*Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.*

[FR Doc. 02-20301 Filed 8-9-02; 8:45 am]

**BILLING CODE 6718-01-P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Open Meeting, Board of Visitors for the National Fire Academy

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

**NAME:** Board of Visitors (BOV) for the National Fire Academy.

**DATES OF MEETING:** September 5, 2002.

**PLACE:** Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

**TIME:** September 5, 2002, 8:30 a.m.—12 noon (Open Meeting).

**PROPOSED AGENDA:** September 5, 2002, Brief BOV on responsibilities as "Special Government Employees," review BOV Charter, identify secretariat for the BOV and review responsibilities, identify Designated Federal Official or designee and review responsibilities, elect BOV Chair and Vice Chair.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447-1117, on or before August 30, 2002.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes

will be available upon request within 60 days after the meeting.

Dated: August 2, 2002.

**R. David Paulison,**

*U.S. Fire Administrator.*

[FR Doc. 02-20302 Filed 8-9-02; 8:45 am]

**BILLING CODE 6718-01-P**

**FEDERAL TRADE COMMISSION**

**Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules**

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section

7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
<b>Transactions Granted Early Termination—07/08/2002</b>			
20020908 .....	Southern Wines & Spirits of America, Inc.	Anthony Terlato .....	Pacific/Southern Wine & Spirits of Illinois, LLC.
20020912 .....	Philadelphia Suburban Corporation	Pennichuck Corporation .....	Pennichuck Corporation.
20020918 .....	Staples, Inc. ....	FS Equity Partners IV, L.P .....	Medical Arts Press, Inc.
20020922 .....	The Southern Company .....	The New Power Company .....	The New Power Company.
20020923 .....	General Electric Company .....	Ralph Stern .....	CareCredit LLC
20020927 .....	J.W. Childs Equity Partners III, L.P	Esselte AB .....	Esselte AB
20020932 .....	Richard B. Cohen .....	Koninklijke Ahold N.V. ....	Tops Markets, LLC
<b>Transactions Granted Early Termination—07/09/2002</b>			
20020886 .....	AT&T Broadband Corp. ....	Susquehanna Pfaltzgraff Co .....	Casco Cable Television Inc. SBC Cable Co. Susquehanna Cable Company. York Cable Television, Inc.
20020894 .....	Group 1 Automotive, Inc .....	Michael E. Miller .....	Miller Automotive Group, Inc.
20020903 .....	AmerisourceBergen Corporation ....	Robert L. Fisher .....	Automated Technologies, Inc.
20020910 .....	BellSouth Corporation .....	Republican Technologies Integrated LLC.	Republic Technologies Integrated LLC
20020913 .....	DLJ Merchant Banking Partners III, L.P.	Seabulk International Inc .....	Seabulk International Inc.
20020920 .....	Warburg Pincus Private Equity VIII, L.P.	Proxim Corporation .....	Proxim Corporation
20020931 .....	General Electric Company .....	The Williams Companies, Inc .....	Williams Gas Processing—Kansas Hugoton Company.
<b>Transactions Granted Early Termination—07/10/2002</b>			
20020897 .....	Enbridge Energy Partners, L.P .....	Enbridge Inc. ....	Enbridge Midcoast Energy, Inc.
20020909 .....	Providence Equity Partners IV L.P ..	Krause Publication, Inc. Employee Stock Ownership Plan.	Krause Publication, Inc.
<b>Transactions Granted Early Termination—07/11/2002</b>			
20020916 .....	Providence Equity Partners IV L.P ..	Lewis T. Tefteau .....	Communications Concepts, Inc., Database Marketing Solutions, Inc. Mail-Gard Concepts, Inc. Marketing Communication Systems of Delaware, Inc. Marketing Communication Systems, Inc.
20020929 .....	Bemis Company, Inc .....	E.I. du Pont de Nemours and Company.	Pacific Communication Concepts, Inc., E.I. du Pont de Nemours and Company.
<b>Transactions Granted Early Termination—07/12/2002</b>			
20020317 .....	Amgen Inc. ....	Immunex Corporation .....	Immunex Corporation
20020915 .....	Sempra Energy .....	TNP Enterprises, Inc. ....	Texas Generating Company L.P. Texas-New Mexico Power Company.

Trans No.	Acquiring	Acquired	Entities
20020933 .....	The St. Paul Companies, Inc. ....	Old Mutual plc .....	NWQ Investment Management Co., Inc.
20020940 .....	Newhouse Broadcasting Corporation.	AOL Time Warner Inc. ....	Time Warner Entertainment Advance/Newhouse Partnership
20020942 .....	Vestar Capital Partners IV, L.P. ....	Pro-Fac Cooperative, Inc .....	Agrilink Foods, Inc.
20020945 .....	Francisco Partners, L.P. ....	General Electric Company .....	GE Information Services, Inc. RMS Electronic Commerce Systems, Inc.
20020947 .....	Code, Hennessy & Simmons IV, L.P..	Atlantic Equity Partners International II L.P..	Otis Spunkmeyer, Inc.
20020950 .....	AOL Time Warner, Inc .....	AOL Time Warner, Inc. ....	Time Warner Entertainment Advance/Newhouse Partnership.

**Transactions Granted Early Termination—07/15/2002**

20020778 .....	FPL Group Inc. ....	BayCorp Holdings, Ltd. ....	BayCorp Holdings, Ltd.
20020781 .....	FPL Group, Inc. ....	Northeast Utilities .....	Northeast Utilities.
20020782 .....	FPL Group, Inc. ....	UIL Holdings Corporation .....	UIL Holdings Corporation.
20020783 .....	FPL Group, Inc. ....	The National Grid Group PLC .....	The National Grid Group PLC.
20020875 .....	Pliva d.d. ....	Sobel N.V. ....	Sobel Holdings Inc.
20020919 .....	J.P. Morgan Chase & Co .....	Atlantic Equity Partners International, II, L.P.	BPC Holdings Corporation.
20020921 .....	Public Service Enterprise Group Inc	Wisconsin Energy Corp .....	Wisvest-Connecticut, LLC.

**Transactions Granted Early Termination—07/17/2002**

20020943 .....	Intuit, Inc. ....	Eclipse, Inc. ....	Eclipse, Inc.
20020953 .....	The News Corporation Limited .....	The News Corporation Limited .....	Affiliated Regional Communications, Ltd. ARC Holding, Ltd. Fox Sports Net National Network Holdings, LLC. Fox Sports Net Rocky Mountain LLC Liberty/Fox ARC, L.P. Prime Network LLC
20020959 .....	MDCP IV Global Investments LP ....	Jefferson Smurfit Group plc .....	Jefferson Smurfit Group plc.

**Transactions Granted Early Termination—07/18/2002**

20020951 .....	State Street Corporation .....	James Kelly .....	International Fund Services (N.A.), L.L.C. Investment Management Services, Inc.
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**Transactions Granted Early Termination—07/19/2002**

20020935 .....	Daniel Gilbert .....	Intuit Inc. ....	Quicken Loans, Inc. Title Source, Inc.
20020954 .....	AT&T Wireless Services, Inc .....	AT&T Wireless Services, Inc .....	Boise City Cellular Partnership.
20020955 .....	AT&T Wireless Services, Inc .....	AT&T Wireless Services, Inc .....	Greeley Cellular Telephone Company.
20020957 .....	EPCOR Utilities, Inc. ....	Duke Energy Corporation .....	Frederickson Power L.P. Frederickson Power Management, Inc.
20020963 .....	Francisco Partners, L.P. ....	Agere Systems Inc .....	Agere Systems Inc.
20020964 .....	The Katz Trust .....	Phar-Mor, Inc. ....	Phar-Mor, Inc.
20020969 .....	First Data Corporation .....	BP p.l.c. ....	PayPoint Electronic Payment Systems, Inc.
20020973 .....	Elkem ASA .....	Sapa AB .....	Sapa AB.
20020980 .....	Kelso Investment Associates VI, L.P	Nortek Holding, Inc .....	Nortek Holding, Inc.

**FOR FURTHER INFORMATION CONTACT:**  
Sandra M. Peay, Contact Representative,  
Federal Trade Commission, Premerger  
Notification Office, Bureau of  
Competition, Room 303, Washington,  
DC 20580. (202 326-3100).

By Direction of the Commission.  
**Donald S. Clark,**  
*Secretary.*  
[FR Doc. 02-20336 Filed 8-9-02; 8:45 am]  
**BILLING CODE 6750-01-M**

**FEDERAL TRADE COMMISSION**

[File No. 022 3095]

**Philips Electronics North America  
Corporation; Analysis To Aid Public  
Comment**

AGENCY: Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before September 3, 2002.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov), as prescribed below.

**FOR FURTHER INFORMATION CONTACT:** Linda Badger or Matthew Gold, Federal Trade Commission, Western Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 848-5151 or (415) 848-5176.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC home page (for August 5, 2002), on the World Wide Web, at "<http://www.ftc.gov/os/2002/08/index.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not

contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box:

[consentagreement@ftc.gov](mailto:consentagreement@ftc.gov). Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

#### **Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order with Philips Electronics North America Corporation ("Philips"). Philips manufactures, advertises, labels, offers for sale, sells, and distributes consumer electronic equipment and other electronic products to the public. Through its division, Philips Consumer Electronics North America, Philips manufactures, advertises, labels, offers for sale, sells, and distributes computer peripheral equipment, such as CD-rewritable drives and computer monitors.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns cash rebate offers that Philips made to consumers who purchased computer peripheral products. The complaint alleges that respondent engaged in deceptive and unfair practices relating to these rebate offers. Specifically, the complaint alleges that respondent falsely represented that it would deliver cash rebates to purchasers of its computer peripheral products within eight weeks. For its promotions offered through its division, Philips Consumer Electronics North America, from January 2001 to January 2002, over fifty thousand consumers experienced delays of up to six months or more. The rebates at issue ranged from \$20 to \$100 in value.

The complaint further alleges that, in the advertising and sale of its computer peripheral products, Philips offered to deliver rebates in eight weeks to consumers who purchased a Philips computer peripheral product and submitted a rebate form with proof of purchase. After receiving rebate requests in conformance with this offer, Philips

unilaterally extended the time period in which it would deliver the rebates to consumers without consumers agreeing to this extension of time. According to the complaint, this constituted an unfair business practice.

The proposed consent order contains provisions designed to prevent Philips from engaging in similar acts and practices in the future. Part I applies to Philips' marketing of personal computer or personal computer-related product sold to consumers, including but not limited to, monitors, speakers, sound cards, CD-RW drives, DVD+RW drives, and multimedia projectors. With regard to these products, Part I.A. prohibits the respondent from misrepresenting the time in which it will mail any cash rebate or any credit towards future purchases. Parts I.B. and I.C. prohibit Philips from failing to provide any such rebate within the time specified, or if no time is specified, within thirty days.

Part I.D. prohibits the respondent from violating the Federal Trade Commission's Trade Regulation Rule Concerning Mail or Telephone Order Merchandise (the "Mail Order Rule") if it offers rebates in the form of merchandise. Part I.E. addresses rebates in the form of services or other consideration that the Mail Order Rule does not cover. That provision requires the respondent to provide the rebate in the time specified, or within thirty days if no time is specified, unless the respondent offers the purchaser the option of consenting to the delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the promised rebate. Part I.F. requires that the company not "misrepresent, in any manner, expressly or by implication, any material terms of any rebate program, including the status of or reasons for any delay in providing any rebate."

Part II of the proposed order is a redress provision which requires the company to pay out all valid rebates requests that are due or past due as of the date of service of the order. This provision also requires the respondent to send a rebate to any eligible consumer who contacts the respondent or the FTC for a period of 60 days after service of the order.

Parts III through VI of the proposed order are reporting and compliance provisions. Part VII is a provision, "sunsetting" the order after twenty years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 02-20334 Filed 8-9-02; 8:45 am]

BILLING CODE 6750-01-M

## FEDERAL TRADE COMMISSION

[File No. 012 3191]

### Tim R. Wofford/OKie Corporation; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before September 3, 2002.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov), as prescribed below.

**FOR FURTHER INFORMATION CONTACT:** Kerry O'Brien, Federal Trade Commission, Western Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 848-5189.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f) and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC home page (for August 5, 2002), on the World Wide Web, at "<http://www.ftc.gov/os/2002/08/index.htm>." A paper copy can be obtained from the

FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov). Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Tim R. Wofford, an officer of OKie Corporation (OKie). OKie did business as Prime Peripherals. Mr. Wofford and OKie advertised, labeled, offered for sale, sold, and distributed computer peripheral products to the public, including Prime Peripherals brand modems, CD-Rom drive kits, and recordable compact discs.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns cash rebate offers that respondent and OKie made to consumers who purchased Prime Peripherals computer peripheral products. The complaint alleges that respondent engaged in false advertising and unfair practices relating to these rebate offers. Specifically, the complaint alleges that respondent falsely represented that he would mail cash rebates to purchasers of Prime Peripherals computer peripheral products within either six to eight or eight to ten weeks, or within a reasonable period of time, of respondent's receipt of their requests. In

many instances, consumers never received their cash rebates or experienced delays ranging from one to six months.

The complaint also alleges that, in the advertising and sale of Prime Peripherals computer peripheral products, respondent offered that consumers would receive cash rebates if they purchased a Prime Peripherals computer peripheral product and submitted a rebate form with proof of purchase. In making this offer, he did not require consumers to submit a telephone number, fax number, or e-mail address to be eligible to receive the offered cash rebates. In numerous instances, consumers accepted respondent's rebate offer by purchasing those products and submitting rebate forms with proof of purchase. After receiving rebate requests, respondent unfairly modified the terms or conditions of the rebate offer unilaterally by requiring that, in addition to submitting a rebate form with proof of purchase, consumers submit a telephone number, a fax number, and an e-mail address to receive a rebate. In breach of the original rebate offer, respondent rejected numerous rebate requests from consumers because they did not submit a telephone number, a fax number, and/or an e-mail address.

Finally, the complaint alleges that respondent represented that purchasers of Prime Peripherals computer peripheral products would receive cash rebates if they purchased those products and submitted a rebate form with proper documentation, yet failed to disclose that consumers were required to possess and disclose their telephone number, fax number, and e-mail address on a rebate form to receive those cash rebates. The complaint alleges that his failure to disclose these facts was a deceptive practice.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits respondent from failing to disclose all terms, conditions, or other limitations of a rebate offer on the rebate form. It also requires the respondent to disclose in any rebate advertising that the rebate offer requires consumers to disclose a fax number and/or e-mail address on their rebate form if such is the case. Part I of the proposed order also prohibits respondent from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards future purchases, will be mailed to consumers. It also prohibits respondent from failing to provide such rebates within the time

specified, or if no time is specified, within thirty days.

Part I of the proposed order also prohibits respondent from violating any provision of the Federal Trade Commission's trade Regulation Rule Concerning Mail or Telephone Order Merchandise (the "Mail Order Rule") in connection with rebates in the form of merchandise. Among other things, the Mail Order Rule prohibits marketers from failing to provide rebates in the form of merchandise within the time they specify for delivery, or if no time is specified, within thirty days, unless they offer consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the merchandise originally offered. Finally, Part I of the proposed order similarly prohibits respondent from failing to provide rebates in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time he specifies for delivery, or if no time is specified, within thirty days, unless he offers consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

Parts II through IV of the proposed order are reporting and compliance provisions. Part V is a provision "sunsetting" the order after twenty years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 02-20335 Filed 8-9-02; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for emergency review. We are requesting an

emergency review because we believe the collection of this information will be extremely useful prior to the World Summit on Sustainable Development to be held in Johannesburg, South Africa, from 26 August—4 September, 2002. This summit is regarded as one of the most significant United Nations conferences in recent times. The Summit will shape future actions within a globally defined sustainable development agenda. Health is emerging as a particularly important global priority in the context of sustainable development. In this context, the information (opinions) from the two proposed groups is important, both for U.S. participation in the summit itself and for the follow-up that will need to begin immediately thereafter.

Most countries will be represented in Johannesburg by their head of state/government, cabinet level, and other appropriate senior government officials, among others. Details of the U.S. delegation have not been finalized. However, the United States will surely be represented at an appropriate senior level, along with other senior government officials, and others. The results of this study, related to the current awareness and perceptions of global health among key U.S. influencers and the general public, will be used to inform and shape U.S. participation and strategies at the summit, and in particular will shape important follow up activities for the Department of Health and Human Services beginning immediately after the summit. Following the normal clearance procedures would not allow us to complete the study in time to make this important information available in time for the United Nations world summit this summer. DHHS is requesting that OMB grant emergency approval as soon as possible for 180-days.

*Title and Description of Information Collection: Global Health Public Opinion Research—The purpose of this information collection is to provide important information to U.S. policy makers as they prepare for this country's participation at The World Summit on Sustainable Development in August–September 2002. Respondents: Key influencers and the general public; Number of Respondents: 800 general public, 182 key influencers; Number of Responses per Respondent: one; Average Burden per Response: 0.2 hours—Key influencers, 0.25 hours—general public; Total Burden on Respondents: 236 hours.*

To request more information please contact Cynthia Bauer at 202-690-6207 or Dr. Melinda Moore at 301-443-1774.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Written comments and recommendations for the proposed information collections should be sent immediately directly to Allison Eydt, the OMB Desk Officer, at the following address: OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

Comments may be faxed to Ms. Eydt at 202-395-6974.

Please send a copy of your comments to Cynthia Agnes Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Dated: August 2, 2002.

**Kerry Weems,**

*Deputy Assistant Secretary, Budget.*

[FR Doc. 02-20292 Filed 8-9-02; 8:45 am]

BILLING CODE 4150-28-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB:

1 42 CFR 50 subpart B: Sterilization of Persons in Federally Assisted Planning Projects—0937-0166—Extension no Change—These regulations and informed consent procedures are associated with Federally-funded sterilization services. Selected consent forms are audited during site visits and program reviews to ensure compliance with regulations and the protection of the rights of

individuals undergoing sterilization. *Burden Estimate for Consent Form—Annual Response:* 40,000; *Burden per Response:* one hour; *Total Burden for Consent Form:* 40,000 hours—*Burden Estimate for Recordkeeping Requirement—Number of Recordkeepers:* 4,000; *Average Burden per Recordkeeper:* 2.5 hours; *Total Burden for Recordkeeping:* 10,000 hours. *Total Burden:* 50,000 hours.

*OMB Desk Officer:* Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690-6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address. Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: August 2, 2002.

**Kerry Weems,**

*Deputy Assistant Secretary, Budget.*

[FR Doc. 02-20293 Filed 8-9-02; 8:45 am]

**BILLING CODE 4150-34-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Availability of Funds and Request for Applications for the Disease Prevention and Health Promotion Education and Training Program

**AGENCY:** Department of Health and Human Service, Office of the Secretary, Office of Public Health and Science, Office of Disease Prevention and Health Promotion.

**ACTION:** Notice.

**SUMMARY:** The Office of Disease Prevention and Health Promotion (ODPHP) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement to provide health promotion and disease prevention educational and training opportunities for medical students, preventive medicine residents, primary care residents, and practicing physicians.

Approximately \$125,000 will be available in fiscal year 2002. This award will begin on or about September 30, 2002 for a 12-month budget period with a project period of 5 years. Funding

estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds. The OMB Catalog of Federal Domestic Assistance number for the National Health Promotion Program is 93.990.

**Authority:** This program is authorized under section 301 and sections 1701 through 1704 of the Public Health Service Act, as amended, 42 U.S.C. 241 and 42 U.S.C. 300u through 300u-3.

**ADDRESSES:** Applications for this announcement shall be submitted to Ms. Karen Campbell, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852. Send the original and 2 copies of the complete application to this address. Only original hard copy applications are acceptable.

**DATES:** To receive consideration, applications must be received by September 16, 2002. Applications will be considered as meeting the deadline if they are: Received on or before the deadline date by the Office of Minority Health by 5 PM EDT. Applications hand-carried by applicants or by applicant couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date between the hours of 9 a.m. to 5 p.m. at the address indicated above. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sally Jones, Administrative Officer, Office of Disease Prevention and Health Promotion, Hubert H. Humphrey Building Room 738-G, 200 Independence Avenue, SW., Washington, DC 20201, (202) 260-7654.

**SUPPLEMENTARY INFORMATION:** The Office of Disease Prevention and Health Promotion (ODPHP) uses cooperative agreements with public and non-profit organizations to support its mandate to provide leadership to promote health and prevent disease among Americans through management and coordination of the implementation of Healthy People 2010, the nation's health objectives for this decade. Through cooperative agreements, ODPHP has forged public-private partnerships to extend the reach and effectiveness of its work. For a copy of Healthy People 2010, visit the

Internet site: <http://www.health.gov/healthypeople>.

ODPHP intends to provide \$125,000 to one grantee to enhance core competencies in health promotion and disease prevention for medical students, residents, and physicians. Measurable outcomes will include increased knowledge and understanding of the content, value and usage of such materials as Healthy People 2010, the Leading Health Indicators, Guide to Clinical Preventive Services, Guide to Community Preventive Services, and health promotion and disease prevention in general.

### Application Kit

For this cooperative agreement, Form PHS 5161-1 (Revised July, 2000 and approved by OMB under Control Number 0937-0189) must be used. An applicant is advised to pay close attention to the specific program guidelines and general instructions provided in the application kit. To get an application kit, write to: Ms. Karen Campbell, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852; or call Karen Campbell at (301) 594-0758.

**Eligible Applicants:** To qualify for funding, an applicant must be a professional organization/society or institution of higher learning responsible for the education of medical students, preventive-medicine residents, primary-care residents, and practicing physicians from communities across the country. Eligible applicant organizations are encouraged to apply as partnerships.

Faith-based organizations that meet the definition of a professional organization/society or institution of higher learning responsible for the training of those populations listed above are eligible to apply for this Disease Prevention and Health Promotion Education and Training Program Cooperative Agreement.

**Availability of Funds:** About \$125,000 is expected to be available in FY 2002 to fund one cooperative agreement. It is expected that this award will begin on or about September 30, 2002 and will be made for a 12-month budget period with a project period of five years. Funding estimates may change. Grantee may make contracts. Grantee will not be expected to match funds or share project costs.

**Use of Funds:** Funds cannot be used for construction or renovation, to purchase or lease vehicles or vans, to purchase a facility to house project staff or carry out project activities, or to

substitute new activities and expenditures for current ones.

### Grantee Responsibilities

1. The successful applicant, in collaboration with the ODPHP, will develop, implement and monitor Medical Student education in disease prevention and health promotion:
  - a. Develop and execute a 2–3 day educational seminar for selected medical students to enhance their understanding of community-based health promotion and disease prevention strategies in the context of Healthy People 2010 and the Leading Health Indicators. This may be modeled on the 2002 Paul Ambrose Health Promotion Medical Student Leadership Symposium. (See attached documentation for further specifics.)
  - b. Assist symposium students and their sponsoring institutions in the development of a specific health promotion or disease prevention project prior to and/or following the symposium by linking medical students to faculty at their institution of higher learning engaged in disease prevention and health promotional activities.
  - c. Provide a forum for students to present the results of their project.
2. The successful applicant, in collaboration with the ODPHP, will develop, implement and monitor Preventive Medicine and Primary Care Resident education in disease prevention and health promotion:
  - a. Facilitate/coordinate an elective rotation at ODPHP of 1–3 months duration. (2 month minimum for preventive medicine residents)
  - b. Recruit and select preventive medicine and primary care residents to participate in this elective.
  - c. Convene a meeting at the onset of the initial project year of relevant residency program directors and field placement/site mentors and/or advisors to review program goals, objectives and educational plans.
3. The successful applicant, in collaboration with the ODPHP, will develop and present a proposal to expand disease prevention and health promotion education opportunities for primary care providers. This may include, for example, expanding opportunities for continuing medical education or other mechanisms for educating practitioners on the principles of health promotion and disease prevention.
4. The successful applicant will assist ODPHP with the Luther Terry Fellowship including the framework for identifying education content and resources in the public health community for the development and

implementation of the Luther Terry Fellowship.

### ODPHP Responsibilities

- Substantial programmatic involvement is as follows:
1. ODPHP will provide technical assistance and oversight as necessary for the overall design and implementation of the Disease Prevention and Health Promotion Education and Training programs.
  2. ODPHP will participate with grantee in the development of, and ultimately approve, educational materials and program activities for medical students, residents, and practicing physicians.
  3. Provide site location and mentorship for preventive medicine residents and primary care residents on educational assignment at ODPHP.
  4. ODPHP will provide assistance to the management of program strategies, direction, evaluation activities, and any decisions related to adjustments in funding levels of participating institutions.
  5. ODPHP will participate in site visits to training events, as deemed appropriate.

### Review of Applications

Applications that are not complete or that do not conform to or address the criteria of the announcement will be returned without comment. Each organization may submit no more than one proposal under this announcement. Organizations submitting more than one proposal will be deemed ineligible. The proposals will be returned without comment. Accepted applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Panel. Panel members are chosen for their expertise in disease prevention and health promotion issues at the national and local levels. Applications should be no more than 30 pages in length, excluding resumes and organizational background material.

### Application Review Criteria

The technical review of applications will consider the following 5 generic factors:

#### (1) Education and Training Plan (30 points)

The proposed goals and objectives in the Education Plan relate to the goal of increasing knowledge and use of disease prevention and health promotion materials and methods among the targeted levels of medical students/residents and practitioners:

- Extent to which the plan summarizes the state of disease prevention and health promotion education for medical students, preventive medicine and primary care residents, and practicing primary care physicians. Including a description of the extent to which “disease prevention and health promotion” didactic and applied experiences and opportunities exist in medical education and clinical practice.
- Description of how the applicant develops each activity specific to the medical students, preventive medicine residents and primary care residents, and practicing physicians as outlined under *Grantee Responsibilities*.
- Appropriateness and relationship of strategies and objectives to the overall goal and implementation of the required activities.
- Appropriateness of specific, realistic, measurable and time-phased process and outcome objectives for each of the strategies to be implemented.
- Relevancy of the evidentiary basis for the proposed strategies.
- Degree to which the *Healthy People 2010* initiative, corresponding Healthy People State plans, the Leading Health Indicators, the Clinical and Community Guides to Preventive Services will be incorporated into proposed activities.
- Where applicable, how proposed strategies and objectives are currently being implemented using other resources.
- How applicant will leverage additional resources for implementation of components of the each educational/training activity.

#### (2) Project Evaluation (20 points)

- Extent to which application describes how process and outcome objectives for all educational activities will be measured, evaluated and documented.
- Identification of mechanisms to track: (1) The participants in the three educational/training activities, (2) the effect(s) the activities have on the respective careers, and (3) use of clinical preventive services and participation in health promotional activities.
- Feasibility and appropriateness of evaluation design;
- Ability to share and disseminate project results.

#### (3) Organizational Capabilities/Qualifications (20 points)

- The management and administrative structure of the applicant is explained. Evidence of the applicant’s

- ability to manage a project of the proposed activities is well defined.
- The application clearly demonstrates the successful management of projects of similar scope by the organization and or by the individual and/or team designated to manage the project.
  - The organization's active involvement in education and or training of the targeted groups is demonstrated.
  - Position descriptions and/or resumes of key personnel, including those of consultants/contractors, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the proposed approach and in the proposed budget of the application. Position descriptions clearly describe the position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the proposed activities. Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

**(4) Partnerships (15 points)**

- Description of how partners (if any) were selected and how they will contribute to the development, implementation, monitoring, and any modifications to the proposed activities over time.

**(5) Budget (15 points)**

A detailed and fully explained budget is provided which:

- Justifies each line item, with a well-written justification, in the budget categories of the application;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed activities;
- Requests funds which are appropriate and necessary for the scope of the proposed activities; and
- Demonstrates administrative efficiency and value which allows for the maximizing of resources for the proposed activities.

**General Reporting Requirements**

A successful applicant under this notice will also submit (1) semi-annual progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by ODPHP, in accordance with provisions of the general regulations which apply under

“Monitoring and Reporting Program Performance,” 45 CFR 74.51–74.52, with the exception of State and local governments to which 45 CFR part 92, Subpart C reporting requirements apply.

**Provision of Smoke-Free Workplace and Non-Use of Tobacco Products by Recipients of PHS**

**Grants**

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

**Public Health System Reporting Requirements**

This program is subject to Public Health System Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted:

- (a) A copy of the face page of the application (SF 424), and
- (b) A summary of the project (PHSIS), not to exceed one page, which provides:
  - (1) A description of the population to be served,
  - (2) A summary of the services to be provided, and
  - (3) A description of the coordination planned with the appropriate State or local health agencies.

Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Disease Prevention and Health Promotion.

**State Reviews**

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The

application kit available under this notice will contain a list of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Disease Prevention and Health Promotion's Acting Grants Management Officer. The Office of Disease Prevention and Health Promotion does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See “Intergovernmental Review of Federal Programs” Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

Dated: August 2, 2002.

**Randolph F. Wykoff,**

*Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), Director, Office of Disease Prevention and Health Promotion.*

[FR Doc. 02–20306 Filed 8–9–02; 8:45 am]

**BILLING CODE 4150–32–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**Secretary's Council on Public Health Preparedness; Notice of Meeting**

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the Secretary's Council on Public Health Preparedness.

The purpose of this public meeting is to convene the Council to discuss issues related to preparing the nation to respond to public health emergencies in general and bioterrorism in particular. Major areas to be considered by the Council at this meeting may include the following: DHHS bioterrorism preparedness and response programs, oversight of states' preparedness programs, lessons from the anthrax experience, the research and development agenda, development of new products (against bioterrorism), public health emergency response planning, and pre-epidemic vaccination plans.

*Name of Committee:* Secretary's Council on Public Health Preparedness.

*Date:* August 26–27, 2002.

*Time:* August 26, 10 a.m.–5:30 p.m.; August 27, 9 a.m.–3:30 p.m.

*Place:* Loews L'Enfant Plaza Hotel (Ballroom), 480 L'Enfant Plaza, SW., Washington, DC 20024, Telephone: (202) 484–100.

*Contact Person:* Lily Engstrom, Executive Director, Secretary's Council on Public Health Preparedness, Office of the Assistant Secretary for Public Health Emergency Preparedness, 200 Independence Avenue, SW., Room 638G, Washington, DC 20201, 202–690–6750.

*Supplementary Information:* The Secretary's Council on Public Health Preparedness was established on October 22, 2001 by the Secretary of Health and Human Services under the authorization of section 319 of the Public Health Service Act (42 U.S.C. 247d); section 222 of the Public Health Service Act (42 U.S.C. 217a). The purpose of the Secretary's Council on Public Health Preparedness will be to advise the Secretary on appropriate actions to prepare for and respond to public health emergencies, including acts of bioterrorism. The function of the Council is to advise the Secretary regarding steps that the U.S. Department of Health and Human Services can take to (1) improve the public health and health care infrastructure to better enable Federal, State, and local governments to respond to a public health emergency and, specifically, a bioterrorism event; (2) ensure that there are comprehensive contingency plans in place at the Federal, State, and local levels to respond to a public health emergency and, specifically, a bioterrorism event; and (3) improve public health preparedness at the Federal, State, and local levels.

**Public Participation**

The meeting is open to the public with attendance limited by the availability of space on a first come, first served basis. Members of the public who wish to attend the meeting may register by e-mailing [publichealth@iqsolutions.com](mailto:publichealth@iqsolutions.com) no later than close of business, Wednesday, August 21, 2002.

Opportunities for oral statements by the public will be provided on August 26, 2002, from 5 p.m. –5:30 p.m. (Time approximate). Oral comments will be limited to five minutes, three minutes to make a statement and two minutes to respond to questions from Council members. Due to time

constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotment may also be limited by the number of registrants. Members of the public who wish to present oral comments at the meeting may register by e-mailing [publichealth@iqsolutions.com](mailto:publichealth@iqsolutions.com) no later than close of business, Monday, August 19, 2002. All requests to present oral comments should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the areas of interest or issue to be addressed.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits and at the Chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by e-mail to [publichealth@iqsolutions.com](mailto:publichealth@iqsolutions.com) for inclusion in the public record no later than close of business, Wednesday, August 21, 2002.

When mailing written comments, please provide your comments, if possible, as an electronic version or on a diskette. Persons needing special assistance, such as sign language interpretation or other special accommodations, should e-mail staff at [publichealth@iqsolutions.com](mailto:publichealth@iqsolutions.com) no later than close of business, Monday, August 19, 2002.

Because of the need to provide advice and recommendations on bioterrorism, this notice is being provided at the earliest possible time.

Dated: August 5, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–20275 Filed 8–9–02; 8:45 am]

**BILLING CODE 4140–01–M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Agency Information Collection Activities: Proposed Collection: Comment Request**

In compliance with the requirement for opportunity for public comment on

proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: Faculty Loan Repayment Program (FLRP) Application (OMB No. 0915–0150)—Revision**

Under the Health Resources and Services Administration Faculty Loan Repayment Program, disadvantaged graduates from certain health professions may enter into a contract under which HRSA will make payments on eligible educational loans in exchange for a minimum of two years of service as a full-time or part-time faculty member of an accredited health professions school. Applicants must complete an application and provide current loan balances on all eligible educational loans.

The estimate of burden for the form are as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Applicants .....	94	1	94	1	94

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A-33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 5, 2002.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 02-20265 Filed 8-9-02; 8:45 am]

**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information

collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: Survey to Assess Gender, Race, and Ethnicity of Clients and Staff at BPHC Supported Community-Based Health Service Sites—New**

The Office of Minority and Women's Health (OMWH), in the Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA), recognizes that information on the gender, race, and ethnicity of clients and staff employed at BPHC supported programs is important in determining the extent to which BPHC supported

programs reflect the populations they serve. The OMWH purposes to conduct a survey for the purpose of obtaining baseline data on the gender, racial, and ethnic composition of both users and staff at its supported programs.

This survey will permit the BPHC to determine the extent that gender, racial and ethnic composition of employees at supported community-based health care partners reflect the populations they serve. By obtaining this information, BPHC and its service partners will generate the baseline data necessary to determine if improvements should be made to increase the future diversity and knowledge base of staff working at its federally supported health service sites. If health care providers are informed regarding health care issues pertaining to their diverse clientele, and prepared to determine their health behaviors and needs, providers will be better equipped to effectively prevent and treat illnesses.

The burden estimate for this project is as follows:

Form name	Number of respondents	Responses per respondent	Total responses	Average time per response	Total burden hours
Staff Survey .....	150	74	11,100	.0833	925
Director Survey .....	150	1	150	.5	75
Total .....	300	.....	11,250	.....	1,000

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 5, 2002.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 02-20264 Filed 8-9-02; 8:45 am]

**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Advisory Council; Notice of Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of September 2002.

*Name:* National Advisory Council on the National Health Service Corps.

*Date and Time:*

- September 12, 2002, 5 p.m.–7 p.m.
- September 13, 2002; 8:30 a.m.–5 p.m.
- September 14, 2002; 9 a.m.–5:30 p.m.
- September 15, 2002; 8 a.m.–10:30 a.m.

*Place:* Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009, (202) 797-2000.

The meeting is open to the public.

*Agenda:* The agenda will focus on goals set by the Council and the development of a set of recommendations for the management team from the Agency and the Bureau of Health Professions regarding the National Health Service Corps and the designation of health professional shortage areas.

For further information regarding this meeting please contact Ms. Tira Robinson, Office of the Director, Division of National Health Service Corps, at (301) 594-4140.

Agenda items and times are subject to change as priorities dictate.

Dated: August 6, 2002.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 02-20299 Filed 8-9-02; 8:45 am]

**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, COX2 Inhibitors in Proteinuric Renal Insufficiency.

*Date:* August 29, 2002.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 2 Democracy Plaza, 6707 Democracy Blvd., Room 750, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892-6600. (301) 594-7798. [muston@extra.niddk.nih.gov](mailto:muston@extra.niddk.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Dermatology Research, National Institutes of Health, HHS)

Dated: August 5, 2002

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02-20271 Filed 8-9-02; 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 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 a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Mental Health Council.

*Date:* September 12-13, 2002.

*Closed:* September 12, 2002, 10:30 a.m. to recess.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

*Open:* September 13, 2002, 8:30 a.m. to adjournment.

*Agenda:* Presentation of NIMH Acting Director's report and discussion on NIMH program and policy issues.

*Place:* National Institutes of Health, Shannon Building, Wilson Hall, 1 Center Drive, Bethesda, MD 20892.

*Contact Person:* Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892-9609. 301-443-5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: [www.nimh.nih.gov/council/advis.cfm](http://www.nimh.nih.gov/council/advis.cfm), where an agenda and any additional information for the meeting will be posted when available.

(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: August 5, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02-20272 Filed 8-9-02; 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, Services Research Applications on Depression.

*Date:* August 7, 2002.

*Time:* 3 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Joel Sherrill, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892-9606. 301-443-6102. [jsherril@mail.nih.gov](mailto:jsherril@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: August 5, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02-20273 Filed 8-9-02; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Institute on Aging; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, National Cell Repository for Alzheimer's Disease.

*Date:* September 9, 2002.

*Time:* 12 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Gateway Building, 7201 Wisconsin Ave Suite 2C212, Bethesda, MD 20814. (Telephone Conference Call).

*Contact Person:* Mary Nekola, PhD, Chief of the Scientific Review Office, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814-9692. 301-496-9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Role of Glia in Neuronal Degeneration.

*Date:* September 12, 2002.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Scientific Review Office, National Institute on Aging, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. (Telephone Conference Call).

*Contact Person:* Alicja L. Markowska, PhD, DSC, Scientific Review Office, Gateway Building/Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20817. (Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 5, 2002.

**LaVerne J. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02-20274 Filed 8-9-02; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4739-N-40]

**Notice of Proposed Information Collection: Comment Request; Mortgagee's Certification and Application for Assistance or Interest Reduction Payments Due Under Sections 235(b), 235(j), or 235(i)**

**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 proposals.

**DATES:** *Comments Due Date:* October 11, 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:** Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., 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:* Mortgagee's Certification and Application for Assistance or Interest Reduction Payments Due Under Sections 235(b) 235(j), or 235(i).

*OMB Control Number, if applicable:* 2502-0081.

*Description of the need for the information and proposed use:* HUD must monitor all assistance payments disbursed under the Section 235 Program. Mortgagees submit these information collections in order to receive assistance payments each month. The information collection is used to bill HUD for these payments.

*Agency form numbers, if applicable:* HUD-300 and HUD-93102.

*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 5,250, the number of respondents is 350 generating approximately 8,400 annual responses, the frequency of response is on occasion and monthly, and the estimated time needed to prepare the responses varies from 15 minutes to one hour.

*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: July 31, 2002.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.*

[FR Doc. 02-20333 Filed 8-9-02; 8:45 am]

**BILLING CODE 4210-27-M**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[ID-010-5700-10; IDI-33300]

**Classification of Lands for Recreation and Public Purposes, Elmore County, Idaho**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following described public lands in Elmore County, Idaho, have been examined and determined to be suitable for classification for lease or

conveyance to Elmore County, under the provisions of the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*):

**Boise Meridian, Idaho**

T. 2 N., R. 10 E.,

Section 19: the northerly 110.00 feet of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ .

Aggregating 0.833 acres, more or less.

**DATES:** Interested parties may submit comments through September 26, 2002 to the Four Rivers Field Manager.

**ADDRESSES:** Comments should be sent to Daryl Albiston, Four Rivers Field Manager, Bureau of Land Management, Lower Snake River District, 3948 Development Ave., Boise, Idaho 83705.

**FOR FURTHER INFORMATION CONTACT:** Mike Austin, Four Rivers Realty Specialist at (208) 384-3339.

**SUPPLEMENTARY INFORMATION:** On January 2, 2001, Elmore County was granted a R&PP lease on 2 $\frac{1}{2}$  acres of public land, for a senior citizen's center and snowmobile groomer shed. Elmore County has filed an application to amend this lease to accommodate a slightly different placement for the snowmobile groomer shed. This land will be developed and managed for community and recreational purposes, as described in the development plan submitted by Elmore County on March 10, 2002. We have determined that the lease or conveyance of the lands for the proposed community center and shed are in the public interest.

Publication of this notice in the **Federal Register** will segregate the above described public lands from the operation of the public land laws and the mining laws, except for mineral leasing and leasing or conveyance under the R&PP Act. In the absence of any adverse comments, the classification will become effective October 11, 2002. The segregative effect will automatically expire on February 12, 2004.

*Comments:* Comments may address whether the lands being classified are physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning or zoning, or if the use is consistent with State or Federal programs. Comments may also address the specific use proposed in the application or plan of development, whether the BLM followed proper administrative procedures in reaching the decision to lease the land under the R&PP Act, or any other factor not directly related to the suitability of the land for the stated purpose. Adverse comments will be reviewed by the District Manager.

The lease of the lands will not occur until after the classification becomes effective, and will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Dated: May 31, 2002.

**Daryl Albiston,**

*Four Rivers Field Manager.*

[FR Doc. 02-20337 Filed 8-9-02; 8:45 am]

**BILLING CODE 4310-GG-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[AK-040-1430-EQ; AA-081878]**

**Notice of Realty Action: Non-Competitive FLPMA Lease; Alaska**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action: lease of public land.

**SUMMARY:** The following public lands along the Anvik River in western Alaska have been examined and found suitable for non-competitive lease to the State of Alaska Department of Fish and Game (ADF&G) under the provisions of Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 and 43 CFR Part 2920. ADF&G proposes to lease the Anvik fish counting station and associated storage and maintenance area for 20 years. The lease is intended to convert a permit to a lease for the continued operation and maintenance of existing facilities.

**Seward Meridian, Alaska**

T. 31 N., R. 61 W.

NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 34

NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 35

Containing approximately 2 acres.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed action to the Anchorage Field Manager.

**FOR FURTHER INFORMATION CONTACT:** Stuart Hirsh, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507, (907) 267-1252.

Dated: July 22, 2002.

**June Bailey,**

*Acting Anchorage Field Manager.*

[FR Doc. 02-20338 Filed 8-9-02; 8:45 am]

**BILLING CODE 4310-JA-P**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Notice of Meeting**

**AGENCY:** National Park Service, U.S. Department of the Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the National Landmarks Committee of the National Park System Advisory Board will be held at 9 on the following dates and at the following location.

**DATES:** October 15 and October 16, 2002.

**ADDRESSES:** The Charles Sumner School, Museum and Archives, 1201 Seventeenth Street, NW, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Patricia Henry, National Historic Landmarks Survey, National Register, History, and Education, National Park Service; in care of Ms. Shirley Sears Smith; National Park Service, Office of Policy; 1849 C Street, NW; Room 2414; Washington, DC 20240. Telephone (through Ms. Shirley Smith) (202) 208-7456.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting of the National Landmarks Committee of the National Park System Advisory Board is to evaluate nominations of historic properties in order to advise the full National Park System Advisory Board of the qualifications of properties being proposed for National Historic Landmark (NHL) designation, and to recommend to the National Park System Advisory Board those properties that the Landmarks Committee finds meet the criteria for designation as National Historic Landmarks. The members of the National Landmarks Committee are: Dr. Janet Snyder Matthews, CHAIR  
Dr. Allyson Brooks  
Dr. Ian W. Brown  
Mr. S. Allen Chambers, Jr.  
Dr. Elizabeth Clark-Lewis  
Dr. Bernard L. Herman  
Professor E.L. Roy Hunt  
Ms. Paula J. Johnson  
Mr. Jerry L. Rogers

Dr. Richard Guy Wilson

The meeting will include presentations and discussions on the national historic significance and the historic integrity of a number of properties being nominated for National Historic Landmark designation. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file for consideration by the committee written comments concerning nominations and matters to be discussed pursuant to 36 CFR Part 65.

Comments should be submitted to Carol D. Shull, Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places; National Register, History, and Education (2280); National Park Service; in care of Ms. Shirley Sears Smith; National Park Service, Office of Policy; 1849 C Street, NW; Room 2414; Washington, DC 20240.

