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# Federal Register

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 7626 of November 13, 2002**

## To Implement Modifications to the Caribbean Basin Economic Recovery Act and the African Growth and Opportunity Act

**By the President of the United States of America**

**A Proclamation**

1. Section 3107 of the Trade Act of 2002 (Public Law 107–210) amended the Caribbean Basin Economic Recovery Act (Title II of the Trade Act of 2000, Public Law 106–200) (CBERA) to modify the type and quantity of textile and apparel articles eligible for the preferential tariff treatment now accorded to designated beneficiary Caribbean Basin Trade Partnership Act (CBTPA) countries.

2. Section 3108 of the Trade Act of 2002 amended the African Growth and Opportunity Act (Title I of the Trade Act of 2000, Public Law 106–200) (AGOA) to modify the type and quantity of textile and apparel articles eligible for the preferential tariff treatment now accorded to designated beneficiary sub-Saharan African countries.

3. In order to implement the tariff treatment provided under sections 3107 and 3108 of the Trade Act of 2002, it is necessary to modify the Harmonized Tariff Schedule of the United States (HTS).

4. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) (1974 Trade Act) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 604 of the 1974 Trade Act, do proclaim that:

(1) In order to provide the preferential treatment provided for in section 213(b)(2)(A) of the CBERA (19 U.S.C. 2703(b)(2)(A)), as amended by section 3107(a) of the Trade Act of 2002, the HTS is modified as provided in Annex I to this proclamation.

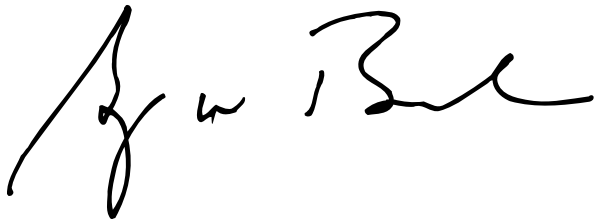
(2) In order to provide for the preferential treatment provided for in section 112(b) of the AGOA (19 U.S.C. 3721(b)), as amended by section 3108(a) of the Trade Act of 2002, the HTS is modified as provided in Annex II to this proclamation.

(3) Any provisions of previous proclamations and Executive Orders that are inconsistent with this proclamation are superseded to the extent of such inconsistency.

(4) This proclamation is effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after August 6, 2002; except that section I of Annex I to this proclamation relating to the dyeing, printing, and finishing of fabrics shall be effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after September 1, 2002; and except that section II of Annex I and Annex II relating to increases in the amount of certain articles eligible for duty-free treatment shall be effective with respect to articles entered, or withdrawn

from warehouse for consumption, on or after the dates provided in such annex sections.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



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# ANNEX I

Subchapters II and XX of chapter 98 of the Harmonized Tariff Schedule of the United States (HTS) are modified as provided in the annex sections set forth below.

Section I. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after September 1, 2002, chapter 98 of the HTS is modified as follows:

A. U.S. note 7(b) to subchapter II of such chapter is modified–

(i) by inserting in subdivision (i) of such note, immediately after "States)", the phrase "provided they otherwise comply with the provisions of this note";

(ii) by inserting after the sentence which ends "quantitative limitations." the following new sentence:

> "Apparel articles entered on or after September 1, 2002, that are assembled in a beneficiary CBTPA country from knitted or crocheted fabrics or from woven fabrics shall be eligible to receive the duty treatment provided for in this note only if all dyeing, printing and finishing of such fabrics from which the articles are assembled is carried out in the United States."

B. U.S. note 2(a) to subchapter XX of such chapter is modified by deleting "9820.11.30" and by inserting in lieu thereof "9820.11.33", and by inserting at the end of such note subdivision the following new sentence:

> "For purposes of subheadings 9820.11.03, 9820.11.06, 9820.11.18, and 9820.11.33, apparel articles entered on or after September 1, 2002, that are assembled in a beneficiary CBTPA country from knitted or crocheted fabrics or from woven fabrics shall be eligible to receive the duty treatment provided for in this note only if all dyeing, printing and finishing of such fabrics from which the articles are assembled is carried out in the United States."

C. The article description of subheading 9820.11.03 is modified by deleting "and" appearing immediately before "(2)" and by inserting after the word "schedule" the following phrase ", and (3) meet the requirements of U.S. note 2(a) to this subchapter".

D. The article description of subheading 9820.11.06 (as modified by section III of this annex) is further modified by inserting at the end thereof the phrase ", under the terms of U.S. note 2(a) to this subchapter".

E. The article description of subheading 9820.11.18 is modified by inserting at the end thereof the phrase ", and under the terms of U.S. note 2(a) to this subchapter".

F. U.S. note 3(a) to subchapter XX of such chapter is modified by deleting the final period at the end of subdivision (iii) and by inserting in lieu thereof "; or", and by inserting the following new subdivision:

> "(iv) thread, used to assemble such apparel article, that is dyed, printed or finished in one or more CBTPA beneficiary countries."