The committee will consider the following nominations:

Arkansas

Centennial Baptist Church

Illinois

Columbus Park

Indiana

Allen County Courthouse  
Oldfields

Iowa

Terrace Hill

Maryland

Rebecca T. Ruark

Massachusetts

Beauport

Jacob's Pillow Dance Festival

Mount Auburn Cemetery

Revere Beach Reservation

Union Oyster House

New York

Dr. Oliver Bronson House and Estate  
Philosophy Hall

Ohio

Adena (Thomas Worthington House)

Pennsylvania

Buckingham Friends Meeting House

Tennessee

Sun Record Company/Memphis  
Recording Service

Texas

USS *Lexington*

Virginia

Prestwould

Washington

Hashidate Yu at the Panama Hotel

West Virginia

The Baltimore and Ohio Railroad  
Martinsburg Shops

Wisconsin

Herbert and Katherine Jacobs First  
House

Herbert and Katherine Jacobs Second

House  
Ten Chimneys  
Wyoming  
Fort Yellowstone  
Jackson Lake Lodge

The Committee will also consider the following boundary adjustments, additional documentation and withdrawals of designation:

Delaware

New Castle County Courthouse (name change and additional documentation)

District of Columbia, Maryland, and Virginia

Washington Aqueduct (boundary adjustment and additional documentation)

Tennessee

Nashville Union Station and  
Trainshed (withdrawal of designation)

The committee will also consider the recommendations presented in the Draft Star-Spangled Banner National Historic Trail Study, prepared under the auspices of Public Law 104-333.

Dated: July 31, 2002.

**Carol D. Shull,**

*Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places; National Park Service, Washington, DC.*

[FR Doc. 02-20377 Filed 8-9-02; 8:45 am]

**BILLING CODE 4310-70-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 20, 2002. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St., NW, Suite 400, Washington DC 20002; or by fax, 202-343-1836. Written or faxed comments should be submitted by August 27, 2002.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**Illinois**

Lake County:

Adler, Mrs. Isaac D., House, 1480 N.  
Milwaukee Ave., Libertyville,  
02000901

### Massachusetts

Barnstable County:

Jarves, John and Mary Waterman,  
House, 3 Jarves St., Sandwich,  
02000903

Berkshire County:

Northeast School, 981 Summit Rd.,  
Richmond, 02000902

Hampshire County:

Our Mother of Sorrows Monastery and  
Retreat Center, 110 Monastery Ave.,  
West Springfield, 02000904

### Missouri

Newton County:

Neosho High School, (Neosho MPS), W.  
McCord and N. Wood Sts., Neosho,  
02000906

St. Louis County:

J. Milton Turner School, 238 Meacham  
Ave., and 245 Saratoga Ave.,  
Kirkwood, 02000905

### Texas

Hidalgo County:

Mission Canal Company Second Lift  
Pumphouse, (Mission, Hidalgo  
County: MPS), 6th St. and Canal,  
Mission, 02000910

Mission Citrus Growers Union Packing  
Shed, (Mission, Hidalgo County:  
MPS), 824 W. Business TX 83,  
Mission, 02000911

Roosevelt School Auditorium and  
Classroom Addition, (Mission,  
Hidalgo County: MPS), 407 E. 3rd  
St., Mission, 02000909

Shary, John, Building, (Mission, Hidalgo  
County: MPS), 900 Doherty,  
Mission, 02000907

Teatro La Paz, (Mission, Hidalgo  
County: MPS), 514, 516, 518  
Doherty, Mission, 02000908

A request for REMOVAL has been received for the following resources:

### Colorado

El Paso County:

Cragmor Sanatorium 1420 Austin Bluffs  
Pkwy, Colorado Springs, 98000586

Fremont County:

Howard Bridge, (Vehicular Bridges in  
Colorado TR),  
Off US 50, Howard, 85000209

Las Animas:

Avery Bridges (Vehicular Bridges in  
Colorado TR), Cty. Rd. Over  
Leitensdorfer Arroyo and Apishapa  
River, Hoehne and Aguilar vicinity,  
85001403

Elson Bridge, (Vehicular Bridges in  
Colorado TR), Cty. Rd. 36, El Moro  
vicinity, 85000215

[FR Doc. 02-20375 Filed 8-9-02; 8:45 am]

**BILLING CODE 4310-70-P**

**DEPARTMENT OF THE INTERIOR****National Park Service****National Register of Historic Places;  
Notification of Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 27, 2002. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St., NW, Suite 400, Washington DC 20002; or by fax, 202-343-1836. Written or faxed comments should be submitted by August 27, 2002.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**Connecticut****Litchfield County**

Migeon Avenue Historic District, Roughly along Migeon Ave. and parts of Forest St., Torrington, 02000913

Skee's Diner, 589 Main St., Torrington, 02000912

**Kentucky****Barren County:**

Glasgow OMS #9, (Kentucky's National Guard Facilities MPS) Cavalry Dr., Glasgow, 02000922

**Boyd County:**

Ashland Armory, (Kentucky's National Guard Facilities MPS) 2519 Lexington Ave., Ashland, 02000920

**Daviess County:**

Owensboro Armory, (Kentucky's National Guard Facilities MPS) 1501 Parrish Ave., Owensboro, 02000919

**Fayette County:**

Woolworth, F.W., Building, 106 Main St., Lexington, 02000924

**Franklin County:**

Berry, George F., House, 700 Louisville Rd.,

Frankfort, 02000915 Frankfort Storage Building—Armory, (Kentucky's National Guard Facilities MPS) 208 Maryland Ave., Frankfort, 02000929

**Hardin County:**

Elizabethtown Armory, (Kentucky's National Guard Facilities MPS) 205 Warfield St., Elizabethtown, 02000921

**Harrison County:**

Second Battle of Cynthiana Battlefield, 1 mi. N of Cynthiana, E of KY 36, Cynthiana, 02000914

**Henderson County:**

Henderson Armory, (Kentucky's National Guard Facilities MPS) 735 N. Elm St., Henderson, 02000928

**Hopkins County:**

Madisonville Armory, (Kentucky's National Guard Facilities MPS) 670 Park Ave., Madisonville, 02000927

**Jefferson County:**

Masonic Widows and Orphans Home, 3701 Frankfort Ave., Louisville, 02000916

**Kenton County:**

Erlanger Proper Subdivision Historic District, (Erlanger, Kenton County, Kentucky MPS) Roughly bounded by Hulbert, Division, Crescent, Dixie, and Graves., Erlanger, 02000918

**Pike County:**

Fordson Coal Company Buildings, 1355, 1377, and 1393 Pond Creek Rd., Stone, 02000917

**Pulaski County:**

Somerset Armory, (Kentucky's National Guard Facilities MPS) 109 Grand Ave., Somerset, 02000926

**Scott County:**

Scott County: Jail Complex, 117 N. Water St., Georgetown, 02000923

**Warren County:**

Bowling Green OMS #10, (Kentucky's National Guard Facilities MPS) 719 Old Morgantown Rd., Bowling Green, 02000925

**Whitley County:**

Williamsburg Ave. (Kentucky's National Guard Facilities MPS), S. Second St., Williamsburg, 02000930

**Maryland****Nicollet County:**

Nicollet County Courthouse and Jail, 501 S. Minnesota Ave., St. Peter, 02000939

**Minnesota****Marshall County:**

Taralseth, K.J., Company, 427 N. Main St., Warren, 02000938

**Pine County:**

Hinckley State Line Marker (Federal Relief Construction in Minnesota MPS AD), MN 48, Ogema, 02000935

**Roseau County:**

Lodge Boleslav Jablonsky No. 219, 30033 110th St., Poplar Grove, 02000936

**St. Louis County:**

Church of St. Joseph (Catholic), 7897 Elmer Rd., Elmer, 02000940  
Lester River Bridge—Bridge No. 5772 (Reinforced-Concrete Highway Bridges in Minnesota MPS), London Rd. over the Lester R., Duluth,

02000934

Orr Roadside Parking Area (Federal Relief Construction in Minnesota MPS AD), MN 53 at First Ave., Orr, 02000937

**North Carolina****Henderson County:**

Stillwell, Erle, House II, 541 Blythe St., Hendersonville, 02000933

**Iredell County:**

Mitchell College Historic District (Boundary Increase, Roughly bounded by Mulberry, Race, Cherry, Oak and Alexander Sts., Statesville, 02000932

**Lee County:**

Lee Avenue Historic District (Lee County: MPS), Roughly along Lee Avenue, W. Main St., S. Academy St., and W. Raleigh St., Sanford, 02000944

**Nash County:**

Villa Place Historic District (Boundary Increase), Roughly along Chester St., Tillery St., NC 64, and Pearl St., Rocky Mount, 02000942

West Have Historic District, Roughly bounded by Lafayette and Pincrest Aves., and the Tar River, Rocky Mount, 02000931

**Stokes County:**

King Historic District, Dalton Rd., Main St., School St. and Railroad Right of Way, King, 02000941

Leak—Chaffin-Browder House, NC 8, 0.1 mi. S of jct. with NC 1941, Germantown, 02000943

**Transylvania County:**

Main Street Historic District (Transylvania County: MPS), Roughly bounded by Gaston St., England St., Probart St., and Jordan St., Brevard, 02000945

**Wake County:**

Depot Historic District, Bounded by W. Hargett, S. McDowell, S. Dawson, and W. Cabarrus St., Raleigh, 02000946

**Ohio****Summit County:**

Porter-Aue House (Canal, Railroad, and Industrial Resources of the Village of Clinton/Warwick, Ohio MPS), 2798 North Street, Clinton, 02000947

**Oregon****Malheur County:**

Vale Drug Store, 158 Main St. N, Vale, 02000950

**Marion County:**

Brown, Charles and Martha, House, 425 N. First Ave., Stayton, 02000949

**Multnomah County:**

Tannler—Armstrong House, 4420 NE Alameda, Portland, 02000948

**Pennsylvania**

## Pike County:

Milford Historic District (Boundary Increase), Roughly encompassing the gridded portion of Milford, Milford, 02000951

**Rhode Island**

## Providence County:

Exchange Street Historic District, Roughly along Exchange, Front and Fountain Sts., Pawtucket, 02000952

**Vermont**

## Windsor County:

Fessenden, Joseph, House, 58 Bridge St., Royalton, 02000953

A request for REMOVAL has been made for the following resource:

**Wisconsin**

## Milwaukee County:

Milwaukee County: Home for Dependent Children School, 9658 Watertown Plank Rd., Wauwatosa, 98001535

[FR Doc. 02-20376 Filed 8-9-02; 8:45 am]

BILLING CODE 4310-70-P

**DEPARTMENT OF THE INTERIOR****Bureau of Reclamation****Notice of Request for Extension of a Currently Approved Information Collection**

**AGENCY:** Bureau of Reclamation, Interior.

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intentions of the Bureau of Reclamation to seek extension of the information collection for the Lower Colorado River Well Inventory. The current OMB approval expires on December 31, 2002.

**DATES:** Comments on this notice must be received by October 11, 2002.

**FOR FURTHER INFORMATION CONTACT:** To obtain copies of the information collection form and to submit comments on this information collection contact: Mr. Jeffrey Addiego, Boulder Canyon Operations Office, PO Box 61470, Boulder City, NV 89006-1470; telephone (702) 293-8525; or e-mail at [JAddiego@lc.usbr.gov](mailto:JAddiego@lc.usbr.gov).

**SUPPLEMENTARY INFORMATION:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have

practical utility; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, 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. 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 disclosure in their entirety.

*Title:* Lower Colorado River Well Inventory.

*OMB No.* OMB No. 1006-0014.

*Abstract:* The Secretary of the Interior is responsible for accounting for all diversions of mainstream Colorado River water along the lower Colorado River, and for assuring that all Colorado River use is in accordance with a water use entitlement. This requires an inventory of wells along the lower Colorado River, and the gathering of specific information concerning these wells.

*Description of respondents:* All diversions of mainstream Colorado River water along the lower Colorado River must be accounted for and, for non-Indian diverters, in accordance with a water use contract with the Secretary of the Interior. This will affect every well owner and operator along the lower Colorado River in Arizona, California, and Nevada. Each diverter (including well pumpers) must be identified and their diversion locations and water use determined.

*Frequency:* These data will be collected only once for each well owner or operator as long as changes in water use, or other changes that would impact contractual or administrative requirements, are not made.

*Estimated completion time:* An average of 30 minutes is required for Reclamation to interview individual

well owners or operators. Reclamation will use the information collected during these interviews to complete the information collection form.

*Annual responses:* 1,000.

*Annual burden hours:* 500 hours.

Dated: July 17, 2002.

**Gary Palmeter,**

*Manager, Property and Office Services Division.*

[FR Doc. 02-20298 Filed 8-9-02; 8:45 am]

BILLING CODE 4310-MN-M

**DEPARTMENT OF JUSTICE****National Institute of Corrections****Advisory Board Meeting**

*Time and Date:* 8:30 a.m. to 5 p.m. on Monday, October 21, 2002 and 8:30 a.m. to 12 noon on Tuesday, October 22, 2002.

*Place:* Raintree Plaza Hotel & Conference Center (soon to be Radisson Hotel & Conference Center), 1900 Ken Pratt Boulevard, Longmont, Colorado 80501.

*Status:* Open.

*Matters to Be Considered:*

Presentations on Leadership/Management Competency Project, E-Learning and Children of Offenders; division reports; Quaterly Report by Office of Justice Programs, Health and Human Services; and updates on Interstate Compact activities and Prison Rape Research/Data.

*Contact Person For More Information:* Larry Solomon, Deputy Director, 202-307-3106, ext. 44254.

**Morris L. Thigpen,**

*Director.*

[FR Doc. 02-20362 Filed 8-10-02; 8:45 am]

BILLING CODE 4410-36-M

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-482]

**Wolf Creek Nuclear Operating Corporation; Wolf Creek Generating Station Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to revise the antitrust conditions applicable to Kansas Gas and Electric Company (KGE) contained in Appendix C to Facility Operating License No. NPF-42 for the Wolf Creek Generating Station (WCGS), located in Coffey County, Kansas. Wolf Creek Nuclear Operating Corporation (the licensee) operates WCGS and acts

as the agent for KGE, which co-owns the facility. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

### Environmental Assessment

#### *Identification of the Proposed Action*

The proposed action would revise the antitrust conditions for KGE in Appendix C of Facility Operating License No. NPF-42 to (1) add a statement that the antitrust conditions do not restrict the rights of Kansas Electric Power Cooperative, Inc. (KEPCo) or the duties of KGE, that may exist beyond, and are not inconsistent with, the antitrust conditions, (2) define "KGE members in licensee's service area" in the appendix to include all KEPCo members with facilities in Western Resources, Inc.'s and KGE's combined service area, (3) delete license conditions restricting KEPCo's use of the power from WCGS, (4) remove out-of-date conditions, and (5) update conditions to be consistent with the terms and conditions of Western Resources' Federal Energy Regulatory Commission open access transmission tariff. Western Resources is the parent company of KGE. The proposed action is in accordance with the licensee's application dated June 27, 2000, as supplemented by letters dated January 31, May 2, and October 30, 2001, and May 10, 2002.

#### *The Need for the Proposed Action*

The proposed action is needed, according to the licensee's application, to update KGE's antitrust conditions and make the antitrust conditions consistent with the terms and conditions of Western Resources' Federal Energy Regulatory Commission open access transmission tariff.

#### *Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes that the proposed license amendment involves administrative actions which have no effect on plant equipment or operation.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed

action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

#### *Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

#### *Alternative Use of Resources*

The action does not involve the use of any different resource than those previously considered in NUREG-0878, "Final Environmental Statement Related to the Operation of Wolf Creek Generating Station, Unit No. 1," dated June 1982.

#### *Agencies and Persons Consulted*

On August 5, 2002, the staff consulted with the Kansas State official, Mr. Thomas A. Conley of the Kansas Department of Health and Environment regarding the environmental impact of the proposed action. The State official had no comments.

#### **Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated June 27, 2000, January 31, May 2, and October 30, 2001, and May 10, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in

accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1-800-397-4209, or 301-415-4737, or by e-mail at [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 6th day of August 2002.

For the Nuclear Regulatory Commission.

#### **Stephen Dembek,**

*Chief, Section 2 Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02-20343 Filed 8-9-02; 8:45 am]

BILLING CODE 7590-01-P

## POSTAL SERVICE

### **Privacy Act of 1974; System of Records**

**AGENCY:** Postal Service.

**ACTION:** Notice of proposal to consolidate two systems of records.

**SUMMARY:** The Postal Service, primarily for ease of reference, has determined it necessary to consolidate the descriptions of two records systems previously reported separately. The description of USPS 050.010—Finance Records, Employee Travel Records (Accounts Payable), is combined with USPS 050.060—Finance Records, Accounts Payable Files. The Postal Service has determined that the description of USPS 050.060 should be expanded in order to provide a more complete picture of the scope of the information maintained. System modifications and the two added new routine uses (3 and 4) enhance the description and permit disclosure of information about employees to the government credit card vendor and to the employee's designated financial institution.

**DATES:** Any interested party may submit written comments on the proposed amendments and additions. This proposal becomes effective without further notice September 23, 2002, unless comments received on or before that date result in a contrary determination.

**ADDRESSES:** Written comments on this proposal should be mailed or delivered to the Records Office, Room 5846, 475 L'Enfant Plaza SW., Washington, DC 20260-5846. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Faruq at (202) 268-2608.

**SUPPLEMENTARY INFORMATION:** The proposed revision to Privacy Act system

of records USPS 050.060, Finance Records—Accounts Payable Files, reflects the changes in procedures and recordkeeping implemented by the Postal Service when accounts payable processing was decentralized and changes were made for reimbursing employee travel and related expenses through eTravel. The proposed revision also incorporates the implementation of the Electronic Funds Transfer (EFT) reimbursement capability for travelers. Therefore, the Postal Service is deleting from its Personal Systems of Sequential Inventory USPS 050.010, Finance Records—Employee Travel Records (Accounts Payable). Records that were subject to USPS 050.010 are covered by system of records USPS 050.060, Finance Records—Accounts Payable Files. The changes to USPS 050.060 do not alter the character or use of information contained in the system, but rather improved the system description to reflect information collection in today's environment.

Each of the proposed routine uses is compatible with the purpose for collecting the information. The purpose for collecting the information is, in part, "to reimburse employees and vendors for travel and other expenses incurred in conjunction with official business." Because the information within this system USPS 050.060 is collected to handle reimbursement for travel and other expenses, the proposed routine uses (3 and 4) are clearly compatible with the purpose of the system.

The system modifications and additions are not expected to have any effect on individual rights because the accounts payable information pertains primarily to businesses. To the extent that information within system USPS 050.060 pertains to individuals, it relates to business transactions rather than personal matters. However, appropriate safeguards are applied to protect information. Records are kept in a secured environment, with automated data processing physical and administrative security and technical software applied to data on computer media. Paper records are kept in a secured area and made available internally on an official need-to-know basis. Contractors who maintain data collected are made subject to the subsection (m) of the Privacy Act and are required to apply appropriate protection subject to the audit and inspection of the Postal Inspection Service.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed system changes has been sent to

Congress and to the Office of Management and Budget for their evaluation.

USPS Privacy Act system 050.060 was last published in its entirety in the **Federal Register** on June 5, 1997 (62 FR 30898–30901). The Postal Service proposes amending this system as shown below.

#### **USPS 050.060**

##### **SYSTEM NAME:**

Finance Records—Accounts Payable Files, 050.060.

##### **SYSTEM LOCATIONS:**

[Change to Read]

Post Offices, district and area finance offices, Postal Service Headquarters, imprest funds offices, personnel offices, accounting service centers, computer operations service centers, and contract travel and relocation agency offices.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

[Change to Read]

Individuals or entities to whom the Postal Service makes payment(s) for materials and services received or expenses incurred in conjunction with official Postal Service business. Includes employees and officers authorized to travel, relocate, or otherwise incur expenses in performance of their official duties. Also includes persons that receive payment for indemnity claims for damage to or loss of mail, service failures, and administrative tort claims.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

[Change to Read]

This system is made up of hard copy and electronic records. The records include hard copies of commitment documents, purchase orders, requisitions, invoices, claims, and receipts; and computerized transaction files and databases. These records contain creditors' name, address, vendor, tax identification, or social security number (employees and officers are considered vendors); finance number, e-mail address, logon identification code, travel and relocation plans, travel expense and relocation transaction details, expense dates, descriptions of expenses incurred, amount due, payment status, and payment history. For employees and officers using the government-supplied travel card for travel and relocation expenses, certain electronic records also contain the employee or officer's credit card account number. For electronic funds transfer transactions (EFT), files also include the creditor's financial institution routing number; and for EFT payments made by

the Postal Service on behalf of employees and officers, the employee or officer's account number.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

[Change to Read]

39 U.S.C. 401, 404, 1001, 1206, 2008, and Public Law 104–134.

##### **PURPOSE(S):**

[Change to Read]

The records in this system support payments to Postal Service creditors. Information from these records is used to: (1) Verify that goods and services were received by the Postal Service; (2) assure that expenses incurred were properly authorized; (3) reimburse employees, officers, and vendors for travel, relocation, and other expenses incurred in conjunction with official Postal Service business; (4) generate electronic funds transfer and hard copy check payment transactions to promptly pay creditors; and (5) offset delinquent debts that certain creditors owe to the Federal Government under the Department of the Treasury Offset Program.

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

General routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses follow:

1. Disclosure of information about individuals for whom the Postal Service maintains accounts payable *records* may be made to the Department of the Treasury for cross-matching under its Treasury Offset Program. Disclosure will be limited to information needed to establish the identity of the individual as a delinquent debtor of another Federal agency and to offset the payment to pay the debt.

2. Disclosure of the name and address of the owner of leased property, or of the payee when different from the owner, may be made upon request.

[Add]:

3. Disclosure of the employee or officer's social security number and government-supplied credit card account number may be made to the government travel card vendor in conjunction with payment of charges for authorized expenses charged to the government-supplied travel card.

4. Disclosure of the employee or officer's account number may be made to the financial institution designated by the employee or officer when reimbursing the employee or officer for authorized travel relocation expenses

not charged to government-supplied travel card.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

[Change to Read]

Hard copy documents are retained in Post Offices, district and area finance offices, Postal Service Headquarters, imprest fund offices, personnel offices, the St. Louis and San Mateo Accounting Service Centers, and contractor travel and relocation agency offices. Electronic records related to accounts payable transactions, including incoming invoices, government-supplied travel card transactions, and electronic funds transfer and other payment records, are maintained at the San Mateo Computer Operations Service Center (COSC). The electronic databases containing employee travel reimbursement system enrollment, logon ID, and travel expense transaction records are retained at the Eagan COSC.

**RETRIEVABILITY:**

[Change to Read]

Hard copy accounts payable records are retrieved by vendor name (including employees and officers) and identification number within processing location, transaction date, and/or batch number. Electronic records are retrieved by vendor name, identification number, credit card number, financial institution account number, transaction date, and/or batch number.

**SAFEGUARDS:**

[Change to Read]

Hard copy and electronic records within this system are located in buildings with controlled access. Hard copy records are stored in lockable file cabinets. Access to the buildings and to controlled areas within the buildings is restricted through use of guards and authorized badges and/or card keys and limited to persons whose duties require such access. Electronic records are protected with security software and operating system controls, including the use of logon identification codes and password firewalls that prevent unauthorized access to the private Postal Service computer network, and encryption of sensitive data elements. Information that is transmitted electronically between Postal Service facilities or between the Postal Service and external entities is also encrypted. Access is limited by these means to persons whose duties require it.

**RETENTION AND DISPOSAL:**

[Change to Read]

**Note:** In addition to this system of records, certain accounts payable records are duplicated in USPS Privacy Act Systems 010.030, 050.040, 150.030, 160.010, 160.020, 200.020, and 200.030, each of which has relevant retention periods established. See those systems for the retention of the records described therein.

a. Hard copies of accounts payable records, including requisitions, purchase orders, certified invoices, travel expense reports, relocation forms, and related records, are filed alphabetically by vendor name and invoice number (in the Postal Service facility where the payment transaction was processed) within batch number, and/or within accounting period. These records are retained for 3 years from the end of the fiscal year in which the expenses were paid, then shredded.

b. Hard copies of travel reimbursement system enrollment records are filed alphabetically, by employee or officer's last name, by responsible coordinator, within the Postal Service facility where the employee was enrolled into the system. These records are transferred to an inactive file when the employee or officer no longer participates in the electronic travel reimbursement system or separates from the Postal Service. The inactive records are retained until the end of the calendar year, then shredded.

c. Electronic accounts payable payment records are retained online at the San Mateo COSC for 1 year from the end of the fiscal year in which the payment was made; archived for 6 additional years, then destroyed.

d. Electronic travel reimbursement system employee and officer transaction records are retained online at the Eagan COSC for 3 years from the end of the fiscal year in which the reimbursement was claimed; archived for an additional year, then destroyed.

e. Electronic travel reimbursement system employee and officer enrollment and logon ID records are retained online at the Eagan COSC until they are cancelled or superseded, when they are transferred to an inactive file. The inactive records are retained for 3 years from the end of the calendar year in which they became inactive, then destroyed.

**SYSTEM MANAGER(S) AND ADDRESSES:**

Vice President, Controller, Finance, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-5200.

**NOTIFICATION PROCEDURE:**

Individuals wanting to know whether information about them is maintained in this system of records must address

inquiries in writing to the system manager. Inquiries must contain the individual's name and taxpayer identification number (or social security number).

**RECORDS ACCESS PROCEDURES:**

Requests for access must be made in accordance with the Notification Procedures above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

**CONTESTING RECORD PROCEDURES:**

See Notification Procedure and Records Access Procedures above.

**RECORD SOURCE CATEGORIES:**

[Change to Read]

Information in this system is furnished by Postal Service creditors, employees, and officers; Postal Service financial systems; the government travel card vendor; employee-designated financial institutions; and other Federal agencies to which creditors are delinquently indebted. Some information may be duplicated in other Privacy Act systems of records including USPS 010.030, 050.040, 150.030, 160.010, 160.020, 200.020, and 200.030.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 02-20393 Filed 8-9-02; 8:45 am]

**BILLING CODE 7710-12-U**

**POSTAL SERVICE**

**Postal Service Licensing Program**

**ACTION:** Notice.

**SUMMARY:** The Postal Service is publishing notice that it has amended its *Administrative Support Manual* to include policy and information about the Postal Service's licensing policy and program.

**DATES:** The amendments to the *Administrative Support Manual* (ASM) are effective when published in the *Postal Bulletin* (issue 22082) on August 8, 2002.

**ADDRESSES:** Parties interested in reviewing these amendments may find them online at <http://www.usps.com/cpim/ftp/bulletin/pb.htm>.

**FOR FURTHER INFORMATION CONTACT:** Maria Pell, Senior Licensing Specialist, 202-268-6745.

**SUPPLEMENTARY INFORMATION:**

**Discussion of Amendments**

The Postal Service is adding ASM subchapter 66, Licensing, to include the Postal Service's licensing policy and

information about the licensing program. Specifically, we:

- Added ASM section 333.647 to include a reference to the licensing policy in section 333.6, Endorsement of Nonpostal Products, Services, or Business. The reference is to remind employees to refer to and follow the appropriate policy if a company approaches them about manufacturing or distributing merchandise bearing USPS marks.

- Added ASM part 661 to include the responsibilities and authority of the Licensing group.

- Added ASM section 662.1, to describe the requirements of the licensing program as it relates to Postal Service employees making official purchases of merchandise that display a Postal Service trademark, stamp design, or other pictorial or graphic image that the Postal Service owns or uses.

- Added ASM section 662.2 to provide the definition of *officially-licensed merchandise*.

- Included a licensing handbook for Postal Service employees who work in the field [*Licensing: Field Handbook of Frequently Asked Questions (FAQs)*] and a list of the Postal Service's licensees, which will be updated monthly in the Postal Bulletin.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02-20392 Filed 8-9-02; 8:45 am]

BILLING CODE 7710-12-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46318; File No. SR-MSRB-2002-06]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of the Proposed Rule Change Relating to Disclosures in Connection With New Issues

August 6, 2002.

On June 21, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-2002-06). The proposed rule change relates to disclosures in connection with new issues.

The Commission published the proposed rule change for comment in

the **Federal Register** on July 3, 2002.<sup>3</sup>

The Commission did not receive comment letters relating to the forgoing proposed rule change. This order approves the Board's proposal.

### I. Description of the Proposed Rule Change

To add greater convenience to customers and cost effectiveness to brokers, dealers and municipal securities dealers, the MSRB has determined to amend Rule G-32, on disclosures in connection with new issues. The proposed rule change amends Rule G-32(a) to reference Rule 154, of the Securities Act of 1933 ("Securities Act"), on householding.<sup>4</sup> The amendments to Rule G-8, on books and records, and Rule G-9, on preservation of records, account for the changes to Rule G-32.

Under the Securities Act's Rule 154, a broker-dealer may satisfy its prospectus delivery requirements with respect to two or more investors sharing the same address by sending a single prospectus to that address, subject to certain conditions.<sup>5</sup> The SEC refers to this process as "householding." In adopting Rule 154, the Commission noted that, as a result of increased ownership of securities by individuals through different accounts (*e.g.*, brokerage accounts, individual retirement accounts and custodial accounts for minors), duplicate copies of disclosure documents often were mailed to a single household.<sup>6</sup> The investors do not have to be related. The document may be addressed to the investors as a group (*e.g.*, "Jane Doe and Household" or "The Smith Family") or to each of the investors individually (*e.g.*, "Jane Doe and John Smith"). The address may be a residential, commercial, or electronic address (*i.e.*, it may be a street address, post office box, fax number, or e-mail address).<sup>7</sup> The purpose of Rule 154 is to reduce the number of duplicate disclosure documents delivered to such investors, thereby resulting in greater convenience for investors and cost savings for broker-dealers and issuers.<sup>8</sup>

<sup>3</sup> See Release No. 34-46124 (June 26, 2002), 67 FR 44656.

<sup>4</sup> Rule 154, on delivery of prospectuses to investors at the same address, permits broker-dealers to satisfy their delivery obligations by sending a single document to two or more investors sharing the same address. 17 CFR 230.154.

<sup>5</sup> The Commission has similar requirements under the Act and the Investment Company Act of 1940 with respect to shareholder reports.

<sup>6</sup> See Release No. 33-7912 (October 27, 2000).

<sup>7</sup> An e-mail address may be used if the dealer obtains the investors' written consent for electronic delivery and it is a shared e-mail address.

<sup>8</sup> *Id.*

The broker-dealer must obtain the investors' written consent to the delivery of a single document on behalf of all such investors, or the broker-dealer may rely on "implied consent" if the following conditions are met: (1) The investor has the same last name as the other investors, or the broker-dealer reasonably believes that they are members of the same family; (2) the dealer sends each investor written notice at least 60 days before relying on this provision, and provides each investor with an opportunity to opt out of this method of delivery;<sup>9</sup> (3) the investor does not opt out during the 60-day notice period; and (4) the dealer delivers the documents to a residential street address or a post office box.<sup>10</sup>

For open-end management investment companies (*i.e.*, mutual funds) and dealers that are required to deliver the disclosure documents of such companies, Rule 154(c) requires, at least annually, that the dealer explain to investors who have provided written or implied consent how such consent can be revoked. This information may be provided through any means reasonably designed to reach the investor, such as a prospectus, shareholder report or newsletter. Unlike other issuers, mutual funds typically send investors updated disclosure materials annually, and the ongoing nature of this relationship dictates that investors be informed of their right to revoke consent and begin receiving individual copies of disclosure documents, if they so desire.

MSRB Rule G-32, on disclosures in connection with new issues, generally requires that any dealer selling municipal securities to a customer during the issue's underwriting period must deliver the official statement in final form, if any, to the customer by settlement of the transaction. The MSRB believes that, with respect to this delivery requirement, if two or more customers share the same address, Rule G-32 should allow for the same "householding" process as that contained in Rule 154. In addition, Rule G-32(a)(i)(A) provides that, if a customer participates in a periodic municipal fund security plan or a non-periodic municipal fund security program and has previously received an official statement in final form in connection with such a plan or program,

<sup>9</sup> The dealer must provide either a toll-free number or a pre-addressed, postage paid form.

<sup>10</sup> Rule 154 provides that a dealer can assume that an address is a residential address unless it has information that indicates it is a business address. If the dealer has reason to believe that the address is a multi-unit dwelling, the address must include the investor's unit number. See Rule 154(b)(4) and (d).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

the dealer may sell additional shares or units to that customer if the dealer sends a copy of any new, supplemented, amended or "stickered" official statement in final form, by first class mail or other equally prompt means.<sup>11</sup> Allowing for householding in the context of municipal fund securities would be particularly beneficial, especially where one family has accounts for multiple children (or each parent has separate accounts for the same child) and the dealer may be required to deliver disclosure documents on an ongoing basis (e.g., the customer participates in a periodic plan or non-periodic program).

Thus, the proposed rule change provides that a dealer may satisfy its official statement delivery obligations by complying with that Rule's requirements when sending disclosure documents to two or more customers sharing the same address. The amendment further provides that dealers that are required to send ongoing disclosure documents to customers who participate in a periodic municipal fund security plan or a non-periodic municipal fund security program are specifically required to comply with Rule 154(c) by providing those customers with information, at least annually, on how to revoke their consent to the householding process and thereby receive individual copies of disclosure documents, if they so desire.

## II. Summary of Comments

The Commission did not receive comment letters relating to this proposed rule change.

## III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Act and the rules and regulations thereunder, which govern the MSRB.<sup>12</sup> The language of Section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to,

<sup>11</sup> If the dealer sends a supplement, amendment or sticker without including the remaining portions of the final official statement, the dealer must include a written statement describing which documents constitute the complete final official statement and stating that it is available upon request.

<sup>12</sup> Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.<sup>13</sup>

After careful review, the Commission finds that the Board's proposed rule change consisting of a proposed amendment to Rule G-32, on disclosures in connection with new issues, as well as amendments to Rule G-8, on books and records, and Rule G-9, on preservation of records, meets the requisite statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Act, as set forth above.

## IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (File No. MSRB-2002-06) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-20332 Filed 8-9-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46316; File No. SR-NASD-2002-90]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Modification of a Pilot Program To Provide Daily Share Volume Reports via NasdaqTrader.com

August 6, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, 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"), submitted to the Securities

<sup>13</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposal with the Commission on August 1, 2002.<sup>3</sup> Nasdaq filed the proposal pursuant to Section 19(b)(3) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend its Nasdaq PostData<sup>SM</sup> ("PostData<sup>SM</sup>") pilot program to make the following additional information available through PostData<sup>SM</sup>: (1) Buy volume reports; (2) sell volume reports; (3) crossed volume reports; and (4) consolidated activity volume reports. New text is italicized.

\* \* \* \* \*

### Rule 7010 System Services

(a)-(o) No changes.

(q) NasdaqTrader.com Volume and Issue Data Package Fee

The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be \$70 per month. The charge to be paid by market data vendors for this information shall be \$35 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members, Qualified Institutional Buyers\* and data vendors. The Volume and Issue Data package includes: (1) Daily Share Volume reports

<sup>3</sup> See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Yvonne Fraticelli, Special Counsel, Division of Market Regulation, Commission, dated July 31, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq represented that the proposed modifications to Nasdaq PostData<sup>SM</sup>, a trading data distribution facility, will be made available at no charge to all vendors and direct subscribers of Nasdaq. Nasdaq further represented that it had made information on the proposed modifications available to market data vendors, but that no vendors currently accept the PostData<sup>SM</sup> feed or re-distribute that feed to their subscribers. In addition, Nasdaq requested that the Commission waive both the five-day pre-filing notice requirement and the 30-day operative delay provided under Rule 19b-4(f)(6) of the Act.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

\* For purposes of this service, see definition of "Qualified Institutional Buyer" found in Rule 144A of the Securities Act of 1933.

- (2) Daily Issue Data
- (3) Monthly Volume Summaries
- (4) *Buy Volume Report*
- (5) *Sell Volume Report*
- (6) *Crossed Volume Report*
- (7) *Consolidated Activity Volume Report*

\* \* \* \* \*

## 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

On January 11, 2002, the Commission approved, on a twelve-month pilot basis, the creation of PostData<sup>SM</sup>, a voluntary trading data distribution facility accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com website.<sup>6</sup> PostData<sup>SM</sup> currently consists of three reports provided in a single package: (1) Daily share volume reports, which provide subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any NASD member firm that voluntarily permits the dissemination of this information; (2) daily issue data, which contains a summary of the previous day's activity for every Nasdaq issue; and (3) monthly volume summaries, which provide monthly trading volume statistics for the top 50 market participants sorted by industry sector, security, or type of trading (e.g., block or total).

In response to requests from professional Nasdaq market participants to increase the availability and granularity of Nasdaq-verified trading data provided through NasdaqTrader.com, Nasdaq has determined to expand the information made available to PostData<sup>SM</sup> subscribers. Specifically, Nasdaq has determined to make available through PostData<sup>SM</sup> the following four additional

reports: buy volume reports, sell volume reports, crossed volume reports, and consolidated activity volume reports. According to Nasdaq, each report would offer information regarding total Nasdaq reported buy, sell, cross, or consolidated volume in the security, as well as rankings of registered market makers based upon various aspects of their activity in Nasdaq. In addition, the reports would provide recipients with information about the number and character of each market maker's trades. Finally, the reports would also provide the information described above with respect to block volume, be it buy, sell, cross or consolidated interest. Nasdaq notes that these new reports, as well as the existing reports, would include the volume reported by another exchange only if that volume is executed through a Nasdaq execution system.

In its proposal to create PostData<sup>SM</sup>, Nasdaq represented that it would make product enhancements available to all PostData<sup>SM</sup> users of the proposed products, whether the users were customers of Nasdaq or of a participating data vendor.<sup>7</sup> Specifically, Nasdaq represented that if it offered a free product enhancement during the pilot program, it would make the enhancement available to all direct and indirect users at no cost, and that such modifications to PostData<sup>SM</sup> during the pilot period would be limited to minor enhancements to the content of the package.<sup>8</sup> In addition, Nasdaq represented that it would provide notice to vendors to allow vendors to implement programming changes if necessary.<sup>9</sup> Nasdaq believes that the current proposal meets these requirements because (1) the proposed modifications to PostData<sup>SM</sup> will be made available at no charge to all vendors and direct subscribers of Nasdaq and (2) Nasdaq has made information on the proposed modifications available to market data vendors.<sup>10</sup>

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5)<sup>11</sup> and 15A(b)(6) of the Act.<sup>12</sup> Section 15A(b)(5) of the Act requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a

national securities association. Section 15A(b)(6) of the Act requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

### 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

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and subparagraph (f)(6) of Rule 19b-4<sup>14</sup> thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. 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.

Nasdaq has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. Under Rule 19-4(f)(6) of the Act, a proposed "non-controversial" does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time. The Commission believes that waiving the five-day pre-filing notice requirement and the 30-day operative delay is

<sup>6</sup> See Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (Order approving File No. SR-NASD-99-12) ("Pilot Approval Order").

<sup>7</sup> See Pilot Approval Order, *supra* note 6.

<sup>8</sup> Nasdaq also represented that it would seek Commission approval of any fees to be assessed for such enhancements. *Id.*

<sup>9</sup> See Amendment No. 1, *supra* note 3.

<sup>10</sup> See Amendment No. 1, *supra* note 3.

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq to provide the additional PostData<sup>SM</sup> information to all users of PostData<sup>SM</sup> immediately. For this reason, the Commission designates the proposal, as amended, to be effective and operative upon filing with the Commission.<sup>15</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR-NASD-2002-90 and should be submitted by September 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-20281 Filed 8-9-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46296; File No. SR-Phlx-2002-37]

### Self-Regulatory Organization; Notice of Filings and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a 10-Up AUTO-X Guaranteed Size for Option Orders for the Proprietary Account(s) of Off-Floor Broker-Dealers in the Top 120 Options

August 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 22, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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 Phlx. On July 31, 2002, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> 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 Phlx proposes to amend Exchange Rule 1080, Commentary .05(iv), to provide that the minimum guaranteed AUTO-X size shall be at least ten contracts for off-floor broker-dealer limit orders in the 120 most actively traded equity options (the "Top 120 Options").<sup>4</sup> The text of the proposed rule change is set forth below. New text is in italics; deletions are in brackets.

#### Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

(a)-(j) No change.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter to John C. Roeser, Special Counsel, Division of Market Regulation, Commission, from Richard S. Rudolph, Director and Counsel, Phlx, dated July 26, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to expand the definition of the Top 120 Options so that any equity option listed on the Exchange, regardless of when such equity option was listed can be considered a Top 120 Option. For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on July 31, 2002.

<sup>4</sup> The Exchange has defined a Top 120 Option as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded nationally for a specified month based on volume reflected by The Option Clearing Corporation. See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-2000-71). See also Amendment No. 1, *supra* note 3.

Commentary:

.01-.03 No change.

.04 Reserved.

.05

(1)-(iii) No change.

(iv) (a) *The minimum guaranteed AUTO-X size shall be at least 10 contracts for off-floor broker-dealer limit orders in the 120 most actively traded equity options (the "Top 120 Options"). A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded nationally for a specified month based on volume reflected by The Options Clearing Corporation ("OCC").*

(b) *With respect to all other options. [O]ff-floor broker-dealer limit orders may be eligible for automatic execution via AUTO-X on an issue-by-issue basis, subject to the approval of the Options Committee.*

(c) *The AUTO-X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO-X guarantee for public customer orders, subject to the approval of the Options Committee.*

(v) 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, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to guarantee automatic executions of at least ten contracts in Top 120 Options for orders delivered via AUTOM<sup>5</sup> from off the floor of the

<sup>5</sup> AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

<sup>15</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). In addition, for purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on August 1, 2002, the date Nasdaq filed Amendment No. 1.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

Exchange for the proprietary account(s) of off-floor broker-dealers.<sup>6</sup>

Currently, off-floor broker-dealer limit orders may be eligible for automatic execution via AUTO-X on an issue-by-issue basis, subject to the approval of the Options Committee. The instant proposal would require specialists to provide automatic executions of at least ten contracts for eligible orders for the account(s) of off-floor broker-dealers in the Top 120 Options.<sup>7</sup> Specialists may elect to guarantee a larger size for automatic execution of such orders, up to the maximum size allowable under Exchange rules.<sup>8</sup> The AUTO-X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO-X guarantee for public customer orders, subject to the approval of the Options Committee.<sup>9</sup>

The Exchange believes that the instant proposal should enhance competition in the options markets by enabling it to attract and compete for order flow in the Top 120 Options by guaranteeing automatic executions for eligible orders for the proprietary account(s) of off-floor broker-dealers. By requiring the automatic execution of such orders, the Exchange can guarantee order flow providers automatic executions in Top 120 Options for a minimum of ten contracts, thus ensuring that their proprietary orders would be handled automatically and reported expeditiously.

## 2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with section 6 of the Act<sup>10</sup> in general, and with section 6(b)(5) of the Act<sup>11</sup> specifically, in that it is

<sup>6</sup>In April, 2002, the Commission approved the Exchange's proposal to adopt rules to allow limit orders for the proprietary accounts of off-floor broker-dealers to be delivered through AUTOM and, in certain issues, automatically executed via AUTO-X. See Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR-Phlx-2001-40).

<sup>7</sup>The initial proposal would have limited the definition of the Top 120 Options to options listed on the Exchange after January 1, 1997. See Amendment No. 1, *supra* note 3.

<sup>8</sup>The current maximum allowable guaranteed size for automatic execution of eligible orders via AUTO-X is 250 contracts. See Exchange Rule 1080(c).

<sup>9</sup>See Exchange Rule 1080, Commentary .05(iv).

<sup>10</sup>15 U.S.C. 78f.

<sup>11</sup>15 U.S.C. 78f(b)(5).

designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by adding a requirement designed to attract order flow generated for the proprietary accounts of off-floor broker-dealers, thus fostering competition among exchanges for such order flow.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx 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; and (iii) does not become operative for thirty days from the date of filing, or such time as the Commission may designate if consistent with the protection of investors and the public interest,<sup>12</sup> the proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder.

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), 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 upon filing and has requested that the Commission waive the thirty-day operative period in order that the

<sup>12</sup>The Exchange provided the Commission with notice of its intent to file the proposed rule change more than five days prior to the filing date.

<sup>13</sup>15 U.S.C. 78s(b)(3)(A).

<sup>14</sup>17 CFR 240.19b-4(f)(6).

Exchange may implement the proposal promptly and in an orderly fashion. The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately.<sup>15</sup> 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 also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2002-37 and should be submitted by September 3, 2002.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-20280 Filed 8-9-02; 8:45 am]

**BILLING CODE 8010-01-M**

<sup>15</sup>For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>16</sup>17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46307; File No. SR-Phlx-2002-43]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Increase in the Maximum Guaranteed Size for AUTO-X Eligible Orders in Options on the Nasdaq-100 Index Tracking Stock ("QQQ")<sup>SM</sup> From 250 Contracts to 1,000 Contracts

August 2, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 29, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 self-regulatory organization. The proposed rule change has been filed by the Exchange as a "non-controversial" rule change under Rule 19-4(f)(6).<sup>3</sup> 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 Phlx Rule 1080, which governs the Exchange's Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X),<sup>4</sup> to provide that, with respect to options overlying the Nasdaq-100 Index Tracking Stock ("QQQ")<sup>SM</sup>,<sup>5</sup> orders of up to 1,000

contracts would be eligible for automatic execution via AUTO-X.

#### 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 purpose of the proposed rule change is to increase the maximum order size eligibility for AUTO-X in QQQ<sup>SM</sup> options from 250 to 1,000 contracts<sup>6</sup> to match the size of orders in the same options eligible for AUTO-X on another options exchange.<sup>7</sup>

Currently, orders are routed through AUTOM from member firms directly to the appropriate specialist on the trading floor. Public customer market orders and marketable limit orders routed through AUTOM that are eligible for

calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust<sup>SM</sup>, or the beneficial owners of Nasdaq-100 Shares<sup>SM</sup>. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

<sup>6</sup> Currently, the maximum option order size eligible for automatic execution via AUTO-X is 250 contracts for all options, including QQQ<sup>SM</sup> options. See Phlx Rule 1080(c).

<sup>7</sup> Phlx Rule 1080(c) provides that The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO-X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Commission pursuant to Section 19(b)(3)(A) of the Act. 15 U.S.C. 78s(b)(3)(A). The Exchange notes that the American Stock Exchange LLC ("Amex") allows automatic executions in QQQ<sup>SM</sup> options for a size of up to 2,000 contracts in series in the two near-term expiration months, and up to 1,000 contracts in all other expiration months. See Amex Rule 933. Commentary .02. See also Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002) (SR-Amex-2002-30). Because the Amex rule allows automatic executions in QQQ<sup>SM</sup> options for up to at least 1,000 contracts in, all series, the Exchange proposes to match the 1,000 contract AUTO-X guarantee for QQQ<sup>SM</sup> options in all series.

AUTO-X are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.<sup>8</sup>

Because AUTO-X affords prompt and efficient automatic executions at the displayed price, the Exchange believes that the proposed increase in automatic execution levels for eligible orders in QQQ<sup>SM</sup> options from 250 to 1,000 contracts should provide the benefits of automatic execution to a larger number of customer orders. The Exchange further believes that the proposed increase in automatic execution levels in QQQ<sup>SM</sup> options should enable the Exchange to remain competitive for order flow with other exchanges that trade QQQ<sup>SM</sup> options.

The Exchange notes that there are many safeguards incorporated into its rules to ensure the proper handling of AUTO-X orders. First, Phlx Rule 1080(f)(iii) states that a specialist is responsible for the remainder of an AUTOM order where a partial execution occurred. Phlx Rule 1015 governs execution guarantees and requires the trading crowd to ensure that public orders are filled at the best market to a minimum of the disseminated size. Violations of any of these provisions could be referred to the Business Conduct Committee for disciplinary action.

Registered Options Traders ("ROTS") have discretion to participate on the Wheel that allocates AUTO-X trades among specialists and ROTs.<sup>9</sup> Consequently, an increase in the maximum AUTO-X order size in QQQ<sup>SM</sup> options would not prevent a ROT from declining to participate on the Wheel. Because the Wheel currently rotates in two-lot to ten-lot increments depending upon the size of the order,<sup>10</sup> no single ROT would be allocated the entire 1,000 contracts. The Exchange also has procedures that allow specialists to disengage AUTO-X in extraordinary circumstances and provide that AUTOM users will be notified of such circumstances.<sup>11</sup>

With respect to issues involving financial responsibility, the Exchange notes that its rules provide a minimum net capital requirement for ROTs.<sup>12</sup> In addition, a ROT's clearing firm performs risk management functions to ensure that the ROT has sufficient financial resources to cover positions throughout the day. In this regard, the function

<sup>8</sup> See Phlx Rule 1080(c).

<sup>9</sup> Unlike ROTs, specialists are required to participate on the Wheel. See Phlx Rule 1080(g).

<sup>10</sup> See Phlx Options Floor Procedure Advice ("OFPA") F-24(e)(i).

<sup>11</sup> See Phlx OFPA A-13 and Phlx Rule 1080(e).

<sup>12</sup> See Phlx Rule 703.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

<sup>5</sup> The Nasdaq-100®, Nasdaq-100 Index® Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares<sup>SM</sup>, Nasdaq-100 Trust<sup>SM</sup>, Nasdaq-100 Index Tracking Stock<sup>SM</sup>, and QQQ<sup>SM</sup> are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the "Index") is determined, composed, and

includes real-time monitoring of positions. Further, the Exchange believes that clearing firm procedures address the issue of whether a ROT has the financial capability to support the AUTO-X trading of orders in QQQ<sup>SM</sup> options as large as 1,000 contracts.

The Exchange believes that automatic execution of orders in QQQ<sup>SM</sup> options for up to 1,000 contracts should provide AUTOM customers with quicker, more efficient executions for a larger number of orders, by providing automatic rather than manual executions, thereby reducing the amount of orders subject to manual processing. Further, increasing the AUTO-X maximum order size in QQQ<sup>SM</sup> options should not impose a significant burden on operation or capacity of the AUTOM System and will give the Exchange better means of competing with other options exchanges for order flow.

2. Basis

For the reasons stated above, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>13</sup> in general, and in particular, with Section 6(b)(5),<sup>14</sup> in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism<sup>SM</sup> of a free and open market and a national market system, as well as to protect investors and the public interest by enhancing efficiency by providing automatic executions to a larger number of options orders.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder<sup>16</sup> 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 the filing, or such shorter time that 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 to the filing date of the proposed rule change.<sup>17</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative date is consistent with the protection of investors and the public interest. The Commission also notes that a similar proposal was implemented by the Amex.<sup>18</sup> Acceleration of the operative date for this filing will enable the Phlx to compete on an equal basis with other exchanges and thus is consistent with Section 6(b)(8) of the Act.<sup>19</sup> For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.

**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

impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> The Commission has determined to waive the requirement the Phlx 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.

<sup>18</sup> 18 See note 7, supra.

<sup>19</sup> 19 15 U.S.C. 78f(b)(8).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2002-43 and should be submitted by September 3, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 02-20282 Filed 8-9-02; 8:45 am]

**BILLING CODE 8010-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #3437]**

**State of California; Disaster Loan Areas**

Kern County and the contiguous counties of Inyo, Kings, Los Angeles, San Bernardino, San Luis Obispo, Santa Barbara, Tulare and Ventura in the State of California constitute a disaster area as a result of a wildfire that occurred on July 21, 2002 in the Deer Point area of Bodfish and Lake Isabella, California. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 4, 2002, and for economic injury until the close of business on May 5, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853-4795.

The interest rates are:

	Percent
For Physical Damage	
Homeowners with credit available elsewhere .....	6.625
Homeowners without credit available elsewhere .....	3.312
Businesses with credit available elsewhere .....	7.000
Businesses and non-profit organizations without credit available elsewhere .....	3.500
Others (including non-profit organizations) with credit available elsewhere .....	6.375
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere .....	3.500

<sup>20</sup> 20 17 CFR 200.30-3(a)(12).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(6). For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's

The number assigned to this disaster for physical damage is 343705 and for economic damage is 9Q9200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 5, 2002.

**Hector V. Barreto,**  
*Administrator.*

[FR Doc. 02-20361 Filed 8-9-02; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3428]

#### State of Texas, (Amendment #8); Disaster Loan Areas

In accordance with a notice received from the Federal Emergency Management Agency, dated July 31, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on June 29, 2002 and continuing through July 31, 2002.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 6, 2002.

**Herbert L. Mitchell,**  
*Associate Administrator for Disaster Assistance.*

[FR Doc. 02-20360 Filed 8-9-02; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF STATE

### [Public Notice 4096]

#### Culturally Significant Objects Imported for Exhibition Determinations: Battle of the Nudes: Pollaiuolo's Renaissance Masterpiece

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Battle of the Nudes: Pollaiuolo's Renaissance Masterpiece," imported

from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Cleveland Museum of Art, Cleveland, OH, from on or about August 25, 2002, to on or about October 27, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619-6529). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: August 6, 2002.

**Patricia S. Harrison,**  
*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 02-20391 Filed 8-9-02; 8:45 am]

BILLING CODE 4710-08-P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Meeting of the Industry Sector Advisory Committee on Capitol Goods (ISAC-2)

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of a partially opened meeting.

**SUMMARY:** The Industry Sector Advisory Committee on Capitol Goods (ISAC-2) will hold a meeting on September 6, 2002, from 12 p.m. to 4:30 p.m. The meeting will be opened to the public from 1:30 p.m. to 4:30 p.m. The meeting will be closed to the public from 12 p.m. to 1:30 p.m.

**DATES:** The meeting is scheduled for September 6, 2002, unless otherwise notified.

**ADDRESSES:** The meeting will be held at McCormick Place, 2301 S. Lake Shore Drive, Chicago, IL 60616.

**FOR FURTHER INFORMATION CONTACT:** Padraic Sweeney, at (202) 482-5024, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or Christina Sevilla, Director for Intergovernmental Affairs, on (202) 395-6120.

**SUPPLEMENTARY INFORMATION:** During the opened portion of the meeting the following agenda items will be discussed.

- Trade Promotion Authority (TPA) and the Administration's International Trade Policy Agenda.

- Steel Issues.
- USG Trade Finance Programs.
- Role of DOC/International Trade Administration.
- Overview of the Industry Consultations Program.
- Overview of the role of U.S. Export Assistance Centers.

**Christina Sevilla,**

*Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison (A).*

[FR Doc. 02-20291 Filed 8-9-02; 8:45 am]

BILLING CODE 3190-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Request for Comments on Advisory Circular (AC) 183-35H, Airworthiness Designee Function Codes and Consolidated Directory for DMIR/DAR/ODAR/DAS/DOA and SFAR No. 36; Correction

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

**ACTION:** Request for comments; correction.

**SUMMARY:** This is a correction to a Request for Comments document published on July 8, 2002, (67 FR 45169) that announced a proposed change to AC 183-35H authorizing a new function code identified as Data Management Code 50 (pending). It will allow a Designated Airworthiness Representative and Organizational Designated Airworthiness Representative responsible for managing alterations programs leading to the issuance of a FAA Field approval and/or approval for return to service to alter U.S.-registered aircraft.

**FOR FURTHER INFORMATION CONTACT:** George Torres, (405) 954-6923.

#### Correction of Publication

In the FR Doc. 02-16905, beginning on page 45169 in the **Federal Register** issue of July 8, 2002, make the following corrections:

1. On page 45169, in column 3, in the third line up from the bottom, correct "authorizing is sought;" to read "authorizing is sought; or".
2. On Page 45170, in column 1, in the sixth line up from the bottom, correct "address: georgetorres@mmac.iccbbi.gov" to read "address: "george.torres@faa.gov".

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

**Diana Frohn,**

*Manager, General Aviation and Commercial Branch.*

[FR Doc. 02-19999 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number: MARAD-2002-13048]

#### 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 ALTAR.

**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 September 11, 2002.

**ADDRESSES:** Comments should refer to docket number MARAD-2002-13048. 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:* ALTAR. *Owner:* Monument Yacht Charters, LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: "The size of the vessel is 67.3 feet over all. The capacity of the vessel is ten passengers. The tonnage of the vessel is 48GRT (44NRT)."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

The primary use of the vessel is for private use only. Secondly the vessel maybe, but not intended for, charter. The geographic region of intended operation in The East Coast of the U.S., primarily New England in the summer months and Puerto and Caribbean through out the winter."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1994. *Place of construction:* Oyster Marine at Landamores Yacht Builders in Wroxham Norfolk England.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The current operation of the vessel is for the private use only. The use of the vessel will change very little if the waiver is granted. The addition of one to two charters per year will be added to the operation. This will have an unperceivable impact on the

commercial passenger vessel operators, as these charters would be to the friends and business associates of the owner."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This waiver will have a positive impact on U.S. shipyards, as there will be a greater incentive for the vessel to return to U.S. waters each year. This will mean that all yard work will be done in the U.S. increasing the work for U.S. shipyards."

Dated: August 6, 2002.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 02-20366 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number: MARAD-2002-13053]

#### 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 AMERICAN DREAM.

**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 September 11, 2002.

**ADDRESSES:** Comments should refer to docket number MARAD-2002-13053. 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/](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:* AMERICAN DREAM. *Owner:* Betty Becker.

(2) Size, capacity and tonnage of vessel. According to the applicant: "59'6" tonnage Gross 47 net 38."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: Vessel to be used as a replacement vessel for the owners previous vessel Pacific Belle that was destroyed in a fire. The vessel will continue to charter in South East Alaska to her clientele of over 20 years."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1984. *Place of construction:* Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Since the owner has

been chartering in Alaska for 20 years there will be no impact on the other commercial operators. The bulk of the charter clients come from businesses that have been booking for the same times each year in advance. 2003 is sold out completely at this time."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The U.S. shipyards are the beneficiaries of over one hundred and fifty thousand spent on AMERICAN DREAM over the past five years. I see no down side to the shipyards, as they will get all the future work on the boat."

Dated: August 6, 2002.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 02-20371 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-81-P**

**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

[Docket Number: MARAD-2002-13052]

**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 ARVOR.

**SUMMARY:** As authorized by Public Law 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 Public Law 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 September 11, 2002.

**ADDRESSES:** Comments should refer to docket number MARAD-2002-13052. 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 Public Law 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:* ARVOR. *Owner:* Mark Tyler Sheldon.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Length; 63 feet; Gross 70 tons, Net 56 tons; Beam: 18.2 feet; Draft 9.2 feet."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Classic Wooden Motor Yacht Charter Cruises. Day charters for up to 12 persons, and overnight charters for up to 8 persons. Cruising in waters from Marblehead, Massachusetts, to Bass Harbor, Maine, no more than 20 miles out, U.S."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of*

*construction*: 1962. *Place of construction*: Buckie, Scotland, U.K.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "My research (defined as maritime publications and local knowledge) has indicated there are little or no similar Classic Wooden Motor Yacht chartering entities of this type in the cruising areas previously described in question #3. My research has further indicated that the operation of existing operators in previously described areas include whale and/or specific nature watches, fishing excursions, and 2-4 hour type sightseeing tours. The intent of the applicant/vessel is to provide its passengers with the experience of cruising on a classic wooden yacht. This experience includes the ambiance of the yacht itself, overnight accommodations if so chartered, and meals or snacks, depending on the length of charter."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "To the best of my knowledge, the above described vessel would appear to have no impact on U.S. shipyards, other than her own maintenance."

Dated: August 6, 2002.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 02-20367 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number: MARAD-2002-13047]

#### 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 LADYHAWKE.

**SUMMARY:** As authorized by Public Law 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

Public Law 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 September 11, 2002.

**ADDRESSES:** Comments should refer to docket number MARAD-2002-13047. 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 Public Law 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*: LADYHAWKE. Owner: Steve Kirven.

(2) Size, capacity and tonnage of vessel. *According to the applicant*: "The

length of vessel while on hover is 39 feet and off hover is 35 feet. The width of vessel while hovering is 19 feet and off hover is 14 feet. The height of vessel while hovering is 11 feet and off hover is 8 feet. The tonnage is 8.15 tons. Since this is not a normal hull design, I am not sure how tonnage measurements were taken. The gross all up weight on vessel is 18,000 lbs."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant*: The intended use of the vessel is to operate as a tour boat offering tours in shallow waters where other vessels cannot operate. This craft rides on a cushion of air 30 inches above the surface producing no wake and having no negative impact on the environment." "The geographic region for the operation is the Miami, Biscayne Bay, and Keys area, located in Dade and Monroe Counties in the state of Florida. I would be providing tours in and around many of the small islands and areas not accessible by other conventional boats. There are no existing commercial hovercraft operators in this area."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction*: 1994. *Place of construction*: Australia.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant*: "The insurance of this waiver will not impact other commercial passenger vessel operators, as there are no existing commercial hovercraft operators in this area. I will be providing tours in shallow water areas where other commercial convention vessels cannot operate. The only other commercial hovercraft operation in the United States is located in Alaska. In the area I propose to operate, there are several tour boat operators running sailing tours, deep sea fishing, dinner cruises, dive boats and thrill rides. None of these vessels can operate where I would be providing scenic tours."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant*: "This waiver will have no impact on existing U.S. shipyards. There are several builders of recreational hovercraft throughout the United States building 1 and 2 passenger craft. My research indicates there are no commercial builders of hovercraft in the 12-20 passenger range that can be U.S. Coast Guard inspected. A proven design is imperative. There are builders of much larger craft that are used by the U.S.

military such as General Dynamics and Bell Textron.”

Dated: August 6, 2002.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 02-20365 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number: MARAD-2002-13046]

#### 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 MALENA.

**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 September 11, 2002.

**ADDRESSES:** Comments should refer to docket number MARAD-2002-13046. 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 Public Law 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:* MALENA. *Owner:* T&L Concepts, LLC.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Size: 66'9" LOA, 18'6" Beam, 5'8" Draft; Type: 71 Gross Tons, 57 Net tons; Capacity: Sleeps 6 to 8."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "3-14 day Charters with two Couples or Family of Six. We are currently doing bareboat charters but someday will like to change to Crewed Charters and be able to operate in US waters as Crewed Chartered Vessel. No fish caught from this Vessel are sold commercially." "Operation and Trade area: Florida Keys, South Florida, Bahamas, US and British Islands."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1996. *Place of construction:* President Marine Intl., Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "The impact on existing operators offering the same type of services will be negligible. Our Service area will remain the same as in Bareboat Chartering but will allow us to simplify

the charter contract, add Professional Crew to operate the Vessel and pick up passengers from various South Florida Areas and cruise the Florida Keys or Bahamas. Currently there is a very limited number of Yachts in MALENA's category and size performing this type of Charter at this time."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "There will be a positive impact on U.S. shipyards due to the, added, annual income from the maintenance on our vessel. In addition we will be able to do most all of our maintenance in South Florida."

Dated: August 6, 2002.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 02-20374 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number: MARAD-2002-13050]

#### 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 MOTIVATION.

**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 Public Law 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 September 11, 2002.

**ADDRESSES:** Comments should refer to docket number MARAD-2002-13050. 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 Public Law 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:* MOTIVATION. *Owner:* Richard Keith Carroll, Jr. & Lauren C. Carroll.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Length: 40", Breadth: 13'2", Depth: 6'5", Capacity: 6 or fewer passengers, Gross Tonnage: 21, Net Tonnage: 16."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: Sport fishing charters with twelve or fewer passengers. All contiguous U.S. coastal waters, primarily in New England and Florida and excluding Alaskan waters."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* June 1999. *Place of construction:* San Jose, Costa Rica.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This waiver will have little or no impact. This vessel will carry six or fewer passengers on either full day of one-half day trips. This represents an extremely small percentage of the sport fishing charter business." 6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "None \* \* \* Allowing this relatively small vessel to engage in sport fishing charter will not affect demand for boats from U.S. shipyards."

Dated: August 6, 2002.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 02-20373 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-81-P**

**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

**[Docket Number: MARAD-2002-13051]**

**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 REEL TIME.

**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 September 11, 2002.

**ADDRESSES:** Comments should refer to docket number MARAD-2002-13051. 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:* REEL TIME. *Owner:* Reel Time Charters, Inc.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "The vessel has a net weight of 15 tons and a gross weight of 19 tons with a passenger capacity of 12."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The intended use of this vessel is for Inshore and Offshore Charter fishing for passengers up to (6) plus a Captain and a mate under a US Coast Guard Licensed Captain in the area of Chincoteague Is, VA."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of*

*construction*: 1989. *Place of construction*: Taiwan, China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "There will be little to no impact on other commercial passenger vessels operators since the vessel will only be carrying up to (6) passengers. This vessel was Chartering Offshore under the Registry Endorsement since 1996."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "There will be no negative impact on U.S. shipyards since this vessel is no longer made. There is a positive impact on U.S. shipyards due to normal maintenance repairs."

Dated: August 6, 2002.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 02-20372 Filed 8-9-02; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number: MARAD-2002-13049]

#### 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 SAPPHIRE.

**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 September 11, 2002.

**ADDRESSES:** Comments should refer to docket number MARAD-2002-13049. 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 Public Law 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*: SAPPHIRE. *Owner*: Albatroz, LLC.

(2) Size, capacity and tonnage of vessel. *According to the applicant*: "Length: 86.8 ft., Breadth: 21.6 ft., Depth: 9.8 ft., Gross Tonnage: 77, Net Tonnage: 23."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant*: "The Company intends to charter the Vessel between Bar Harbor, Maine and

Newport, Rhode Island and will carry no more than 12 passengers for hire."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction*: 1997. *Place of construction*: Makkum, Netherlands.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The Company does not believe that any existing commercial passenger vessel operators that provide, or intend to provide, similar commercial services in the same geographic region would suffer any unduly adverse affect as a result of the proposed operations of the Vessel. The Company contacted two large charter managers servicing similar commercial service operators in the same geographic region. In the combined fleet of these charter management companies, there were only two sailboats offering commercial passenger operations in the area. Both charter management companies indicated a strong need and demand for additional sailboats ranging between 60' and 120' for coastwise trade in the region."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The Company is aware of only one U.S.-vessel builder that has the capability and capacity to build a vessel similar to the Vessel. It is the opinion of the undersigned that this American builder would not suffer any unduly adverse affect as a result of this request of waiver of the coastwise trade laws."

Dated: August 6, 2002.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 02-20370 Filed 8-9-02; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2001-10623]

#### Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of Petition for Rulemaking.

**SUMMARY:** This document denies a petition for rulemaking submitted by Costa Technologies requesting that NHTSA initiate rulemaking to amend the Federal motor vehicle safety standard on glazing materials to include

the words "to reduce or minimize the likelihood of personal injury from flying glazing material when the glazing material is broken," and to require the fracture test to use specimens that would represent the glazing as it would be installed in the vehicle.

**FOR FURTHER INFORMATION CONTACT:** *For non-legal issues:* John Lee, Office of Crashworthiness Standards, NPS-11, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2264. Fax: (202) 366-4329.

For legal issues: Nancy Bell, Office of Chief Counsel, NCC-20, National Highway Traffic Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2992, Fax: (202) 366-3820.

**SUPPLEMENTARY INFORMATION:** On August 14, 2001, NHTSA received a petition from Costa Technologies (Costa) to initiate rulemaking to amend paragraph S2 of Federal motor vehicle safety standard (FMVSS) No. 205, "Glazing materials," to (1) include the words "to reduce or minimize the likelihood of personal injury from flying glazing material when the glazing material is broken," and to (2) include a requirement to use specimens representing the glazing as it would be installed in the vehicle for the fracture test. Costa did not identify any documented safety benefits that would result from making the requested amendments. NHTSA denies these two requests for the reasons discussed below.

Costa's first request stems from the concern that the stated purpose of FMVSS No. 205 does not expressly address injuries from flying glazing material. It is true that paragraph S2 of FMVSS No. 205 does not expressly mention such injuries: "[t]he purpose of this standard is to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions." However, the Standard's requirements do address the issue. Currently, paragraph S5 of FMVSS No. 205 incorporates by reference the commercial standard American National Standard Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways—Standard ANSI Z26.1-1977 (ANSI Z26.1-1977) as supplemented by Z26.1a-1980 (hereinafter referred to as "ANS Z26"). In ANS Z26, Section 5.7 "Fracture, Test No. 7" limits the size of individual glass fragments that form as a result of impact

to a glazing surface. Requiring automotive glazing materials to meet this requirement has the effect of minimizing the size of individual glazing fragments that can form in a real world impact event. Consequently, the risk of two types of injuries is reduced: (1) Contact injuries with sharp shards remaining in the window casing as a result of glazing fracture, and (2) risk of lacerative or puncture type injuries that may result from flying glazing fragments. Both of these types of injuries are injuries that could result from "impacts to glazing surfaces", as specified in the purpose of FMVSS No. 205. Therefore, the current purpose of FMVSS No. 205, " \* \* \* to reduce injuries resulting from impact to glazing surfaces \* \* \*" addresses the reduction of an occupant's risk of injuries from flying glazing and does not require clarification or modification.

Second, Costa requested that FMVSS No. 205 be amended to specify that the specimens to be used for Fracture Test No. 7 of ANS Z26 "represent the glazing as it would be installed in the vehicle." FMVSS No. 205 does not require the fracture test to be conducted with the electrical terminals attached to the glazing material's conductors and soldered by processes that represent the manufacturer's production and rework processes. Costa was concerned that the heating and cooling due to the soldering process would cause localized annealing of the safety tempered glass, causing the individual glass fragments to be larger than 4.25 g (0.15 oz.). NHTSA agrees that temperature effects from heating and cooling can cause localized annealing and is addressing this issue in a current rulemaking.

NHTSA published a Notice of Proposed Rulemaking (NPRM) on August 4, 1999 (64 FR 42330), to amend FMVSS No. 205 so that it incorporates by reference the October 1996 version of ANS Z26, the industry standard on motor vehicle glazing. Currently, the Federal standard incorporates the 1977 version. Section 5.7 "Fracture, Test 7" of the October 1996 version requires that no individual glass fragment weigh more than 4.25 g (0.15 oz.) as in the current ANS Z26. However, it further requires that specimens: (1) Be selected from a range of glazing that a manufacturer produces or plans to produce; and (2) be of the most difficult part or pattern designation within the model number. Further, in selecting the specimens, thickness, color and conductors must be considered. Therefore, manufacturers would still be required to certify that glazing materials with conductors that may have localized annealing from a heating/cooling

process would not produce any individual glass fragment weighing more than 4.25 g (0.15 oz.) in a fracture test. A final decision on that rulemaking is expected soon.

For the reasons discussed above, we are denying Costa's petition for rulemaking.

**Authority:** 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: August 2, 2002.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 02-20369 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Docket Number: RSPA-4957]

#### Pipeline Safety Reports of Abandoned Underwater Pipelines

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

**ACTION:** Notice and request for public comments and OMB approval.

**SUMMARY:** This notice requests public participation in the Office of Management and Budget (OMB) approval process regarding the renewal of an existing RSPA/Office of Pipeline Safety (OPS) collection of information for Pipeline Safety Reports of Abandoned Underwater Pipelines. Specifically, public comment is requested to minimize the burden of this collection of information on the public, along with other factors listed in the body of this notice. RSPA/OPS published a notice requesting public comment on May 20, 2002 (67 FR 35618). No comments were received. RSPA/OPS is offering the public another opportunity to comment on this information collection. It is also requesting OMB approval for the renewal of this information collection under the Paperwork Reduction Act of 1995 and 5 CFR part 1320.

**DATES:** Comments on this notice must be received within 30 days of the publication date of this notice to be assured of consideration.

**ADDRESSES:** Interested persons are invited to send comments directly to OMB, Office of Information and Regulatory Affairs, 726 Jackson Place, Washington, DC 2003 ATTN: Desk Officer for the Department of Transportation. Comments can be reviewed at the Department of Transportation Dockets Facility, Plaza

401, 400 Seventh Street SW., Washington, DC which is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays, when the facility is closed. Comments must identify docket number of this notice. Persons should submit the original documents and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. Please identify the docket and notice numbers shown in the heading of this notice. Documents pertaining to this notice can be viewed in this docket. The docket can also be viewed electronically at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Marvin Fell, (202) 366-6205, to ask questions about this notice; or write by e-mail to [marvin.fell@rspa.dot.gov](mailto:marvin.fell@rspa.dot.gov).

**SUPPLEMENTARY INFORMATION:** *Title:* Pipeline Safety Reports of Abandoned Underwater Pipelines.

*Type of Request:* Renewal of existing information collection.

*Abstract:* Underwater pipelines are being abandoned at an increasing rate as older facilities reach the end of their useful life. This trend is expected to continue. In 1992, Congress responded to this issue by amending the Pipeline Safety Act (49 U.S.C. 60108(c)(6)(B)) to direct the Secretary of Transportation to require operators of an offshore pipeline facility or a pipeline crossing navigable waters to report the abandonment to the Secretary of Transportation in a way that specifies whether the facility has been abandoned properly according to applicable Federal and State requirements. RSPA's/OPS's regulations for abandonment reporting can be found at Title 49 CFR 192.727 and 195.402.

*Respondents:* Gas and hazardous liquid pipeline operators.

*Estimated Number of Respondents:* 400.

*Estimated Number of Responses Per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 2,400 hours.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated,

electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on August 7, 2002.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 02-20368 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-60-P**

## DEPARTMENT OF TRANSPORTATION

### Saint Lawrence Seaway Development Corporation

#### Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 11 a.m. on Wednesday, August 28, 2002, by conference call in the Administrator's Office, Room 5424, 400 7th Street, SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than August 20, 2002, Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202-366-6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued in Washington, DC, on August 7, 2002.

**Marc C. Owen,**

*Chief Counsel.*

[FR Doc. 02-20390 Filed 8-9-02; 8:45 am]

**BILLING CODE 4910-61-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### [STB Finance Docket No. 34208]

#### Soo Line Railroad Company— Trackage Rights Exemption— Hennepin County Regional Rail Authority

Hennepin County Regional Rail Authority (HCRRA), pursuant to a

written trackage rights agreement<sup>1</sup> entered into between HCRRA and Soo Line Railroad Company (Soo), d/b/a Canadian Pacific Railway (CPR),<sup>2</sup> has agreed to grant trackage rights to CPR over HCRRA's rail line from a point of connection with existing trackage rights in the City of Minneapolis, MN, at or near CNW milepost 16.2,<sup>3</sup> to approximately 330 feet west in the City of St. Louis Park, MN, at a point of connection with Soo-owned trackage located at or near Soo milepost 428.38, engineering station 381.90, at or near CNW milepost 16.3.<sup>4</sup>

The transaction was scheduled to be consummated on or shortly after July 30, 2002, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the trackage rights is to allow CPR to continue to hold rights to operate over a 330-foot section of trackage that is being sold to HCRRA by CPR.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

The notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34208, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Diane P. Gerth, Leonard, Street and Deinard Professional Association, 150 South Fifth Street, Minneapolis, MN 55402.

<sup>1</sup> A redacted version of the trackage rights agreement was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. A protective order is being served on August 5, 2002.

<sup>2</sup> Soo is a wholly owned subsidiary of CPR.

<sup>3</sup> Some of the trackage and right-of-way in the vicinity was formerly owned by the Chicago and North Western Transportation Company (CNW).

<sup>4</sup> CPR agreed to sell this segment of Soo's track to HCRRA. The segment is adjacent to track already owned by HCRRA over which CPR and the Twin Cities & Western Railroad Company have trackage rights under an August 10, 1998 agreement that will be supplemented to include this line segment under its terms.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: August 1, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 02-19943 Filed 8-9-02; 8:45 am]

BILLING CODE 4915-00-P

**DEPARTMENT OF THE TREASURY**

**Submission for OMB Review; Comment Request**

August 5, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before September 11, 2002 to be assured of consideration.

**Internal Revenue Service**

OMB Number: New.

Form Number: IRS Form 8718.

*Type of Review:* New collection.

*Title:* User Fee for Exempt Organization Determination Letter Request.

*Description:* The Omnibus Reconciliation Act of 1990 requires payment of a "user fee" with each application for a determination letter. Because of this requirement, the Form 8718 was created to provide filers the means to make payment and indicate the type of request.

*Respondents:* Business or other for-profit, not-for-profit institutions.

*Estimated Number of Respondents:* 200,000.

*Estimated Burden Hours Per Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 16,667 hours.

OMB Number: 1545-0091.

Form Number: IRS Form 1040X.

*Type of Review:* Revision.

*Title:* Amended U.S. Individual Income Tax Return.

*Description:* Form 1040X is used by individuals to amend an original tax return to claim a refund of income taxes, pay additional income taxes, or designate \$3 to the Presidential Election Campaign Fund. The information is needed to help verify that the individual has correctly figured his or her income tax.

*Respondents:* Individuals or households, business or other for-profit, farms.

*Estimated Number of Respondents/Recordkeepers:* 2,929,311.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 18 min.

Learning about the law or the form—28 min.

Preparing the form—1 hr., 11 min.

Copying, assembling, and sending the form to the IRS—34.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 10,399,055 hours.

OMB Number: 1545-0714.

Form Number: IRS Forms 8027 and 8027-T.

*Type of Review:* Extension.

*Title:* Employers Annual Information Return of Tip Income and Allocated Tips (Form 8027); and Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips (Form 8027-T).

*Description:* To help IRS in its examinations of returns filed by tipped employees, large food or beverage establishments are required to report annually information concerning food or beverage operations receipts, tips, reported by employees, and in certain cases, the employer must allocate tips to certain employees.

*Respondents:* Business or other for-profit, individuals or households, not-for-profit institutions, State, Local or Tribal Government.

*Estimated Number of Respondents/Recordkeepers:* 52,050.

**ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER**

	Form 8027	Form 8027-T
Recordkeeping .....	9 hr., 47 min. ....	43 min.
Learning about the law or the form .....	53 min. ....	0 min.
Preparing and sending the form to the IRS .....	1 hr., 4 min. ....	0 min.

*Frequency of Response:* Annually.  
*Estimated Total Reporting/Recordkeeping Burden:* 488,161 hours.

OMB Number: 1545-1788.

Form Number: IRS Form 13259.

*Type of Review:* Extension.

*Title:* Taxpayer Advocacy Panel (TAP) Membership Application.

*Description:* An application to volunteer to serve on the Taxpayer Advocacy Panel, an advisory panel to the IRS.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents:* 750.

*Estimated Burden Hours Per Respondent:* 1 hour, 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 1,125 hours.

OMB Number: 1545-1791.

Form Number: IRS Form 12339-A.

*Type of Review:* Extension.

*Title:* Tax Check Waiver.

*Description:* The tax check waiver is necessary for the purpose of ensuring that all panel members are tax compliant. Information provided will be used to qualify or disqualify individuals to serve as panel members. The information will be used as appropriate by the Taxpayer Advocate service staff, and other appropriate IRS personnel.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents:* 250.

*Estimated Burden Hours Per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 42 hours.

*Clearance Officer:* Glenn Kirkland (202) 622-3428, Internal Revenue Service, Room 6411-03, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Joseph F. Lackey, Jr. (202) 395-7316, Office of Management and Budget, Room 10235, New

Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 02-20342 Filed 8-9-02; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Customs Service

#### Wool Manufacturer Payment Clarification and Technical Corrections Act

**AGENCY:** Customs Service, Treasury.

**ACTION:** General notice.

**SUMMARY:** On August 6, 2002, President Bush signed into law the Trade Act of 2002. Section 5101 of the Trade Act of 2002 amends section 505 of the Trade and Development Act of 2000, which entitled U.S. manufacturers of certain wool articles to a limited refund of duties paid on imports of select wool products. The amendments concern the maximum amount manufacturers are eligible to receive and include a definition of the term "manufacturer" for purposes of determining eligibility. The amendments also authorize a new class of claimants as being eligible to receive a payment, establish new deadlines for the submission and payment of claims for all claimants, and generally simplify the claims process. Section 5102 of the Trade Act of 2002 authorizes Customs to make two additional payments to eligible manufacturers. As sections 5101 and 5102 are self-effectuating, Customs will not be issuing regulations to implement the program as amended. Manufacturers are directed to follow the statutory procedures to claim a payment. For ease of reference, this document describes the changes to the wool duty payment program as set forth in section 505 of the Trade Act of 2002, as amended. The document also sets forth the address to which all wool duty payment documentation should be sent.

**DATES:** Claims by eligible U.S. manufacturers of men's or boys' suits, suit-type jackets and trousers, and by eligible U.S. importing-manufacturers of wool fabric and wool yarn, must be submitted to Customs postmarked no later than August 21, 2002. Claims by eligible U.S. non-importing manufacturers of wool fabric and wool yarn must be received by Customs no later than September 20, 2002.

**ADDRESSES:** Claims for payments pursuant to section 505 of the Trade and Development Act, as amended, should be sent to the U.S. Customs Service,

Office of Field Operations, Wool Duty Payment Unit, 5th Floor, Attention: Debbie Scott, 1300 Pennsylvania Avenue, NW., 5th Floor, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Debbie Scott (202) 927-1962 or Sherri Lee Hoffman (202) 927-0542.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 ("the Act"), Pub. L. 106-200, 114 Stat. 251. Title V of the Act concerns imports of certain wool articles and sets forth provisions intended to provide tariff relief to U.S. manufacturers of specific wool products. Within Title V, section 505 permits eligible U.S. manufacturers to claim a limited refund of duties paid on imports of select wool articles.

Section 505 was implemented in the Customs Regulations at § 10.184 (19 CFR 10.184).

On August 6, 2002, President Bush signed into law the Trade Act of 2002, H.R. 3009 (the Public Law citation is unavailable at the time of this document's filing for public inspection at the Office of the Federal Register. Division E of the Trade Act of 2002 contains miscellaneous provisions. Within Division E, Title L sets forth miscellaneous trade benefits with Subtitle A pertaining specifically to wool provisions. Within Subtitle A, section 5101, entitled the "Wool Manufacturer Payment Clarification and Technical Corrections Act," amends section 505. Specifically, section 5101 amends section 505 regarding the maximum payment amount manufacturers are eligible to receive, defines the term "manufacturer" for purposes of section 505, authorizes a new class of claimants as eligible to receive a payment, establishes new deadlines for the submission and payment of claims, and simplifies the claims process. Section 5102(c) is a related statutory provision that authorizes Customs to make two additional payments to eligible manufacturers in years 2004 and 2005.

#### Explanation of Amendments to Section 505 Effected by Section 5101

Section 5101 amends 505 in several key aspects, as discussed below.

##### I. Payment Amounts and Simplified Claim Procedures

The original terms of section 505 authorized certain manufacturers to claim a limited refund of duties paid in each of calendar years 2000, 2001 and 2002 on imports of select wool

products. The maximum amount eligible to be refunded in each claim year was limited to an amount not to exceed one-third of the amount of duties actually paid on such wool products imported in calendar year 1999. In order to receive a refund, manufacturers had to substantiate their claim to Customs by submitting relevant entry summary documentation.

Section 5101 amends section 505 regarding the amount of payment an eligible manufacturer may receive. Specifically, section 5101 authorizes eligible manufacturers to receive a *pro rata* share of a statutorily designated amount. Section 5101(2) appropriates \$36,251,000 out of amounts in the General Fund of the Treasury to carry out the amendments to section 505 made by section 5101(1). This amount is divided into six separate accounts which are established for the purposes of funding payments to different types of eligible manufacturers.

A claimant is no longer required to submit entry summary documentation to substantiate a claim. Rather, a claimant must make a claim for each claim year by submitting a signed affidavit to Customs, with return address clearly marked, that attests to the affiant's status as an eligible manufacturer. Claimants must submit affidavits by specific dates designated in the statute. Eligible U.S. manufacturers of men's or boys' suits, suit-type jackets and trousers, and eligible U.S. importing-manufacturers of wool fabric and wool yarn, must submit their 4 claims to Customs postmarked so that they are received by Customs no later than August 21, 2002. Eligible U.S. non-importing manufacturers of wool fabric and wool yarn must submit their claims so that Customs receives them no later than September 20, 2002.

##### II. Definition of "Manufacturer" Added to Section 505

Section 5101 adds a new paragraph (g) to section 505 that sets forth the definition of manufacturer for purposes of the statute. The definition authorizes the party that owns specified types of wool imports at the time the imports are processed into designated products in the United States to be eligible to receive a payment. This definition permits manufacturers who either import the specified wool products directly or purchase the specified imports to be eligible. Additionally, the definition includes manufacturers who perform their own processing operations in the United States, as well as manufacturers who contract the work out to a U.S. processing facility, so long as in both instances the manufacturer

retains ownership of the wool imports at the time of processing.

### III. New Class of Manufacturer Eligible to Receive Payment

The original terms of section 505(b) and (c) required that a manufacturer of wool fabric or yarn be the importer of the wool inputs used in the manufacturer of the finished product in order to receive a refund. Therefore, non-importing manufacturers of wool fabric and yarn were ineligible for a refund.

Pursuant to section 505(g)(2) and (3), non-importing manufacturers of wool fabric and yarn are now eligible to receive a payment. In order to be eligible to claim a payment, Customs must receive documentation from a non-importing manufacturer of wool fabric or yarn by September 20, 2002, that establishes the amount the manufacturer paid for eligible wool products in 1999. This information will be used by Customs to determine the non-importing manufacturer's *pro rata* share of the fund established for this class of claimant.

### New Address To Send Documentation Pertaining to Wool Payments

As sections 5101 and 5102 are detailed and clear, Customs will not issue regulations to implement the wool duty payment program as amended (and 19 CFR 10.184 is superseded by statute). Accordingly, manufacturers are directed to follow the statutory procedures to claim a payment. While self-effectuating, section 505, as amended, does not state where claims and other documentation are to be sent. This document provides notice that claimants must send all statutorily required documentation pertaining to wool duty payments, including any additional information deemed necessary by Customs, to the U.S. Customs Service, Office of Field Operations, Wool Duty Payment Unit, 5th Floor, Attention: Debbie Scott, 1300 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20229.

### Additional Wool Duty Payments

Section 5102(c) of the Trade Act of 2002 authorizes Customs to pay each eligible manufacturer that receives a payment for calendar year 2002 under section 505, as amended, two additional payments. To claim the additional payments, a manufacturer must submit a signed affidavit to the U.S. Customs Service, Office of Field Operations, Wool Duty Payment Unit, 5th Floor, Attention: Debbie Scott, 1300 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20229, for each

additional claim year, attesting that the affiant remains a manufacturer in the United States as of January 1 of the additional claim year for which a payment is being sought. Each additional payment will be in an amount equal to the amount received by the claimant for calendar year 2002. The additional payments will be paid out in two installments: the first installment will be made by Customs after January 1, 2004, but on or before April 15, 2004, and; the second installment will be paid by Customs after January 1, 2005, but on or before April 15, 2005.

### The Statute as Amended

Section 505, as amended, is set forth below in its entirety for ease of reference.

#### SEC. 505.

(a) *Worsted Wool Fabrics.*—For each of the calendar years 2000, 2001, and 2002, a manufacturer of men's or boys' suits, suit-type jackets, or trousers (not a broker or other individual acting on of the manufacturer to process the import) of imported worsted wool fabrics of the kind described in heading 9902.51.11 or 9902.51.12 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(1).

(b) *Wool Yarn.*—(1) *Importing Manufacturers.*—For each of the calendar years 2000, 2001, and 2002, a manufacturer of worsted wool fabrics who imports wool yarn of the kind described in heading 5107.10 or 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(2).

(2) *Nonimporting Manufacturers.*—For each of the calendar years 2001 and 2002, any other manufacturer of worsted wool fabrics of imported wool yarn of the kind described in heading 5107.10 or 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(2).

(c) *Wool Fiber and Wool Top.*—(1) *Importing Manufacturers.*—For each of the calendar years 2000, 2001, and 2002, a manufacturer of wool yarn or wool fabric who imports wool fiber or wool top of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(3).

(2) *Nonimporting Manufacturers.*—For each of the calendar years 2001 and 2002, any other manufacturer of wool yarn or wool fabric of imported wool fiber or wool top of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(3).

(d) *Amount of Annual Payments to Manufacturers.*—(1) *Manufacturers of men's suits, etc., of imported worsted wool fabrics.*—

(A) *Eligible to receive more than \$5,000.*—Each annual payment to manufacturers described in subsection (a) who, according to the records of the Customs Service as of September 11, 2001, are eligible to receive more than \$5,000 for each of the calendar years 2000, 2001, and 2002, shall be in an amount equal to one-third of the amount determined by multiplying \$30,124,000 by a fraction—

(i) The numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the manufacturer making the claim, and

(ii) The denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the manufacturers described in subsection (a) who, according to the records of the Customs Service as of September 11, 2001, are eligible to receive more than \$5,000 for each such calendar year under this section as it was in effect on that date.

(B) *Eligible wool products.*—For purposes of subparagraph (A), the term "eligible wool products" refers to imported worsted wool fabrics described in subsection (a).

(C) *Others.*—All manufacturers described in subsection (a), other than the manufacturers to which subparagraph (A) applies, shall each receive an annual payment in an amount equal to one-third of the amount determined by dividing \$1,665,000 by the number of all such other manufacturers.

(2) *Manufacturers of worsted wool fabrics of imported wool yarn.*—

(A) *Importing manufacturers.*—Each annual payment to an importing manufacturer described in subsection (b)(1) shall be in an amount equal to one-third of the amount determined by multiplying \$2,202,000 by a fraction—

(i) The numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the importing manufacturer making the claim, and

(ii) The denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the importing manufacturers described in subsection (b)(1).