G. The article description of subheading 9820.11.33 (as added by section III of this annex) is modified by inserting at the end thereof the phrase ", under the terms of U.S. note 2(a) to this subchapter".

Section II. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2002, chapter 98 of the HTS is modified as follows:

A. The tabulation in U.S. note 2(b) to subchapter XX of such chapter is modified by deleting "336,400,000" and by inserting in lieu thereof "500,000,000"; by deleting "and subsequent 12-

month periods"; by deleting "390,224,000" and by inserting in lieu thereof "850,000,000"; and by inserting at the end thereof the following item:

"October 1, 2004 through September 30, 2005
and subsequent 12-month periods..... 970,000,000".

B. U.S. note 2(d) to subchapter XX of such chapter is modified by deleting from at each instance the phrase "fabric components" and by inserting in lieu thereof the phrase "fabrics (exclusive of all findings and trimmings)"; by inserting between "fabric" and "contained" at each instance the phrase "(exclusive of all findings and trimmings)"; by inserting between "entity" and "during" at each instance the phrase "that are entered and eligible under subheading 9820.11.15"; by inserting between the words "entered" and "during" at each instance the phrase "and eligible under subheading 9820.11.15"; and by deleting the phrase "in the preceding 12-month period" and inserting in lieu thereof the phrase "entered during the preceding 12-month period".

Section III. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after August 6, 2002, chapter 98 of the HTS is modified as follows:

A. U.S. note 7(b)(i) to subchapter II of such chapter is modified by inserting in subdivision (b)(i) before "assembled" the words "sewn or otherwise", and by inserting after the first appearance of the word "cut" the phrase ", or from components knit-to-shape,".

B. The tabulation in U.S. note 2(c) to subchapter XX of such chapter is modified by deleting "5,651,520" and by inserting in lieu thereof "9,000,000"; by deleting "and subsequent 12-month periods"; by deleting "6,555,763" and by inserting in lieu thereof "10,000,000"; and by inserting at the end thereof the following item:

"October 1, 2004 through September 30, 2005
and subsequent 12-month periods..... 12,000,000"

C. The article description of subheading 9820.11.03 is modified by inserting after "62" the words "sewn or otherwise", and by inserting after "cut" the phrase ", or from components knit-to-shape,".

D. The article description of subheading 9820.11.06 is deleted and the following new article description is inserted in lieu thereof:

"Apparel articles sewn or otherwise assembled in one or more such countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more such countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the tariff schedule and are wholly formed in the United States)".

E. The following new subheading is inserted in numerical sequence in subchapter XX of such chapter, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special":

| | | | | |
|---|---|---|---|---|
| | :[Articles...:] | : | : | : |
| "9820.11.33 | : Apparel articles sewn or otherwise assembled in one or | : | : | : |
| | : more such countries with thread formed in the United | : | : | : |
| | : States, the foregoing (i) from components cut in the | : | : | : |
| | : United States and in one or more such countries from | : | : | : |
| | : fabric wholly formed in the United States from yarns | : | : | : |
| | : wholly formed in the United States (including fabrics not | : | : | : |
| | : formed from yarns, if such fabrics are classifiable under | : | : | : |
| | : heading 5602 or 5603 of the tariff schedule), or (ii) from | : | : | : |
| | : components knit-to-shape in the United States and one or | : | : | : |

| | | | |
|---|---|---|---|
| : | more such countries from yarns wholly formed in the United States, or (iii) from any combination of two or more of the foregoing knitting-to-shape or cutting operations..... | : | Free" |

## ANNEX II

Subchapters II and XIX of chapter 98 of the Harmonized Tariff Schedule of the United States (HTS) are modified as provided in the annex sections set forth below.

Section I. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after August 6, 2002, chapter 98 of the HTS is modified as follows:

A. U.S. note 7(a) to subchapter II of such chapter is modified by inserting in the first sentence immediately after "apparel articles" the phrase "sewn or otherwise", and by inserting after "cut" the phrase ", or from components knit-to-shape,".

B. U.S. note 2(d) to subchapter XIX of such chapter is modified by inserting in alphabetical sequence the following countries: "Republic of Botswana" and "Republic of Namibia".

C. U.S. note 3(b) to subchapter XIX of such chapter is modified by deleting the comma after the word "zippers" and inserting parentheses around the phrase "including zipper tapes".

D. The article description of subheading 9819.11.03 is modified by inserting after "62" the words "sewn or otherwise", and by inserting after the first appearance of the word "cut" the phrase ", or from components knit-to-shape,".

E. The article description of subheading 9819.11.06 is deleted and the following new article description is inserted in lieu thereof:

> "Apparel articles sewn or otherwise assembled in one or more such countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more such countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the tariff schedule and are wholly formed in the United States)".