(B) *Eligible wool products.*—For purposes of subparagraph (A), the term "eligible wool products" refers to imported wool yarn described in subsection (b)(1).

(C) *Nonimporting manufacturers.*—Each annual payment to a nonimporting manufacturer described in subsection (b)(2) shall be in an amount equal to one-half of the amount determined by multiplying \$141,000 by a fraction—

(i) The numerator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by the nonimporting manufacturer making the claim, and

(ii) The denominator of which is the total amount attributable to the purchases of

imported eligible wool products in calendar year 1999 by all the nonimporting manufacturers described in subsection (b)(2).

(3) *Manufacturers of wool yarn or wool fabric of imported wool fiber or wool top.*—

(A) *Importing manufacturers.*—Each annual payment to an importing manufacturer described in subsection (c)(1) shall be in an amount equal to one-third of the amount determined by multiplying \$1,522,000 by a fraction—

(i) The numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the importing manufacturer making the claim, and

(ii) The denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the importing manufacturers described in subsection (c)(1).

(B) *Eligible wool products.*—For purposes of subparagraph (A), the term ‘eligible wool products’ refers to imported wool fiber or wool top described in subsection (c)(1).

(C) *Nonimporting manufacturers.*—Each annual payment to a nonimporting manufacturer described in subsection (c)(2) shall be in an amount equal to one-half of the amount determined by multiplying \$597,000 by a fraction—

(i) The numerator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by the nonimporting manufacturer making the claim, and

(ii) The denominator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by all the nonimporting manufacturers described in subsection (c)(2).

(4) *Letters of intent.*—Except for the nonimporting manufacturers described in subsections (b)(2) and (c)(2) who may make claims under this section by virtue of the enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, only manufacturers who, according to the records of the Customs Service, filed with the Customs Service before September 11, 2001, letters of intent to establish eligibility to be claimants are eligible to make a claim for a payment under this section.

(5) *Amount attributable to purchases by nonimporting manufacturers.*—

(A) *Amount attributable.*—For purposes of paragraphs (2)(C) and (3)(C), the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by a nonimporting manufacturer shall be the amount the nonimporting manufacturer paid for eligible wool products in calendar year 1999, as evidenced by invoices. The nonimporting manufacturer shall make such calculation and submit the resulting amount to the Customs Service, within 45 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, in a signed affidavit that attests that the information contained therein is true and accurate to the best of the affiant’s belief and knowledge. The nonimporting manufacturer shall retain the records upon which the calculation is based for a period of five years beginning on

the date the affidavit is submitted to the Customs Service.

(B) *Eligible wool product.*—For purposes of subparagraph (A)—

(i) The eligible wool product for nonimporting manufacturers of worsted wool fabrics is wool yarn of the kind described in heading 5107.10 or 9902.51.13 of the Harmonized Tariff Schedule of the United States purchased in calendar year 1999; and

(ii) The eligible wool products for nonimporting manufacturers of wool yarn or wool fabric are wool fiber or wool top of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of such Schedule purchased in calendar year 1999.

(6) *Amount attributable to duties paid.*—For purposes of paragraphs (1), (2)(A), and (3)(A), the amount attributable to the duties paid by a manufacturer shall be the amount shown on the records of the Customs Service as of September 11, 2001, under this section as then in effect.

(7) *Schedule of payments; Reallocations.*—

(A) *Schedule.*—Of the payments described in paragraphs (1), (2)(A), and (3)(A), the Customs Service shall make the first and second installments on or before the date that is 45 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, and the third installment on or before April 15, 2003. Of the payments described in paragraphs (2)(C) and (3)(C), the Customs Service shall make the first installment on or before the date that is 120 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, and the second installment on or before April 15, 2003.

(B) *Reallocations.*—In the event that a manufacturer that would have received payment under subparagraph (A) or (C) of paragraph (1), (2), or (3) ceases to be qualified for such payment as such a manufacturer, the amounts otherwise payable to the remaining manufacturers under such subparagraph shall be increased on a *pro rata* basis by the amount of the payment such manufacturer would have received.

(8) *Reference.*—For purposes of paragraphs (1)(A) and (6), the “records of the Customs Service as of September 11, 2001” are the records of the Wool Duty Unit of the Customs Service on September 11, 2001, as adjusted by the Customs Service to the extent necessary to carry out this section. The amounts so adjusted are not subject to administrative or judicial review.

(e) *Affidavits by Manufacturers.*—(1) *Affidavit Required.*—A manufacturer may not receive a payment under this section for calendar year 2000, 2001, or 2002, as the case may be, unless that manufacturer has submitted to the Customs Service for that calendar year a signed affidavit that attests that, during that calendar year, the affiant was a manufacturer in the United States described in subsection (a), (b), or (c).

(2) *Timing.*—An affidavit under paragraph (1) shall be valid—

(A) In the case of a manufacturer described in paragraph (1), (2)(A), or (3)(A) of subsection (d) filing a claim for a payment for

calendar year 2000 or 2001, or both, only if the affidavit is postmarked no later than 15 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act; and

(B) In the case of a claim for a payment for calendar year 2002, only if the affidavit is postmarked no later than March 1, 2003.

(f) *Offsets.*—Notwithstanding any other provision of this section, any amount otherwise payable under subsection (d) to a manufacturer in calendar year 2001 and, where applicable, in calendar years 2002 and 2003, shall be reduced by the amount of any payment received by that manufacturer under this section before the enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act.

(g) *Definition.*—For purposes of this section, the manufacturer is the party that owns—

(1) Imported worsted wool fabric, of the kind described in heading 9902.51.11 or 9902.51.12 of the Harmonized Tariff Schedule of the United States, at the time the fabric is cut and sewn in the United States into men’s or boys’ suits, suit-type jackets, or trousers;

(2) Imported wool yarn, of the kind described in heading 5107.10 or 9902.51.13 of such Schedule, at the time the yarn is processed in the United States into worsted wool fabric; or

(3) Imported wool fiber or wool top, of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of such Schedule, at the time the wool fiber or wool top is processed in the United States into wool yarn.

Dated: August 8, 2002.

**Jayson P. Ahern,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 02–20478 Filed 8–8–02; 3:11 pm]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### Proposed Collection; Comment Request for Electronic License Application Form

**AGENCY:** Office of Foreign Assets Control, Treasury.

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed an/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (OFAC) within

the Department of the Treasury is soliciting comments concerning OFAC's Electronic License Application Form TD-F 90-22.54.

**DATES:** Written comments should be received on or before October 11, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Policy Planning and Program Management Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information about the filings or procedures should be directed to Policy Planning and Program Management Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

*Title:* OFAC Form for OFAC License Applications to Unblock Funds Transfers.

*Agency Form Number:* TD-F 90-22.54.

*OMB Number:* 1505-0170.

*Abstract:* Transactions prohibited pursuant to the Trading With the Enemy Act, 50 U.S.C. App. 1-44, and the International Emergency Economic Powers Act, 50 U.S.C. 1701, may be authorized by means of specific licenses issued by the Office of Foreign Assets Control ("OFAC"). Such licenses are issued in response to applications submitted by persons or institutions whose property has been blocked or who wish to engage in transactions that would otherwise be prohibited. Form TD-F 90-22.54, which provides a standardized method of all applicants seeking the unblocking of funds transfers, is available in electronic format on OFAC's website. Use of the form greatly facilitates and speeds these applicant's submissions and OFAC's processing of such applications while simultaneously obviating the need for applicants to write lengthy letters to OFAC, thus reducing the overall burden of the application process. Since February 2000, use of the form to apply for the unblocking of funds transfers has been mandatory pursuant to a revision in OFAC's regulations at 31 CFR 501.801. See 65 FR 10708, February 29, 2000.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals/businesses and other for-profit institutions/banking institutions.

*Estimated Number of Respondents:* 3,000.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget ("OMB") control number. Books or records relating to a collection of information must be retained for five years.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 6, 2002.

**Loren L. Dohm,**

*Deputy Director, Office of Foreign Assets Control.*

[FR Doc. 02-20344 Filed 8-9-02; 8:45 am]

**BILLING CODE 4810-25-M**

**DEPARTMENT OF VETERANS AFFAIRS**

**[OMB Control No. 2900-New]**

**Proposed Information Collection Activity: Proposed Collection; Comment Request**

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA), Department of

Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to conduct a study of war related illnesses and post-deployment health issues.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 11, 2002.

**ADDRESSES:** Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail [ann.bickoff@mail.va.gov](mailto:ann.bickoff@mail.va.gov). Please refer to "OMB Control No. 2900-New" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ann W. Bickoff (202) 273-8310 or FAX (202) 273-9381. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Study of War Related Illnesses and Post-Deployment Health Issues, VA Form 10-21060(NR).

*OMB Control Number:* 2900-New.

*Type of Review:* New collection.

*Abstract:* The purpose of this study is to develop a plan for clinical, research, risk communication and educational

activities for war-related illnesses and post-deployment health issues.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,750 hours.

*Estimated Average Burden Per Respondent:* 30 minutes.  
*Frequency of Response:* One time.  
*Estimated Number of Respondents:* 3,500.

Dated: July 31, 2002.

By direction of the Secretary.

**Ernesto Castro,**

*Director, Records Management Service.*

[FR Doc. 02-20279 Filed 8-9-02; 8:45 am]

**BILLING CODE 8320-01-P**



# Federal Register

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**Monday,  
August 12, 2002**

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**Part II**

## **Department of Housing and Urban Development**

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**24 CFR Part 236  
Retention of Section 236 Excess Income;  
Proposed Rule**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**24 CFR Part 236**

[Docket No. FR-4689-P-01]

RIN 2502-AH68

**Retention of Section 236 Excess  
Income**

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish the terms and procedures for owners of projects receiving section 236 rental assistance to participate in retaining some or all of their excess rental charges (Excess Income) for project use; to retain Excess Income charges for non-project use after a determination by HUD that the project is well-maintained housing in good condition and that the owner has not engaged in material adverse financial or managerial actions or omissions; and to request a return of Excess Income remitted to HUD.

**DATES:** *Comments Due Date:* October 11, 2002.

**ADDRESSES:** Address all comments concerning this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the docket number and title listed above. A copy of each comment submitted will be available for public inspection and copying weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Comments submitted by facsimile (FAX) will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Room 6134, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-3000 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 532(b) of the Departments of Veterans Affairs, Housing and Urban Development, Independent Agencies Appropriations Act, 2000 (Pub. L. 106-74, 113 Stat. 1047, approved October 20,

1999) (FY 2000 Appropriations Act) amended section 236(g) of the National Housing Act (12 U.S.C. 1715z-1(g)) to permit owners (mortgagors) of projects receiving Section 236 rental assistance to participate in retaining some or all of their excess charges, referred to as "Excess Income" in this rule, for project use if authorized by HUD. Permitting project owners to retain Excess Income is an exception to the general requirement of section 236(g) that project owners pay to HUD all rental charges, collected on a unit-by-unit basis, that are in excess of the basic rental charges. Under the new statutory authority, Excess Income that mortgagors are permitted to retain is to be used for the project upon terms and conditions established by HUD. This rule establishes those terms and conditions.

Section 532(b) of the FY 2000 Appropriations Act also permits owners to retain Excess Income for non-project use after a determination by HUD that the project is well-maintained housing in good condition, and that the owner has not engaged in material adverse financial or managerial actions or omissions as described in section 516 of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

This proposed rule would implement the section 236(g) authority to retain Excess Income by adding 24 CFR 236.60, formerly contained in the April 1, 1995 edition of 24 CFR, the provisions of which were saved pursuant to 24 CFR 236.1(c) of the current CFR. As added by this rule, § 236.60 would include the general rule requiring the return to HUD of Excess Income, but would also add new provisions to govern the process for a Section 236 mortgagor to apply for, and HUD to approve, the authority to retain Excess Income. HUD will not withhold approval of a mortgagor's request to retain Excess Income because of the existence of unpaid Excess Income charges, if the unpaid income is being repaid over a period of time in accordance with a Workout or Repayment Agreement with HUD. However, HUD will withhold approval if the mortgagor is in violation of such an Agreement.

Once approved to retain Excess Income, a mortgagor must continue to prepare and submit to HUD a revised Form HUD-93104, Monthly Report of Excess Income. If approved to retain Excess Income for project use, a mortgagor must also submit an annual narrative description of the amount and the uses made of Excess Income during the prior fiscal year of the project. Finally, this rule includes the procedure

for withdrawing the authority to withhold income from a mortgagor.

This rule would also establish the procedures for mortgagors to request a return of Excess Income that has already been remitted to HUD. The Departments of Veterans Affairs, Housing and Urban Development, Independent Agencies Appropriations Act, 1999, (Pub. L. 105-276, 112 Stat. 2461, approved October 21, 1998) (FY 1999 Appropriations Act), at section 227, permitted project owners to retain Excess Income upon terms and conditions established by HUD. Section 532(e) of the FY 2000 Appropriations Act allowed HUD to return any Excess Income remitted to HUD since October 21, 1998, the date of enactment of the FY 1999 Appropriations Act. Finally, section 861(b) of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106-569, 114 Stat. 2944, approved December 27, 2000) authorized HUD to return Excess Income remitted to HUD since the date of enactment of the FY 2000 Appropriations Act.

This rule proposes to permit mortgagors to request a return of Excess Income for project use or non-project use in accordance with the same procedures and conditions that apply to a request to retain Excess Income. For example, a request to return Excess Income for project use must include a description of how the funds will be used, and mortgagors may request a return of remitted Excess Income for non-project use only if the project has been well-maintained housing in good condition during the period from which a return is requested, and if the mortgagor has not engaged in material adverse financial or managerial actions or omissions.

A mortgagor may request a return of Excess Income that has been remitted to HUD since October 21, 1998, except for unpaid income that was repaid in accordance with a Workout or Repayment Agreement with HUD, or Excess Income generated between October 1, 2000, and October 27, 2000, by projects with State agency non-insured Section 236-assisted mortgages or HUD-held Section 236 mortgages. This rule further provides that a mortgagor may not request a return of any income after the date that is one year from the publication date of the final rule. HUD has set this time limit for requesting income returns to give mortgagors a period to plan for the retention and use of Excess Income on a current basis, which is more efficient than a procedure that would require constant reexaminations.

**II. Findings and Certifications**

*Paperwork Reduction Act*

The proposed new information collection requirements contained in §§ 236.60(c)(3), (d)(3), and (g), have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44

U.S.C. 3501–3520). Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The public reporting burden for this new collection of information is

estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in the following table.

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
§ 236.60(c)(3) .....	1,750	1	1,750	.25	438
§ 236.60(d)(3) .....	750	1	750	.25	188
§ 236.60(g) .....	1,750	1	1,750	.25	438
<b>Total hours</b> .....					<b>1,064</b>

In accordance with 5 CFR 1320.8(d)(1), HUD 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.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received by October 11, 2002. Comments must refer to the proposal by name and docket number (FR-4689-P-01) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer,  
Office of Management and Budget,  
New Executive Office Building,  
Washington, DC 20503.

and  
Rules Docket Clerk, Office of the  
General Counsel, Room 10276, U.S.  
Department of Housing and Urban  
Development, 451 Seventh Street,  
SW., Washington, DC 20410.

*Regulatory Planning and Review*

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866 (captioned “Regulatory Planning and Review”) and determined that this rule is a

“significant regulatory action” as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule will not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

*Environmental Review*

A Finding of No Significant Impact (FONSI) with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The FONSI is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule and in so doing certifies

that the rule would not have a significant economic impact on a substantial number of small entities. The rule only establishes the requirements for mortgagors of section 236 projects to retain and use Excess Income.

Notwithstanding HUD’s determination that this rule would not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s objectives as described in this preamble.

*Federalism Impact*

This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance Number for section 236 assistance is 14.103.

**List of Subjects in 24 CFR Part 236**

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 236 as follows:

**PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION**

1. The authority citation for 24 CFR part 236 continues to read as follows:

**Authority:** 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

2. Section 236.60 is added to read as follows:

**§ 236.60 Excess Income.**

(a) *Definition.* Excess Income consists of cash collected as rent from the residents by the mortgagor, on a unit-by-unit basis, that is in excess of either the HUD-approved unassisted Basic Rent or the New Authorized Rent under the Section 8 mark-to-market program under 24 CFR part 401. The unit-by-unit requirement necessitates that, if a unit has Excess Income, it must be returned to HUD. It is not permissible to do an aggregate calculation of the Excess Income for all occupied rent-paying units, and then to offset or subtract from that figure any unpaid rent from occupied or vacant units, before remitting Excess Income to HUD.

(b) *General requirement to return Excess Income.* Except as otherwise provided in this section, or as agreed to by HUD pursuant to a plan of action approved under part 248 of this chapter or in connection with an adjustment of contract rents under section 8 of the 1937 Act, the mortgagor shall agree to pay monthly to HUD the total of all Excess Income in accordance with procedures prescribed by HUD.

(c) *Retention of Excess Income for project use—(1) Eligible mortgagors.* Any mortgagor of a project receiving Section 236 interest reduction payments may apply to retain Excess Income for project use unless the mortgagor owes prior Excess Income and is not current in payments under a HUD-approved Workout or Repayment Agreement.

(2) *Eligible uses.* Excess Income retained by a mortgagor for project use may be used for any necessary and reasonable operating expense of the project. Examples are:

- (i) Project operating shortfalls, including repair costs;
- (ii) Repair costs identified in the Comprehensive Needs Assessment, including increasing deposits to the Reserve Fund for Replacements to a limit necessary to adequately fund the reserve;
- (iii) Service coordinators;
- (iv) Neighborhood networks located at the project for project residents; and
- (v) Enhanced supportive services for the residents.

(3) *Request for approval to retain Excess Income.* A mortgagor must submit a written request to retain Excess Income for project use to the local HUD Field Office. The request must describe:

- (i) The amount or percentage of Excess Income requested;
- (ii) The period from which Excess Income is being requested; and
- (iii) The proposed use of the requested Excess Income.

(d) *Retention of Excess Income for non-project use—(1) Eligible*

*mortgagors.* Any mortgagor of a project receiving Section 236 interest reduction payments may apply to retain Excess Income for non-project use unless the mortgagor owes prior Excess Income and is not current in payments under a HUD-approved Workout or Repayment Agreement or the mortgagor falls within any of the following categories:

- (i) The mortgagor's Reserve for Replacement is not funded;
- (ii) The mortgagor's project is not well maintained housing in good condition, as evidenced by:

(A) Failure to maintain the project in decent, safe, and sanitary condition and in good repair in accordance with HUD's Uniform Physical Condition Standards and Inspection Requirements in subpart G of 24 CFR part 5;

(B) A score below 60 on the physical inspection conducted by HUD's Real Estate Assessment Center (REAC);

(C) The existence of Exigent Health and Safety (EHS) deficiencies identified by REAC; or

(D) A Comprehensive Needs Assessment that finds there are significant current repair or maintenance needs;

(iii) The mortgagor has engaged in any one of the following material adverse financial or managerial actions or omissions:

(A) Materially violating any Federal, State, or local law or regulation with regard to the project or any other federally assisted project, including any applicable civil rights law or regulation, after receipt of notice and an opportunity to cure;

(B) Materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), after receipt of notice and an opportunity to cure;

(C) Materially violating any applicable regulatory or other agreement with HUD or a participating administrative entity, after receipt of notice and an opportunity to cure;

(D) Repeatedly and materially violating any Federal, State, or local law or regulation, including any applicable civil rights law or regulation, with regard to the project or any other federally assisted project;

(E) Repeatedly and materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937;

(F) Repeatedly and materially violating any applicable regulatory or other agreement with HUD or a participating administrative entity, including failure to submit audited financial statements or required tenant data;

(G) Repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the project;

(H) Materially failing to maintain the project in decent, safe, and sanitary condition and in good repair after receipt of notice and a reasonable opportunity to cure; or

(I) Committing any actions or omissions that would warrant suspension or debarment by HUD.

(2) *Eligible uses.* Excess Income retained by a mortgagor for non-project use may be used for any purpose, except that the non-project use of Excess Income by a nonprofit entity mortgagor is limited to activities that carry out the entity's nonprofit purpose.

(3) *Request for approval to retain Excess Income.* A mortgagor must submit a written request to retain Excess Income for non-project use to the local HUD Field Office. The request must describe:

(i) The amount or percentage of Excess Income requested; and

(ii) The period from which Excess Income is being requested.

(e) *Timing of request to retain Excess Income.* A mortgagor must submit a request to retain Excess Income at least 90 days before the beginning of each fiscal year, or 90 days before any other time during a fiscal year that the mortgagor plans to begin retaining Excess Income for that fiscal year.

(f) *HUD review and response procedure.* HUD will review the mortgagor's request to retain income and issue a letter of approval or denial as follows:

(1) *Approval letter.* The approval letter from HUD permitting the mortgagor to retain Excess Income must, at a minimum, assert:

(i) Retention rights are for the time specified in the approval letter, but cannot extend beyond the current fiscal year;

(ii) Failure of the mortgagor to maintain the Reserve for Replacement account in a fully funded amount at all times is grounds for HUD to rescind the approval;

(iii) Failure of the mortgagor to maintain the project in decent, safe, and sanitary condition and in good repair at all times is grounds for HUD to rescind the approval;

(iv) If the Excess Income requested for project use is not used for the proposed purpose described in the mortgagor's request, the income must be returned to HUD, unless the mortgagor has obtained prior HUD approval for the alternate use; and

(v) The failure of a mortgagor to return retained Excess Income to HUD for not

complying with applicable requirements is a violation of the Regulatory Agreement for which there are enforcement remedies that HUD may take.

(2) *Denial letter.* A letter from HUD denying a mortgagor's request to retain Excess Income must cite the specific reasons for denial and state what requirements the mortgagor must meet to receive HUD's approval to retain Excess Income.

(3) *Environmental review.* Before approving a request to retain Excess Income for project use, HUD will perform an environmental review to the extent required under 24 CFR part 50 for activities that are not excluded under 24 CFR 50.19(b).

(g) *Post-approval requirements—(1) Monthly report.* Mortgagors approved to retain Excess Income must continue to prepare and submit to HUD a revised Form HUD-93104, Monthly Report of Excess Income, or successor form.

(2) *Other reporting requirements.* Mortgagors who retain Excess Income for project use must provide HUD, on an annual basis, two copies of a narrative description of the amount and the uses made of Excess Income during the prior fiscal year of the project. HUD may request additional follow-up information on a case-by-case basis. The report must contain the following certification:

I certify that (1) the amount of Excess Income retained and used was for the purposes approved by HUD; (2) all eligibility requirements for retaining Excess Income were satisfied for the entire reporting period; and (3) all the facts and data on which this report is based are true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 U.S.C. 1001, 1010, 1012; and 31 U.S.C. 3729 and 3802).

(h) *Return of remitted Excess Income—(1) For project use.* A mortgagor that is eligible to retain Excess Income for project use under paragraph (c)(1) of this section may apply for the return of Excess Income remitted to HUD since October 21, 1998 (except for unpaid income that was

repaid in accordance with a Workout or Repayment Agreement with HUD, or Excess Income generated between October 1, 2000, and October 27, 2000, by projects with State agency non-insured Section 236-assisted mortgages or HUD-held Section 236 mortgages) in accordance with procedure in paragraph (c)(3) of this section.

(2) *For non-project use.* A mortgagor that is eligible to retain Excess Income for non-project use under paragraph (d)(1) of this section may apply for the return of Excess Income remitted to HUD since October 21, 1998 (except for unpaid income that was repaid in accordance with a Workout or Repayment Agreement with HUD, or Excess Income generated between October 1, 2000, and October 27, 2000, by projects with State agency non-insured Section 236-assisted mortgages or HUD-held Section 236 mortgages) in accordance with procedure in paragraph (d)(3) of this section.

(3) *Reporting requirement.* A mortgagor that receives returned Excess Income requested for project use is subject to the reporting requirements of paragraph (g)(2) of this section with respect to the returned Excess Income.

(4) *Time limit.* After [Insert date that is one year after the date of publication of the final rule], a mortgagor may no longer apply for the return of any Excess Income remitted to HUD.

(i) *HUD withdrawal of approval to retain Excess Income—(1) Bases for withdrawal of approval.* HUD may withdraw approval for any of the following reasons:

(i) If, at any time after approval, a mortgagor fails to meet the eligibility requirements of paragraph (c)(1) or (d)(1) of this section, as applicable;

(ii) If the mortgagor does not use the Excess Income requested for project use for purposes and activities as approved by HUD; or

(iii) Where the mortgagor has been approved to retain Excess Income for non-project use, if at any time during the fiscal year that such approval is in effect, the mortgagor fails to maintain the project in decent, safe, and sanitary

condition and in good repair, or maintain the Reserve for Replacement account in a fully funded amount.

(2) *Notification of withdrawal of approval.* HUD will notify the mortgagor by certified mail that the authorization to retain Excess Income is withdrawn. The notification will state:

(i) Specific reasons for HUD's withdrawal of approval;

(ii) The effective termination date, which may be the date of the violation resulting in the withdrawal or the date of HUD's determination that the mortgagor was out of compliance;

(iii) The amount of retained Excess Income improperly retained that must be returned to HUD; and

(iv) The actions that the mortgagor must take to restore the authorization to retain Excess Income.

(3) *Mortgagor's request for reconsideration—(i) Letter of reconsideration.* A mortgagor may request that HUD reconsider its decision by submitting, to the Hub/Field Office Director or other party identified by HUD in the notification, within 30 days of receipt of the notification of withdrawal, a letter stating the basis for reconsideration. The letter must include documentation supporting a review of the denial.

(ii) *HUD response.* Within 30 days of HUD's receipt of the mortgagor's request for reconsideration, HUD will make a final determination and respond in writing to the mortgagor. HUD's response may:

(A) Affirm the withdrawal of authority to retain Excess Income;

(B) Reverse the withdrawal of authority to retain Excess Income; or

(C) Request additional information from the mortgagor before affirming or reversing the withdrawal of authority to retain Excess Income.

Dated: July 8, 2002.

**John C. Weicher,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 02-20022 Filed 8-9-02; 8:45 am]

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# Federal Register

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**Monday,  
August 12, 2002**

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**Part III**

## **Department of the Interior**

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**National Park Service**

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**36 CFR Part 61  
Procedures for State, Tribal and Local  
Government Historic Preservation  
Programs; Proposed Rule**

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Part 61**

RIN 1024-AC79

**Procedures for State, Tribal and Local Government Historic Preservation Programs****AGENCY:** National Park Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) proposes to establish the requirements for an Indian Tribe to assume the duties as State Historic Preservation Officer (SHPO) pursuant to section 101(d)(2) of the National Historic Preservation Act (NHPA). The 1992 amendments to the NHPA include a provision that enables a Tribe to assume any or all of the duties of a SHPO on tribal lands. The proposed rule establishes the formal process by which a Tribe may secure the Secretary of the Interior's (Secretary) approval to assume SHPO duties on tribal land.

**DATES:** The NPS will accept written comments through December 10, 2002. The NPS will hold public meetings on September 20, 2002, at 9 a.m. in Albuquerque, New Mexico; on September 18, 2002, at 9 a.m. in Phoenix, Arizona; on September 16, 2002, 9 a.m. in Reno, Nevada; on September 13, 2002, at 9 a.m. in Seattle, Washington; on October 4, 2002, at 10 a.m. in Oklahoma City, Oklahoma; on October 9, 2002, at 9 a.m. in Lac du Flambeau, Wisconsin; on October 22, 2002, at 9 a.m. in Washington, DC; on September 11, 2002, at 9 a.m. in Polson, Montana; and on October 2, 2002 at 9 a.m. in Fort Yates, North Dakota, to present the proposed rule and to receive oral comments.

**ADDRESSES:** Comments should be addressed to: Chief, Heritage Preservation Services Division, National Center for Cultural Resources, National Park Service, 1849 C Street, NW., NC 330, Washington, DC 20240; Attention: H. Bryan Mitchell. You may hand carry your comments or send them by overnight mail to 800 North Capitol Street, NW., Suite 330, Washington, DC 20002. Fax: (202) 343-3921. E-mail: [Bryan\\_Mitchell@nps.gov](mailto:Bryan_Mitchell@nps.gov). The public meetings noted in **DATES** will be at the Indian Pueblo Cultural Center, Inc. (Antelope Room) 2401 12th Street, NW., in Albuquerque, New Mexico; Intertribal Council of Arizona, El Encanto Building, Suite 130, 2214 North Central Avenue, in Phoenix, Arizona; University of Nevada at Reno,

Continuing Education Bldg., Room 109, 1041 North Virginia Street, in Reno, Nevada; Daybreak Star Indian Cultural Center (Lounge Room), Discovery Park, 34th Avenue West and West Government Way, in Seattle, Washington; Shepherd Mall, Suite 65, NW 23rd Street and Villa, in Oklahoma City, Oklahoma; Lake of the Torches Resort Hotel (3rd Floor Conference Room), 510 Old Abe Road, in Lac du Flambeau, Wisconsin; Department of the Interior (Room 7000-B) 1849 C Street, NW., in Washington, DC; KwaTaqNuk Resort Hotel (Charlo Room), 303 U.S. Highway 93 East, in Polson, Montana; and Prairie Knights Casino and Lodge (Prairie View Room), 7932 Highway 24, in Fort Yates, North Dakota.

**FOR FURTHER INFORMATION CONTACT:** H. Bryan Mitchell, National Park Service, 1849 C Street, NW. (NC 330), Washington, DC 20240. Telephone: (202) 343-9558. Fax: (202) 343-3921. E-mail: [Bryan\\_Mitchell@nps.gov](mailto:Bryan_Mitchell@nps.gov).

**SUPPLEMENTARY INFORMATION:****Background**

The NPS has promulgated 36 CFR part 61 pursuant to the NHPA (16 U.S.C. 470 *et seq.*) that implemented the national historic preservation program as a partnership among Federal, State, Tribal, and local governments, non-profit organizations, and private individuals. The NHPA also created the mechanism for funding this partnership, the Historic Preservation Fund. This partnership promotes and carries out the preservation of irreplaceable historic and archeological resources that provide the foundation of the Nation's heritage. Through this partnership the vital legacy of cultural, educational, aesthetic, inspirational, and economic benefits of our historical patrimony will be maintained and enriched for future generations of Americans. 36 CFR part 61 provides the regulatory framework for voluntary participation by State, Tribal, and local governments in the national historic preservation program. The Secretary, operating through the Director of the National Park Service (Director), administers these programs.

The specific objects of this proposed rule are §§ 61.8 and 61.9 of 36 CFR part 61. These two sections, which the NPS reserved for future development in the recent overall revision of Part 61 (published for effect in the **Federal Register** on March 9, 1999), are specific to tribal participation in the national historic preservation program. Where a Tribe assumes responsibilities on tribal lands pursuant to this section of the NHPA, the SHPO does not have

responsibility for those functions, except in those cases where a non-tribal land owner requests the State's participation in addition to the Tribe's. Prior to the enactment of the 1992 amendments, the NHPA included no provision by which a Tribe could formally assume these duties in the national program. Issuance of these two sections will complete the revision of Part 61 in response to the 1992 amendments to the NHPA.

Federally recognized Tribes that exercise governmental jurisdiction over tribal lands are eligible for this program. The NHPA defines tribal lands as all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities (16 U.S.C. 470w).

As of the date of publication of this proposed regulation, the Secretary has already approved 31 Tribes to assume SHPO duties pursuant to section 101(d)(2) of the NHPA. In the absence of a regulation specifically implementing that new section of the NHPA, the NPS has reviewed tribal proposals to date in accordance with and in reliance upon the existing statutory and regulatory requirements for SHPOs. The NPS has based this review process on the broad requirements that ensure a certain level of quality, consistency, and public participation in the delivery of the national program. The current review process has demonstrated the need for rules that establish a formal assumption process for Tribes and that respond more specifically to those values and needs of Tribes that are distinct from those of the States. Further, section 101(d)(2) of the NHPA, itself, specifically anticipates that the NPS will promulgate regulations that are specific to tribal assumption of SHPO duties.

**Section by Section Analysis***Section 61.8 Tribal Programs*

Taken as a whole, the section includes the process by which a Tribe can gain approval from the Secretary, acting through the Director, to assume SHPO duties on tribal lands. This section affirms that a Tribe must meet existing broad requirements for level of quality, consistency, and public participation in order to be deemed fully capable of assuming SHPO duties. However, an important purpose of this section is to distinguish tribal participation in the national program from state participation in the national program, where such distinctions are appropriate and consistent with the purposes of the NHPA. The section:

- Provides the necessary guidance for what a Tribe must include in a proposal;
- Establishes deadlines by which the NPS must respond to a tribal proposal;
- Implements the provisions of section 101(d)(1)(B) of the NHPA that allow for waivers and modifications of the requirements of the NHPA, in order to accommodate tribal values and the cultural setting of tribal heritage preservation goals and objectives;
- Provides a process by which a Tribe can request review by the Director of any decision to disapprove a tribal proposal or to deny a tribal request for a waiver or modification of requirements, or of any failure to act within certain deadlines; and
- Establishes the process for periodic review by the NPS of approved tribal programs, in accordance with sections 101(d)(2) and 101(b)(2) of the NHPA.

(a) What Is the Purpose of the Section?

This paragraph makes clear that the procedures and requirements set out in § 61.8 apply only to tribal assumption of SHPO responsibilities in the national historic preservation program. The procedures and requirements of this rule do not apply to tribal historic preservation programs and activities that are created and carried out solely pursuant to tribal ordinances.

For example, if a Tribe assumes the responsibility for nominating properties to the National Register of Historic Places, the Tribe must follow the National Register's nomination procedures, and it must use the National Register's evaluation criteria to assess the significance of the property being nominated. On the other hand, if the Tribe proposes to establish and maintain its own tribal register—either instead of or in addition to nominating properties to the National Register—the Tribe may establish whatever procedures and evaluation criteria it feels best meet the Tribe's needs. If a Tribe chooses only to establish and maintain a tribal register, then the responsibility for nominating properties to the National Register remains with the SHPO.

In another example, if a Tribe assumes the SHPO's responsibility for commenting on the possible effects of proposed Federal undertakings, the Tribe must carry out that responsibility in accordance with the regulations (36 CFR 800) of the Advisory Council on Historic Preservation. The Tribe's authority within that arena is set out in that regulation. On the other hand, if a Tribe adopts an ordinance requiring tribal approval and a permit for activities on tribal land that may affect historic or cultural resources, the terms

of that ordinance are set out by the Tribe to meet its own needs. The two processes are separate and do not substitute for each other.

(b) What Policies Govern Tribal Participation in the National Historic Preservation Program?

The statements of policy affirm that:

- (1) tribal assumption of SHPO duties is a governmental function and so is a part of the government-to-government relationship between the United States and Indian Tribes;
- (2) tribal participation will strengthen the national historic preservation program [16 U.S.C. 470–1(2)]; and
- (3) the program should encourage and facilitate tribal participation [16 U.S.C. 470–1(d)(1)(A)];

(c) How Will the NPS Implement These Policies in Carrying Out the Procedures and Requirements for Tribal Assumption of SHPO Duties?

The NPS will administer this rule in a manner sufficiently flexible to respond to the varying scopes of tribal programs and to tribal values while remaining consistent with the intent and purposes of the NHPA.

(d) What Terms Do I Need To Know?

The NHPA defines most of the terms used in this rule. Those definitions are not repeated here. This paragraph defines one very important term not defined elsewhere: “tribal traditional cultural authority.” The definition affirms two important ideas for the purposes of this program. First, the only test for determining that someone is a tribal traditional cultural authority is whether the Tribe recognizes that person as such. Second, the NPS attributes the same professional standing and credibility to a tribal traditional cultural authority as he or she does to an individual who meets the Secretary of the Interior's Professional Qualifications Standards. This equivalent standing does not mean that a tribal traditional cultural authority is necessarily qualified to assess the archeological, historical, or architectural significance of a site. Likewise, a professionally qualified archeologist, historian, or architectural historian is not necessarily competent to assess the traditional cultural significance of that same site. The NPS recognizes each of these individuals as competent within a specific sphere of knowledge.

(e) How Does Our Tribe Seek Approval To Assume SHPO Functions?

This paragraph reiterates the NHPA's three fundamental procedural requirements that a Tribe must meet

when it proposes to assume SHPO duties on tribal lands:

- (1) submit an appropriate resolution from the Tribe's chief governing authority;
- (2) duly designate a Tribal Historic Preservation Officer (THPO) who will be responsible for carrying out these duties; and
- (3) submit a Program Plan that describes how the Tribe will carry out the duties it proposes to assume.

(f) What Are the General Requirements for Our Tribe's Program Plan?

This paragraph establishes the basic framework for a Program Plan. It refers to the SHPO functions as they are set out in the NHPA and calls on a Tribe to indicate in its Program Plan which functions the Tribe will assume and which ones it will not assume. The paragraph also makes clear that a Tribe must include in its Program Plan sufficient descriptive information on the Tribe's current historic preservation activities and on how the Tribe will carry out the functions it proposes to assume, so that the NPS can determine whether the Tribe is, in the words of the NHPA, “fully capable” of carrying out the functions it proposes to assume.

The paragraph also indicates that a Tribe may, at its discretion, include other materials in its Program Plan, such as a request for a waiver or modification of requirements, a request for technical assistance, and any other background information the Tribe wishes to include.

(g) What Are the Specific Elements That Must Be in a Tribal Program Plan?

This paragraph provides more detailed guidance on the descriptive information a Tribe must provide in its Program Plan. The NPS bases the required information directly on existing statutory and regulatory requirements for SHPO duties. The Tribe must demonstrate its familiarity with those requirements and describe how it will meet them, so that the NPS can determine, pursuant to section 101(d)(2)(D)(i) of the NHPA, whether the Tribe is “fully capable of carrying out the functions specified in the plan.” However, the paragraph also modifies some of the requirements imposed on States, in order to take into account tribal values and to recognize that tribal programs may vary in scope from state programs.

The paragraph is divided into two parts. The first part concerns information about the Tribe's overall program:

- (a) Information on how the Tribe will include professionally qualified individuals in its program;

(b) Information on how the Tribe will include an adequate and qualified review board in its program; and

(c) Information on how the Tribe will provide for adequate public participation in its program.

Two examples of how these overall requirements are modified for Tribes are:

(1) The NHPA requires an SHPO to employ or appoint "such professionally qualified staff as may be necessary \* \* \*" Existing regulations (36 CFR 61.4) require that such State staff include a professionally qualified architectural historian, a professionally qualified historian, and a professionally qualified archeologist. The Secretary recognizes that unique cultural settings, smaller workloads, more limited program scopes, and limited funding may make such full-time staffing requirements both unnecessary and infeasible for a Tribe. Therefore, this proposed rule offers a Tribe greater flexibility to arrange for access to professionally qualified individuals as necessary to meet the specific needs of a Tribe's program.

(2) The NHPA requires SHPO programs to include "an adequate and qualified" review board to review National Register nominations and to provide general programmatic advice to the SHPO. Existing regulations (36 CFR 61.4) require that a majority of the members of such State boards meet the Secretary's Professional Qualifications Standards. However, the Secretary recognizes that, like many local historic preservation programs that the Secretary has certified, Tribes may not have access to professionally qualified individuals who are locally available and willing to serve on the board. Further, the Secretary recognizes that the nature and scope of THPO programs may be such that they are better served by board members who are traditional cultural authorities, elders, and others experienced in the preservation of tribal culture. Therefore, this proposed rule only requires that tribal review board members be interested and experienced in historic preservation and/or tribal culture, in order for the board to be deemed "adequate and qualified."

The second part of the paragraph concerns information on the specific SHPO functions the Tribe may assume, with emphasis on the following three functions:

(a) The National Register nomination process;

(b) Consultation with Federal agencies pursuant to section 106 of the NHPA; and

(c) Review of proposals for rehabilitation of historic properties that may qualify for Federal tax credits.

The required information for these three functions makes clear that a Tribe that assumes any or all of these three functions must carry them out in a manner that is consistent with existing regulations applicable to SHPOs. However, the paragraph also makes clear that a Tribe that finds these existing regulations to be contrary to tribal values may seek and receive a waiver or modification of those regulations from the Secretary.

(h) How Does Our Tribe Obtain a Waiver or Modification of the Requirements of the NHPA or of This Rule?

This paragraph implements the provision of section 101(d)(1) of the NHPA that allows for waivers and modifications of existing legal requirements applicable to SHPOs in order to take into account tribal values and to conform to the cultural setting of tribal heritage goals and objectives. A Tribe may include such a waiver or modification request as a part of its Program Plan. While the NPS neither requires nor expects that a Tribe include or divulge any information that is sensitive or culturally inappropriate for the Tribe, the Tribe must explain why a waiver or modification is appropriate, and it must propose a specific alternative.

(i) How Will the NPS Consult With Us on Our Proposed Program Plan?

This paragraph makes clear that, when the NPS receives a proposed Program Plan from a Tribe, it will consult with the Tribe in an effort to clarify any ambiguities and remedy any deficiencies in that Plan. The paragraph also establishes deadlines by which the NPS must:

(a) Acknowledge receipt of a Tribe's Program Plan;

(b) Notify a Tribe of any ambiguities or apparent deficiencies in its Program Plan;

(c) Notify a Tribe of any ambiguities or apparent deficiencies remaining in its Program Plan following consultation with the NPS.

(j) Will the NPS Consult With Anyone Else About Our Proposed Program Plan?

This paragraph makes clear that the NHPA requires NPS to consult with the appropriate SHPO(s), any other Tribes whose traditional homelands may be affected, and, if you are assuming responsibilities pursuant to section 106, the Advisory Council on Historic Preservation. The paragraph establishes

a deadline by which NPS must contact these other consulting parties, as well as a deadline by which the consulting parties must return any comments to NPS.

(k) On What Basis Will the Secretary Review Our Proposed Program Plan?

This paragraph makes clear that the NPS must decide to approve or not to approve a Tribe's Program Plan based on the statutory test of whether the Tribe is "fully capable" of carrying out the SHPO functions it proposes to assume. The paragraph binds the NPS to determine whether the Tribe is fully capable based on whether the Tribe has met the requirements set out in § 61.8(f) through § 61.8(i) of this rule.

The paragraph also affirms that, in any case where a Tribe has requested a waiver or modification of existing requirements applicable to SHPOs, the NPS will approve that request upon finding that such a waiver or modification is feasible, necessary to accommodate tribal values, and consistent with the purposes of the NHPA.

(l) How Will the NPS Make a Decision on Our Program Plan?

Item (1) of this paragraph requires the NPS to provide the Tribe with a written finding as to whether the Tribe is fully capable of carrying out its proposed duties and whether the NPS has approved any requested waivers or modifications.

Item (2) indicates that the finding must include an explanation for the NPS' decisions, a description of the necessary steps to correct any deficiencies that resulted in denial of the Tribe's request, an offer of technical assistance as appropriate, and a notice of the Tribe's right to request the Director's review of certain adverse decisions or actions.

Items (3) and (4) establish that the NPS may approve a Tribe's entire plan, disapprove the entire plan, or approve parts of the plan and disapprove other parts. The basis for partial approval of a plan by the NPS and/or partial assumption of duties by the Tribe is section 101(d)(2) of the NHPA, which provides that, "A tribe may assume *all or any part* of the functions of a State Historic Preservation Officer \* \* \* [emphasis added]"

Item (5) makes clear that a Tribe that assumes only a portion of the SHPO duties at first may at any subsequent time assume any or all of the remaining duties upon approval by the NPS. Any Tribe that wants in the long term to assume all SHPO duties but feels that it

should take on those duties gradually or in phases may do so.

(m) How Can We Obtain a Review of a Negative Decision by the NPS?

This paragraph establishes a clear process by which a Tribe can request the Director to review any decision that disapproved in whole or in part the Tribe's proposal to assume SHPO duties, any decision to deny the Tribe's request for a waiver or modification of requirements, or any failure to act by the deadlines established by this rule. The paragraph indicates what a Tribe should include in its request to the Director, and it establishes a 60-day deadline for making such a request. The paragraph calls for a meeting between the Tribe and the Director if the Tribe requests such a meeting, or if the Director believes that a meeting would be helpful. The paragraph requires that the Director's decision be in writing and that it include an explanation for the Director's action. Finally the paragraph requires the Director to act within 60 days of receiving the Tribe's request.

(n) May a Tribe That Assumes SHPO Functions Obtain Relevant Materials From the SHPO?