F. The article description of subheading 9819.11.09 is modified by inserting after "countries)," the phrase "or from components knit-to-shape in one or more such countries from yarns originating either in the United States or in one or more such countries, or apparel articles wholly formed on seamless knitting machines in such a country from yarns originating either in the United States or one or more such countries,".

G. The article description of subheading 9819.11.12 is modified by inserting after "assembled" the phrase ", or knit-to-shape and wholly assembled, or both,"; by deleting "a lesser developed such country" and by inserting in lieu thereof "in one or more such lesser developed countries"; and by inserting before "if entered" the phrase "regardless of the country of origin of the fabric or the yarn used to make such articles,".

H. The article description of subheading 9819.11.18 is modified by deleting "18.5" and by inserting in lieu thereof "21.5".

I. The following new subheading is inserted in numerical sequence in subchapter XIX, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special":

| | | | |
|---|---|---|---|
| | :[Articles...:] | : | : |
| "9819.11.30 | : Apparel articles sewn or otherwise assembled in one or more such countries with thread formed in the United States, the foregoing (i) from components cut in the United States and in one or more such countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the tariff schedule), or (ii) from components knit-to-shape in the United States and one or more such countries from yarns wholly formed in the United States, or (iii) from any combination of two or more of the foregoing knitting-to-shape or cutting operations..... | : | : Free" : |

Section II. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2002, chapter 98 of the HTS is modified as follows:

A. U.S. note 2(b) to subchapter XIX of such chapter is modified by deleting from the tabulation "2.0714" and by inserting in lieu thereof "4.2414", by deleting "2.3571" and by inserting in lieu thereof "4.7931", by deleting "2.6428" and by inserting in lieu thereof "5.3448", by deleting "2.9285" and by inserting in lieu thereof "5.8965", by deleting "3.2142" and by inserting in lieu thereof "6.4482", and by deleting "3.5" and by inserting in lieu thereof "7.0"; and

B. Such U.S. note 2(b) is further modified by deleting "subheadings" and by inserting in lieu thereof the "subheading", by deleting the phrase "and 9819.11.12", and by inserting below the tabulation the following new material and tabulation:

> "Apparel articles from a lesser developed beneficiary sub-Saharan African country enumerated in subdivision (d) of this note, when such articles are described in and entered under subheading 9819.11.12, shall be counted toward the limit set forth in this note for apparel articles described in and entered under subheading 9819.11.09 and shall, in each of the one-year periods beginning on October 1, 2002, and October 1, 2003, be limited to an aggregate quantity not to exceed the applicable percentage set forth herein of aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available:
>
> | 12-month Period | Applicable Percentage |
> |---|---|
> | October 1, 2002 through September 30, 2003 | 2.0714 |
> | October 1, 2003 through September 30, 2004 | 2.3571 |
>
> Such apparel articles described in subheading 9819.11.12 during the 12-month periods enumerated above shall be allowed to enter regardless of the country of origin of the fabric or yarn used to make such articles."

[FR Doc. 02–29372

Filed 11–15–02; 8:45 am]

Billing code 3190–01–C

# Presidential Documents

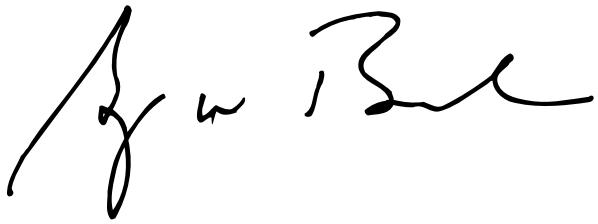
**Memorandum of November 13, 2002**

## Notification to Congress of Trade Negotiation

**Memorandum for the United States Trade Representative**

You are authorized and directed to notify the Congress, consistent with section 2104(a)(1) of the Trade Act of 2002 (19 U.S.C. 3804(a)(1)), of my intention to enter into negotations on a Free Trade Agreement with Australia.

You are also authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
*Washington, November 13, 2002.*

[FR Doc. 02–29373
Filed 11–15–02; 8:45 am]
Billing code 3190–01–M

# Rules and Regulations

Federal Register
Vol. 67, No. 222
Monday, November 18, 2002

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

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

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 201

**[Regulation A]**

### Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of a decrease in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

**DATES:** The amendments to part 201 (Regulation A) were effective November 6, 2002. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

**FOR FURTHER INFORMATION CONTACT:** Jennifer J. Johnson, Secretary of the Board, at (202) 452–3259, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority of sections 10(b), 13, 14, 19, *et al.*, of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The ''basic discount rate'' is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit for up to 30 days. In decreasing the basic discount rate from 1.25 percent to .75 percent, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The 50-basis-point decrease in the discount rate was associated with a similar decrease in the federal funds rate approved by the Federal Open Market Committee (FOMC) and announced at the same time.

In a joint press release announcing these actions, the FOMC and the Board stated that the FOMC continues to believe that an accommodative stance of monetary policy, coupled with still-robust underlying growth in productivity, is providing important ongoing support to economic activity. However, incoming economic data have tended to confirm that greater uncertainty, in part attributable to heightened geopolitical risks, is currently inhibiting spending, production, and employment. Inflation and inflation expectations remain well contained. In these circumstances, the FOMC believes that this additional monetary easing should prove helpful as the economy works its way through this current soft spot. With its recent action, the FOMC believes that, against the background of its long-run goals of price stability and sustainable economic growth and of the information currently available, the risks are balanced with respect to the prospects for both goals in the foreseeable future.

### Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

### Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering price stability and sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

### List of Subjects in 12 CFR Part 201

Banks, Banking, Credit, Federal reserve system.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

## PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

**Authority:** 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

#### § 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

| Federal Reserve Bank | Rate | Effective |
|---|---|---|
| Boston | .75 | Nov. 7, 2002. |
| New York | .75 | Nov. 6, 2002. |
| Philadelphia | .75 | Nov. 7, 2002. |
| Cleveland | .75 | Nov. 7, 2002. |
| Richmond | .75 | Nov. 7, 2002. |
| Atlanta | .75 | Nov. 7, 2002. |
| Chicago | .75 | Nov. 7, 2002. |
| St. Louis | .75 | Nov. 7, 2002. |
| Minneapolis | .75 | Nov. 7, 2002. |
| Kansas City | .75 | Nov. 7, 2002. |
| Dallas | .75 | Nov. 6, 2002. |
| San Francisco | .75 | Nov. 6, 2002. |

Dated: November 12, 2002.

By order of the Board of Governors of the Federal Reserve System.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 02–29193 Filed 11–15–02; 8:45 am]

BILLING CODE 6210–01–P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 602**

**[TD 9022]**

**RIN 1545–BB40**

## Information Reporting Relating to Taxable Stock Transactions

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

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations under section 6043(c) requiring information reporting by a corporation if control of the corporation is acquired or if the corporation has a recapitalization or other substantial change in capital structure. This document also contains temporary regulations under section 6045 concerning information reporting requirements for brokers with respect to transactions described in section 6043(c). The text of these temporary regulations also serves as the text of proposed regulations set forth in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective November 18, 2002.

*Applicability Dates:* For dates of applicability, see §§ 1.6043–4T(i) and 1.6045–3T(f).

**FOR FURTHER INFORMATION CONTACT:** Nancy Rose at (202) 622–4910 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1812. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background and Explanation of Provisions

Section 6043(c) provides that if any person acquires control of a corporation, or if there is a recapitalization or other substantial change in capital structure of a corporation, the corporation, when required by the Secretary, shall make a return setting forth the identity of the parties to the transaction, the fees involved, the changes in the capital structure involved, and such other information as the Secretary may require with respect to such transaction.

Proposed regulations under section 6043(c) were previously published in the **Federal Register** on July 5, 1990 (55 FR 27648) (the 1990 proposed regulations). After considering issues raised in public comments and the reporting burdens placed on corporate taxpayers under the 1990 proposed regulations, the Internal Revenue Service decided to withdraw the 1990 proposed regulations on October 16, 1992 (57 FR 47428). At that time, the IRS stated that the value of the information that would be collected under the 1990 proposed regulations did not justify the burden to the public in complying with the rules. The IRS further stated that it might promulgate regulations under section 6043(c) if it became apparent that the information would be needed to administer the tax system properly.

At this time, the IRS believes that information reporting under section 6043(c) for certain large corporate transactions is appropriate. The transactions covered by this reporting requirement are acquisitions of control and substantial changes in the capital structure of a corporation. The temporary regulations require a corporation to attach a form to its income tax return describing these transactions, and to file information returns with respect to certain shareholders in such transactions. Duplicate reporting is not intended; thus, the regulations provide that no reporting is required under this section where reporting is required under another section. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the cross-referencing notice of proposed rulemaking published in the proposed rules section of this issue of the **Federal Register**. The preamble to that notice of proposed rulemaking invites public comments with respect to the potential for duplicate reporting under this section. That preamble also invites comments with respect to the burden of compliance with the reporting requirements.

These temporary regulations require a domestic corporation involved in certain large taxable transactions to file form 8806 reporting and describing such transactions. The corporation must attach form 8806 to its timely filed income tax return. If form 8806 is not available at least 90 days prior to the due date (including extensions) of the corporation's income tax return for the year in which the acquisition of control or the substantial change in capital structure occurs or at least 90 days before such return is timely filed (whichever is sooner), the regulation allows a corporation to make the report by attaching an interim statement to its return containing certain required information.