Existing survey inventories and archives of the SHPOs often include significant information on sites within the boundaries of Indian reservations, as well as on aboriginal lands now outside the reservation. A Tribe that assumes SHPO duties needs that information very much, not only so that it can build upon rather than duplicate previous work carried out pursuant to the NHPA, but also so that it can effectively and efficiently work with the Federal agencies that consult with the Tribe pursuant to the NHPA.

A few of the Tribes that have already assumed SHPO duties have reported some difficulties in acquiring copies of SHPO records. Those tribes have requested that the NPS require SHPOs to turn over their original records to the Tribes at no cost to the Tribes.

The NPS cannot require SHPOs to divest their archives of these official state records. In addition, the SHPOs will have a continuing need to refer to those records for their own planning purposes. The NPS also cannot require that an SHPO bear all the costs of making duplicate records for a Tribe.

On the other hand, the NPS recognizes the critical importance of these records for THPOs. This paragraph affirms that the State, if the Tribe requests, must provide the Tribe with original records or legible duplicates for sites on tribal lands or on a Tribe's aboriginal lands. While a State may

charge the Tribe a fee not to exceed actual costs for transferring or duplicating materials, the NPS encourages the States to give whatever assistance they can to a Tribe that is assuming SHPO duties, so that the Tribe can obtain the necessary records quickly at the lowest possible cost.

(o) How Does the NPS Review the Performance of a Tribe That Has Assumed SHPO Functions?

Section 101(d)(2) of the NHPA says that a tribe may assume SHPO duties "in accordance with" section 101 (b)(2) of the NHPA. This latter section requires periodic review, not less often than once every 4 years, of each SHPO program to ensure that it remains consistent with the NHPA. 36 CFR 61.4 establishes the basic procedure by which the NPS carries out this review of state programs.

Accordingly, paragraph 61.8(o) of this rule establishes a basic process for review of each THPO program that is identical to the procedure for review of SHPO programs as set out in 36 CFR 61.4

The principal features of the review process are:

1. It is collegial;
2. It focuses on identifying both strengths and weaknesses;
3. It provides a Tribe with a reasonable opportunity to correct any problems;
4. It allows a Tribe to request a review by the Director of any findings or required actions; and
5. It results in a formal continuation of a Tribe's approved status, or, where major deficiencies remain uncorrected, in a revocation of approved status and suspension of any financial assistance.

(p) What Is the Effect of This Rule on Tribal Sovereignty, Treaty Rights, and Other Tribal Rights?

This paragraph affirms that nothing in this rule is intended to modify tribal sovereignty or to preempt any treaty rights or other rights in any way.

(q) What Is the Effect of This Rule on Tribes Previously Approved To Assume SHPO Functions?

This paragraph "grandfathers" those Tribes that have been approved to assume SHPO duties prior to the effective date of this rule, so that they retain their approved status without reapplying to the NPS for approval.

*Section 61.9 Grants to Tribal Programs*

(a) Are Tribes That Have Assumed SHPO Functions Eligible for Financial Assistance To Carry Out Those Functions?

Item (1) of this paragraph affirms that a Tribe that is approved to assume SHPO duties is eligible to receive financial assistance from the Historic Preservation Fund (HPF), just as SHPOs are eligible to receive financial assistance from the HPF.

Item (2) establishes the first day of the Federal fiscal year (October 1) as the deadline by which a tribal program must have been approved in order to be eligible for financial assistance in any given fiscal year. This deadline is important and necessary for two reasons:

1. The number of Tribes participating in this program is growing and will continue to grow for the foreseeable future. A Tribe may submit a program plan to the NPS for approval at any time during the year.

2. The NPS provides annual financial assistance to approved Tribes based on an apportionment formula very soon after Congress appropriates the funds. Each approved Tribe needs to know as early as possible what its funding level will be for the year. The Tribe also needs access to its funds as early in the fiscal year as possible to meet ongoing costs. Already-approved Tribes would suffer unfairly, if apportionment were delayed in order to wait for possible additional Tribes.

*Section 61.9(b) What Requirements Govern the Financial Assistance for Tribes That Have Assumed SHPO Functions?*

This paragraph affirms that the various departmental and government-wide requirements for receiving and spending Federal grant-in-aid money apply to the funds a Tribe receives through this program. This paragraph also affirms the provisions of section 101(e)(5) of the NHPA that the matching-share requirements normally attached to the HPF may be modified for Tribes.

**Drafting Information**

The primary author of this rule is H. Bryan Mitchell, Heritage Preservation Services, National Center for Cultural Resources, National Park Service.

**Compliance With Laws, Executive Orders and Department Policy**

*Regulatory Planning and Review (Executive Orders 12866)*

This document is not a significant rule and is not subject to review by the

Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The proposed rule provides the framework for the voluntary participation of individual Indian tribes in the national historic preservation program. Current grant funding available to participating tribes is under \$5 million nationwide.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule establishes the formal relationship between the NPS and participating tribes. Consultation between Federal agencies and Indian tribes concerning Federal undertakings on tribal lands is already required by section 110 of the NHPA and by the regulations (36 CFR part 800) of the Advisory Council on Historic Preservation.

(3) This rule does not alter any existing budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule does make clear that Indian tribes that choose to participate in the national historic preservation program are eligible for additional grant funding from the Historic Preservation Fund to assist the tribe in carrying out the activities of that program. The rule establishes an annual deadline by which a tribe must be approved in order to be eligible for the next funding cycle; it also affirms that various government-wide and departmental requirements apply to grants received by participating tribes.

(4) This rule does not raise novel legal or policy issues. The programmatic requirements established by this proposed rule for tribes that choose to participate in the program are consistent with the broad programmatic requirements that have been in place for states for over 25 years. At the same time, the proposed rule recognizes the differences in scope, workload, and program emphasis that exist between states and tribes, as well as among tribes.

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As noted above, the proposed rule only establishes

procedures and requirements for Indian tribes that voluntarily choose to participate in the national historic preservation program. Total grant funding available for participating tribes is less than \$5 million annually.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more. As noted above, the proposed rule only establishes procedures and requirements for Indian tribes that voluntarily choose to participate in the national historic preservation program. Total grant funding available for participating tribes is less than \$5 million annually. The proposed rule establishes no new requirements for small businesses.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Federal agencies are already required by section 110 of the NHPA and by the regulations (36 CFR part 800) of the Advisory Council on Historic Preservation to consult with Indian tribes concerning proposed Federal undertakings. Where a tribe has assumed SHPO functions pursuant to this proposed rule, the costs to Federal agencies may actually be reduced in some cases, because consultation with the SHPO in addition to the tribe would no longer be required.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The proposed rule establishes the procedures and requirements for any Indian tribe that chooses to enter into a formal relationship with the Secretary in which the tribe carries out the national historic preservation program on tribal lands.

#### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. Tribal assumption of SHPO duties pursuant to the NHPA and this proposed rule is completely at the discretion of individual tribal governments with jurisdiction over tribal lands, so that no mandate of any

kind arises from this proposed rule. In addition, the proposed rule creates no significant or unique effect on any unit of government.

#### *Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule creates administrative procedures for the organization of Tribal historic preservation offices. This rule does not affect private property owners. The SHPO duties a tribe may assume pursuant to the NHPA and this proposed rule do not include any responsibilities or activities that affect property rights protected by the Constitution or that pose any risk of being a compensable taking. A takings implication assessment is not required.

#### *Federalism (Executive Order 13132)*

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Tribal participation in the national program is voluntary. Nonetheless, the NPS has consulted with participating tribes in drafting this proposed rule. This proposed rule has evolved directly from a draft prepared by the participating tribes and provided to the NPS in July, 1997. Later in the drafting process the NPS met with the participating tribes in October, 1998 to discuss the draft at that point. The NPS also solicited written comments from the participating tribes following that meeting but received none. While the proposed rule has undergone a series of editorial refinements since the 1998 meeting, it remains substantively the same. The proposed rule has no significant effect on states' abilities to make their own decisions. Where a tribe is approved by the NPS to assume SHPO functions on tribal lands, the state no longer has those responsibilities on tribal lands. However, the level of SHPO activity on tribal lands is relatively small and consists of providing technical assistance requested by tribes and consulting with Federal agencies on the potential impacts of their undertakings. Allowing tribes to assume SHPO functions with regard to tribal lands is mandated by the NHPA and not created by this proposed rule. The NHPA also calls for promulgation of regulations to implement the mandate, so that there is no alternative to publishing the proposed rule. A Federalism Assessment is not required.

*Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*

The Office of Management and Budget has approved the collection of information contained in this rule under 44 U.S.C. 3507 *et seq.* and has assigned clearance number 1024–0038. The information collected is part of the process for reviewing the procedures and programs of State, Tribal, and local governments participating in the national historic preservation program and the Historic Preservation Fund grant program. The NPS will use the information to evaluate those programs and procedures for consistency with the National Historic Preservation Act of 1966, as amended, and compliance with government-wide grant requirements. Participating State, Tribal, and local governments must respond in order to obtain a benefit under these programs. Note that a Federal agency may not conduct or sponsor, nor must a person respond to, a collection of information unless it displays a currently valid OMB control number. The NPS provides no assurance of confidentiality to respondents with the exception for the information concerning the location of some properties included in government historic preservation property inventories. Pursuant to Section 304 of the National Historic Preservation Act of 1966, as amended, the NPS tightly controls the release of information, when such release could have the potential of damaging those qualities that make a property historic or of vital cultural or religious significance.

We estimate the public reporting burden for the collection of this information averages 14.06 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to Ms. Diane M. Cooke, Information Collection Officer, National Park Service, 1849 C Street NW., MS 3317, Washington, DC 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the

Interior (1024–0038), Washington, DC 20503.

*National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

*Government-to-Government Relationship With Tribes*

In accordance with the Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249) and President’s memorandum of April 29, 1994, “Government to Government Relations with Native American Tribal Governments” (59 FR 22951) and 512 DM 2:

We have evaluated the possible effects on federally recognized Indian tribes. The proposed rule does not, in and of itself, have any effect on tribal trust resources, as contemplated by 512 DM 2. However, the proposed rule is of particular concern to those tribes. The proposed rule formalizes the process established by the National Historic Preservation Act, whereby a tribe can voluntarily choose to assume certain responsibilities pursuant to that Act. If a tribe chooses not to assume those duties and therefore takes no action to request approval to do so, this proposed rule has no effect upon the tribe. There is no consequence to the tribe that chooses not to assume these duties. Even where a tribe does choose to assume these responsibilities in accordance with this proposed rule, the tribe is assuming responsibilities previously assigned to a State Historic Preservation Officer, not to an agency of the Federal government, so that the trust relationship between the tribe and the Federal government is unaltered. The overall policy goal of this proposed rule and of section 101(d)(2) of the National Historic Preservation Act is the enhancement of tribes’ abilities to identify, evaluate, and protect those cultural and historic resources that are of particular importance to the tribes.

*Clarity of This Regulation*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to

understand if it were divided into more (but shorter) paragraphs? (5) Is the description of the rule in the “Supplementary Information” section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240.

*Public Comment Solicitation*

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Heritage Preservation Services, National Center for Cultural Resources, National Park Service, 1849 C Street, NW (NC 330), Washington, DC 20240. You may also comment via the internet by sending your comments to the following e-mail address: [Bryan\\_Mitchell@nps.gov](mailto:Bryan_Mitchell@nps.gov). Please include “Attn: RIN 1024–AC79” and your name and return address in your message. In addition, any interested person will have the opportunity to make oral comments at one of the public meetings noted at the beginning of this rulemaking. Finally, you may hand-deliver comments to Heritage Preservation Services, National Center for Cultural Resources, National Park Service, 800 North Capitol Street, Room 330, Washington, DC. Our practice is to make comments, including names and home addresses or respondents, available for public review during regular business hours. Individual respondents may request that we withhold their name or home address from the rulemaking record, which we will honor to the extent 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.

**List of Subjects in 36 CFR Part 61**

Grant programs—natural resources, Historic preservation, Indians—tribal government, Reporting and recordkeeping requirements.

We propose to amend 36 CFR part 61 as set forth below:

**PART 61—PROCEDURES FOR STATE, TRIBAL, AND LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAMS**

1. The authority citation for part 61 continues to read as follows:

**Authority:** 16 U.S.C. 470 *et seq.*

2. Revise § 61.8 to read as follows:

**§ 61.8 Tribal programs.**

(a) *What is the purpose of this section?* This section sets out procedures and requirements for the assumption by Indian Tribes of any or all functions of a State Historic Preservation Officer (SHPO) with respect to tribal lands, in accordance with section 101(b)(2) and (b)(3) of the NHPA. A Tribe that has assumed any or all functions of an SHPO in accordance with the NHPA shall have the same authority and discretion accorded to an SHPO by the NHPA for the purpose of carrying out those functions.

(b) *What policies govern tribal participation in the national historic preservation program?* (1) Congress has recognized that the national historic preservation program will be strengthened by providing Indian Tribes with the opportunity to become full partners in the program.

(2) Our program and regulations should assist Indian Tribes in expanding and accelerating their historic preservation programs to protect their historic properties.

(3) The program to assist Tribes in their preservation activities shall ensure that tribal values are taken into account to the extent feasible.

(4) Qualified tribes are encouraged to assume all or any part of the functions of a SHPO and to plan, conduct, and administer programs, functions, services and activities for which they have assumed responsibility.

(5) An Indian Tribe has an inherent legal right to self-determination and the distinctive rights that flow from its inherent sovereignty. Assuming responsibility for functions in accordance with the NHPA and this regulation is an exercise of the government-to-government relationship between the United States and the Indian tribes.

(6) To the extent feasible, the National Park Service (NPS) will construe this section so as to facilitate tribal assumption of functions pursuant to the NHPA.

(c) *How will the NPS implement these policies in carrying out the procedures and requirements for tribal assumption of SHPO duties?* (1) The NPS will consult with each Indian Tribe

proposing to assume SHPO duties on a government-to-government basis, in a manner respectful of tribal sovereignty, and with the aim of building an effective working relationship between the two governments.

(2) In accordance with section 101(d)(1)(B) of the NHPA, the NPS will recognize the need for flexibility, in order to respond to the varying scopes of tribal historic preservation programs, and in order to accommodate tribal values and the cultural setting of tribal heritage preservation goals and objectives.

(d) *What terms do I need to know?* For the purposes of this section:

*Tribal traditional cultural authority* means any individual recognized as such by an Indian Tribe. For the purposes of this section, a tribal traditional cultural authority has standing equivalent to that of an individual who meets the Secretary of the Interior's Professional Qualifications Standards. For example, in determining the overall historic significance of a property or site, a tribal traditional cultural authority's assessment of the traditional cultural value of that property or site has the same standing as a professionally qualified archeologist's assessment of the archeological value of that property.

(e) *How does our Tribe seek approval to assume SHPO functions?* A Tribe that seeks to assume SHPO functions must do three things:

(1) Submit a resolution to the NPS from the Tribe's chief governing authority requesting the assumption of SHPO functions by the Tribe;

(2) Designate a Tribal Historic Preservation Officer (THPO), through appointment by the Tribe's chief governing authority or as a tribal ordinance may otherwise provide, who shall be responsible for administering the tribal historic preservation program; and

(3) Submit a Tribal Historic Preservation Program Plan (hereinafter the Program Plan) to the NPS.

(f) *What are the general requirements for Tribal Program Plans?* (1) When submitting a Tribal Program Plan for review and approval, you must include the following in your Program Plan:

(i) A clear list of the SHPO functions set out in section 101(b)(3) of the NHPA that you propose to assume.

(ii) Sufficient descriptive information on your current historic preservation program or activities and on the individual functions you propose to assume to allow the NPS to determine whether you are fully capable of carrying out the functions you propose to assume (see paragraph (g) of this

section for further guidance on this requirement).

(iii) A clear list of the SHPO functions, if any, that you propose will remain the responsibility of the SHPO.

(2) You may include the following in your Program Plan:

(i) A request for any waiver or modification of the requirements of the NHPA or of this rule that you believe is necessary to accommodate tribal values or the cultural setting of tribal heritage preservation goals and objectives (see paragraph (h) of this section for further guidance).

(ii) Any additional information you believe will assist the NPS in determining that you are fully capable of carrying out the functions you propose to assume.

(iii) A request for any technical assistance you believe would benefit the Tribe in carrying out the functions you propose to assume.

(g) *What are the specific elements that must be in a Tribal Program Plan?* (1) In describing the overall assumption of SHPO functions set out in your Program Plan, your Program Plan must include:

(i) Information on how the THPO will employ or appoint such professionally qualified individuals as may be necessary for carrying out those functions the Tribe proposes to assume. Such employment or appointment must be through establishment of full or part-time staff positions, or through other arrangements suitable to the workload of the THPO and to the scope of the tribal program. A professionally qualified individual meets the Secretary of the Interior's Professional Qualifications Standards or is recognized by the Tribe as a traditional cultural authority.

(ii) Information on how the THPO will include an adequate and qualified tribal historic preservation review board in the operations of the tribal historic preservation program. The THPO appoints such a board, unless tribal ordinance or the Tribe's chief governing authority provides for another appointment process. Members of the board must have sufficient interest and experience in historic preservation and/or tribal culture to provide the THPO with meaningful advice. The board's duties include providing general advice and guidance to the THPO, reviewing appropriate documentation submitted to the NPS in connection with the Historic Preservation Fund, reviewing National Register nominations where the Tribe has assumed responsibility for that nomination process, and such other duties as may be appropriate.

(iii) Information on how the THPO will provide for adequate participation

in the historic preservation program by Tribal traditional cultural authorities, representatives of other Tribes whose traditional lands are under the jurisdiction of the Tribe, and the interested public. At a minimum, adequate participation of the interested public means that, no less frequently than annually, the THPO solicits and considers comments on the goals and activities of the tribal historic preservation program. The THPO solicits these comments through means such as locally publishing a notice, holding an open meeting, or some other process consistent with the routine procedures of the tribal government.

(iv) An affirmation that on tribal land that is neither owned by a member of the Tribe nor held in trust by the Secretary for the benefit of the Tribe, at the request of the owner of such land, the State Historic Preservation Officer, in addition to the Tribal Historic Preservation Officer, may exercise the historic preservation responsibilities in accordance with section 101(b)(2) and (b)(3) of the NHPA.

(2) In setting out each of the duties in section 101(b)(3) of the NHPA that the Tribe proposes to assume, your Program Plan must include a description of how the Tribe will carry out each of those duties, and a description of how those duties are related to the Tribe's current historic preservation program or activities. If the Tribe proposes to assume responsibility for administering the National Register nomination process, for advising and assisting in the evaluation of proposals for rehabilitation of historic properties that may qualify for Federal tax credits, and/or for consulting with Federal agencies pursuant to section 106 of the NHPA, your Program Plan must include the following:

(i) Information on the process the Tribe proposes for considering and submitting such nominations where the Tribe proposes to assume responsibility for submitting nominations to the National Register of Historic Places. The Tribe's process must be consistent with the National Register process set out in 36 CFR part 60 as it applies to State Historic Preservation Officers. The THPO must ensure that the tribal historic preservation review board has access to advice from appropriately qualified individuals in accordance with paragraph (g)(1)(i) of this section carrying out its responsibilities for reviewing National Register nominations. In the event that the process in 36 CFR part 60 is incompatible with tribal values and/or cultural preservation goals and objectives, the Tribe may propose an

alternative process that provides at a minimum for review of nominations by professionally qualified individuals, review of nominations by a qualified advisory board or other independent, qualified entity, and reasonable opportunity for public comment on nominations before they are submitted to the National Register (*see* paragraph (h) of this section on waivers and modifications of requirements).

(ii) Information on the Tribe's process for reviewing such projects and submitting them to the NPS where the Tribe proposes to assume responsibility for advising and assisting in the evaluation of proposals for rehabilitation of historic properties that may qualify for Federal tax credits or other Federal assistance. The Tribe's process must be consistent with the process set out in 36 CFR part 67 as it applies to State Historic Preservation Officers. In the event that the process in 36 CFR part 67 is incompatible with tribal values and/or cultural preservation goals and objectives, the Tribe may propose an alternative process that provides at a minimum for professional review and timely submission of project documentation to the NPS in a manner that is consistent with the overall purposes of 36 CFR part 67 (*see* paragraph (h) of this section on waivers and modifications of requirements).

(iii) Information that indicates how the Tribe will carry out this responsibility in accordance with the regulations of the Advisory Council on Historic Preservation at 36 CFR part 800, or in accordance with alternate tribal procedures that have been specifically approved by the Council pursuant to section 101(d)(5) of the NHPA where the Tribe proposes to assume responsibility for consulting with Federal agencies for the purposes of section 106 of the NHPA.

(h) *How does our Tribe obtain a waiver or modification of the requirements of the NHPA or of this section?* (1) If, in preparing your Program Plan, you determine that the requirements of the NHPA and/or of this regulation that are applicable to SHPOs are incompatible with tribal values or with the cultural setting of your tribal heritage goals and objectives, you may include as a part of your Program Plan a request that the NPS waive or modify those requirements in order to conform to tribal values and/or the cultural setting of tribal heritage preservation goals and objectives.

(2) Your request must include:

(i) An explanation of the inconsistency between the pertinent requirements and tribal values and/or

the cultural setting of tribal heritage preservation goals and objectives.

(ii) The specific remedy or alternate tribal procedures you propose.

(3) Nothing in this paragraph (h) authorizes the waiver or modification of the duties and responsibilities of the Secretary.

(i) *How will the NPS consult with us on our proposed Program Plan?* (1) Within 21 days of receipt, the NPS will notify you in writing that it has received your proposal. In accordance with section 101(d)(2) of the NHPA and paragraph (g) of this section, a complete proposal includes the formal resolution from the Tribe's chief governing authority, the official designation of a Tribal Historic Preservation Officer, and the Program Plan. If your proposal is incomplete, the NPS will indicate which parts are missing. The consultation process set out in paragraph (j) of this section will begin upon receipt of the missing parts.

(2) Within 45 days of receipt of a complete proposal, the NPS will notify the Tribal Historic Preservation Officer, or other representative specifically designated by the Tribe, in writing of any ambiguities or apparent deficiencies that remain in the proposal and indicate how those ambiguities or apparent deficiencies may be remedied. Within 30 days of receipt of a written response from the Tribe, the NPS will notify the Tribe in writing whether or not the ambiguities or apparent deficiencies have been remedied.

(j) *Will the NPS consult with anyone else about our proposed Program Plan?*

(1) Unless the Tribe notifies the NPS that it wishes to have additional time to revise its proposal, within 21 days of completion of the consultation process in paragraph (i) of this section, the NPS, pursuant to section 101(d)(2)(D) of the NHPA, will provide copies of the Tribe's proposal, including any revisions, to the appropriate SHPO(s), to any other Tribes whose tribal or aboriginal lands may be affected by the conduct of the tribal historic preservation program and, if the Tribe proposes to assume Section 106 responsibilities, to the Advisory Council on Historic Preservation.

(2) The SHPO(s), other Tribes, and the Advisory Council will have 30 days in which to provide written comments to the NPS on the Tribe's proposal.

(k) *On what basis will the Secretary review our proposed Program Plan?* (1) Following the consultation process set out in paragraph (j) of this section, the NPS must review the Program Plan in accordance with section 101(d)(2)(E) of the NHPA. That review must determine:

(i) Whether the Tribe's chief governing authority has requested to assume SHPO functions.

(ii) Whether the Tribe has duly designated a THPO to carry out the functions assumed by the Tribe.

(iii) Whether the Tribe has submitted a Program Plan that demonstrates that the Tribe is fully capable of carrying out the functions it proposes to assume in accordance with the requirements of the NHPA and of this section.

(2) Where the Program Plan includes a request for waiver or modification of requirements in accordance with paragraph (h) of this section, the NPS will review the Tribe's request as a part of its review of the Tribe's Program Plan, pursuant to section 101(d)(1)(B) of the NHPA. Upon finding that a waiver or modification of the requirements of the NHPA is consistent with the purposes of the NHPA, feasible, and necessary to accommodate tribal values and/or the cultural setting of tribal heritage preservation goals and objectives, the NPS will waive or modify such requirements.

(1) *How will the NPS make a decision on our Program Plan?* (1) Within 30 days of completion of the consultation process set forth in paragraph (j) of this section, the NPS must send to the Tribal Historic Preservation Officer or other designated representative of the Tribe a written finding as to:

(i) Whether or not the Tribe is fully capable of carrying out the functions specified in the proposed program plan, including any modifications to that plan as were mutually agreed upon by the NPS and the Tribe pursuant to the consultation process set forth in paragraph (j) of this section; and

(ii) Whether any requested waivers or modifications have been approved.

(2) The written finding must:

(i) Explain the basis for finding that the Tribe is or is not fully capable of carrying out a function or functions. The explanation for any finding that the Tribe is not fully capable must include a reference to the specific requirements(s) of this section and/or of the NHPA that the Tribe has failed to meet.

(ii) Explain the basis for approving or denying any requested waiver or modification.

(iii) Describe the steps the Tribe can take to correct any deficiency the NPS has identified as the basis for a finding that the Tribe is not fully capable of carrying out a function or functions.

(iv) Identify the technical assistance available to the Tribe to correct any noted deficiency.

(v) Clearly specify the Tribe's right to request a review of the decision by the

Director and provide appropriate information on the procedure for filing such a request in accordance with paragraph (m) of this section.

(3) If the NPS finds that the Tribe is fully capable of carrying out the functions specified in the program plan, including any mutually agreed upon modifications to the plan, the NPS must approve the program plan as it may have been modified and transmit the approved plan to the Tribe.

(4) If the NPS finds that the Tribe is not fully capable of carrying out the functions specified in the program proposal as it may have been modified by mutual agreement between the NPS and the Tribe, the NPS will either:

(i) Approve the tribal program plan in part for those portions that the Tribe is fully capable of carrying out; disapprove those portions of the program plan for which the Tribe is not fully capable of carrying out the function(s); and transmit to the Tribe the approved portions of the program plan; or

(ii) Disapprove the entire program plan.

(5) In any case where a Tribe initially assumes only a portion of the responsibilities of section 101(b)(3) of the NHPA, the Tribe may at any subsequent time request approval to assume any or all of the remaining responsibilities in accordance with this section.

(m) *How can we obtain a review of a negative decision by the NPS?* (1) You may request a review by the Director of:

(i) Any decision to disapprove in whole or in part your Program Plan to assume any or all of the functions of an SHPO.

(ii) Any decision to deny your request for a waiver or modification of requirements.

(iii) Any failure to act within the deadlines specified by this section.

(2) You must make your request to the Director within 60 days of the adverse decision or missed deadline. Your request must be in writing, must come from the Tribe's chief governing authority, and must include:

(i) A statement of the decision to be reviewed by the Director.

(ii) A statement of the issues involved in the request for review.

(iii) An explanation of why the Tribe believes the decision is wrong.

(iv) Any appropriate supporting documentation.

(3) If the chief governing authority of your Tribe asks for a meeting with the Director to discuss its request, or, if the Director on his or her own initiative desires such a meeting, the Director will convene a meeting with the designated representatives of the Tribe.

(4) The Director must either meet with the Tribe's representatives or issue a decision in writing within 60 days of receipt of the Tribe's request. In any case where the Director and the Tribe's representatives have met in accordance with paragraph (m)(3) of this section, the Director must issue a decision in writing either within 60 days of receipt of the Tribe's request or within 30 days of the meeting, whichever is later. The Director and the Tribe may agree to extend these deadlines for reasons of mutual convenience or to allow for additional efforts to resolve the disagreement between the Tribe and the NPS. The Director's decision may affirm or overrule the previous decision, either in whole or in part. The Director must base his or her decision on the relevant provisions of this section and/or of the NHPA and must include an explanation that refers specifically to those provisions. The Director's decision is the final administrative decision on the appeal. No person shall be considered to have exhausted administrative remedies with respect to the decision described in this part until the Director has issued a final administrative decision pursuant to this section.

(n) *May a Tribe that assumes SHPO functions obtain relevant materials from the SHPO?* (1) Upon formal assumption of SHPO responsibilities, a Tribe is entitled to receive from the affected SHPO(s) those records, data, maps, and reports, or legible copies thereof, that pertain to sites on tribal land, as well as to those sites on the Tribe's aboriginal lands to which the Tribe attaches religious and cultural significance.

(2) The NPS will foster communication and cooperation between the Tribe and the affected SHPO(s) to ensure that the Tribe receives the information necessary to carry out its responsibilities.

(3) The SHPO may charge the Tribe a fee not to exceed the actual cost of transferring or duplicating the materials.

(o) *How does the NPS review the performance of a Tribe that has assumed SHPO duties?* (1) Pursuant to section 101(b)(2) and (d)(2) of the NHPA, the NPS periodically will evaluate each tribal program for consistency with the NHPA and with the Tribe's approved program plan. The review will occur at least once every four years. The NPS may use on-site and/or off-site inquiries to perform such evaluation. The review will provide the Tribe with written findings and analyses that highlight program strengths and weaknesses.

(2) To the greatest extent feasible the review will be a collegial process that involves both the NPS and the Tribe in

a mutual evaluation and assessment of the program. The NPS will approve the Tribe's program if the NPS determines that it continues to meet the program requirements of the NHPA and of this section.

(3) Each Tribe with a program determined to be consistent with the NHPA will receive timely written notice from the NPS that its approved status is continued.

(4) Any Tribe found to have major program aspects not consistent with the NHPA or with its approved program plan will receive timely written notice of deficiencies from the NPS, along with the required actions for correcting them. Unless circumstances warrant immediate action, the NPS will defer making a decision on program approval for a specified period to allow the Tribe to correct deficiencies or present a justifiable plan and timetable for correcting deficiencies. During this period the Tribe may request that the Director review any findings and required actions.

(5) A Tribe that successfully resolves deficiencies will receive timely written notice from the NPS of continued approved status. Once the NPS renews a Tribe's approved status, the NPS generally will not review that Tribe's program again until the next regular evaluation period, although the NPS

may conduct evaluations more often if the NPS deems it necessary.

(6) A Tribe with deficiencies that warrant immediate action or that remain after the expiration of the period specified pursuant to paragraph (o)(4) of this section will receive notice from the NPS that its approved status is revoked. The NPS will then initiate financial suspension and other actions in accordance with applicable regulatory requirements and applicable related guidance issued by the Secretary.

(p) *What is the effect of this section on tribal sovereignty, treaty rights, and other tribal rights?* Nothing in this section is intended to alter, amend, repeal, interpret, or modify tribal sovereignty, or to preempt treaty rights, or other rights of an Indian Tribe, or modify or limit the exercise of such rights.

(q) *What is the effect of this section on Tribes previously approved to assume SHPO functions?* Any Tribal Historic Preservation Program approved prior to [the effective date of the final rule]:

(1) Retains that status in accordance with the terms of the previously executed Memorandum of Agreement, and

(2) May, at the Tribe's request, modify its existing agreement in accordance with this section.

3. Revise § 61.9 to read as follows:

#### **§ 61.9 Grants to tribal programs.**

(a) *Are Tribes that have assumed SHPO functions eligible for financial assistance to carry out those functions?*

(1) Each Tribe with an approved tribal program is eligible for grants-in-aid from the Historic Preservation Fund.

(2) A Tribe must have an approved program not later than the first day of the Federal fiscal year (October 1), in order to be eligible for a grant-in-aid during that same fiscal year.

(b) *What requirements govern the financial assistance for Tribes that have assumed SHPO functions?* (1) The HPF will administer HPF grants-in-aid in accordance with the NHPA, OMB Circular A-133 (For availability, see 5 CFR 1310.3.), and 43 CFR part 12, and related guidance issued by the Secretary. Pursuant to section 101(e)(5) of the NHPA, the Secretary may modify matching fund requirements for Tribes.

(2) Failure by a Tribe to meet the applicable requirements will be cause for comment and appropriate action by the NPS.

Dated: April 16, 2002.

**Craig Manson,**

*Assistant Secretary, Fish and Wildlife and Parks.*

[FR Doc. 02-19816 Filed 8-9-02; 8:45 am]

**BILLING CODE 4310-70-P**



# Federal Register

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**Monday,  
August 12, 2002**

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**Part IV**

## **Office of Management and Budget**

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**Federal Financial Assistance Management  
Improvement Act of 1999;  
Implementation; Notices**

## OFFICE OF MANAGEMENT AND BUDGET

### Grants Streamlining Activities Under Public Law 106–107, Federal Financial Assistance Management Improvement Act of 1999

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice.

**SUMMARY:** This Notice precedes five additional notices that relate to the interagency grants streamlining effort, prepared jointly by the Office of Management and Budget (OMB) staff and the interagency groups dedicated to implementing Public Law (Pub. L.) 106–107, the Federal Financial Assistance Management Improvement Act of 1999. This first Notice provides background and contextual information for the next five notices, which:

- Propose revisions to Office of Management and Budget (OMB) Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations,”

- Provide information about the OMB decision to not revise OMB Circular A–110, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” based on comments relating to the May 1, 2000, Advanced Notice of Proposed Revision;

- Propose a standard format for Federal agency use in announcing discretionary grant and cooperative agreement funding opportunities;

- Propose standard data elements for Federal agency use in creating grant funding opportunity announcement summaries, to be used under the E-Grants initiative for its “E-FIND” option; and

- Propose revisions to three OMB circulars (A–21, “Cost Principles for Educational Institutions;” A–87, “Cost Principles for State, Local and Indian Tribal Governments;” and A–122, “Cost Principles for Non-Profit Organizations”) to clarify ambiguous language, thereby preventing inconsistent interpretations of similar cost items across the three circulars.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth C. Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3053 (direct) or 202–395–3993 (main office) and e-mail: [ephillip@omb.eop.gov](mailto:ephillip@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** The purposes of Pub. L. 106–107 are to (1) improve the effectiveness and performance of Federal financial

assistance programs, (2) simplify Federal financial assistance application and reporting requirements, (3) improve the delivery of services to the public, and (4) facilitate greater coordination among those responsible for delivering the services. Pub. L. 106–107 requires the Director of the Office of Management and Budget (OMB) to direct, coordinate, and assist Federal agencies in establishing a common application and reporting system, including electronic processes, and uniform administrative rules for Federal financial assistance programs across different Federal agencies.

Under joint leadership from OMB and a lead agency (the Department of Health and Human Services) agencies are working together to make it easier for States, local, and Tribal governments; universities; and non-profit organizations to administer Federal grant programs. The work is done under interagency work groups created in June 2000 to develop and recommend streamlining and simplification proposals to the Grants Management Committee of the Chief Financial Officers Council, and include the Pre-Award, Post-Award, and Audit Oversight Work Groups. A fourth group, the Electronic Processing Work Group, operational in 2000 and 2001, was integrated this year into the organizational structure that supports an electronic grants (E-Grants) initiative. [E-Grants is part of the electronic government (E-Gov) priority under the President’s Management Agenda.]

Streamlining improvements to the grant process were proposed in hundreds of comments sent by 77 different sources responding to the January 17, 2001, **Federal Register** notice. Many of those comments directly relate to the proposals which follow this background Notice. Future notices will propose government-wide standards for grant applications and reports. OMB expects to issue these proposals in Fall 2002. E-Grants plans to deploy an electronic application process (E-APPLY) using the government-wide standards in Fall 2003.

A. The next Notice proposes to revise OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations,” by (1) increasing the threshold for audit from \$300,000 to \$500,000; (2) increasing the threshold for cognizant agency for audit from \$25 million to \$50 million; and (3) making related technical changes to facilitate the determination of cognizant agency for audit and provide for Federal agency reassignment of oversight agency for audit.

This Notice was endorsed by the Audit Oversight Work Group, whose goal under grants streamlining is to ensure that audits provide useful and reliable information to Federal agencies and pass-through entities, and that recipient audits are in compliance with Federal audit requirements. An audit threshold increase, as proposed from \$300,000 to \$500,000, would relieve almost 6,000 entities from the audit requirements of Circular A–133 while retaining audit coverage for 99.5 percent of Federal awards currently audited (in dollars).

B. The third Notice explains the conclusions reached by OMB and the Grants Management Committee of the Chief Financial Officers (CFO) Council regarding a previous request for comment from Federal agencies and grant recipients, in May 2000, on the merits of pooled payment systems and grant-by-grant payment systems. The proposal to amend OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, that would have required Federal agencies to offer recipients the option to request cash advances on a pooled basis, resulted in 65 comment letters from universities, State and local government agencies, Federal agencies, and other sources. There were differing perspectives on the issue, leading OMB and the CFO Council to believe that a revision to Circular A–110 is not needed. This Notice was prepared by the Post-Award Work Group after analysis of the comments received in response to the May 1, 2000, Advanced Notice of Proposed Revision.

C. The fourth Notice proposes a government-wide standard format for Federal agency use in announcing discretionary grant and cooperative agreement funding opportunities. Each year the agencies publish hundreds of funding opportunity announcements for discretionary grants under programs with a broad range of purposes, to give potential applicants the information they need, such as the types of activity the agency will support, who is eligible to apply, and when/how to apply. Comments from the applicant and recipient communities noted vast differences in Federal agencies’ announcement formats, making it hard for potential applicants to quickly locate key information, such as who is eligible to apply or whether cost sharing is required. Commentors asked for clear language in announcements and consistency in the placement of information.

This Notice was developed by the Pre-Award Work Group after a review of agency announcements and related business processes. The group developed the standard format for government-wide use, which will make it easier for potential applicants to quickly find the information they need.

D. The fifth Notice proposes standard data elements for Federal agency use in creating grant funding opportunity announcement summaries, to be used under the E-Grants initiative for its E-FIND option. The E-Grants initiative plans to provide a single Internet site for Federal agencies to post electronic summaries, or synopses, of the funding opportunity announcements on the General Services Administration's FedBizOpps Internet site (<http://www.FedBizOpps.gov>). E-FIND will greatly facilitate a potential applicant's search for funding opportunities.

This Notice was prepared by the Pre-Award Work Group, which made use of previous work on a set of FedBizOpps data elements completed by the Inter-Agency Electronic Grants Committee. The earlier work proposed a limited set of synopsis data elements (nine) to be used in a pilot on the use of FedBizOpps for grant opportunities. The result of that pilot demonstrated that agencies could, indeed, use the FedBizOpps Internet site to post electronic synopses of funding opportunities leading to the award of grants, cooperative agreements, and other financial assistance instruments. The Pre-Award Work Group expanded the synopsis to become a standard data set of twenty data elements. These data elements and the posting of information at the FedBizOpps site respond to many comments received during the Public Law 106-107 consultation process. Commentors requested a single searchable Internet site for information about Federal agencies' funding opportunities, to reduce potential their frustration with having to search multiple sites that individual Federal agencies configure in different ways.

E. The sixth and final Notice relating to grants streamlining proposes revisions to three OMB circulars (A-21, "Cost Principles for Educational Institutions;" A-87, Cost Principles for State, Local and Indian Tribal Governments;" and A-122, "Cost Principles for Non-Profit Organizations") to clarify ambiguous language, thereby addressing many grantee concerns expressed in the comments relating to the Public Law 106-107 initial plan published in the **Federal Register** on January 16, 2001. Commentors noted inconsistent

allocation methods and different interpretations about indirect cost recovery. The three circulars apply to different types of recipient organizations and were developed separately. Consequently, different language is used in the three circulars to describe similar cost items, sometimes causing inconsistent interpretations by Federal staff, recipients, and auditors.

This Notice was prepared by the Cost Principles Subgroup of the Post-Award Work Group, after reviewing 74 cost items in the three circulars for consistency. The Subgroup determined that 11 cost items can be deleted, 22 cost items do not need changes, and 41 cost items need common language in the three circulars. The Notice proposes revisions to incorporate consistent descriptions of similar cost items and, where possible, clarify existing policies in the three circulars. Information about the proposed revisions is also available on the OMB Internet site (<http://www.whitehouse.gov/omb/grants>).

Dated: July 31, 2002.

**Mark W. Everson,**  
Controller.

[FR Doc. 02-20257 Filed 8-9-02; 8:45 am]

BILLING CODE 3110-01-P

## OFFICE OF MANAGEMENT AND BUDGET

### Audits of States, Local Governments, and Non-Profit Organizations

**AGENCY:** Office of Management and Budget.

**ACTION:** Proposed revisions to OMB Circular A-133.

**SUMMARY:** This Notice proposes to revise Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," by (1) increasing the threshold for audit from \$300,000 to \$500,000, (2) increasing the threshold for cognizant agency for audit from \$25 million to \$50 million, and (3) making related technical changes to facilitate the determination of cognizant agency for audit and provide for Federal agency reassignment of oversight agency for audit.

**DATES:** All comments on this proposal should be in writing, and must be received by October 11, 2002. It is planned that the proposed revisions shall apply to audits of fiscal years ending after December 31, 2003, and earlier implementation will not be permitted.

**ADDRESSES:** Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: [tramsey@omb.eop.gov](mailto:tramsey@omb.eop.gov). Please include "A-133 Comments" in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and E-mail address in the text of the message. Comments may also be submitted via facsimile to 202-395-4915.

Comments may be mailed to Terrill W. Ramsey, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

A copy of the current Circular A-133 published in the **Federal Register** on June 30, 1997 (62 FR 35277), is available on the Internet at <http://www.omb.gov> and then select "Grants Management."

#### FOR FURTHER INFORMATION CONTACT:

Terrill W. Ramsey, Office of Federal Financial Management, Office of Management and Budget, telephone 202-395-3812 (direct) or 202-395-3993 (main office) and e-mail: [tramsey@omb.eop.gov](mailto:tramsey@omb.eop.gov).

#### SUPPLEMENTARY INFORMATION:

A. Increase the Threshold for Audit from \$300,000 to \$500,000—OMB proposes to increase the audit threshold amount from \$300,000 to \$500,000.

The Single Audit Act Amendments of 1996, 31 U.S.C. 7502(a)(3), provide for the Director of OMB to review the single audit threshold and increase it as appropriate. The current audit threshold requires all non-Federal entities (States, local governments, and non-profit organizations) that expend \$300,000 or more in a year in Federal awards to have an audit conducted in accordance with Circular A-133.

As shown in the following table, an audit threshold increase from \$300,000 to \$500,000 would relieve almost 6,000 entities from the audit requirements of Circular A-133 while only exempting from audit less than one half of one percent of Federal awards expended (in dollars) by entities currently filing Circular A-133 audits.

Federal awards expended range	Number of entities filing reports	Percent of entities filing reports	Percent of Federal awards expended within range
\$300,000 to \$500,000 .....	6,000	18	.5
\$500,000 and above .....	28,000	82	99.5
Total .....	34,000	100	100.0

(The above data was compiled by the Federal Audit Clearinghouse (FAC) from its database of Circular A-133 audit submissions for non-Federal entity fiscal years ending in 2000. The FAC database is publicly accessible on the Internet at <http://harvester.census.gov/sac>.)

Many pass-through entities use Circular A-133 audit results as a primary tool in ensuring compliance for Federal awards passed through to a subrecipient. With the proposed increase in the audit threshold, subrecipients expending between \$300,000 and \$500,000 will no longer be required to have an audit under Circular A-133 so their pass-through entities will not be able to use the Circular A-133 audit as a monitoring tool.

However, the Circular A-133 audit is only one of many subrecipient monitoring tools available and subrecipient monitoring should occur throughout the year rather than relying solely on a once-a-year audit. Monitoring activities may take various forms; however, a first monitoring tool should be identifying to the subrecipient the Federal award information (e.g., Catalog of Federal Domestic Assistance (CFDA) title and number, award name, name of Federal agency) and applicable compliance requirements. Other monitoring tools include reviewing financial and performance reports submitted by the subrecipient, performing site visits to the subrecipient to review financial and programmatic records and observe operations, and arranging for agreed-upon procedures engagements for certain aspects of subrecipient activities, such as eligibility determinations as described in § \_\_\_\_ .230(b)(2) of Circular A-133. Factors such as the size of awards, percentage of the pass-through entity's total program funds awarded to subrecipients, the complexity of the compliance requirements, and risk of subrecipient non-compliance as assessed by the pass-through entity may influence the nature and extent of monitoring procedures. Additionally, Federal laws or regulations may impose subrecipient monitoring requirements specific to a Federal program.

The OMB Circular A-133 Compliance Supplement, Chapter 6, provides a list of typical internal controls for subrecipient monitoring. The Compliance Supplement is available on the Internet at <http://www.omb.gov> and then select "Grants Management." Additionally, OMB plans to request one or more single audit constituent groups to volunteer to develop additional tools and techniques which pass-through entities may use to monitor their subrecipients.