The temporary regulations define an acquisition of control of a corporation as a transaction or series of related transactions in which stock representing control of that corporation is distributed by a second corporation or in which stock representing control of that corporation is acquired (directly or indirectly) by a second corporation and the shareholders of the first corporation receive cash, stock or other property. For these purposes, control is determined in accordance with the first sentence of section 304(c)(1). With certain limitations, the constructive ownership rules of section 318(a) apply to determine ownership. Acquisitions of control within an affiliated group are excepted from this definition, as are acquisitions in which the fair market value of the stock acquired in the transaction or series of related transactions is less than $100,000,000.

Under the temporary regulations, a corporation has a substantial change in its capital structure if the corporation in a transaction or series of related transactions (a) undergoes a recapitalization with respect to its stock, (b) redeems its stock, (c) merges, consolidates or otherwise combines with another entity or transfers substantially all of its assets to one or more entities, (d) transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation, or (e)

changes its identity, form or place of organization. Transactions in which the amount of any cash plus the fair market value of any property (including stock) provided to shareholders of the corporation is less than $100,000,000 are excepted from this definition, as are transactions within an affiliated group.

The temporary regulations also require a domestic corporation involved in the specified transactions to issue, with respect to each of its shareholders, a form 1099–CAP reporting the amount of any cash plus the fair market value of any property (including stock) provided to the shareholder in the transaction. Corporations are not required to report amounts distributed to certain exempt recipients or the fair market value of any stock provided to a shareholder if the corporation reasonably determines that the receipt of such stock would not cause the shareholder to recognize gain (if any). Further, transactions and distributions already reported under other sections are not subject to reporting under these regulations.

Penalties under section 6652(l) may be imposed for failing to file required returns under section 6043(c) (including failure to file on magnetic media, as required under section 6011(e) and § 1.6011–2). The penalty under section 6652(l) is $500 for each day the failure continues, but the total amount imposed with respect to a return cannot exceed $100,000. The temporary regulations provide that the information returns required under these regulations shall be treated as one return for purposes of the section 6652(l) penalty, so that the penalty shall not exceed $500 per day ($100,000 in total) with respect to any acquisition of control or change in capital structure. Further, as provided in section 6652(l), such penalty does not apply if the failure is due to reasonable cause. Until regulations are promulgated under section 6652(l) to set forth specific standards for determining reasonable cause, the IRS will use the reasonable cause standards set forth in § 301.6724–1 of this chapter as a guideline for determining reasonable cause.

Section 1.6045–3T requires a broker who, as the record holder of stock, receives a form 1099–CAP from a corporation pursuant to the reporting requirements of § 1.6043–4T, to file a form 1099–CAP with respect to the actual owner and furnish such form 1099–CAP to the actual owner.

The temporary regulations are effective only for acquisitions of control and substantial changes of capital structure that occur after December 31, 2001, and for which the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a). The cross-referencing proposed regulations published in proposed rules section of this issue of the **Federal Register** will apply to all acquisitions of control and substantial changes in capital structure occurring after the date that such regulations are published as final regulations (regardless of whether section 367(a) applies).

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referencing notice of proposed rulemaking published in the proposed rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

**Drafting Information**

The principal author of these temporary regulations is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

## PART 1—INCOME TAXES

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

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

**Par. 2.** Section 1.6043–4T is added to read as follows:

**§ 1.6043–4T Information returns relating to certain acquisitions of control and changes in capital structure (temporary).**

(a) *Information returns for an acquisition of control or a substantial change in capital structure*—(1) *General rule.* If there is an acquisition of control (as defined in paragraph (c) of this section) or a substantial change in the capital structure (as defined in paragraph (d) of this section) of a domestic corporation (''reporting corporation''), the reporting corporation must file a completed form 8806 (or any successor form) in accordance with the instructions to that form. Form 8806 will request the information required in paragraphs (a)(1)(i) through (v) of this section.

(i) *Reporting corporation.* Provide the name, address, and taxpayer identification number (TIN) of the reporting corporation;

(ii) *Common parent, if any, of the reporting corporation.* If the reporting corporation was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, provide the name, address, and TIN of the common parent of that affiliated group;

(iii) *Acquiring corporation.* Provide the name, address and TIN of any corporation that acquired control of the reporting corporation within the meaning of paragraph (c) of this section or combined with or received assets from the reporting corporation pursuant to a substantial change in capital structure within the meaning of paragraph (d) of this section (''acquiring corporation''). State whether the acquiring corporation is foreign (as defined in section 7701(a)(5)) or is a dual resident corporation (as defined in § 1.1503–2(c)(2)). In either case, state whether the acquiring corporation was newly formed prior to its involvement in the transaction.

(iv) *Common parent, if any, of acquiring corporation.* If the acquiring corporation named in paragraph (a)(1)(iii) of this section was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, provide the name, address, and TIN of the common parent of that affiliated group.

(v) *Information about acquisition of control or substantial change in capital structure.* Provide—

(A) A description of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure of the corporation;

(B) The date or dates of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure;

(C) A description of and a statement of the fair market value of any stock provided to the reporting corporation's shareholders in exchange for their stock if the reporting corporation reasonably determines that the shareholders are not required to recognize gain (if any) from the receipt of such stock for U.S. Federal income tax purposes; and

(D) A statement of the aggregate amount of cash plus the fair market value of any property (including stock if the reporting corporation reasonably determines that its shareholders would be required to recognize gain (if any) on the receipt of such stock, but excluding stock described in paragraph (a)(1)(v)(C) of this section) provided to the reporting corporation's shareholders in exchange for their stock.

(2) *Time for making return.* Form 8806 (or an interim statement, as set forth in paragraph (a)(3) of this section) must be attached to the reporting corporation's timely filed income tax return (taking extensions into account) for the year in which the acquisition of control or substantial change in capital structure occurs.

(3) *Interim statement.* If form 8806 has not been made available at least 90 days before the due date (including extensions) of the reporting corporation's income tax return for the year in which the acquisition of control or substantial change in capital structure occurs or at least 90 days before such return is timely filed (whichever is sooner), the reporting corporation shall attach a statement to its return containing the information described in paragraphs (a)(1)(i) through (v) of this section.

(4) *Coordination with other sections.* (i) No reporting is required under paragraph (a) of this section with respect to a transaction for which information is required to be filed pursuant to §§ 1.351–3(b), 1.355–5(a), or 1.368–3(a), provided the transaction is properly reported in accordance with those sections.

(ii) No reporting is required under paragraph (a) of this section with respect to a transaction for which information is required to be reported pursuant to section 6043(a), provided the transaction is properly reported in accordance with that section.

(5) *Exception where shareholders are exempt recipients.* No reporting is required under paragraph (a) of this section if the reporting corporation reasonably determines that all of its shareholders who receive cash, stock or other property pursuant to the acquisition of control or substantial change in capital structure are exempt recipients under paragraph (b)(6) of this section.

(b) *Information returns regarding shareholders*—(1) *General rule.* A corporation that is required to file form 8806 pursuant to paragraph (a)(1) of this section (or an interim statement under paragraph (a)(3) of this section) shall file a return of information on forms 1096 and 1099–CAP with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other property pursuant to the acquisition of control or the substantial change in capital structure.

(2) *Additional requirement for information returns.* A corporation that would have been required to file form 8806 pursuant to paragraph (a) of this section (or an interim statement under paragraph (a)(3) of this section) but for the application of paragraph (a)(4)(i) of this section (relating to information provided under §§ 1.351–3(b), 1.355–5(a), or 1.368–3(a)) shall file a return of information on forms 1096 and 1099–CAP with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other property pursuant to the acquisition of control or the substantial change in capital structure.

(3) *Time for making information returns.* Forms 1096 and 1099–CAP must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(4) *Contents of return.* A separate form 1099–CAP must be filed with respect to amounts received by each shareholder (who is not an exempt recipient as defined in paragraph (b)(6) of this section) showing—

(i) The name, address, telephone number and TIN of the reporting corporation;

(ii) The name, address and TIN of the shareholder;

(iii) The number and class of shares in the reporting corporation exchanged by the shareholder;

(iv) The amount of cash and the fair market value of any stock (other than stock described in paragraph (a)(1)(v)(C)) of this section or other property provided to the shareholder in exchange for its stock; and

(v) Such other information as may be required by the instructions to form 1099–CAP.

(5) *Furnishing of forms to shareholders.* The form 1099–CAP filed with respect to each shareholder must be furnished to such shareholder on or before January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property as part of the acquisition of control or the substantial change in capital structure.

(6) *Exempt recipients.* A corporation is not required to file a form 1099–CAP pursuant to this paragraph (b) of this section with respect to the following shareholders:

(i) Any shareholder who receives solely stock described in paragraph (a)(1)(v)(C) of this section in exchange for its stock in the corporation.

(ii) Any shareholder who is required to recognize gain (if any) as a result of the receipt of cash, stock, or other property if the corporation reasonably determines that the amount of such cash plus the fair market value of such stock and other property does not exceed $1,000. Stock described in paragraph (a)(1)(v)(C) of this section is not taken into account for purposes of this paragraph (b)(6)(ii).

(iii) Any shareholder described in paragraphs (b)(6)(iii)(A) through (K) of this section if the corporation has actual knowledge that the shareholder is described in one of paragraphs (b)(6)(iii)(A) through (K) of this section or if the corporation has a properly completed exemption certificate from the shareholder (as provided in § 31.3406(h)-3 of this chapter). The corporation also may treat a shareholder as described in paragraphs (b)(6)(iii) (A) through (J) of this section based on the applicable indicators described in § 1.6049–4(c)(1)(ii).

(A) A tax-exempt organization, as described in § 1.6049–4(c)(1)(ii)(B)(1).

(B) An individual retirement plan, as described in § 1.6049–4(c)(1)(ii)(C).

(C) The United States, as described in § 1.6049–4(c)(1)(ii)(D).