B. Increase the Threshold for Cognizant Agency for Audit from \$25 Million to \$50 Million—OMB proposes to increase the threshold for cognizant agency for audit from \$25 million to \$50 million.

Currently, recipients (non-Federal entities that expend Federal awards received directly from a Federal awarding agency) which expend more than \$25 million a year in Federal awards have a Federal agency designated as their cognizant agency for audit. All other non-Federal entities have a Federal agency as their oversight agency for audit. (Cognizant agency for audit and oversight agency for audit responsibilities are described in paragraphs § \_\_\_\_ .400(a) and (b) of Circular A-133, respectively.) The basic difference is that a cognizant agency for audit is required to perform certain oversight functions as listed in Circular A-133 and an oversight agency for audit is given the option to assume these responsibilities. The only responsibility the oversight agency for audit is required to perform is to provide technical advice to auditors and auditees upon request.

Of the approximately 34,000 non-Federal entities currently filing Circular A-133 audits, approximately 1,000 have a cognizant agency for audit. Increasing this threshold from \$25 million to \$50 million will reduce the number of non-Federal entities with a cognizant agency for audit assignments to approximately 500. This change will allow the Federal agencies to provide more focused audit oversight where there is the greatest risk in terms of Federal awards expended but still provide each non-Federal entity with an assigned oversight agency for

audit from which to request technical advice.

(Note, whether an entity has a cognizant agency for audit for a fiscal year is determined based on the expenditures for that fiscal year, not whether they met the threshold for cognizant agency for audit in the base year (see next paragraph for discussion of "base year"). For example, under the current threshold of \$25 million, if a non-Federal entity had only \$20 million Federal awards expended in 2002, they would not have a cognizant agency for audit for that year even if they had greater than \$25 million in Federal awards expended in the base year of 2000. Similarly, if the cognizant agency for audit threshold is increased effective for fiscal years ending after December 31, 2003, only non-Federal entities with Federal awards expended greater than \$50 million will have a cognizant agency for audit for those years. The cognizant agency for audit would continue to be the Federal agency that provided the predominant amount of direct funding in the base year.)

C. Technical Change—Base Year for Cognizant Agency for Audit Determination—OMB proposes to change the base year for cognizant agency for audit determination from one to two years before the start of the five year audit cognizance period. This change is needed to provide sufficient time to make cognizant agency for audit determinations before the start of the audit cognizance period.

Cognizant agency for audit is based upon which Federal agency provides the predominant amount of direct Federal awards funding to a recipient in the base year. For example, cognizant agency for audit determinations for the years 2001 through 2005 were based upon which Federal agency provided the predominant amount of Federal awards expended in the base years ending in 2000. Since Circular A-133 reports for the non-Federal entities' fiscal years ending December 31, 2000 were not required to be filed until September 30, 2001, it was not possible to produce a cognizant agency for audit assignment list at the start of 2001.

Under the proposed change, 2004 will be the base year for determining the cognizant agency for audit for 2006 through 2010. All fiscal year 2004 Circular A-133 reports are due to the FAC on or before September 30, 2005. This will provide sufficient time for Federal agencies to use the FAC database to produce a cognizant agency for audit list for the 2006 through 2010 audit cognizance period at the start of 2006. (Note, the base year for 2001 through 2005 will remain at 2000.)

D. Technical Change—Oversight Agency for Audit reassignment—OMB proposes to change the definition of oversight agency for audit to permit Federal agencies to make reassignments.

Currently Circular A-133 definitions do not specifically provide for the reassignment of oversight agency for audit. The proposed revision would explicitly provide for the reassignment of oversight agency for audit by Federal agencies similar to the reassignment of cognizant agency for audit.

Dated: July 31, 2002.

**Mark W. Everson,**  
Controller.

Circular A-133 is proposed to be revised as follows:

1. In the following sections, replace \$300,000 with \$500,000: § \_\_.200(a); § \_\_.200(b); § \_\_.200(d); § \_\_.230(b)(2); and § \_\_.400(d)(4).
2. In section § \_\_.400(a), first sentence, replace \$25 million with \$50 million.
3. Replace section § \_\_.400(a), third, fourth, and fifth (parenthetical) sentences with the following:

**§ \_\_.400 Responsibilities.**

(a) \* \* \* The determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 2004, 2009, 2014, and every fifth year thereafter. For example, audit cognizance for periods ending in 2006 through 2010 will be determined based on Federal awards expended in 2004. (However, for 2001 through 2005, cognizant agency for audit is determined based on the predominant amount of direct Federal awards expended in the recipient's fiscal year ending in 2000).

\* \* \* \* \*

4. In section § \_\_.105, definition of oversight agency for audit, add the following at the end of the definition: "A Federal agency with oversight for an auditee may reassign oversight to another Federal agency which provides substantial funding and agrees to be the oversight agency for audit. Within 30 days after any reassignment, both the old and the new oversight agency for

audit shall notify the auditee, and, if known, the auditor of the reassignment."

[FR Doc. 02-20258 Filed 8-9-02; 8:45 am]

BILLING CODE 3110-01-P

**OFFICE OF MANAGEMENT AND BUDGET**

**Circular A-110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations**

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice.

**SUMMARY:** This notice explains the conclusions reached by OMB and the Grants Management Committee of the Chief Financial Officers (CFO) Council regarding their previous request for comments on the desirability of requiring Federal grant-making agencies to offer their grantees the option to request cash advances on a pooled basis, and on the merits of pooled payment systems and grant-by-grant payment systems. They have decided not to propose an amendment to OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," which would include such a requirement. The rationale for this determination is explained below.

**FURTHER INFORMATION CONTACT:** Gilbert Tran, Technical Manager, Office of Management and Budget, at (202) 395-3052.

**SUPPLEMENTARY INFORMATION:**

**I. Purpose**

This notice explains the conclusions reached by OMB and the Grants Management Committee of the CFO Council regarding our previous request for comments on the desirability of requiring Federal grant-making agencies to offer their grantees the option to request cash advances on a pooled basis (*i.e.*, when cash advances are requested from a pool rather than on a grant-by-grant basis), and on the merits of the two systems. The rationale for the decision not to propose an amendment to OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," that would include such a requirement, is explained below.

It is also intended that this notice explain the differing perspectives and clarify when pooling is applicable, in order to maintain a policy which can work for all.

**II. Background**

On May 1, 2000, 65 FR 25396, OMB published an Advance Notice of Proposed Revision (ANPR) in which comments were sought on several questions relating to Federal requirements for requesting and issuing cash payments under Federal awards. The core issue was whether OMB should amend A-110 to require Federal awarding agencies to make the pooling method of requesting and issuing cash payments under awards available to their award recipients.

**III. Grant-By-Grant Payment Systems**

With the grant-by-grant payment method, a recipient identifies estimated costs for each award and requests cash advances on that basis. Some of these agencies approve the requests on a grant-by-grant basis, pool the individual amounts, and issue payments in the aggregate.

Some Federal agencies systems currently require grant-by-grant requests, and several indicated that their grant-by-grant payment systems are more streamlined than the pooled systems. One agency said it had eliminated the need for the SF-272 (Report of Federal Cash Transactions) and SF-269 (Financial Status Report) by accepting grant-by-grant cash requests as reports of cash usage and recording them as expenditures.

Agencies that use this method believe it generates better data and strengthens their recipient monitoring programs. With grant-by-grant systems, it was reported that agencies have more timely information on payments and can provide more immediate technical assistance to a recipient experiencing problems with a particular grant. It was also reported that pooled payment reports often arrive too late for agencies to help recipients take corrective actions on specific grants.

**IV. The Pooled Payment System**

Under a pooled payment process, the recipient estimates the aggregate amount of cash that it will need for all of its awards from the awarding agency and requests a cash advance in that amount. The awarding agency uses a methodology it has developed to estimate how the recipient will distribute the cash advances among its various awards; it then assigns the estimated amounts to awards in its internal accounts. When recipients

report actual expenditures, the agency adjusts the allocation to the actual reported expenditures. Recipients report expenditures for each grant via financial reports such as the SF-269 or SF-272. Since these estimates are adjusted to actual when the recipients submit their reports, accurate and timely reporting is essential.

Since many recipients, particularly those with a high volume of grant awards, are unable to determine actual cash needs on a grant-by-grant basis at the time of draw without expending considerable time and effort, requiring this determination up-front may cause recipients to draw larger amounts of cash, less frequently. Some agencies believe that a transition from grant-by-grant to pooled payments must be accompanied by monthly reporting of actual expenditures, in an electronic format, rather than the paper-based quarterly reporting that is currently required by some agencies using pooled payment systems.

#### V. Summary of Comments Received

Altogether, 65 comments were received: 33 from universities, 14 from State and local agencies, 14 from Federal agencies, and four from other sources. The following text explains the conclusions reached after considering these comments.

Comments were requested on whether Circular A-110 should be amended to require that Federal grant-making agencies make the pooling option available to their grantees, and on questions relating to the merits of pooled payments and grant-by-grant payment systems.

The 33 comments received from universities unanimously supported making the pooling option available to recipients. The 14 Federal commenters were divided, as indicated in Sections III and IV, above, with some agencies preferring grant-by-grant payments and other agencies supportive of a pooled payment process. Of the 14 State and local agencies commenting, only eight has comments on this question, with five opposed to the idea of requiring Federal awarding agencies to make the pooling method available and one that expressed concern about being forced to pool. Their opposition must be viewed as theoretical, however, because Circular A-110 does not apply to State and local governments. [The audience for Circular A-110 consists of universities, hospitals, and other not-for-profit organizations.]

The universities' strong support for the pooling method stems from the ways in which their administrative needs differ from those of State and local

governments. Major research universities typically have large grant portfolios that may include hundreds, or even thousands, of discretionary grants. Indeed, one university responding to the ANPR submitted an itemized list of its Federal awarding agencies and the number of active awards from each; the commenter had 1,260 awards from nine Federal agencies, with the number of awards per agency ranging from ten to 400. Many of the awards received by such universities may be for relatively small dollar amounts; awards to the aforementioned commenter from one Federal agency averaged \$2,500. The universities find the pooling method of requesting advances responsive to the difficulty of gauging their cash needs for each of their Federal awards at the specific point in time that they need to make a cash draw.

To illustrate, an organization representing the higher education community commented that "[our] membership firmly believes that a pooled payment system as described in the subject notice would be a significant step toward streamlining the payment procedures for recipients of federal assistance. We know that streamlining is a priority for the government and concur with the findings of the CFO Council that the pooling method as currently practiced at NSF and DHHS provides a more efficient and customer-friendly method of drawing cash for grant purposes."

Conversely, universities find it much more labor-intensive and administratively burdensome to generate actual, grant-by-grant data. The aforementioned commenter added that "drawing cash on a grant-by-grant basis is time consuming and adds no value to the process. [Our] member universities report that much more effort is required for grant-by-grant drawdowns than is necessitated by pooled draws \* \* \* This practice is not conducive to good management of federal funds and results in poor management of university resources. Using the grant-by-grant drawdown process in effect converts an advance payment system into a reimbursement system. The cost and burden of estimating, executing and adjusting for grant-by-grant drawdowns is excessive."

#### VI. Conclusion

Given the differing perspectives on this issue and the division between the 14 Federal commenters, revising Circular A-110 does not appear to be the most effective approach. In order to maintain a policy that can work for all, OMB and the CFO Council believe that the grant-by-grant option is not

encouraged; however, this method is permitted when a Federal agency and its Circular A-110 grant recipient agree that grant-by-grant requests for cash advances are preferable to pooled requests. We are committed to encouraging the pooling method for the Circular A-110 community, yet permitting the grant-by-grant method when both the Federal agency and the grant recipient prefer that method, or when the awarding agency determines that conditions require it.

OMB will, therefore, leave Circular A-110 unchanged. The existing Circular A-110 text does not require Federal awarding agencies to make the pooled payment method available to their recipients, but it does authorize them to do so. Section 22(c) provides that, "Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient." Since the awarding agency must determine when conditions merit making pooled payments to a recipient, the existing text takes a permissive, rather than a mandatory, approach to the issue.

Dated: July 31, 2002.

**Mark W. Everson,**

*Controller.*

[FR Doc. 02-20259 Filed 8-9-02; 8:45 am]

BILLING CODE 3110-01-P

#### OFFICE OF MANAGEMENT AND BUDGET

##### Office of Federal Financial Management Policy Directive on Financial Assistance Program Announcements

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice of proposed policy issuance directive.

**SUMMARY:** The Office of Federal Financial Management (OFFM) proposes to establish a standard format for Federal agency announcements of funding opportunities under programs that award discretionary grants or cooperative agreements. The purpose of the standard format is to have information organized in a consistent way in program announcements for the hundreds of Federal programs that make financial assistance awards to non-Federal recipients. The Federal awarding agencies jointly developed this format as one part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107). Consistent with the streamlining and

simplification purposes of that public law, a standard format will make it easier for potential applicants to quickly find the information they need.

**DATES:** All comments on this proposal should be in writing, and must be received by October 11, 2002.

**ADDRESSES:** Due to potential delays in OMB's receipt and processing of mail sent through the U. S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: [ephillip@omb.eop.gov](mailto:ephillip@omb.eop.gov). Please include "Grant Announcement Format Comments" in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202-395-3952.

Comments may be mailed to Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone 202-395-3053 (direct) or 202-395-3993 (main office) and e-mail: [ephillip@omb.eop.gov](mailto:ephillip@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** This notice proposes to establish, by way of a policy directive, a standard format for organizing the information that Federal agencies include in their announcements of funding opportunities under programs that use discretionary grants or cooperative agreements. This policy directive will implement an outcome of the Federal agencies' streamlining and simplification efforts, under Public Law 106-107. There may be subsequent OFFM policy directives to implement other outcomes of those efforts where revision of OMB circulars, or issuance of a rule or Executive Order is not warranted.

This action addresses a need that non-Federal entities identified during the public consultation process mandated by Public Law 106-107. Commenters suggested that if all agencies' program announcements were to present information in the same order, a potential applicant could more easily and quickly find the key pieces of information it needed at each point in the process (e.g., to decide at the outset whether it was eligible and wished to

apply and to later prepare and submit an application).

The proposed announcement format is an interim product in that it addresses some, but not all, of the public comments on program announcements. It responds to comments on the need for consistency in placement and ease of locating pertinent information within announcements. It also incorporates language in Sections III and V to address comments that some announcements are not sufficiently clear about the way in which applicants' cost sharing is considered in selecting applications for funding. The Federal agencies are proposing this announcement format as an interim product so that potential applicants can begin to realize the benefits of a standard format while we continue to consider other issues addressed in the public comments, including suggestions that we try to establish a uniform approach to defining what constitutes a late application. As we complete work on the issues identified in those comments, we will propose updates to the announcement format, as warranted.

The proposed announcement format described in this Notice relates to another proposal described in a subsequent notice in this section of today's **Federal Register**. That proposal is a set of data elements that Federal agencies would use to synthesize available funding opportunities at FedBizOpps, an Internet site maintained by the General Services Administration. The purposes of FedBizOpps synopses are to give potential applicants a single site to search for Federal funding opportunities, to provide enough information for them to decide whether they want to read the full announcement, and to provide one or more ways (e.g., an electronic link to another Internet site, an e-mail address or a telephone number) to get that announcement. The FedBizOpps information therefore complements the full announcement described in this Notice.

We welcome your input on any aspect of the proposed format. Questions that you may wish to address include:

- Is there additional information that should appear in the overview segment preceding the full text of the announcement?
- Do you feel that we need to add or delete any categories or subcategories of information in the full text of the announcement? For example, should you choose to apply, are the information elements sufficient for you to determine what you must submit, and when and how you must do so? If you suggest an additional information element, please

explain why you recommend its inclusion.

- Are terms used in the format readily understandable? Are the terms generic enough to cover all programs and agencies in which you might have an interest? Do you have suggestions for alternate terms?

Dated: July 31, 2002.

**Mark W. Everson,**  
Controller.

### To the Heads of Executive Departments and Establishments

*Subject: Format for Financial Assistance Program Announcements*

1. *Purpose.* This policy directive establishes a government-wide funding opportunity announcement format for Executive Branch departments and agencies to use in programs that make discretionary awards of grants or cooperative agreements. Program announcements include all paper and electronic issuances that Federal departments and agencies use to announce funding opportunities, whether they are called "program announcements," "notices of funding availability," "broad agency announcements," "research announcements," "solicitations," or something else.

2. *Authority.* This policy directive is a part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107).

3. *Background.* The Federal Financial Assistance Management Improvement Act of 1999 required the Office of Management and Budget (OMB) to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal financial assistance procedures for non-Federal entities. It also required each Executive agency to develop, submit to the Congress, and implement a plan for that streamlining and simplification.

Twenty-six Executive Branch agencies jointly submitted a plan to the Congress in May 2001, as the Act required. The plan described the interagency process through which the agencies would review current policies and practices and seek to streamline and simplify them. The process involved interagency work groups under the auspices of the Grants Management Committee of the Chief Financial Officers Council. The plan also identified substantive areas in which the interagency work groups had begun their review.

One of the substantive areas that the agencies identified in the plan was the form and

content of program announcements. The agencies stated in the May 2001 plan that their preliminary analysis suggested a potential for developing a more consistent announcement format across the many Federal agencies and programs. A standard announcement format with information content organized in a consistent way will let applicants quickly and efficiently find the information they need, in order to decide whether a particular funding opportunity is of interest and to prepare an application. An interagency work group developed the format attached to this policy letter and recommended that the OMB's Office of Federal Financial Management (OFFM) issue it as the standard for all programs that use discretionary grants or cooperative agreements.

4. *Policy.* The format attached to this policy directive is the government-wide standard format for programs that make discretionary awards of grants or cooperative agreements, with the exception of programs that do not issue separate announcements apart from the program description in the *Catalog of Federal Domestic Assistance* (CFDA). For those excepted programs, the format will continue to conform with the guidance in OMB Circular A-89 for program information in the CFDA.

#### 5. *Responsibilities.*

a. *Agency Responsibilities.* Executive Branch departments and agencies:

(1) Must issue any needed direction to offices that award grants or cooperative agreements under discretionary programs, in order to establish the attached format as the standard for those programs' announcements. All announcements must include information elements that are marked "required" in the format. An announcement for a given program may use elements that are marked "optional," as appropriate for the program. Whether or not the announcement includes any "optional" elements, the information that is included must be organized to conform with the standard format.

(2) Are to request exceptions from this OFFM policy directive for any program announcement(s) with information organized in a way that deviates from the standard format.

b. *OMB Responsibilities.* The OMB:

(1) Will update this policy directive as needed, based on recommendations from interagency work groups such as those sponsored by the Chief Financial Officers Council.

(2) Must respond within 30 days to an agency's request for an exception from this policy letter, either with a final

decision or an estimate of the time needed to render that decision.

6. *Information Contact.* Direct any questions regarding this policy directive to Elizabeth Phillips, OFFM, 202-395-3053 (direct) or 202-395-3993 (main office).

7. *Effective Date.* The policy directive is effective 30 days after issuance. All implementing actions other than regulatory revisions must be completed by the Executive departments and agencies within 6 months of the effective date; regulatory revisions must be completed within 12 months.

Mark W. Everson,

*Controller.*

Attachment

### Announcement of Federal Funding Opportunity

This document is a uniform format for Federal agencies' announcements of funding opportunities under which discretionary awards of grants or cooperative agreements may be made. The format has two parts, the first for overview information and the second for the full text of the announcement.

#### Overview Information

The agency must display prominently the following information (not necessarily in the same sequential order) in a location preceding the full text of the announcement:

- **Agency Name(s)—Required.**

Include the name of your department or agency, the specific office(s) within the agency (e.g., bureau, directorate, division, or institute) that are involved in the funding opportunity, and the mailing address with zip code.

- **Program Name—Optional.** If your agency has a program name that is different from the Funding Opportunity Title, you could include it here.

- **Funding Opportunity Title—Required.**

- **Funding Opportunity Number—Optional.** Your agency may wish to assign identifying numbers to announcements.

- **Catalog of Federal Domestic Assistance (CFDA) Number(s)—Required.**

- **CFDA Title(s)—Optional.** This is the program name listed in the CFDA for each CFDA number given above.

- **Dates—Required.** Include key dates that potential applicants need to know. Key dates include due dates for applications or Executive Order 12372, "Intergovernmental Review of Federal Programs" (July 14, 1982), submissions, as well as any letters of intent or pre-applications. For any announcement issued before a program's application

materials are available, key dates also include the date on which those materials will be released.

The program office must present the overview information described above and may present other information it wishes. It can do so in any of the following ways:

- **Executive Summary.** An agency may wish to include an executive summary of the announcement before the full text. For announcements that are long (25 pages or more in length) or complex, agencies should consider including executive summaries with the overview information described above and additional key information (e.g., who is eligible to apply and where one can get application materials), so that potential applicants can more quickly and easily find what they need. An executive summary should be short, preferably one page, with information in concise bullets to give an overview of the funding opportunity.

- **Cover and/or Inside Cover.** If the agency does not wish to include an executive summary, an alternative is to provide the overview information on the cover and/or inside cover of the announcement (or the first screen a potential applicant would see, in the case of an electronic announcement).

- **Federal Register Format.** For an announcement that appears as a notice in the **Federal Register**, some of the required overview information will appear with other information near the beginning of the notice, due to the **Federal Register's** standard format for notices. Remaining overview information may be included in the **SUMMARY** section of the **Federal Register** notice or immediately preceding the full text of the announcement in the **SUPPLEMENTARY INFORMATION** section.

#### Full Text of Announcement

The full text of the announcement is organized in sections. The format indicates immediately following the title of each section whether that section is required in every announcement or is an agency option.

The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the format's sections to describe the types of information that an agency would include in that section of an actual announcement.

An agency that wishes to include information on a subject that the format does not specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if an announcement chooses to

address performance goals in the announcement, it might do so in the funding opportunity description, the application content, and/or the reporting requirements.

Similarly, when this format calls for a type of information to be in one particular section, an agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections. For example, an agency may want to include in Section I information about the types of recipients who are eligible to apply. The format specifies a standard location for that information in Section III.1 but that does not preclude repeating the information in Section I or creating a cross reference between Sections I and III.1, as long as a potential applicant can find the information quickly and easily from the standard location.

The sections of the full text of the announcement are described in the following paragraphs.

#### I. Funding Opportunity Description—Required

This section contains the full programmatic description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the agency's funding priorities or the technical or focus areas in which the agency intends to provide assistance. As appropriate, it may include any program history (e.g., whether this is a new program or a new or changed area of program emphasis). This section may communicate indicators of successful projects (e.g., if the program encourages collaborative efforts) and may include examples of projects that have been funded previously. This section also may include other information the agency deems necessary, such as citations for authorizing statutes and regulations for the funding opportunity.

#### II. Award Information—Required

Provide sufficient information to help an applicant make an informed decision about whether or not to submit a proposal. Relevant information could include the total amount of funding that your agency expects to award through the announcement; the anticipated number of awards; the expected amounts of individual awards (which may be a range); the amount of funding per award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new awards. This section also should address whether applications for renewal or supplementation of existing

projects are eligible to compete with applications for new awards.

This section also must indicate the type(s) of assistance instrument (i.e., grant, cooperative agreement, and/or other instrument) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the "substantial involvement" that the agency expects to have or should reference where the potential applicant can find that information (e.g., in the funding opportunity description in Section I or award administration information in Section VI). If procurement contracts also may be awarded, you must say so.

#### III. Eligibility Information

This section addresses considerations or factors that make an applicant or application eligible or ineligible for consideration. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. You should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in your agency's returning the application without review or, even though an application may be reviewed, will preclude the agency from making an award. Key elements to be addressed are:

1. **Eligible Applicants—Required.** You must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if your program is limited to non-profit organizations subject to Section 501(c)(3) of the tax code, your announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that non-profit organizations may apply. Eligibility also can be expressed by exception, (e.g., open to all types of domestic applicants other than individuals). This section should refer to any portion of Section IV specifying documentation that must be submitted to support an eligibility determination (e.g., proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution).

2. **Cost Sharing—Required.** You must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, you must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (e.g., provision of equipment). Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as well as those imposed by administrative decision of the agency. This section should refer to the appropriate portion(s) of Section IV stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if an award is made.

3. **Other—Required, if applicable.** If there are other eligibility criteria (i.e., criteria that have the effect of making an application or project ineligible for award, whether you refer to them as "responsiveness" criteria, "go-no go" criteria, "threshold" criteria, or in other ways), you must clearly state them. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. In this section you also may indicate whether there is any limit to the number of applications an applicant may submit under the announcement. You also should use this section to address any eligibility criteria for beneficiaries or for program participants other than award recipients.

#### IV. Application and Submission Information

1. **Address to Request Application Package—Required.** You must tell potential applicants how to get application forms, kits, or other materials they need to apply (if this announcement contains everything they need, this section need only say so). You may give an Internet address where they can access the materials.\* Since high-speed Internet access is not yet universally available for downloading documents, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or fax number, Telephone Device for the Deaf (TDD) number, and/or Federal Information Relay Service (FIRS) number.

2. **Content and Form of Application Submission—Required.** This section should identify the required content of an application and the forms or formats that an applicant must use to submit it. This section also should address any

preliminary submissions that the agency requires or encourages, either to facilitate its own planning or to provide potential applicants with feedback to help them decide whether to submit a full proposal.

For a full application, this includes all content and forms or formats that constitute a complete application, including: general information (e.g., applicant name and address), budgetary information, narrative programmatic information, biographical sketches, and all other required information (e.g., documentation that an applicant meets stated eligibility criteria or certifications or assurances of compliance with applicable requirements). If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section may refer to where those requirements may be found. You must either include required forms or formats as part of this announcement or state where the applicant may obtain them.

In this section, you should specifically address content and form or format requirements for:

- Pre-applications, letters of intent, or white papers that your agency requires or encourages (see Section IV.3), including any limitations on the number of pages or other formatting requirements similar to those for full applications.

- The application as a whole. For hard copy submissions, that could include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required,\* that could include special requirements for formatting or signatures.

- Component pieces of the application (e.g., if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (e.g., references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).

- Information that successful applicants must submit after your agency notifies them of its intent to make awards, but prior to award. This could include evidence of compliance with human subjects requirements or information your agency needs to comply with the National Environmental Policy Act (NEPA).

3. Submission Dates and Times—Required. Your announcement must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (e.g., letters of intent, white papers, or pre-applications). It also includes any other submissions of information before award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see “Overview Information” segment of this format).

For each type of submission that you address, this section should indicate whether the submission is encouraged or required and, if required, any deadline date for submission (or dates, if the agency plans more than one cycle

of application submission, review, and award under the announcement). The announcement should state (or provide a reference to another document that states):

- Any deadline in terms of a date and local time.

- What the deadline means (e.g., whether it is the date and time by which the agency must receive the application, the date by which the application must be postmarked, or something else) and how that depends, if at all, on the submission method (e.g., mail, electronic, or personal/courier delivery).

- The effect of missing a deadline (e.g., whether late applications are neither reviewed nor considered or are reviewed and considered under some circumstances).

- How the receiving Federal office determines whether an application or pre-application has been submitted before the deadline. This includes the form of acceptable proof of mailing or system-generated documentation of receipt date and time.

This section also may indicate whether, when, and in what form the applicant will receive an acknowledgment of receipt.

You should consider displaying the above information in ways that will be easy to understand and use. It can be difficult to extract all needed information from narrative paragraphs, even when they are well written. A tabular form for providing a summary of the information may help applicants for some programs and give them what effectively could be a checklist to verify the completeness of their application package before submission. For example, a summary table might look like:

What to submit	Required content	Required form or format	When to submit it
Preapplication (optional, but encouraged).	Described in Section IV.2 of this announcement.	Format described in section ____ of grants policy manual at (give URL or where to obtain the manual)*.	By (give pre-application due date).
<b>Application:</b>			
Cover sheet .....	(Per required form) .....	Form SF-____, available from (give source).	
Budget information .....	(Per required form) .....	Form SF-____, available from (give source).	
Narrative .....	Described in Section IV.2 of this announcement.	Format described in Section IV.2 of this announcement.	
Assurances .....	(Per required form) .....	Form SF-____, available from (give source).	
Letters from third parties contributing to cost sharing.	Third parties' affirmations of amounts of their commitments.	No specific form or format.	

What to submit	Required content	Required form or format	When to submit it
Statement of intent to comply with human subjects requirement.	(Per required form) .....	Form SF-____, available from (give source).	Prior to award, when requested by grants officer (if application is successful).

\* With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998.

4. Intergovernmental Review—Required, if applicable. If the funding opportunity is subject to Executive Order (EO) 12372, “Intergovernmental Review of Federal Programs,” you must say so. In alerting applicants that they must contact their State’s Single Point of Contact (SPOC) to find out about and comply with the State’s process under EO 12372, you should inform them that the names and addresses of the SPOCs are listed in the Office of Management and Budget’s home page at: <http://www.whitehouse.gov/omb/grants/spoc.html> to ensure the most up-to-date contact information is made available.

5. Funding Restrictions—Required. You must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs).

6. Other Submission Requirements—Required. This section must address any other submission requirements not included in the other paragraphs of this section. This might include the form of submission, i.e., paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and this section should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this should include the name of an office, official, individual or function (e.g., application receipt center) and a complete mailing address. For electronic submission, this should include the “url” or e-mail address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact that will be available in the event the

applicant experiences technical difficulties.\*

#### V. Application Review Information

1. Criteria—Required. This section must address the criteria that your agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (e.g., minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to give applicants visibility into the evaluation process so that they can make informed decisions when preparing their applications and so that the process is as fair and equitable as possible.

The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned).

If an applicant’s proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section III.2), the announcement must specifically address how it will be considered (e.g., to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants.

2. Review and Selection Process—Required. This section may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for award (e.g., geographical dispersion, program balance, or diversity).

You also may include other details you deem appropriate. For example, this section may indicate who is responsible for evaluation against the merit criteria (e.g., peers external to the agency or Federal agency personnel) and/or who makes the final selections for award. If you have a multi-phase review process (e.g., an external panel advising internal agency personnel who make final recommendations to the deciding official), you may describe the phases. You also may include: The number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. In addition, if you permit applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

3. Anticipated Announcement and Award Dates—Optional. This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the agency can include in this section information about the anticipated dates for announcing successful applicants and for having awards in place. If applications are received and evaluated on a “rolling” basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the agency’s decision.

#### VI. Award Administration Information

1. Award Notices—Required. This section should address what a successful applicant can expect to receive following selection. If your

practice is to provide a separate notice stating that an application has been selected before you actually make the award, this section would be the place to indicate that the letter is not an authorization to begin performance (except at the recipient's own risk, to the extent that you allow charging to awards of pre-award costs). This section should indicate that the notice of award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants.

2. Administrative Requirements—Required. This section should address the administrative requirements your agency's awards include, so that a potential applicant may identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before award. The announcement need not include all of the award terms and conditions, but may refer to a document (with information about how to obtain it) or Internet site\* where applicants can see the terms and conditions.

If this funding opportunity will lead to awards with some special terms and conditions that differ from your agency's usual (sometimes called "general") terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants who have received awards from your agency previously and might not otherwise expect different terms and conditions. For the same reason, you may wish to inform potential applicants about special requirements that could apply to particular awards after review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved).

3. Reporting—Optional. If the funding opportunity may attract first-time applicants, it is helpful to include in this section some general information about the type (e.g., financial or performance), frequency, and means of submission (paper or electronic) of post-award reporting requirements, even if the details are included in the award terms and conditions.

You also should highlight any special reporting requirements for awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what your agency's awards usually require.

This section should clearly indicate whether any special reporting requirement is in addition to or in lieu of the usual reporting requirements.

#### VII. Agency Contact(s)—Required

You must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so you should consider approaches such as giving:

- Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or e-mail, as well as regular mail).
- A fax or e-mail address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.
- Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

#### VIII. Other Information

This section may include any additional information that will assist a potential applicant. For example, the section might:

- Indicate whether this is a new program or a one-time initiative.
- Mention related programs or other upcoming or ongoing agency funding opportunities for similar activities.
- Include Internet addresses for agency Web sites that may be useful to an applicant in understanding the program (**Note:** you should make certain that any Internet sites are current and accessible).\*
- Alert applicants to the need to identify proprietary information and inform them about the way the agency will handle it.
- Let applicants know where the agency will post any subsequent amendments to the announcement, particularly if an alternative medium is used for that purpose.
- Include certain routine notices to applicants (e.g., that the government is not obligated to make any award as a result of the announcement or that only grants officers can bind the government to the expenditure of funds).

\*With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998.

[FR Doc. 02-20260 Filed 8-9-02; 8:45 am]

BILLING CODE 3110-01-P

## OFFICE OF MANAGEMENT AND BUDGET

### Standard Data Elements for Electronically Posting Synopses of Federal Agencies' Financial Assistance Program Announcements at FedBizOpps

**AGENCY:** Office of Management and Budget (OMB).

**ACTION:** Notice of proposed standard data elements.

**SUMMARY:** The Office of Federal Financial Management (OFFM) proposes to establish a standard set of data elements for Federal agencies to use to electronically post synopses of announcements of funding opportunities under programs that award discretionary grants or cooperative agreements. The purpose of the data elements would be to give potential applicants: (1) Enough information about each funding opportunity to decide whether they are interested enough to look at the full announcement; and (2) one or more ways (e.g., an Internet site, e-mail address or phone number) to get the full announcement with the detailed information they need to decide whether they wish to apply. The proposed data elements would be the government-wide standard set for the hundreds of Federal programs that award discretionary grants or cooperative agreements. The Federal awarding agencies jointly developed these proposed data elements as one part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107).

**DATES:** All comments on the proposed data elements should be in writing, and must be received by October 11, 2002.

**ADDRESSES:** Due to potential delays in OMB's receipt and processing of mail sent through the U. S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: [ephillip@omb.eop.gov](mailto:ephillip@omb.eop.gov). Please include "FedBizOpps Data Elements Comments" in the subject line and put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202-395-3952. Comments may be mailed to Elizabeth Phillips, Office of

Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone 202-395-3053 (direct) or 202-395-3993 (main office) and e-mail: [ephillip@omb.eop.gov](mailto:ephillip@omb.eop.gov)

**SUPPLEMENTARY INFORMATION:** To widely disseminate information about Federal funding opportunities more rapidly than was possible before the advent of electronic business practices, the General Services Administration has established the FedBizOpps Internet site ([www.FedBizOpps.gov](http://www.FedBizOpps.gov)). Federal agencies now use FedBizOpps as the single site for giving the public access to relevant information about procurement opportunities that exceed \$25,000, including procurement notices, solicitations, drawings, and amendments. In the future, the Federal agencies also will use the FedBizOpps site to post electronic synopses of funding opportunities leading to the award of grants, cooperative agreements, and other financial assistance instruments. This **Federal Register** announcement seeks public comment on the proposed data elements that Federal agencies would include in their synopses of those financial assistance funding opportunities.

These data elements and the posting of information at the FedBizOpps site address a need that non-Federal entities identified during the public consultation process mandated by Public Law 106-107. Commenters suggested the need for a single searchable Internet site for information about Federal agencies' funding opportunities, to reduce potential applicants' frustration with having to search multiple sites that individual Federal agencies configure in different ways. A standard data set and single site for synopses of announcements should help potential applicants easily and quickly find the key pieces of information they need about each funding opportunity to decide whether they wish to review the full announcement.

The Federal agencies selected the proposed data elements to enable you to do that and to use search criteria that would let you identify from the numerous funding opportunities posted at FedBizOpps at any given time the ones most likely to be of interest to you. For example, the proposed data elements will let you search using the name of a particular agency or the *Catalog of Federal Domestic Assistance* (CFDA) number for a particular program. You also may search by choosing a class or classes of activity, as defined in the CFDA, as well as limiting the search to programs open to certain types of entities (using categories of eligible applicants adapted from the Federal Assistance Awards Data System maintained by the Bureau of the Census at the Department of Commerce). You still would need to read the full announcement for the funding opportunities identified by your search, since the announcements provide much greater detail about each of the program's aspects (e.g., you might isolate programs that show the category of "State controlled institutions of higher education" as being eligible, but find in the full announcement that only selected types of those institutions, such as land-grant institutions, are eligible).

While some of the proposed data elements for financial assistance parallel those currently in FedBizOpps for synopses of procurement opportunities, others differ in ways that reflect differences between procurement and assistance. For example, the activity class codes for financial assistance opportunities are categories from the CFDA. In contrast, FedBizOpps synopses of procurement opportunities use supply code classifications that are appropriate for buying goods and services.

Many of the data elements proposed for FedBizOpps also are key information elements in the proposed standard format for financial assistance funding announcements (see related Notice in this section of the **Federal Register**). Examples are the CFDA number, eligible applicants, and cost-sharing requirements. Including these key elements responds to comments received from non-Federal entities through the public comment process under Public Law 106-107.

The proposed data elements also are designed to provide Federal agencies the flexibility to give you the needed information for programs that are designed to operate in different ways. For example, some programs have a single due date for applications. A numeric "application due date" field accommodates those programs, giving potential applicants concise information in a searchable field. Other programs, however, have announcements that remain open for extended periods; some have applications accepted and reviewed at multiple discrete points in time, while others will accept and review applications at any time during those periods. The proposed data elements include an application due date text field to let agencies give potential applicants clear and unambiguous information about those programs, in a way that the numeric field by itself would not support.

We welcome your input on any aspect of the data elements. Questions that you may wish to address include:

- Are the proposed data elements the essential ones that you need to help you quickly judge whether a funding opportunity is one for which you likely will want to read the full announcement? The intent is for the data elements to be the minimum set needed. That should allow potential applicants to more quickly see essential information, because they will not have to extract it from a larger data set that includes information they do not need until they are preparing and submitting an application. Those additional details are in the full announcement to which FedBizOpps provides electronic links. If you recommend adding or deleting any data elements, please explain why.
- Are the names of data elements and any terms used in describing them readily understandable? Are the terms generic enough to cover all programs and agencies in which you might have an interest? Do you have suggestions for alternate terms? Do you have suggestions for additional codes, such as those listed as choices for the data elements "category of funding activity" and "eligible applicants"?

Dated: July 31, 2002.

**Mark W. Everson,**  
Controller.

Data element	Description	Required?
Federal agency user identification .....	User ID of Federal agency representative who is authorized to post information to the FedBizOpps site.	One entry required.
Federal agency password .....	Password of Federal agency user representative who is authorized to post information to the FedBizOpps site.	One entry required.

Data element	Description	Required?
Funding opportunity title .....	The Federal agency's title for the funding opportunity (including program subcomponent names, as the agency deems appropriate).	One entry required.
Funding opportunity number .....	The number, if any, that the Federal agency assigns to its announcement.	Optional.
Catalog of Federal Domestic Assistance (CFDA) number(s).	Number(s) of the CFDA listing(s) for program(s) included in the announcement (e.g., 12.300).	At least one entry required (may list more than one) if the Federal agency is subject to the requirement in 31 U.S.C. chapter 61 to report to the CFDA.
Federal agency mailing address .....	Regular (United States Postal Service) mailing address of the Federal organization responsible for the announcement, including agency name and specific subcomponent (e.g., department, bureau, directorate, or division), street address, city, State, and zip code.	Optional. If you give no office name and address, FedBizOpps will insert the office name and address you gave when you initially registered and got your user ID and password.
Federal agency contact for electronic access problems.	Should list name of person (e.g., webmaster) to whom potential applicants should refer questions if they cannot link from FedBizOpps to the full announcement (this person is distinct from programmatic and other agency contacts who are listed in the full announcement).	At least one entry required. May list more than one.
Type of help available from the Federal agency contact.	The hypertext description accompanying the Federal agency contact e-mail address, to describe types of problems or questions with which the agency contact may be able to provide assistance (e.g., "If you have problems linking to the full announcement, contact:").	Required. May list only one.
Federal agency contact e-mail address	E-mail address of Federal agency contact who can help with electronic access problems..	Required. May list only one.
Funding opportunity description .....	A concise description of the funding opportunity, designed to contain sufficient information for potential applicants to decide whether they are interested enough to read the full announcement.	Required.
Funding instrument types .....	List codes for types of instruments that may be awarded: G = Grant CA = Cooperative Agreement PC = Procurement Contract O = Other Note that if your announcement states that you may award procurement contracts, as well as assistance instruments, the announcement must be posted to both the procurement and assistance modules of FedBizOpps.	Required. Select all that apply (up to 4 codes).
Category of funding activity .....	Designed to allow potential applicants to narrow their searches to programs in CFDA categories of interest to them. Note that the terms are defined in the CFDA. List all codes that apply: AG = Agriculture AR = Arts (see "Cultural Affairs" in the CFDA) BC = Business and Commerce CD = Community Development CP = Consumer Protection DPR = Disaster Prevention and Relief ED = Education ELT = Employment, Labor and Training EN = Energy ENV = Environment FN = Food and Nutrition HL = Health HO = Housing HU = Humanities (see "Cultural Affairs" in the CFDA) ISS = Income Security and Social Services IS = Information and Statistics LJL = Law, Justice and Legal Services NR = Natural Resources RD = Regional Development ST = Science and Technology and other Research and Development T = Transportation O = Other	At least one required and may list as many as needed. There is no default value.

Data element	Description	Required?
Eligible applicants .....	<p>Designed to help potential applicants narrow their searches to programs where they are most likely to be eligible (although they still must read the full announcement for details because eligibility may be further limited to certain subsets of applicants within the categories below)..</p> <p>99 = Unrestricted (i.e., open to any type of entity below)</p> <p>Government codes:</p> <p>00 = State governments</p> <p>01 = County governments</p> <p>02 = City or township governments</p> <p>04 = Special district governments</p> <p>05 = Independent school districts</p> <p>06 = State controlled institutions of higher education</p> <p>07 = Native American tribal governments (Federally recognized)</p> <p>08 = Public housing authorities/Indian housing authorities</p> <p>Non-Government organizations:</p>	Required to either select "99" for unrestricted or select all others that apply.
How to get full announcement .....	Hypertext stating where to get the full announcement. If it is available on the Internet, this field should include the descriptor that precedes the URL for the full announcement (e.g., "Click on the following link to see the full text of the announcement for this funding opportunity:").	Required.
Electronic link to full announcement ....	<p>The URL for the full announcement, if it is on the Internet.</p> <p>11 = Native American tribal organizations (other than Federally recognized tribal governments)</p> <p>12 = Nonprofits other than institutions of higher education [includes community action agencies and other organizations having a 501(c)(3) status with the IRS]</p> <p>20 = Private institutions of higher education</p> <p>21 = Individuals</p> <p>22 = For-profit organizations other than small businesses</p> <p>23 = Small businesses</p> <p>25 = All others [e.g., U.S. Federal or Foreign Governmental entities and nonprofits that do not have a 501(c)(3) status with the IRS]</p>	Optional.
Cost sharing requirement .....	Answer to question: is cost sharing required: (Y or N).	Required.
Due date for applications .....	Date when applications are due (or latest date when applications accepted, if announcement has multiple due dates or is a general announcement that is open for a specified period with applications accepted at any time during that period).	Required if "Explanation of application due dates" field is not completed. Optional otherwise.
Explanation of application due dates ...	Used by agencies wishing to post more information about due date(s) for potential applicants. For example, the field may be used to describe programs with multiple due dates or ones where applications are accepted, reviewed, and funded at any point within a broad time window. The field also may be used to add information about the time when applications are due (e.g., 5:00 p.m. EDT on the date given in the "Due date for applications" field).	Optional (note that "Due date for applications" field is required if this "Explanation of application due dates" text field is not completed).
Date of FedBizOpps posting .....	Month, day, and year when the agency wants the synopsis posted on FEdBizOpps (e.g., some agencies may build in delays to allow announcements to appear first in the FEDERAL REGISTER or at agency Internet sites). Format is MMDDCCYY.	Required.
Date for FedBizOpps to archive .....	Month, day, and year when the agency wants the synopsis archived. Format is MMDDCCYY.	Optional. Default, if agency provides no input, is 30 days after the date given in the "Due date for applications" field.

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BILLING CODE 3110-01-P

## OFFICE OF MANAGEMENT AND BUDGET

### Cost Principles for Educational Institutions, for State, Local, and Indian Tribal Governments and for Non-Profit Organizations

**AGENCY:** Office of Management and Budget.

**ACTION:** Proposed revisions to Office of Management and Budget (OMB) cost principles' Circulars A-21, A-87, and A-122.

**SUMMARY:** OMB proposes to amend OMB cost principles A-21, A-87, and A-122. These changes are intended to further the objectives of Public Law (Pub. L.) 106-107, the Federal Financial Assistance Management Improvement Act. On May 18, 2001, agencies working with OMB published a plan to implement Pub. L. 106-107. The plan included a proposal to simplify the cost principles to make the descriptions of similar cost items consistent with one another where possible, thus reducing the possibility of misinterpretation.

**DATES:** All comments on this proposal should be in writing and must be received by October 11, 2002.

**ADDRESSES:** Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic comments may be submitted to: *hai\_m\_tran@omb.gov*. Please include "Cost Principles Revision Comments" in the subject line and put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202-395-4915.

Comments may be mailed to Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, (202) 395-3052 (direct) or (202) 395-3993 (main office) and e-mail: *Hai\_M\_Tran@omb.eop.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

The Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107) provides both a mandate and a challenge for the administration of Federal financial assistance programs and activities. The purposes of Pub. L. 106-107 are to (1) improve the effectiveness and performance of Federal financial assistance programs, (2) simplify Federal financial assistance application and reporting requirements, (3) improve the delivery of services to the public, and (4) facilitate greater coordination among those responsible for delivering the services. Federal financial assistance includes grants, cooperative agreements, loans, loan guarantees, scholarships, and other forms of assistance.

The grant and cooperative agreement portion of that enterprise, commonly referred to as "grants," involves more than 600 programs and their subprograms, with awards of more than \$325 billion a year administered by 26 Federal agencies. Grant programs stimulate or support public purposes in areas such as health, social services, law enforcement, agriculture, housing, community and regional development, economic development, education and training, and national security. Many of these programs require complex arrangements, such as intergovernmental coordination or public-private partnerships, to coordinate and deliver the needed services. Among the recipient constituencies are State, local, and Native American tribal governments, public housing authorities and resident organizations, and private, non-profit organizations, including institutions of higher education. The funding mechanisms for these programs include mandatory grants, such as formula and block grants, and discretionary grants and cooperative agreements in support of specific programs or projects.

Public Law 106-107 states that some Federal administrative requirements are duplicative, burdensome, and conflicting, sometimes impeding cost-effective delivery of services at the local level. Grant recipients deal with increasingly complex problems that require the delivery and coordination of many kinds of services. Their need to respond to numerous Federal grant administration requirements only adds to that complexity.

### Implementation of Public Law 106-107

The Director of OMB partnered with the Department of Health and Human Services (HHS) and the former Grants Management Committee (GMC) of the

Chief Financial Officers Council to coordinate and oversee the government-wide implementation of Pub. L. 106-107. Five interagency groups were established to implement the steps laid out in the plan that was submitted to Congress and OMB on May 18, 2001.

The General Policy and Oversight group provides detailed oversight of the other work groups' planning and implementation efforts and is examining broad issues. Three groups represent various parts of the grant life cycle: Pre-Award; Post-Award; and Audit Oversight. The Electronic Processing group supports the development of an electronic option for application for and reporting of grants.

The Post-Award group includes a cost consistency sub-group charged with reviewing the cost principles in OMB Circulars A-21, A-87, and A-122 to ensure they are current, consistent, and appropriate for covered recipients. The sub-group's objectives are to make the descriptions of similar cost items consistent, where possible, and reduce the possibility of misinterpretation by clarifying existing policies. The sub-group's mission did not include adding restrictions or modifying current requirements.

The three OMB's cost circulars established government-wide principles for costs incurred under Federal awards (Circulars A-21, "Cost Principles for Educational Institutions;" A-87, "Cost Principles for State, Local and Indian Tribal Governments;" and A-122, "Cost Principles for Non-Profit Organizations"). These cost principles specify allowable and unallowable costs. The three circulars apply to different types of recipient entities and were developed accordingly. As a result, in a number of cases, similar cost items are described in varying terms. This can cause inconsistent interpretations by Federal staff, recipients, and auditors. Public comments indicate the need for language that is more consistent and for clarification regarding some aspects of the cost principles. Many Federal assistance grant programs require organizations that are subject to different cost circulars to work together in consortia to achieve the objectives of a grant program. It is important in these situations that, to the greatest extent possible, all participants in a consortium be subject to the same treatment for the same kinds of transactions.

The groups focused initially on the definitions in the circulars and the 30 cost items that appear in all three cost circulars. They drafted common descriptions for those cost items that should have similar treatment, but are

currently described differently. Where different outcomes are intended, the language should definitely show the difference. Those cost items that are currently in one or more but not all of the circulars also have been reviewed to determine if it is appropriate and beneficial to include them in one or both of the other cost circulars. In those cases where the groups believe that a cost principle in one circular might be applicable to entities subject to the other circulars, they have tried to state the principle in such a way that it does not change the current policy in the circulars to which the principle is added. In all of the cases where a cost principle in one circular has been applied to one or both of the other circulars, we have done that only to clarify that the outcome is the same under the circular(s) to which the principle is added.

The approach included:

- Reviewing the cost item descriptions in all the circulars;
- Noting the similarities and differences in the descriptions;
- Researching the history of the cost policies related to the cost item;
- Determining if the cost policies are consistent among the circulars;
- Preparing common language, where possible, for the descriptions of those cost items that have a consistent cost policy basis; and
- Restating the principles in simpler language, to the extent possible without changing the meaning of the principles.

#### Presentation of the Circulars

Rather than include the revised language in the three cost principles separately, the team created a chart that allows side-by-side comparison of proposed changes to the language contained in the current circulars. In addition, the three circulars use different standard terminology to refer to “recipients” and “awards;” the groups adopted conventions for the circulars so they would all use the same standard terminology. The conventions are as follows:

Proposed change language	Existing terms in A-21, A-87, and A-122
“Non-Federal entity”.	“Institution,” “unit of government” and “organization”
“Federal award”	“Sponsored agreement,” “Federal award” and “Sponsored award”

When the cost principles are published in final form, OMB will use the new conventions in the revised version. However, OMB plans to use the same words to describe the units of

organization, *i.e.*, A-21 would still be divided into “sections” and “subsections” while A-87 and A-122 would still use “paragraphs” and “subparagraphs.”

#### Clarity of the Regulations

Executive Order 12866, *Regulatory Planning and Review*, and the Presidential memorandum on “Plain Language in Government Writing” require each agency to write regulations that are easy to understand. OMB invites comments on how to make these cost principles easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed circulars clearly stated?
- Do the cost principles contain technical terms or other wording that interferes with their clarity?
- Would the cost principles be easier to understand if divided into more (but shorter) paragraphs or sections; or used the question and answer format?
- What else would make the proposed circulars easier to understand?

To give commenters an idea about how a circular might appear in plain language, the groups provided at the end of the chart a plain language version of one cost item to show how it would look in a different style of drafting.

Send any comments that concern how we could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble. If the comments generated by the plain language treatment indicate that the circulars could be written using this convention, OMB will publish any changes based on those comments for another round of comment.

#### Inadvertent Changes in Policy

OMB has not attempted to change the policy in any of the circulars. However, in the effort to make the language more consistent, some unintended changes in policy may have been made. OMB encourages comments on any proposed changes that could be construed as changes to current policy.

Also, there are places where different language in the current circulars for a particular treatment could be viewed either as intending the same or intending different policies. When faced with this ambiguity, in most cases, OMB has not attempted to write a common treatment. However, OMB is interested in comments on the extent to which some of these treatments could be viewed as expressing the same policy in all three circulars.

#### Response to Public Bodies and Cost Shifting

Where professional bodies such as the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB) have issued pronouncements that contradicted existing circular provisions or otherwise clarified “generally accepted accounting principles” (GAAP), the policy of the professional bodies has been reflected in this draft.

Lastly, in the process of reviewing the circulars for better consistency and clarity, we concluded that this provided another opportunity to address an area of much confusion concerning one of the general standards contained in A-87, Attachment A, C.3., Allocable costs. In attempting to recognize situations where two or more Federal programs might allow identical services or assistance and served the identical population, an effort was made to distinguish between “funding allocations” vs. “cost allocation”. Unfortunately, this section was phrased in a manner that could be interpreted as allowing cost shifting. Cost shifting has always been unallowable. The confusing language has been eliminated in this Notice and no change in policy is intended. The following reflects the proposed revision to OMB Circular A-87, Attachment A, C.3.c., where the last sentence in brackets would be deleted.

“Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of Federal awards, or for other reasons. [However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.]”

#### Organization of the Chart

In the chart, the first column lists the current A-21 item, the second column lists the similar item, if any, from A-87, the third column lists the similar item, if any, from A-122 and the fourth column lists any proposed change to the item and which of the circulars would include the revised item. In some cases one or more of the circulars do not have a cost item that is included in one or more of the other circulars. If a circular does not have an item equivalent to the other circulars, the column for that circular is blank. Also, given the separate development of the three circulars, some items contain more than one concept and some of those concepts

are stated in different places in the other circulars. In some cases, we have moved a cost item in one circular to the place where that item appears in the other circulars. In every case where one circular handles an item in a different place than the others, we explain in the fourth column where we propose to

treat a particular concept in the three circulars.

#### **How To Obtain the Chart**

Due to its size, the chart is not printed in this **Federal Register** notice. It is displayed on the OMB Web site at: <http://www.omb.gov> under the "Grants Management/Current Documents"

section. You can also request a hard copy by calling Gilbert Tran at (202) 395-3052.

Dated: July 31, 2002.

**Mark W. Everson,**

*Controller.*

[FR Doc. 02-20262 Filed 8-9-02; 8:45 am]

**BILLING CODE 3110-01-P**



# Federal Register

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**Monday,  
August 12, 2002**

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**Part V**

## **Department of Education**

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**Office of Special Education and  
Rehabilitative Services; National Institute  
on Disability and Rehabilitation  
Research—Assistive Technology Act (AT  
Act) Technical Assistance Program; Notice  
Inviting Applications for Fiscal Year (FY)  
2002; Notice**

**DEPARTMENT OF EDUCATION**

[CFDA No.: 84.224B]

**Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Assistive Technology Act (AT Act) Technical Assistance Program; Notice Inviting Applications for Fiscal Year (FY) 2002**

**Note to Applicants:** This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

**Purpose of the Program:** The purpose of the Assistive Technology Act of 1998 (AT Act) Technical Assistance Program

is to award grants to entities to address issues raised by interested parties; collect data in order to provide information about assistive technology (AT) devices and services that can be used for determining policy; and provide information on increased access to AT devices, AT services and other disability-related resources. For FY 2002, the competition for new awards focuses on projects designed to meet the priorities we described in the priorities section of this notice.

**Eligible Applicants:** Parties eligible to apply for technical assistance grants must have documented experience with and expertise in AT service delivery or systems, interagency coordination, and capacity building and advocacy activities.

Parties eligible to apply for a grant under Priority 1 and Priority 2 are States, public or private agencies including for-profit organizations,

institutions of higher education, and Indian tribes and tribal organizations.

Parties eligible to apply for a grant under Priority 3 are institutions of higher education that emphasize research and engineering, have a multidisciplinary research center, and have demonstrated expertise in (1) working with AT and intelligent agent interactive information dissemination systems; (2) managing libraries of AT and disability-related resources; (3) delivering education, information, and referral services to individuals with disabilities, including technology-based curriculum development services for adults with low-level reading skills; (4) developing cooperative partnerships with the private sector, particularly with private sector computer software, hardware, and Internet services entities; and (5) developing and designing advanced Internet sites.

**APPLICATION NOTICE FOR FISCAL YEAR 2002**

Assistive Technology Act (AT Act) Technical Assistance Program, CFDA No. 84.224B

Funding priority	Deadline for transmittal of applications	Estimated available funds	Maximum award amount (per year)*	Estimated number of awards	Project period (months)
84.224B-1 ..... Technical Assistance to AT State Grant Program.	September 11, 2002 ..	\$525,000	Year 1—\$525,000; ..... Year 2—\$525,000; ..... Year 3—\$525,000. ....	1	36
84.224B-2 ..... Technical Assistance to AT P&A Program.	September 11, 2002	160,000	Year 1—\$160,000; ..... Year 2—\$160,000; ..... Year 3—\$160,000. ....	1	36
84.224B-3 ..... Establishment and Maintenance of a National Assistive Technology Internet Site.	September 11, 2002	250,000	Year 1—\$250,000 ..... Year 2—\$250,000; ..... Year 3—\$250,000. ....	1	36

**Note 1:** We will reject without consideration any application that proposes a budget exceeding the stated maximum award amount in any year (See 34 CFR 75.104(b)).

**Note 2:** The Department is not bound by any estimates in this notice.

**Applicable Regulations and Statute:**  
(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86, and (b) 29 U.S.C. 3014.

**Priorities**

**Absolute Priority 1—Technical Assistance to AT State Grant Program Grantees and Other Public Entities**

Under 34 CFR 75.105(c)(3) and section 104(c)(2) of the AT Act, the project that will provide technical assistance to AT State Grant Program grantees and other public entities must:

(1) Address State-specific information requests concerning AT from grantees and other public entities, including:

(a) Requests for state-of-the-art, or model, Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome

barriers to, funding for, and access to, AT devices and AT services;

(b) Requests for examples of policies, practices, procedures, regulations, administrative hearing decisions, or legal actions, that have enhanced or may enhance access to and funding for AT devices and AT services for individuals with disabilities;

(c) Requests for information on effective approaches to Federal-State coordination of programs for individuals with disabilities, related to improving funding for or access to AT devices and AT services for individuals with disabilities of all ages;

(d) Requests for information on effective approaches to the development of consumer-controlled systems that increase access to, funding for, and awareness of, AT devices and AT services;

(e) Other requests for technical assistance from grantees and other public entities; and

(f) Other assignments specified by the Secretary including assisting entities described in section 103(b) of the AT Act to develop corrective action plans;

(2) Assist targeted individuals (as defined in section 3(a)(14) of the AT Act) by disseminating information about:

(a) Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to, AT devices and AT services, to promote fuller independence, productivity, and inclusion in society for individuals with disabilities of all ages; and

(b) Technical assistance activities listed above.

For FY 2002, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet the priority.

#### Invitational Priority

Within the absolute priority for this competition, we are particularly interested in applications that meet the following invitational priority.

Production of a yearly report of the technical assistance activities described above that will include information on:

(1) The demonstrated successes of the AT State Grant Program activities in improving interagency coordination relating to AT, streamlining access to and funding for AT, and producing beneficial outcomes for users of AT;

(2) The demonstration activities carried out through the AT State Grant Program to:

(a) Promote access to AT funding in public programs that were in existence on the date of the initiation of the AT State Grant Program; and

(b) Establish additional options for obtaining AT funding;

(3) The education and training activities carried out through the AT State Grant Program to educate and train targeted individuals about AT, including increasing awareness of funding through public programs for AT;

(4) The research activities carried out through the AT State Grant Program to improve understanding of the costs and benefits of access to AT for individuals with disabilities who represent a variety of ages and types of disabilities;

(5) The program outreach activities to rural and inner-city areas that are carried out through the AT State Grant Program;

(6) The activities carried out through the AT State Grant Program that are targeted to reach underrepresented populations and rural populations;

(7) The consumer involvement activities carried out through the AT State Grant Program; and

(8) Information on the availability of AT devices and AT services for individuals with disabilities.

Under 34 CFR 75.105(c)(1) an application that meets an invitational does not receive competitive or absolute preference over other applications.

#### *Absolute Priority 2—Technical Assistance to AT Protection and Advocacy (P&A) Program Grantees and Other Public Entities*

Under 34 CFR 75.105(c)(3) and section 104(c)(2) of the AT Act, the project that will provide Technical Assistance to AT P&A Program Grantees and other public entities must:

(1) Address State-specific information requests concerning AT from grantees and other public entities, including:

(a) Requests for state-of-the-art, or model, Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to, AT devices and AT services;

(b) Requests for examples of policies, practices, procedures, regulations, administrative hearing decisions, or legal actions, that have enhanced or may enhance access to and funding for AT devices and AT services for individuals with disabilities;

(c) Other requests for technical assistance from grantees and other public entities;

(2) Assist targeted individuals (as defined in section (3)(a)(14) of the AT Act) by disseminating information about:

(a) Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to, AT devices and AT services, to promote fuller independence, productivity, and inclusion in society for individuals with disabilities of all ages; and

(b) Technical assistance activities listed above.

#### *Absolute Priority 3—Establishment and Maintenance of a National Assistive Technology Internet Site*

Under 34 CFR 75.105(c)(3) and section 104(c)(1) of the AT Act, the National Assistive Technology Internet Site, established and maintained under this program, must contain the following features:

(1) Availability of information at any time—The site shall be designed so that any member of the public may obtain information posted on the site at any time.

(2) Innovative Automated Intelligent Agent—The site shall be constructed with an innovative automated intelligent agent that is a diagnostic tool for assisting users in problem definition and the selection of appropriate AT devices and AT resources.

(3) Resources.

(a) Library on Assistive Technology—The site shall include access to a comprehensive working library on AT for all environments, including home, workplace, transportation, and other environments.

(b) Resources for a Number of Disabilities—The site shall include resources relating to the largest possible number of disabilities, including

resources relating to low-level reading skills.

(4) Links to Private Sector Resources and Information—To the extent feasible, the site shall be linked to relevant private sector resources and information, under agreements developed between the institution of higher education and cooperating private sector entities.

(5) Minimum Library Components—At a minimum, the Internet site shall maintain updated information on:

(a) How to plan, develop, implement, and evaluate activities to further extend comprehensive statewide programs of technology-related assistance, including the development and replication of effective approaches to:

(i) Providing information and referral services;

(ii) promoting interagency coordination of training and service delivery among public and private entities;

(iii) conducting outreach to underrepresented populations and rural populations;

(iv) mounting successful public awareness activities;

(v) improving capacity building in service delivery;

(vi) training personnel from a variety of disciplines; and

(vii) improving evaluation strategies, research and data collection;

(b) Effective approaches to the development of consumer-controlled systems that increase access to, funding for, and awareness of, AT devices and AT services;

(c) Successful approaches to increasing the availability of public and private funding for and access to the provision of AT devices and AT services by appropriate State agencies; and

(d) Demonstration sites where individuals may try out AT.

*Selection Criteria:* In evaluating applications for grants under the AT Act, the Secretary uses selection criteria chosen from 34 CFR 75.210. The maximum score for all criteria to be used for this competition is 100 points.

(a) *Significance* (8 points total)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(b) *Quality of the project design* (35 points total)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (12 points).

(ii) 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 (10 points).

(iii) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition (8 points).

(iv) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources (5 points).

(c) *Quality of project services* (16 points total)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible proposed project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (5 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services (5 points).

(ii) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources (6 points).

(d) *Quality of project personnel* (12 points total)

(1) The Secretary considers the quality of the personnel who will carry out the project.

(2) 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 (3 points).

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator (5 points).

(ii) The qualifications, including relevant training and experience, of key project personnel (4 points).

(e) *Adequacy of resources* (6 points total)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization (3 points).

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (3 points).

(f) *Quality of the management plan* (11 points total)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (6 points).

(ii) 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 (5 points).

(g) *Quality of the project evaluation* (12 points total)

(1) The Secretary considers the quality of the evaluation to be conducted OF the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project (6 points).

(ii) 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 (6 points).

### Application Instructions and Forms

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, and various assurances and certifications. Please organize the parts and additional materials in the following order:

- PART I: Application for Federal Assistance (ED 424 (Rev. 11/30/2004)) and instructions.
- PART II: Budget Form—Non-Construction Programs (ED 524) and instructions and definitions.
- PART III: Application Narrative.
- PART IV: Additional Materials.
- Estimated Public Reporting Burden.
- Assurances—Non-Construction Programs (Standard Form 424B).
- Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

(NOTE: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

- Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

You may submit information on a photocopy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

### Application Procedures

The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

The Secretary strongly recommends the following:

- (1) a one-page abstract;
- (2) an Application Narrative (*i.e.*, part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than 75 numbered, double-spaced (no more than 3 lines per vertical inch) 8.5" x 11" pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply

to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) a font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

### Instructions for Transmitting Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail*

You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Mail your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.224B and title), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202-4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) *If You Deliver Your Application by Hand*

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.224B and title), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202-4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except

Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

### Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708-9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any, and title—of the competition under which you are submitting your application.

### FOR FURTHER INFORMATION CONTACT:

Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202-2645. Telephone: (202) 205-5880 or via Internet: [Donna.Nangle@ed.gov](mailto:Donna.Nangle@ed.gov).

If you use a telecommunications device for the deaf (TDD) you may call the TDD number at (202) 205-4475.

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 under **FOR FURTHER INFORMATION CONTACT**.

### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: [www.ed.gov/legislation/FedRegister](http://www.ed.gov/legislation/FedRegister).

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

*Program Authority:* 29 U.S.C. 3014.

Dated: August 6, 2002.

**Loretta Petty Chittum,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

### Appendix—Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is 1820-0027. Expiration date: 2/28/2003. We estimate the time required to complete this collection of information to average 30 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651. If you have comments or concerns regarding the status of your submission of this form, write directly to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202-2645.

### Frequent Questions

1. *Can I get an Extension of the Due Date?*

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. *What Should be Included in the Application?*

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many

cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

*3. What Format Should be Used for the Application?*

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

*4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?*

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

*5. What is the Allowable Indirect Cost Rate?*

The limits on indirect costs vary according to the program and the type of application. An applicant for an RRTC is limited to an indirect rate of 15%. An applicant for a Disability and Rehabilitation Research Project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved

indirect cost rate, the application should include an estimated actual rate.

*6. Can Profitmaking Businesses Apply for Grants?*

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

*7. Can Individuals Apply for Grants?*

No. Only organizations are eligible to apply for grants under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

*8. Can NIDRR Staff Advise me Whether my Project is of Interest to NIDRR or Likely to be Funded?*

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

*9. How do I Assure That my Application will be Referred to the Most Appropriate Panel for Review?*

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

*10. How Soon After Submitting my Application can I Find out if it will be Funded?*

The time from closing date to grant award date varies from program to program.

Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

*11. Can I Call NIDRR to Find out if my Application is Being Funded?*

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

*12. If my Application is Successful, can I Assume I will get the Requested Budget Amount in Subsequent Years?*

No. Funding in subsequent years is subject to availability of funds and project performance.

*13. Will all Approved Applications be Funded?*

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

**BILLING CODE 4000-01-P**



## Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.
2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: <http://www.dnb.com>.
3. **Tax Identification Number.** Enter the taxpayer's identification number as assigned by the Internal Revenue Service.
4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.
5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.
6. **Novice Applicant.** Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.  
Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.
7. **Federal Debt Delinquency.** Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."
8. **Type of Applicant.** Enter the appropriate letter in the box provided.
9. **Type of Submission.** See "Definitions for Form ED 424" attached.
10. **Executive Order 12372.** See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."
11. **Proposed Project Dates.** Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).
12. **Human Subjects Research.** (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")  
  
If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.  
  
If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")
- 12a. **If Human Subjects Research is Exempt from the Human Subjects Regulations.** Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.
- 12a. **If Human Subjects Research is Not Exempt from Human Subjects Regulations.** Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.
- 12a. **Human Subjects Assurance Number.** If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.  
  
Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.
13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.
15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.  
  
Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

## Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to <http://www.cfda.gov/public/eo12372.htm>.

## PROTECTION OF HUMAN SUBJECTS IN RESEARCH

## I. Definitions and Exemptions

## A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

## —Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

## —Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

## B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

## II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

### A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

### B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at <http://www.ed.gov/offices/OCFO/humansub.html>

 <b>U.S. DEPARTMENT OF EDUCATION</b> <b>BUDGET INFORMATION</b> <b>NON-CONSTRUCTION PROGRAMS</b>		OMB Control Number: 1890-0004				
Name of Institution/Organization		Expiration Date: 02/28/2003				
<b>SECTION A - BUDGET SUMMARY</b> <b>U.S. DEPARTMENT OF EDUCATION FUNDS</b>		Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.				
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel	0					0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

Name of Institution/Organization		SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS						Total (f)
		Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)		
1. Personnel							0	
2. Fringe Benefits							0	
3. Travel							0	
4. Equipment							0	
5. Supplies							0	
6. Contractual							0	
7. Construction							0	
8. Other							0	
9. Total Direct Costs (lines 1-8)		0	0	0	0	0	0	
10. Indirect Costs							0	
11. Training Stipends							0	
12. Total Costs (lines 9-11)		0	0	0	0	0	0	

SECTION C - OTHER BUDGET INFORMATION (see instructions)

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

## INSTRUCTIONS FOR ED FORM 524

### General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

### Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

### Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total

contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

### Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

## ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER  
RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

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Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

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**1. LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

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**2. DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

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**3. DRUG-FREE WORKPLACE  
(GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

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Check  if there are workplaces on file that are not identified here.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

**DRUG-FREE WORKPLACE  
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions**

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB  
0348-0046

(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> :  Congressional District, <i>if known</i> :	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, <i>if known</i> :	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, <i>if applicable</i> : _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

OMB Control No. 1890-0007 (Exp. 09/30/2004)

**NOTICE TO ALL APPLICANTS**

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

**To Whom Does This Provision Apply?**

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

**What Does This Provision Require?**

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct

description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

**What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?**

The following examples may help illustrate how an applicant may comply with Section 427.

- (1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.
- (2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.
- (3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

**Estimated Burden Statement for GEPA Requirements**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007**. The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248.



# Federal Register

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**Monday,  
August 12, 2002**

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**Part VI**

## **Department of Justice**

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**Immigration and Naturalization Service**

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**8 CFR Parts 214 and 264**

**Registration and Monitoring of Certain  
Nonimmigrants; Final Rule**

## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## 8 CFR Parts 214 and 264

[INS No. 2216-02; AG Order No. 2608-2002]

RIN 1115-AG70

## Registration and Monitoring of Certain Nonimmigrants

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** Recent terrorist incidents have underscored the need to broaden the special registration requirements for nonimmigrant aliens from certain designated countries, and other nonimmigrant aliens whose presence in the United States requires closer monitoring, to require that they provide specific information at regular intervals to ensure their compliance with the terms of their visas and admission, and to ensure that they depart the United States at the end of their authorized stay. On June 13, 2002, the Department published a proposed rule to modify the regulations to require certain nonimmigrant aliens to make specific reports to the Immigration and Naturalization Service: upon arrival; approximately 30 days after arrival; every twelve months after arrival; upon certain events, such as a change of address, employment, or school; and at the time they leave the United States. This final rule adopts the proposed rule without substantial change.

**DATES:** This rule is effective September 11, 2002.

**FOR FURTHER INFORMATION CONTACT:** Dan Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW, Room 6100, Washington, DC 20536, telephone (202) 514-2895.

**SUPPLEMENTARY INFORMATION:****Introduction**

This final rule applies to only a small percentage of the more than 35 million nonimmigrant aliens who enter the United States each year: (1) Nonimmigrant aliens from selected countries specified in notices published in the **Federal Register**, and (2) individual nonimmigrant aliens who are designated by a consular officer outside the United States or an inspection officer at the port of entry based on information that indicates the need for closer monitoring of the alien's compliance with the terms of his or her visa or admission because of the national security or law enforcement

interests of the United States. This rule expands the existing special registration rule to require that these designated nonimmigrant aliens provide more detailed and frequent information to ensure that they comply with the conditions of their visas and admissions, along with leaving the United States.

**Adoption of the Proposed Rule Without Substantial Change**

The Department received 14 comments on the proposed rule (67 FR 40581, June 13, 2002). Some comments supported the adoption of the proposed rule while other comments opposed the proposed rule. In several instances, specific comments repeated the views of other comments in a different form. Rather than respond to each comment individually, the Department is responding to the nature of the comments by subject matter.

In adopting the proposed rule as a final rule, the Department reiterates and adopts the Supplementary Information included in the proposed rule as explaining the final rule. The Department has made one set of changes in the final rule to reflect the fact that the special registration system will be paperless; the Department will not be developing a paper form to collect information. The second set of changes clarifies and limits the scope and applicability of 8 CFR 264.1(f)(8). The Department provides the following additional information in responding to the comments received.

**Response to Comments Received***A. Constitutional Implications*

## 1. Notice of the Requirements of the Rule

Several commenters argued that the notice requirement for nonimmigrant aliens subject to special registration who are already residing in the United States violates their due process rights. One commenter suggested that there needed to be a more formal notification structure developed before provisions relating to nonimmigrant aliens subject to special registration already in the United States could be enforced because the proposal affects such a small segment of society. The commenter argued that these individuals should be given some other way to voice their opinions other than the notice and comment period, citing *Londoner v. City & County of Denver*, 210 U.S. 373 (1908), and the notion that due process requires that they be given an individualized hearing. The commenter argues that those individuals, with limited English proficiency or literacy,

are not being given adequate notice and that the opportunity to be heard must be tailored to the regulated group. Another commenter suggested that publication in the **Federal Register** as public notification of a requirement is a legal fiction.

These comments raise an issue related to two different processes. First, the commenters appear to raise the issue of whether the publication of the proposed and final rule in the **Federal Register** is sufficient notice of the content and applicability of the regulation under the Due Process Clause of the Fifth Amendment to the United States Constitution. Second, the commenters appear to raise the issue of whether publication of a notice in the **Federal Register**, as required by § 264.1(f)(4), of the applicability of the requirements of this rule to a specific country or class, is sufficient notice of the application of the rule under the Due Process Clause.

Such notice by publication in the **Federal Register** unequivocally constitutes sufficient notice for due process purposes. Congress has specified this form of notice and made that notice binding on all who are within the jurisdiction of the United States. 44 U.S.C. 1507 (publication in **Federal Register** "is sufficient to give notice of the contents of the document to a person subject to or affected by it"). The courts have clearly relied upon the adequacy of notice by publication in the **Federal Register** since the **Federal Register's** inception. *See, e.g., Lyng v. Payne*, 476 U.S. 926, 942-43 (1986); *Dixson v. United States*, 465 U.S. 482, 489 n.6 (1984); *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 385 (1947). The Department rejects the notion that more notice is required as a matter of law.

The Department does recognize that the efficacy of the law is more assured when those subject to the law have actual notice of its terms, and, accordingly, the Department is taking steps in addition to publication in the **Federal Register** to publicize its actions relating to immigration matters. When classes of nonimmigrant aliens already in the United States are required to present themselves for special registration, the Department expects to publicize such announcements in additional fora, beyond what is required by the Constitution and the laws of the United States. However, as a legal matter there is no question that one who is within the jurisdiction of the law of the United States, whether by statute or regulation, must comply with the terms of the law. It is the individual's responsibility to know the law.

## 2. Notice of Violative Conduct

One commenter argued that the proposed rule, in defining the special registration requirements and applying the Attorney General's interpretive authority to violations of the requirements as indicia of disregard for the laws of the United States and the potential for further violations, creates a new violation of the Immigration and Nationality Act ("INA" or "Act") that would be both obscure and *de minimis*, based only on publicity by **Federal Register** notices rather than actual notice. The commenter suggests that this rule would provide the most technical and non-substantive bases by which individuals could be detained and eventually removed.

The Department disagrees. As noted above, all who are subject to the jurisdiction of the laws of the United States are required to abide by those laws. Notice of the laws by publication is sufficient notice under the Constitution.

## 3. Discrimination

Several commenters argued that the rule targets specific minority ethnic groups and members of a specific religion, i.e., Arabs and Muslims. The commenters noted that several individuals currently being detained or prosecuted would not have been covered by the specific criteria set forth in the proposed rule. One commenter in particular argued that the proposal "will further stigmatize innocent Arab and Muslim visitors \* \* \* who have committed no crimes and pose no danger to us."

The Department disagrees with this analysis. There are several means by which an alien may become subject to special registration. First, as provided in the regulations being amended and in the final rule, the Attorney General may designate specific countries, the nationals and citizens of which are subject to special registration. Currently, nonimmigrant aliens from Iran, Iraq, Libya, and Sudan are subject to special registration requirements, including fingerprinting. 63 FR 39109 (July 21, 1998). Accordingly, contrary to what some commenters appear to believe, this method is not new.

Second, a specific alien may be subject to special registration if intelligence information indicates that the individual, while qualified for a visa, warrants closer attention. Pre-established criteria will be applied. These criteria will be based on intelligence regarding the activities and behavior patterns of terrorist organizations, not on racial, ethnic, or

religious stereotypes. The Department strongly disagrees with the implication that it would develop or apply such criteria in an invidious manner on the basis of race, religion, or membership in a social group.

The Department strongly disagrees with the premise of the comments that the rule is invidiously discriminatory. Congressional enactments and regulations concerning immigration have historically drawn distinctions on the basis of nationality and related criteria. The political branches of the government have plenary authority in the immigration area. See *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Matthews v. Diaz*, 476 U.S. 67, 80–82 (1976). In the context of immigration and nationality laws, the Supreme Court has particularly "underscore[d] the limited scope of judicial inquiry." *Fiallo*, 430 U.S. at 792. The Supreme Court has stated that

over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens \* \* \* [T]he power to expel or exclude aliens [is] a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.

*Id.* (internal quotations and citations omitted). Congress's "inevitable process of 'line drawing'" in the immigration context is therefore given great deference. *Id.* at 795 n.6. The substantive decision to relax requirements for only specified nationals, while excluding all others, is among those political decisions that are "wholly outside the concern and competence of the Judiciary," *Harisades v. Shaughnessy*, 342 U.S. 580, 596 (1952) (Frankfurter, J., concurring). When the Executive Branch exercises authority delegated by Congress in the immigration area, a court will not "look behind the exercise of that discretion." See *Fiallo*, 430 U.S. at 794–95 (citing *Kleindienst v. Mandel*, 408 U.S. 753 (1972)). As in *Fiallo*, the Attorney General must here make compromises involving "the inevitable process of 'line drawing,'" [whereby] Congress has determined that certain classes of aliens are more likely than others to satisfy national objectives without undue cost, and [it] granted preferential status only to those classes." *Fiallo*, 430 U.S. at 795 n.6. "Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews*, 426 U.S. at 80. The distinctions drawn by the rule are appropriate in the context of immigration law and national security.

The Department recognizes that a few individuals in the United States have questioned the loyalty of some Muslim

Americans to the United States. The Department also recognizes that some American Muslims have been targets of discrimination. Some mosques have been damaged and desecrated. A number of Muslim Americans—and others wrongly believed to be Muslims—have been threatened or attacked. These attacks against Muslim Americans and the Muslim communities are not only reprehensible; like terrorism, they are also attacks against the United States and humanity. The Federal Bureau of Investigation (FBI) has investigated such attacks and threats against Arab, Muslim, and Sikh Americans. The FBI has initiated more than 360 investigations in concert with state and local law enforcement authorities. More than 100 individuals have already been charged with federal, state, and local crimes relating to such attacks. The Department continues to treat such crimes as civil rights violations and will vigorously prosecute these violations.

The Department remains firmly committed to protecting the civil rights of all individuals in the United States while seeking to prevent acts of terrorism. The Department unequivocally rejects the notion that the requirements of the final rule, or the criteria for application of the final rule, to nonimmigrant aliens subject to special registration are, or are intended to be, invidiously discriminatory.

## 4. Applicability of the Act

One commenter argued that the reporting structure for nonimmigrant aliens subject to special registration once they have arrived in the United States does not fully comply with the reporting structure formulated in the Act. This commenter believed that section 265 of the Act (8 U.S.C. 1305) continues to require that aliens report to the Attorney General, in writing, their current address before January 31st of every year and that certain aliens update this address every three months for the duration of the time that they remain in the United States. These provisions of the Act were modified in 1981 to eliminate the "January registration" and 3-month provisions. The amendments continued a 10-day notification of change of address requirement. Public Law 97–116, section 11, 95 Stat. 1617 (1981).

As discussed in the proposed rule, section 262(a) of the Act (8 U.S.C. 1302(a)) provides that all aliens who have not previously been registered and fingerprinted pursuant to section 221(b) of the Act (8 U.S.C. 1201(b)), have a duty to apply for registration and to be fingerprinted if they remain in the

United States for 30 days or longer.<sup>1</sup> Under the existing regulations at 8 CFR 264.1(a), the Immigration and Naturalization Service ("Service" or "INS") registers nonimmigrants using Form I-94 (Arrival-Departure Record). As authorized by section 262(c) of the Act (8 U.S.C. 1302(c)), however, the Service's existing regulations at 8 CFR 264.1(e) contain general provisions waiving the fingerprinting requirement for many nonimmigrants. Accordingly, the vast majority of nonimmigrant aliens are admitted to the United States without being either fingerprinted or photographed.

Notwithstanding the general registration requirements, section 263(a) of the Act (8 U.S.C. 1303(a)) also authorizes the Attorney General to prescribe special regulations and forms for the registration, among other classes, of "aliens of any other class not lawfully admitted to the United States for permanent residence." Pursuant to this section, as well as the Attorney General's general registration authority under section 262 of the Act (8 U.S.C. 1302), the Attorney General promulgated 8 CFR 264.1(f), which authorizes the Attorney General, by notice published in the **Federal Register**, to direct that certain nonimmigrant aliens from designated foreign countries be registered, fingerprinted, and photographed by the Service at the port of entry at the time the nonimmigrant aliens apply for admission. See 58 FR 68024 (Dec. 23, 1993) (final rule); 63 FR 39109 (July 21, 1998) (notice). Moreover, the Attorney General is authorized to prescribe conditions for the admission of nonimmigrant aliens under section 214 of the Act (8 U.S.C. 1184). Section 265 of the Act (8 U.S.C. 1305) requires that all aliens who remain in the United States for 30 days or more (other than A or G nonimmigrants) must file a notice of change of address with the Attorney General within 10 days of any change of address.

This final rule provides for implementation of these requirements for nonimmigrant aliens subject to special registration. However, this Supplementary Information also serves as a reminder to all aliens (not just those nonimmigrant aliens subject to special registration) of their legal obligations under section 265 of the Act to notify the Attorney General, as delegated to the Service, within 10 days of any change

of address by filing the general change of address form, Form AR-11.

### *B. Efficacy of the Rule*

#### 1. Acquiring Information Prior to Travel

Several commenters suggested that data acquisition for any effective monitoring of aliens after admission could be better performed at the visa issuance stage. A commenter questioned whether "it would [be] more effective to have these biometrics collected at the U.S. Department of State Consular Offices that would be issuing the nonimmigrant visas." The commenter stated a belief that all ports of entry are, or soon will be, electronically connected to the United States Department of State consular database in order that, when an individual applies for admission to the United States, the inspector at the port of entry can call up the picture and other data about the individual.

The Department notes that the Department of State is acquiring a great deal of information through Form DS-156, the visa application, and related documents. These forms contain much, but not all, of the information that would be required through special registration. Accordingly, special registration is warranted to obtain the full array of information that is necessary to locate aliens who violate the terms of their visas or admission. However, even if all of the required information were acquired by the consular officers at the point at which they issue a visa, it would still be necessary to confirm the information—as a way of confirming identity—at the port of entry and subsequently during the alien's stay in the United States.

The INS has been working with the State Department to expand data sharing to ensure that Immigration Inspectors have access to the information gathered in the visa issuance process in the Consolidated Consular Database. As a result, this information is now available at all United States ports-of-entry (POEs), and INS has trained inspectors on how to use that data to detect and prevent fraud. Similarly, information is being provided to consular officers regarding the special registration process that can be provided to appropriate visa applicants.

#### 2. Intelligence and Visa Disapproval

A commenter argued that the rule will not change terrorist or criminal methods: they will either comply fully, and registration will not prevent them from committing terrorist or criminal acts at any time; comply upon entry, but "go underground"; enter without inspection; or use proxies. Several

commenters contended that this system would not have acquired the required information on several individuals currently involved in certain notorious cases. At the same time, the commenter claimed that the rule does not mitigate visa fraud or immigration document fraud. This commenter concluded that fingerprinting, photographing, and periodically interviewing a person, whether citizen or alien, cannot predict or deter future terrorist or criminal behavior. One commenter also suggested that it was more important to deny the visa in the first place than attempt to monitor the individual once in the United States.

Another commenter noted that the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. No. 107-173, 116 Stat. 543 (2002), provides for such things as the use of pre-arrival passenger manifests, enhanced database sharing, improved technology, and increased staffing of inspections, all with the hope of enhancing the government's ability to interdict, outside of the United States, those who would harm America. The commenter further noted that section 212(a)(3)(A) of the Act (8 U.S.C. 1182(a)(3)(A)) provides consular officers and immigration inspectors with broad authority to prevent the admission of persons whom they believe may engage in any unlawful activity from entering the United States. Given this authority, the commenter questioned why the government would admit such persons and subject them to special registration.

The Department agrees that, where an individual is inadmissible, the Department of State should deny an application for a visa. However, when an alien is admissible and is granted a visa (or enters the United States properly without a visa), but should nevertheless be more closely monitored in the national security interest of the United States, this rule will provide the basis for that monitoring. The rule is not a substitute for proper determination of visa and admission eligibility, it is only a supplemental monitoring process for those who are eligible for a visa and admissible, but who warrant closer monitoring based on the standards set out in the rule.

The rule must be understood as a third line of defense. First, the Department of State must be satisfied that the individual is eligible for a visa. Section 306 of the Enhanced Border Security and Visa Entry Reform Act of 2002 bars the issuance of visas from a country that is a state sponsor of international terrorism unless the Secretary of State, in consultation with the Attorney General and the heads of

<sup>1</sup> The only exception is for aliens admitted as A or G nonimmigrants, which pertain to diplomats, employees of certain international organizations, etc. INA section 263(b)(8 U.S.C. 1303(b)).

other appropriate agencies, makes a determination that an alien from such a country does not pose a threat to the safety or national security of the United States. 8 U.S.C. 1735(a).

Second, the inspecting officer must determine that the alien is admissible. In this context, it is the alien's responsibility to prove admissibility. INA section 212 (8 U.S.C. 1182). If the nonimmigrant alien can satisfy these requirements, then the alien may be admitted.

However, there are national security and law enforcement reasons why some aliens who are admissible and have visas (or enter properly without a visa) require further monitoring. The final rule, like the proposed rule, provides a process under which such aliens will provide additional, confirmable information that will enable the INS to contact them quickly if necessary and will ensure that such aliens comply with the terms of their visas and the conditions of their admission. As for the terrorist who complies upon entry, but seeks to go underground immediately thereafter, this rule will provide a basis for alerting law enforcement organizations to that fact when the would-be terrorist fails to register at the 30-day point.

### 3. Change of Address and Form AR-11

One commenter acknowledged that the provision requiring filing of a change of address has long been in the statute and regulations, but argued that its "notorious ineffectuality has long since rendered the provision irrelevant." A number of commenters noted that the Service does not maintain a central address file and that the most effective way to file a change of address is to file it with the office holding an application for benefits. Several commenters raised issues concerning whether there would be any electronic retrieval system to support the information provided; whether aliens know that the form is required; whether any means exist to confirm receipt of a change of address; and whether "widespread ignorance" of the provision renders "virtually all "violations" of this provision" not willful.

The Department has recognized the historical shortcomings of the address notification system and has taken steps to develop the necessary infrastructure to provide a complete address record system. For example, the Department's Inspector General recently reported on the historical process for recording student visas, and the failures of that system, and made recommendations for improvement. See Office of the

Inspector General, *The Immigration and Naturalization Service's Contacts with Two September 11, Terrorists: A Review of the INS's Admissions of Mohamed Atta and Marwan Alshehhi, its Processing of their Change of Status Applications, and its Efforts to Track Foreign Students in the United States* 187 (May 20, 2002). The existing student visa process is being replaced by the Student and Exchange Visitor Information System (SEVIS). 67 FR 34862 (May 16, 2002); (Proposed Rule: Retention and Reporting of Information for F, J and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS)); 67 FR 44344 (July 1, 2002) (Interim Rule with Request for Comments: Allowing Eligible Schools To Apply for Preliminary Enrollment in the Student and Exchange Visitor Information System). Moreover, the Department has proposed changes in the forms that aliens use to ensure that they are aware of the requirements of the Act. 67 FR 48818 (July 26, 2002) (Proposed Rule: Address Notification to be Filed with Designated Applications). As a part of these processes, the INS is reconfiguring its computer systems to enhance the utilization of address and other information. Accordingly, the Department believes that the address notification system supporting this final rule is already sufficiently effective and will be improved in the future.

One commenter supported overall enforcement of address change requirements, but recommended leeway for previously unreported changes in address and electronic filing of the form. This commenter suggested that electronic filing would ease compliance while benefitting the INS in its efforts to provide electronic filing of various petition types. The commenter suggests that the vast majority of previous unreported changes of address were not willful violations of the Act, but an oversight in light of different INS priorities and confusion. Thus, the commenter suggests, employers and foreign nationals often file a change of address with an INS Service Center or District Office where a filing or petition is pending, believing this will provide INS with the proper notification of a change of address.