(D) A state, as described in § 1.6049–4(c)(1)(ii)(E).

(E) A foreign government, as described in § 1.6049–4(c)(1)(ii)(F).

(F) An international organization, as described in § 1.6049–4(c)(1)(ii)(G).

(G) A foreign central bank of issue, as described in § 1.6049–4(c)(1)(ii)(H).

(H) A real estate investment trust, as described in § 1.6049–4(c)(1)(ii)(J).

(I) An entity registered under the Investment Company Act of 1940, as described in § 1.6049–4(c)(1)(ii)(K).

(J) A common trust fund, as described in § 1.6049–4(c)(1)(ii)(L).

(K) A corporation, as defined in section 7701(a)(3) (except for corporations for which an election under section 1362(a) is in effect), if the reporting corporation reasonably determines that such corporation is not a broker (as defined in § 1.6045–1(a)(1)) or a record holder for the actual owner of the stock.

(iv) Any shareholder that the corporation, prior to the transaction, associates with documentation upon which the corporation may rely in order to treat payments to the shareholder as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d)(2) or (3). For purposes of this paragraph (b)(6)(iv), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of § 1.1441–1 shall apply by substituting the terms ''corporation'' and ''shareholder'' for the terms ''withholding agent'' and ''payee'' and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code. The provisions of § 1.6049–5(d) shall apply by substituting the terms ''corporation'' and ''shareholder'' for the terms ''payor'' and ''payee''. Nothing in this paragraph (b)(6)(iv) shall be construed to relieve a corporation of its withholding obligations under section 1441.

(v) Any shareholder if, on January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property, the corporation did not know and did not have reason to know that the shareholder received such cash, stock, or other property in a transaction or series of related transactions that would result in an acquisition of control or a substantial change in capital structure.

(7) *Coordination with other sections.* No reporting is required under paragraph (b) of this section with respect to amounts that are required to be reported under section 6042 or section 6045, unless the corporation knows or has reason to know that such amounts are not properly reported in accordance with those sections.

(c) *Acquisition of control of a corporation*—(1) *In general.* For purposes of this section, an acquisition of control of a corporation (''first corporation'') occurs if, in a transaction or series of related transactions, either—

(i) Stock representing control of the first corporation is distributed by a second corporation to shareholders of the second corporation and the fair market value of such stock on the date of distribution is $100,000,000 or more; or

(ii) (A) Before an acquisition of stock of the first corporation (directly or indirectly) by a second corporation, the second corporation does not have control of the first corporation;

(B) After the acquisition, the second corporation has control of the first corporation;

(C) The fair market value of the stock acquired in the transaction and in any related transactions as of the date or dates on which such stock was acquired is $100,000,000 or more; and

(D) The shareholders of the first corporation (determined without applying the constructive ownership rule of section 318(a)) receive cash, stock, or other property pursuant to the acquisition.

(2) *Control.* For purposes of this section, control is determined in accordance with the first sentence of section 304(c)(1).

(3) *Constructive ownership.* (i) Except as otherwise provided in this section, the constructive ownership rules of section 318(a) (except for section 318(a)(4), providing for constructive ownership through an option to acquire stock), modified as provided in section 304(c)(3)(B), shall apply for determining whether there has been an acquisition of control.

(ii) The determination of whether there has been an acquisition of control shall be made without regard to whether the person or persons from whom control was acquired retain indirect control of the first corporation under section 318(a).

(iii) For purposes of paragraph (c)(1)(ii) of this section, section 318(a) shall not apply to cause a second corporation to be treated as owning, before an acquisition of stock in a first corporation (directly or indirectly) by the second corporation, any stock that is acquired in the first corporation. For example, if the shareholders of a domestic corporation form a new holding company and then transfer their shares in the domestic corporation to the new holding company, the new holding company shall not be treated as having control of the domestic corporation before the acquisition. The new holding company acquires control of the domestic corporation as a result of the transfer. Similarly, if the shareholders of a domestic parent corporation transfer their shares in the parent corporation to a subsidiary of the parent in exchange for shares in the subsidiary, the subsidiary shall not be treated as having control of the parent before the transaction. The subsidiary acquires control of the parent as a result of the transfer.

(4) *Corporation includes group.* For purposes of this paragraph (c), if two or more corporations act pursuant to a plan or arrangement with respect to acquisitions of stock, such corporations will be treated as one corporation for purposes of this section. Whether two or more corporations act pursuant to a plan or arrangement depends on the facts and circumstances.

(5) *Section 338 election.* For purposes of this paragraph (c), an acquisition of stock of a corporation with respect to which an election under section 338 is made is treated as an acquisition of stock (and not as an acquisition of the assets of such corporation).

(d) *Substantial change in capital structure of a corporation*—(1) *In general.* A corporation has a substantial change in capital structure if it has a change in capital structure (as defined in paragraph (d)(2) of this section) and the amount of any cash and the fair market value of any property (including stock) provided to the shareholders of such corporation pursuant to the change in capital structure, as of the date or dates on which the cash or other property is provided, is $100,000,000 or more.