The Department does not disagree with the notion that electronic filing may be beneficial, provided that biometric and other identity confirmations can be included in such a system. However, until such a system is fully implemented, the Department will continue to require nonimmigrant aliens subject to special registration to make their special registrations in

person to ensure the accuracy and integrity of the special registrations.

The Department notes that the process of registration will be essentially "paperless" in that information will generally be entered directly into an electronic format. While the proposed rule refers to the information being provided in the "form" required by the Service, the Department has found that a paper form will not be necessary. To ensure clarity, the Department has made minor revisions to the final rule to eliminate the suggestion that a paper form is being developed and will be used in special registration. The only paper process that is continued will be that of the change of address form (AR-11) and nonimmigrant aliens subject to special registration will be instructed at the time of their initial registration on the proper filing of this form. The limited number of individuals who are also within the SEVIS system will be required to notify their schools and the Service of changes of address.

One commenter suggested that there must be assurances that those who have previously moved without reporting a change of address will be able to rectify this oversight without subjecting themselves to fines, imprisonment, and possible removal. The commenter recommended that the rule include a provision recognizing the shift in enforcement priorities, and allow for electronically filed address corrections, while clarifying the process to effectuate a change of address throughout the Service. The Department has considered this idea carefully but declines to adopt it. The concept is technically outside the scope of this rule in that it applies to all address changes, not merely the prospective special registration system embodied in this final rule. This rule is designed to deal with nonimmigrant aliens subject to special registration, not the broader class of aliens.

The Department disagrees with the necessity of providing a specific mechanism to rectify past failures to provide a change of address, or a recognition of a "shift" in enforcement priorities. The requirements of the Act have been in effect for many years and a lack of publicity about specific enforcement of the provision does not change the legal effect of the requirements. The commenter's suggestion that electronic filing of changes of address should be provided does merit consideration and the Department is considering how best to implement such an electronic filing system.

The Department recognizes that the development and implementation of the information technology necessary to

support the special registration system requires time. In particular, the installation of data entry systems requires the acquisition of hardware in some ports-of-entry. Accordingly, while the registration system is expected to be brought on line in a timely fashion, it is also expected that 100 percent coverage will not be immediately available. The Department will exercise prosecutorial discretion, as is deemed appropriate based on the particular circumstances, with regard to the enforcement of the system at those ports-of-entry where the electronic system, or a manual system, is not immediately available. This exercise of discretion not to pursue the individual alien beyond requiring delayed compliance does not, however, absolve any alien from the requirements of the rule.

#### 4. Airport Inspection Facilities

Several commenters stated concern that efficient passenger processing through POEs, airport facilities and airport operations may be negatively impacted by the special registration entry and exit processes. Commenters offered different solutions to perceived problems in the actual flow of arrivals.

One commenter recommended fingerprinting and photographing in secondary inspection areas of airports. The commenter suggested that this would allow the majority of international passengers to be processed efficiently through the primary inspection area, which would allow the Service to continue to strive to meet the 45-minute passenger-processing goal. The Department intends to conduct fingerprinting and photographing in secondary inspection areas in airports precisely because of this reasoning, even though there are no longer any statutorily mandated time limits for inspection.

One commenter suggested that facilities at ports-of-entry do not have the capacity to take fingerprints and photographs. The commenter's assertion is incorrect. The Department has been utilizing both two- and ten-fingerprint systems for the purpose of identifying aliens and rapidly comparing a specific set of fingerprints with existing fingerprint files, including the Federal Bureau of Investigation's Integrated Automated Fingerprint Identification System (IAFIS). Photographing capabilities also exist at all ports-of-entry.

Another commenter recommended that the Service work with international air carriers servicing United States international airports so that registration information can be electronically transmitted via the advanced passenger

information system (APIS) to the Service and queried through the interagency border identification system (IBIS) prior to the non-immigrant alien's entry into the United States. This commenter noted that INS, Customs, and international air carriers have agreed to adopt the U.N. Edifact format for transmitting electronic information. Additionally, the commenter suggested that INS establish a consortium with each of the airport operators and international carriers servicing that federal inspection service area. The commenter noted that without federal funding possible modifications or expansion of a federal inspection service area is limited and costly to the airport.

The Department notes that many of these suggestions are already being implemented as part of the INS's continuing improvement of the inspection service. These issues do not address the provisions of the rule, but the manner in which the INS relates to the air carriers and airport administrations.

#### 5. Economic Impact of the Rule

Several commenters suggested that the proposed rule on registration and monitoring of certain nonimmigrants could have the potential significantly to deter legitimate international travel to the United States. Accordingly, they suggested that registration of nonimmigrants must be targeted in a manner that enhances United States national security while not eroding economic security. The Department has attempted to balance these interests in adopting the proposed and final rules. The national security benefits from this rule outweigh the economic costs.

#### C. Specific Issues

##### 1. Condition of Admission

One commenter argued that the proposal to amend 8 CFR 214.1(f) to make compliance with the special registration requirements a condition of maintenance of status is flawed because it is a ministerial requirement, not intrinsic to a nonimmigrant's maintenance of status. The commenter suggests that *Mashi v. INS*, 585 F.2d 1309 (5th Cir. 1978), limits the use of conditions of admission. However, *Mashi v. INS* holds no more than that the immigration judge and the Board of Immigration Appeals used the wrong regulatory provision in resolving that alien's case. The remainder of the opinion does not discuss the proposition cited by the commenter.

This commenter also argued that 8 CFR part 214 could not be used to

establish conditions because, the commenter argued, one court had found that the Attorney General exceeded his authority when he promulgated 8 CFR 214.1(f), which imposes as a condition of a nonimmigrant's admission and continued stay in the United States the full and truthful disclosure of all information requested by the INS, regardless of whether the information is material, *Romero v. INS*, 39 F.3d 977, 979 (9th Cir. 1994). However, that case related to whether the Service could properly impose a condition to provide full and truthful disclosure of information that was *not material* to the respondent's immigration status. *Id.* at 980. Here the information that aliens are required to provide *is* material to their immigration status. Moreover, this rule is promulgated under the Attorney General's authority not only to establish conditions of admission under section 214 of the Act (8 U.S.C. 1184), but also to promulgate regulations for the registration, reporting of changes of address, and special registration of non-immigrants under sections 263 and 265 of the Act (8 U.S.C. 1303, 1305). This confluence of authority is much broader than the authority interpreted in *Romero* and depends not merely upon an interpretation of the Act, but the specific delegations of authority in the cited provisions of the Act.

##### 2. Identification of Aliens

One commenter argued that it is impossible for many nonimmigrant aliens subject to special registration to acquire a second form of identification from their country of origin. The commenter suggests that some countries do not have second forms of identification. The Department disagrees. Many countries issue more than one form of identification, such as a national identification card and a driver's license. A second form of photographic identification is not specifically required by the regulation, but the Service is authorized to request confirmatory information.

##### 3. Pre-existing Criteria

One commenter argued that, while the proposed 8 CFR 264.1(f)(2)(iii) states that nonimmigrant aliens subject to special registration will be subject to special registration if they meet "pre-existing criteria," no criteria are provided. The commenter questions what these criteria would be, and how specific they would be.

The criteria by which an alien may be required to make a special registration cannot be made public without defeating the national security and law enforcement effectiveness of the criteria.

As with the criteria the United States Customs Service and the Drug Enforcement Administration use in determining which individuals entering the United States will be subject to greater scrutiny for trafficking in controlled substances, publicly announced criteria for requiring special registration could be evaded by those who are subject to the requirements. Even if some details of a specific profile were to become publicly available, it is worth noting that the constantly changing patterns of criminal activity require constant adjustment of the criteria through improved intelligence and more refined analysis, *cf. United States v. Berry*, 670 F.2d 583, 598–599 & n.17 (5th Cir. 1982), and cases cited therein, and any public profile is, at best, of evanescent value.

The international response to the September 11th attacks has been defined by multilateral cooperation. The success of this response has depended in large part on improved sharing among governments of information relating to terrorists, their associates, and their activities. Continued vigilance requires procedures to institutionalize such coordination of information. Accordingly, the Attorney General has directed the FBI to establish procedures to obtain, on a regular basis, the fingerprints, other identifying information, and available biographical data of all known or suspected foreign terrorists who have been identified and processed by foreign law enforcement agencies. The FBI also coordinates with the Department of Defense to obtain, to the extent permitted by law, the fingerprints, other identifying information, and available biographical data of known or suspected foreign terrorists who have been processed by the United States armed forces. Such information is, and will continue to be, regularly evaluated in order to update the criteria that are used in identifying nonimmigrant aliens who are appropriately subject to special registration.

In the same vein, sections 203 and 905 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Public Law 107–56, 115 Stat. 272, 278, 388 (2001), authorized and required sharing of foreign intelligence and counterintelligence information in new ways, subject to limitations otherwise provided by law and exceptions delineated in regulations to be issued by the Department.

#### 4. Reason to Believe

A commenter noted that proposed 8 CFR 264.1(f)(2) also states that a nonimmigrant will be subject to the special registration requirements if there is “reason to believe” that the nonimmigrant is a national or citizen of a specific country or meets the pre-existing criteria, and questioned what criteria would be used. In this context, the commenter questioned whether language or dress would be considered appropriate indicia. Another commenter argued that the proposed rule was a delegation of the Attorney General’s discretion to the inspecting officer at the ports-of-entry, allowing discretion for the inspecting officers to choose aliens who they believe to be a risk. Although the commenter noted that the Act authorizes any employee of the Department to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter, the commenter was concerned over the possibility of abuse.

Under 8 CFR 264.1(f)(2)(i), (ii), as added by this final rule, the authority to designate the classes of nonimmigrant aliens who will be subject to special registration requirements is retained by the Attorney General, in consultation with the Secretary of State. The final rule notes that such designation will apply to “nationals” or “citizens” of a specified country. The Act, moreover, permits the Attorney General to designate “class[es]” of aliens for special registration, not merely countries. INA section 263(a)(6) (8 U.S.C. 1303(a)(6)). In light of the fact that individual aliens involved in terrorist activity or other activity inimical to the interests of the United States may commit document fraud to gain admission to the United States for nefarious purposes, the rule allows immigration inspectors to conclude that an alien will be subject to special registration requirements if they have “reason to believe” that the individual alien actually does fall within the classes of nonimmigrant aliens subject to special registration.

This “reason to believe” phrase is used throughout the Act to refer to situations where there is a basis for believing in fact that a provision of the Act applies. *See, e.g.*, INA section 204(f)(2)(A) (8 U.S.C. 1154(f)(2)(A)) (procedure for granting immigrant status; certain aliens whom the Attorney General has reason to believe were born in certain countries and were fathered by a United States citizen); INA section 212(a)(2)(C) (8 U.S.C. 1182(a)(2)(C)) (alien inadmissible if consular or immigration officer has reason to

believe alien is a controlled substance trafficker); INA section 214(n)(1) (8 U.S.C. 1184(n)(1)) (alien inadmissible if substantial reason to believe alien committed act of severe form of human trafficking); INA section 221(g)(3) (8 U.S.C. 1201(g)(3)) (non-issuance of visa if consular officer has reason to believe alien not eligible) of the Act. In the final rule, the “reason to believe” standard will not have such drastic consequences, but instead will merely require certain nonimmigrant aliens to provide more detailed information at regular intervals. Where information indicates that an alien is, in fact, a national or citizen of a designated country, or that other provisions of the rule apply, the inspecting officer must be authorized to make the special registration requirements applicable to that alien.

#### 5. Notice of New Country Listings

One commenter was concerned that a specific country that is not currently listed might be listed in the future. The commenter believed that this would be antithetical to the relationship between the United States and that country and its citizens.

The listing of countries from which nonimmigrant aliens will be subject to special registration is determined by the Attorney General in consultation with the Secretary of State, thereby ensuring that foreign policy implications will be considered when evaluating the possible designation of any specific country. However, because the final rule only provides the framework for the special registration process, and does not make any specific designations, this comment is outside the scope of this final rule.

#### 6. Reporting at 30-day and Annual Intervals

One commenter suggested that interval reporting is problematic. As the States are making it increasingly difficult, if not impossible, for some nonimmigrants to obtain driver’s licenses or identification cards, some aliens may find that an alternative form of identification is not available. The commenter suggested proof of tenancy is often impossible because “short-term visitors (such as students touring for the summer) often travel around the United States, with no set address as they stay in hostels or camp”; in other cases aliens may not have established proof of tenancy in their names if they are staying with relatives or friends. Another commenter suggested that nonimmigrants sponsored by a charity, such as for a speaking tour, be permitted to use the charity’s address.

A commenter also argued that interval reregistration will be burdensome, both in traveling to a specified office and in the process of scheduling and appearing at an overburdened office. This commenter also discussed, and discounted, the notion that nonimmigrants might be required to report to state or local police offices.

The rule continues to provide that an individual must reregister at a 30-day interval and annually. Neither of these requirements appears to the Department to be burdensome. However, if an individual nonimmigrant alien subject to special registration can show a specific burden, that nonimmigrant alien subject to special registration may seek relief from the appropriate district director.

#### 7. Relief

Several commenters stated that the provision allowing a district director to grant relief from the provisions of the rule was insufficient. They were concerned that travel to a distant office was still required, that some offices would not grant dispensation, and that officials would not be available by telephone. One commenter specifically noted that the provision does not include any provision regarding failure to register due to a serious illness or other emergency circumstance that would prevent the nonimmigrant from complying.

The Department does not believe that these situations require any amendment to the rule. The rule is specific that reregistration must be in person and, therefore, telephone communication is irrelevant. Moreover, the reregistration dates are intentionally established as windows before and after a specific date to accommodate such intervening events as illness. The second registration is required to be made between 30 and 40 days after admission, while annual reregistration may be made within 10 days—before or after—the anniversary of admission. The totality of this inconvenience must be kept in perspective with the scope of this rule: the rule applies only to the small number of nonimmigrant aliens subject to special registration, and the registrations are not so frequent or so rigid as to be burdensome in comparison with the national security or law enforcement interests of the United States.

#### 8. Final Registration

The proposed rule provided that a nonimmigrant subject to special registration also report when leaving the United States. This final registration would occur through inspection at a

port of entry. One commenter suggested that this final registration, like the entry process, would take substantial time to develop and implement with airports, even for the small number of aliens covered by this rule. The commenter noted that, for some period of time, nonimmigrant aliens subject to special registration would be permitted to depart the United States only through the limited number of ports with sufficient facilities. The commenter argued against such a provision because it would create a substantial inconvenience and expense to the alien, and, in some instances, a bar to departure.

The Department recognizes that a small number of persons presently in the United States who will become subject to the rule possess a return ticket, and some of these tickets are non-refundable and non-changeable without penalty. However, the Department is making every effort to ensure that there will be sufficient facilities to accommodate final registration at all ports at the time the rule becomes effective. Because special registration will be a paperless system, the Department will be establishing additional computer links to ensure that the system is available nationwide. Nevertheless, for a short period of time, because aliens will be permitted to depart from any port when the rule becomes effective, the Department expects that initially some inspectors will need to record information provided by nonimmigrant aliens subject to special registration on paper records that will not be entered into the system until shortly thereafter. If the Service determines that a port is inappropriate for the departure of nonimmigrant aliens subject to special registration, the Service will give appropriate notice by publication in the **Federal Register**. The Department agrees that individual aliens should not be inconvenienced during the ongoing development of the system. To provide sufficient time to procure equipment and provide training to all inspection personnel, paragraph (f)(8) of the final rule will not become applicable until October 1, 2002. Moreover, the final registration requirement of 8 CFR 264.1(f)(8) will apply only to those nonimmigrant aliens who have been registered under paragraph (f)(3), or who are or have been required to register pursuant to paragraph (f)(4).

Another commenter conceded that subjecting departing aliens to special registration requirements is not new, but is not often done. The commenter noted that departure will now be confirmed by actual presentation by the

nonimmigrant alien subject to special registration, and that the alien's departure can then be confirmed by reference to other records, such as the electronic manifests provided by air carriers. The commenter suggested that INS and the air carriers use APIS to collect an alien's departure information. The commenter suggested a system by which an alien would proceed to the flight gate and the air carrier would electronically collect his departure information and then transmit it to the INS. The commenter suggested that, if prior to an alien's scheduled departure, the INS determined it must conduct a face-to-face interview, INS could arrange for the alien to meet a departure control officer in the federal inspection service (FIS) area before flight time. In all other cases, the air carrier's electronic transmission of the alien's departure would serve as confirmation to the INS.

The Department appreciates the thought given to this approach, but must decline to adopt it. Final registration, like inspection, requires a face-to-face confirmation of identity until such time as electronic verification of biometrics can ensure that the nonimmigrant alien subject to special registration actually is the individual departing the United States.

#### 9. Future Inadmissibility

Another commenter stated that the proposed rule would effectively create a new ground of inadmissibility by characterizing failure to comply with the final registration provisions as "unlawful activity." The commenter noted that the individual would thereafter be presumed to be inadmissible to the United States under section 212(a)(3)(A)(ii) of the Act as an alien "who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in \* \* \* any other unlawful activity." 8 U.S.C. 1182(a)(3)(A)(ii).

The commenter's analysis is faulty in that only Congress can establish grounds for removal and inadmissibility to the United States. Congress has made clear, however, that the Attorney General may find an alien inadmissible if he has "a reasonable ground to believe [the alien] seeks to enter the United States to engage solely, principally, or incidentally in \* \* \* any other unlawful activity \* \* \*." INA section 212(a)(3)(A)(ii) (8 U.S.C. 1182(a)(3)(A)(ii)) (emphasis added). An alien is subject to special registration requirements because that alien meets pre-established criteria that the

Department found to be associated with national security risks. When such an alien violates the terms of his or her special registration by failing to register upon leaving the United States and then seeks to reenter the United States, the alien can reasonably be seen as attempting to reenter for the purpose of engaging in "unlawful activity" under section 212(a)(3)(A)(ii) of the Act. If an alien complies with the regulations, he or she will not, in the future, be presumed inadmissible under this provision.

The Department recognizes that there may be reasons why a departing alien may not be able personally to report for final registration when leaving the United States. The Department acknowledges that some failures to register upon leaving are not likely to be the result of a preconceived intent to engage in unlawful activity at the time of an alien's future entry into the United States. However, if the nonimmigrant alien subject to special registration violates the specific regulations relating to final registration at the time of exiting the United States, that nonimmigrant alien subject to special registration will be presumed to be inadmissible. The presumption may be overcome, but, despite the concerns of at least one commenter, it is not necessary for the Attorney General to provide a complete and exhaustive catalogue of the manner in which he will exercise his discretion.

#### *D. Issues Not Raised in the Rule*

Several commenters opposed the entry of violation information into the National Crime Information Center. The Attorney General's announcement of his direction to the Federal Bureau of Investigation and the INS to include this information is not covered by, and need not be covered by, this rule. Accordingly, these comments are not considered in developing the final rule.

### **Regulatory Procedures**

#### *Regulatory Flexibility Act*

The Department of Justice, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This rule will affect individual nonimmigrant aliens who are not considered small entities as that term is defined in 5 U.S.C. 601(6).

#### *Executive Order 12866*

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and

Review, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

#### *Executive Order 13132*

This regulation 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. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

#### *Executive Order 12988*

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

#### *Unfunded Mandates Reform Act of 1995*

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

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### *Paperwork Reduction Act*

Information collection associated with this regulation has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The OMB control number for this collection is 1115-0254.

### **List of Subjects**

#### *8 CFR Part 214*

Aliens, Immigration, Registration, Reporting and recordkeeping requirements.

#### *8 CFR Part 264*

Aliens, Immigration, Registration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

### **PART 214—NONIMMIGRANT CLASSES**

1. The authority citation for part 214 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

2. Amend § 214.1 by revising paragraph (f) to read as follows:

#### **§ 214.1 Requirements for admission, extension, and maintenance of status.**

\* \* \* \* \*

(f) *Registration and false information.* A nonimmigrant's admission and continued stay in the United States is conditioned on compliance with any registration, photographing, and fingerprinting requirements under § 264.1(f) of this chapter that relate to the maintenance of nonimmigrant status and also on the full and truthful disclosure of all information requested by the Service. Willful failure by a nonimmigrant to register or to provide full and truthful information requested by the Service (regardless of whether or not the information requested was material) constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act (8 U.S.C. 1227(a)(1)(C)(i)).

\* \* \* \* \*

### **PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES**

3. The authority citation for part 264 is revised to read as follows:

**Authority:** 8 U.S.C. 1103, 1182, 1184, 1201, 1301–1305.

4. Amend § 264.1 by revising paragraph (f) to read as follows:

#### **§ 264.1 Registration and fingerprinting.**

\* \* \* \* \*

(f) *Registration, fingerprinting, and photographing of certain nonimmigrants.* (1) Notwithstanding the provisions in paragraph (e) of this section, nonimmigrant aliens identified in paragraph (f)(2) of this section are subject to special registration, fingerprinting, and photographing requirements upon arrival in the United States. This requirement shall not apply to those nonimmigrant aliens applying for admission to the United States under sections 101(a)(15)(A) (8 U.S.C. 1101(a)(15)(A)) or 101(a)(15)(G) (8 U.S.C. 1101(a)(15)(G)) of the Act. In addition, this requirement shall not apply to those classes of nonimmigrant aliens to whom the Attorney General and the Secretary of State jointly determine it shall not apply, or to any individual nonimmigrant alien to whom the Attorney General or the Secretary of State determines it shall not apply. Completion of special registration pursuant to this paragraph (f) is a condition of admission under section 214 of the Act (8 U.S.C. 1184) if the inspecting officer determines that the alien is subject to registration under this paragraph (f) (hereinafter "nonimmigrant alien subject to special registration").

(2) Nonimmigrant aliens in the following categories are subject to the requirements of paragraph (f)(3) of this section:

(i) Nonimmigrant aliens who are nationals or citizens of a country designated by the Attorney General, in consultation with the Secretary of State, by a notice in the **Federal Register**;

(ii) Nonimmigrant aliens who is a consular officer or an inspecting officer has reason to believe are nationals or citizens of a country designated by the Attorney General, in consultation with the Secretary of State, by a notice in the **Federal Register**; or

(iii) Nonimmigrant aliens who meet pre-existing criteria, or who is a consular officer or the inspecting officer has reason to believe meet pre-existing criteria, determined by the Attorney General or the Secretary of State to indicate that such aliens' presence in the United States warrants monitoring in the national security interests, as defined in section 219 of the Act (8 U.S.C. 1189), or law enforcement interests of the United States.

(3)(i) Any nonimmigrant alien who is included in paragraph (f)(2) of this section, and who applies for admission to the United States, shall be specially registered by providing information required by the Service, shall be fingerprinted, and shall be photographed, by the Service, at the port-of-entry at such time the

nonimmigrant alien applies for admission to the United States. The Service shall advise the nonimmigrant alien subject to special registration that, if the alien remains in the United States for 30 days or more, the nonimmigrant alien subject to special registration must appear at a Service office in person to complete registration by providing additional documentation confirming compliance with the requirements of his or her visa. The nonimmigrant alien subject to special registration must appear at such office between 30 and 40 days after the date on which the nonimmigrant alien subject to special registration was admitted into the United States.

(ii) At the time of verification of information for registration pursuant to paragraph (f)(3)(i) of this section, the nonimmigrant alien subject to special registration shall provide the Service with proof of compliance with the conditions of his or her nonimmigrant visa status and admission, including, but not limited to, proof of residence, employment, or registration and matriculation at an approved school or educational institution. The nonimmigrant alien subject to special registration shall provide any additional information required by the Service.

(4) The Attorney General, by publication of a notice in the **Federal Register**, also may impose such special registration, fingerprinting, and photographing requirements upon nonimmigrant aliens who are nationals, citizens, or residents of specified countries or territories (or a designated subset of such nationals, citizens, or residents) who have already been admitted to the United States or who are otherwise in the United States. A notice under this paragraph (f)(4) shall explain the procedures for appearing in person and providing the information required by the Service, providing fingerprints, photographs, or submitting supplemental information or documentation.

(5) A nonimmigrant alien subject to special registration shall annually reregister in person with the Service at the district office for the district in which the nonimmigrant alien subject to special registration's residence is located. Annual reregistration shall be in the same manner as provided in paragraph (f)(3) of this section, and shall occur within 10 days of the month and day of the anniversary of his or her original admission to the United States. Annual reregistration of a nonimmigrant alien subject to special registration under paragraph (f)(4) of this section shall be in the manner prescribed in the applicable notice, subject to any

modifications or changes included in any applicable intervening notice.

(6) In addition to the 30-day and annual reregistrations pursuant to paragraphs (f)(3) and (f)(5) of this section, any nonimmigrant alien subject to special registration who remains in the United States for 30 days or more shall notify the Service by mail or other such means as determined by the Attorney General, using a notification form designated by the Service, of any change of address of residence, change of employment, or change of educational institution, within 10 days of such change.

(7) A nonimmigrant alien subject to special registration may apply to the district director, or such other official as the Attorney General may designate, at the Service's district office in which the nonimmigrant alien subject to special registration's residence address is located and registered, for relief from the requirements of this paragraph (f). The decision of the district director or such other official is final and not appealable.

(8) When a nonimmigrant alien subject to special registration departs from the United States, he or she shall report to an inspecting officer of the Service at any port of entry, unless the Service has, by publication in the **Federal Register**, specified that nonimmigrant aliens subject to special registration may not depart from specific ports. Any nonimmigrant alien subject to special registration who fails, without good cause, to be examined by an inspecting officer at the time of his or her departure, and to have his or her departure confirmed and recorded by the inspecting officer, shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act (8 U.S.C. 1182(a)(3)(A)(ii)), as an alien whom the Attorney General has reasonable grounds to believe, based on the alien's past failure to conform with the requirements for special registration, seeks to enter the United States to engage in unlawful activity. An alien may overcome this presumption by making a showing that he or she satisfies conditions set by the Attorney General and the Secretary of State. This paragraph (f)(8) applies only to those nonimmigrant aliens who have been registered under paragraph (f)(3) of this section, or who are or have been required to register pursuant to paragraph (f)(4) of this section. This paragraph (f)(8) will become applicable on October 1, 2002.

(9) Registration under this paragraph (f) is not deemed to be complete unless all of the information required by the Service, and all requested documents,

are provided in a timely manner. Each annual reregistration and each change of material fact is a registration that is required under sections 262 and 263 of the Act (8 U.S.C. 1302, 1303). Each

change of address required under this paragraph (f) is a change of address required under section 265 of the Act (8 U.S.C. 1305).

\* \* \* \* \*

Dated: August 9, 2002.

**John Ashcroft,**

*Attorney General.*

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**POSTAL SERVICE**

Domestic Mail Manual: Metal strapping materials on pallets; comments due by 8-23-02; published 7-24-02 [FR 02-18732]

**SECURITIES AND  
EXCHANGE COMMISSION**

Securities: Quarterly and annual reports; certification of disclosure; comments due by 8-19-02; published 6-20-02 [FR 02-15571]

Supplemental information; comment request; comments due by 8-19-02; published 8-8-02 [FR 02-20029]

#### **SMALL BUSINESS ADMINISTRATION**

Small business size standards:

Forest fire suppression and fuels management services; comments due by 8-19-02; published 7-19-02 [FR 02-18112]

Information technology value added resellers; comments due by 8-23-02; published 7-24-02 [FR 02-18766]

#### **TRANSPORTATION DEPARTMENT**

##### **Coast Guard**

Boating safety:

Personal flotation devices for children; Federal requirements for wearing aboard recreational vessels; comments due by 8-23-02; published 8-24-02 [FR 02-15793]

#### **TRANSPORTATION DEPARTMENT**

##### **Coast Guard**

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Alternatives to incandescent lights and standards for new lights in private aids; comments due by 8-23-02; published 6-24-02 [FR 02-15794]

Ports and waterways safety:

Commercial vessels greater than 300 tons; arrival and departure requirements; comments due by 8-19-02; published 6-19-02 [FR 02-15432]

Vessels arriving in or departing from U.S. ports; notification requirements; comments due by 8-22-02; published 7-23-02 [FR 02-18596]

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

Air carrier certification and operations:

Foreign operated transport category airplanes; flightdeck security concerns; comments due by 8-20-02; published 6-21-02 [FR 02-15524]

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

Airworthiness directives:

Boeing; comments due by 8-23-02; published 7-9-02 [FR 02-17081]

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

Airworthiness directives:

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 8-19-02; published 7-18-02 [FR 02-18026]

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

Airworthiness directives:

Eurocopter France; comments due by 8-20-02; published 6-21-02 [FR 02-15550]

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

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General Electric Co.; comments due by 8-20-02; published 6-21-02 [FR 02-15642]

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

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Honeywell; comments due by 8-19-02; published 6-18-02 [FR 02-14855]

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

Airworthiness directives:

Pratt & Whitney; comments due by 8-22-02; published 7-23-02 [FR 02-18332]

Saab; comments due by 8-19-02; published 7-19-02 [FR 02-18213]

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#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

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Textron Lycoming; comments due by 8-19-02; published 6-18-02 [FR 02-14696]

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

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Class E airspace; comments due by 8-22-02; published 7-23-02 [FR 02-18472]

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Highway Administration**

Engineering and traffic operations:

Uniform Traffic Control Devices Manual for streets and highways; revision; comments due by 8-19-02; published 5-21-02 [FR 02-12269]

Statewide transportation planning; metropolitan transportation planning; comments due by 8-19-02; published 6-19-02 [FR 02-15280]

#### **TRANSPORTATION DEPARTMENT**

##### **National Highway Traffic Safety Administration**

Motor vehicle safety standards:

Occupant crash protection—  
Head impact protection; comments due by 8-19-02; published 6-18-02 [FR 02-15334]

#### **TREASURY DEPARTMENT**

##### **Internal Revenue Service**

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Foreign personal holding company income; definition; public hearing; comments due by 8-21-02; published 5-13-02 [FR 02-11891]

#### **TREASURY DEPARTMENT**

Currency and foreign transactions; financial reporting and recordkeeping requirements:

USA PATRIOT Act; implementation—

Anti-money laundering programs for certain foreign accounts; due diligence policies, procedures, and controls; comments due by 8-22-02; published 7-23-02 [FR 02-18743]

#### **VETERANS AFFAIRS DEPARTMENT**

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Hospital and outpatient care provision to veterans;

national enrollment system; comments due by 8-22-02; published 7-23-02 [FR 02-18573]

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### **LIST OF PUBLIC LAWS**

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg/plawcurr.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/nara005.html>. Some laws may not yet be available.

#### **H.R. 3009/P.L. 107-210**

Trade Act of 2002 (Aug. 6, 2002; 116 Stat. 933)

Last List August 9, 2002

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Title	Stock Number	Price	Revision Date
<b>1, 2 (2 Reserved)</b>	(869-048-00001-1)	9.00	Jan. 1, 2002
<b>3 (1997 Compilation and Parts 100 and 101)</b>	(869-048-00002-0)	59.00	1 Jan. 1, 2002
<b>4</b>	(869-048-00003-8)	9.00	4 Jan. 1, 2002
<b>5 Parts:</b>			
1-699	(869-048-00004-6)	57.00	Jan. 1, 2002
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1200-End, 6 (6 Reserved)	(869-048-00006-2)	58.00	Jan. 1, 2002
<b>7 Parts:</b>			
1-26	(869-048-00001-1)	41.00	Jan. 1, 2002
27-52	(869-048-00008-9)	47.00	Jan. 1, 2002
53-209	(869-048-00009-7)	36.00	Jan. 1, 2002
210-299	(869-048-00010-1)	59.00	Jan. 1, 2002
300-399	(869-048-00011-9)	42.00	Jan. 1, 2002
400-699	(869-048-00012-7)	57.00	Jan. 1, 2002
700-899	(869-048-00013-5)	54.00	Jan. 1, 2002
900-999	(869-048-00014-3)	58.00	Jan. 1, 2002
1000-1199	(869-048-00015-1)	25.00	Jan. 1, 2002
1200-1599	(869-048-00016-0)	58.00	Jan. 1, 2002
1600-1899	(869-048-00017-8)	61.00	Jan. 1, 2002
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<b>8</b>	(869-048-00022-4)	58.00	Jan. 1, 2002
<b>9 Parts:</b>			
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200-End	(869-048-00024-1)	56.00	Jan. 1, 2002
<b>10 Parts:</b>			
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<b>11</b>	(869-048-00029-1)	34.00	Jan. 1, 2002
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200-1199	(869-048-00040-2)	47.00	Jan. 1, 2002
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<b>15 Parts:</b>			
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300-799	(869-048-00043-7)	58.00	Jan. 1, 2002
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<b>16 Parts:</b>			
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<b>17 Parts:</b>			
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200-239	(869-048-00049-6)	55.00	Apr. 1, 2002
*240-End	(869-048-00050-0)	59.00	Apr. 1, 2002
<b>18 Parts:</b>			
1-399	(869-048-00051-8)	59.00	Apr. 1, 2002
400-End	(869-048-00052-6)	24.00	Apr. 1, 2002
<b>19 Parts:</b>			
1-140	(869-048-00053-4)	57.00	Apr. 1, 2002
141-199	(869-048-00054-2)	56.00	Apr. 1, 2002
200-End	(869-048-00055-1)	29.00	Apr. 1, 2002
<b>20 Parts:</b>			
1-399	(869-048-00056-9)	47.00	Apr. 1, 2002
400-499	(869-048-00057-7)	60.00	Apr. 1, 2002
500-End	(869-048-00058-5)	60.00	Apr. 1, 2002
<b>21 Parts:</b>			
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100-169	(869-048-00060-7)	46.00	Apr. 1, 2002
170-199	(869-048-00061-5)	47.00	Apr. 1, 2002
200-299	(869-048-00062-3)	16.00	Apr. 1, 2002
300-499	(869-048-00063-1)	29.00	Apr. 1, 2002
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1300-End	(869-048-00067-4)	22.00	Apr. 1, 2002
<b>22 Parts:</b>			
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<b>23</b>	(869-048-00070-4)	40.00	Apr. 1, 2002
<b>24 Parts:</b>			
0-199	(869-048-00071-2)	57.00	Apr. 1, 2002
*200-499	(869-048-00072-1)	47.00	Apr. 1, 2002
500-699	(869-048-00073-9)	29.00	Apr. 1, 2002
700-1699	(869-048-00074-7)	58.00	Apr. 1, 2002
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<b>26 Parts:</b>			
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§§ 1.301-1.400	(869-048-00080-1)	44.00	Apr. 1, 2002
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§§ 1.908-1.1000	(869-048-00086-1)	56.00	Apr. 1, 2002
§§ 1.1001-1.1400	(869-048-00087-9)	58.00	Apr. 1, 2002
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2-29	(869-048-00089-5)	57.00	Apr. 1, 2002
30-39	(869-048-00090-9)	39.00	Apr. 1, 2002
40-49	(869-048-00091-7)	26.00	Apr. 1, 2002
50-299	(869-048-00092-5)	38.00	Apr. 1, 2002
300-499	(869-048-00093-3)	57.00	Apr. 1, 2002
500-599	(869-044-00094-6)	12.00	5 Apr. 1, 2001
600-End	(869-048-00095-0)	16.00	Apr. 1, 2002
<b>27 Parts:</b>			
*1-199	(869-048-00096-8)	61.00	Apr. 1, 2002

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
200-End	(869-048-00097-6)	13.00	Apr. 1, 2002	100-135	(869-044-00151-9)	38.00	July 1, 2001
<b>28 Parts:</b>				136-149	(869-044-00152-7)	55.00	July 1, 2001
0-42	(869-044-00098-9)	55.00	July 1, 2001	150-189	(869-044-00153-5)	52.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001	190-259	(869-044-00154-3)	34.00	July 1, 2001
<b>29 Parts:</b>				260-265	(869-044-00155-1)	45.00	July 1, 2001
0-99	(869-044-00100-4)	45.00	July 1, 2001	266-299	(869-044-00156-0)	45.00	July 1, 2001
100-499	(869-044-00101-2)	14.00	<sup>6</sup> July 1, 2001	300-399	(869-044-00157-8)	41.00	July 1, 2001
500-899	(869-044-00102-1)	47.00	<sup>6</sup> July 1, 2001	400-424	(869-044-00158-6)	51.00	July 1, 2001
900-1899	(869-044-00103-9)	33.00	July 1, 2001	425-699	(869-044-00159-4)	55.00	July 1, 2001
1900-1910 (§§ 1900 to 1910.999)	(869-044-00104-7)	55.00	July 1, 2001	700-789	(869-044-00160-8)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869-044-00105-5)	42.00	July 1, 2001	790-End	(869-044-00161-6)	44.00	July 1, 2001
1911-1925	(869-044-00106-3)	20.00	<sup>6</sup> July 1, 2001	<b>41 Chapters:</b>			
1926	(869-044-00107-1)	45.00	July 1, 2001	1, 1-1 to 1-10		13.00	<sup>3</sup> July 1, 1984
1927-End	(869-044-00108-0)	55.00	July 1, 2001	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	<sup>3</sup> July 1, 1984
<b>30 Parts:</b>				3-6		14.00	<sup>3</sup> July 1, 1984
1-199	(869-044-00109-8)	52.00	July 1, 2001	7		6.00	<sup>3</sup> July 1, 1984
200-699	(869-044-00110-1)	45.00	July 1, 2001	8		4.50	<sup>3</sup> July 1, 1984
700-End	(869-044-00111-7)	53.00	July 1, 2001	9		13.00	<sup>3</sup> July 1, 1984
<b>31 Parts:</b>				10-17		9.50	<sup>3</sup> July 1, 1984
0-199	(869-044-00112-8)	32.00	July 1, 2001	18, Vol. I, Parts 1-5		13.00	<sup>3</sup> July 1, 1984
200-End	(869-044-00113-6)	56.00	July 1, 2001	18, Vol. II, Parts 6-19		13.00	<sup>3</sup> July 1, 1984
<b>32 Parts:</b>				18, Vol. III, Parts 20-52		13.00	<sup>3</sup> July 1, 1984
1-39, Vol. I		15.00	<sup>2</sup> July 1, 1984	19-100		13.00	<sup>3</sup> July 1, 1984
1-39, Vol. II		19.00	<sup>2</sup> July 1, 1984	1-100	(869-044-00162-4)	22.00	July 1, 2001
1-39, Vol. III		18.00	<sup>2</sup> July 1, 1984	101	(869-044-00163-2)	45.00	July 1, 2001
1-190	(869-044-00114-4)	51.00	<sup>6</sup> July 1, 2001	102-200	(869-044-00164-1)	33.00	July 1, 2001
191-399	(869-044-00115-2)	57.00	July 1, 2001	201-End	(869-044-00165-9)	24.00	July 1, 2001
400-629	(869-044-00116-8)	35.00	<sup>6</sup> July 1, 2001	<b>42 Parts:</b>			
630-699	(869-044-00117-9)	34.00	July 1, 2001	1-399	(869-044-00166-7)	51.00	Oct. 1, 2001
700-799	(869-044-00118-7)	42.00	July 1, 2001	400-429	(869-044-00167-5)	59.00	Oct. 1, 2001
800-End	(869-044-00119-5)	44.00	July 1, 2001	430-End	(869-044-00168-3)	58.00	Oct. 1, 2001
<b>33 Parts:</b>				<b>43 Parts:</b>			
1-124	(869-044-00120-9)	45.00	July 1, 2001	1-999	(869-044-00169-1)	45.00	Oct. 1, 2001
125-199	(869-044-00121-7)	55.00	July 1, 2001	1000-end	(869-044-00170-5)	56.00	Oct. 1, 2001
200-End	(869-044-00122-5)	45.00	July 1, 2001	<b>44</b>	(869-044-00171-3)	45.00	Oct. 1, 2001
<b>34 Parts:</b>				<b>45 Parts:</b>			
1-299	(869-044-00123-3)	43.00	July 1, 2001	1-199	(869-044-00172-1)	53.00	Oct. 1, 2001
300-399	(869-044-00124-1)	40.00	July 1, 2001	200-499	(869-044-00173-0)	31.00	Oct. 1, 2001
400-End	(869-044-00125-0)	56.00	July 1, 2001	500-1199	(869-044-00174-8)	45.00	Oct. 1, 2001
<b>35</b>	(869-044-00126-8)	10.00	<sup>6</sup> July 1, 2001	1200-End	(869-044-00175-6)	55.00	Oct. 1, 2001
<b>36 Parts:</b>				<b>46 Parts:</b>			
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200-299	(869-044-00128-4)	33.00	July 1, 2001	41-69	(869-044-00177-2)	35.00	Oct. 1, 2001
300-End	(869-044-00129-2)	55.00	July 1, 2001	70-89	(869-044-00178-1)	13.00	Oct. 1, 2001
<b>37</b>	(869-044-00130-6)	45.00	July 1, 2001	90-139	(869-044-00179-9)	41.00	Oct. 1, 2001
<b>38 Parts:</b>				140-155	(869-044-00180-2)	24.00	Oct. 1, 2001
0-17	(869-044-00131-4)	53.00	July 1, 2001	156-165	(869-044-00181-1)	31.00	Oct. 1, 2001
18-End	(869-044-00132-2)	55.00	July 1, 2001	166-199	(869-044-00182-9)	42.00	Oct. 1, 2001
<b>39</b>	(869-044-00133-1)	37.00	July 1, 2001	200-499	(869-044-00183-7)	36.00	Oct. 1, 2001
<b>40 Parts:</b>				500-End	(869-044-00184-5)	23.00	Oct. 1, 2001
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50-51	(869-044-00135-7)	38.00	July 1, 2001	0-19	(869-044-00185-3)	55.00	Oct. 1, 2001
52 (52.01-52.1018)	(869-044-00136-5)	50.00	July 1, 2001	20-39	(869-044-00186-1)	43.00	Oct. 1, 2001
52 (52.1019-End)	(869-044-00137-3)	55.00	July 1, 2001	40-69	(869-044-00187-0)	36.00	Oct. 1, 2001
53-59	(869-044-00138-1)	28.00	July 1, 2001	70-79	(869-044-00188-8)	58.00	Oct. 1, 2001
60 (60.1-End)	(869-044-00139-0)	53.00	July 1, 2001	80-End	(869-044-00189-6)	55.00	Oct. 1, 2001
60 (Apps)	(869-044-00140-3)	51.00	July 1, 2001	<b>48 Chapters:</b>			
61-62	(869-044-00141-1)	35.00	July 1, 2001	1 (Parts 1-51)	(869-044-00190-0)	60.00	Oct. 1, 2001
63 (63.1-63.599)	(869-044-00142-0)	53.00	July 1, 2001	1 (Parts 52-99)	(869-044-00191-8)	45.00	Oct. 1, 2001
63 (63.600-63.1199)	(869-044-00143-8)	44.00	July 1, 2001	2 (Parts 201-299)	(869-044-00192-6)	53.00	Oct. 1, 2001
63 (63.1200-End)	(869-044-00144-6)	56.00	July 1, 2001	3-6	(869-044-00193-4)	31.00	Oct. 1, 2001
64-71	(869-044-00145-4)	26.00	July 1, 2001	7-14	(869-044-00194-2)	51.00	Oct. 1, 2001
72-80	(869-044-00146-2)	55.00	July 1, 2001	15-28	(869-044-00195-1)	53.00	Oct. 1, 2001
81-85	(869-044-00147-1)	45.00	July 1, 2001	29-End	(869-044-00196-9)	38.00	Oct. 1, 2001
86 (86.1-86.599-99)	(869-044-00148-9)	52.00	July 1, 2001	<b>49 Parts:</b>			
86 (86.600-1-End)	(869-044-00149-7)	45.00	July 1, 2001	1-99	(869-044-00197-7)	55.00	Oct. 1, 2001
87-99	(869-044-00150-1)	54.00	July 1, 2001	100-185	(869-044-00198-5)	60.00	Oct. 1, 2001
				186-199	(869-044-00199-3)	18.00	Oct. 1, 2001
				200-399	(869-044-00200-1)	60.00	Oct. 1, 2001
				400-999	(869-044-00201-9)	58.00	Oct. 1, 2001
				1000-1199	(869-044-00202-7)	26.00	Oct. 1, 2001

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<b>50 Parts:</b>			
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200-599 .....	(869-044-00205-1) .....	36.00	Oct. 1, 2001
600-End .....	(869-044-00206-0) .....	55.00	Oct. 1, 2001
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<sup>1</sup> Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup> The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup> No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

<sup>5</sup> No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

<sup>6</sup> No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.