(2) *Change in capital structure.* For purposes of this section, a corporation has a change in capital structure if the corporation in a transaction or series of transactions—

(i) Undergoes a recapitalization with respect to its stock;

(ii) Redeems its stock (including deemed redemptions);

(iii) Merges, consolidates or otherwise combines with another corporation or transfers all or substantially all of its assets to one or more corporations;

(iv) Transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation; or

(v) Changes its identity, form or place of organization.

(e) *Reporting by successor entity.* If a corporation (''transferor'') transfers all or substantially all of its assets to another entity (''transferee'') in a transaction that constitutes a substantial change in the capital structure of transferor, transferor must satisfy the reporting obligations in paragraph (a) or (b) of this section. If transferor does not satisfy the reporting obligations in paragraph (a) or (b) of this section, then transferee must satisfy those reporting obligations. If neither transferor nor transferee satisfies the reporting obligations in paragraphs (a) and (b) of

this section, then transferor and transferee shall be jointly and severally liable for any applicable penalties (see paragraph (g) of this section).

(f) *Receipt of property.* For purposes of this section, a shareholder is treated as receiving property (or as having property provided to it) pursuant to an acquisition of control or a substantial change in capital structure if a liability of the shareholder is assumed in the transaction and, as a result of the transaction, an amount is realized by the shareholder from the sale or exchange of stock.

(g) *Penalties for failure to file.* For penalties for failure to file as required under this section, see section 6652(l). The information returns required to be filed under paragraphs (a) and (b) of this section shall be treated as one return for purposes of section 6652(l) and, accordingly, the penalty shall not exceed $500 for each day the failure continues (up to a maximum of $100,000) with respect to any acquisition of control or any substantial change in capital structure. Failure to file as required under this section also includes the requirement to file on magnetic media as required by section 6011(e) and § 1.6011–2. In addition, criminal penalties under sections 7203, 7206 and 7207 may apply in appropriate cases.

(h) *Examples.* The following examples illustrate the application of the rules of this section. For purposes of these examples, assume the transaction is not reported under §§ 1.351–3(b), 1.355–5(a), 1.368–3(a), and sections 6042, 6043(a) or 6045, unless otherwise specified, and assume that the fair market value of the consideration provided to the shareholders exceeds $100,000,000.

*Example 1.* The shareholders of X, a domestic corporation and parent of an affiliated group, exchange their X stock for stock in Y, a newly-formed foreign holding corporation. After the transaction, Y owns all the outstanding X stock. The X shareholders must recognize gain (if any) on the exchange of their stock as a result of the application of section 367(a). Because the transaction results in an acquisition of control of X, X must comply with the rules in paragraphs (a) and (b) of this section. If a statement is filed in accordance with § 1.351–3(b) with respect to the transaction, X is not required to attach form 8806 (or an interim statement) to its return. Regardless of whether a statement is filed in accordance with § 1.351–3(b), X must file a form 1099–CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the Y stock received by that shareholder, and X must furnish a copy of the form 1099–CAP to that shareholder.

*Example 2.* C, a domestic corporation, and parent of an affiliated group merges into D, an unrelated domestic corporation. Pursuant to the transaction, the C shareholders exchange their C stock for D stock or for a combination of short term notes and D stock. The transaction does not satisfy the requirements of section 368, and the C shareholders must recognize gain (if any) on the exchange. Because the transaction results in a substantial change in the capital structure of C, C (or D as the successor to C) must comply with the rules in paragraphs (a) and (b) of this section. C must attach form 8806 (or an interim statement) to its final income tax return. C (or D as the successor to C) also must file a form 1099–CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the short term notes (if any) and the fair market value of the D stock provided to that shareholder, and C (or D) must furnish a copy of the form 1099–CAP to that shareholder.

*Example 3.* (i) The facts are the same as in example (2), except that C reasonably determines that—

(A) The transaction satisfies the requirements of section 368;

(B) The C shareholders who exchange their C stock solely for D stock will not be required to recognize gain (if any) on the exchange; and

(C) The C shareholders who exchange their C stock for a combination of short term notes and D stock will be required to recognize gain (if any) on the exchange solely with respect to the receipt of the short term notes.

(ii) If a statement is filed in accordance with § 1.368–3(a) with respect to the transaction, C is not required to attach form 8806 (or an interim statement) to its return under paragraph (a) of this section. Regardless of whether a statement is filed in accordance with § 1.368–3(a), C (or D as the successor to C) must comply with the rules in paragraph (b) of this section. With respect to each shareholder who receives a combination of short term notes and D stock, and who is not an exempt recipient, C or D must file a form 1099–CAP showing the fair market value of the short term notes provided to the shareholder, and C (or D) must furnish a copy of the form 1099–CAP to that shareholder. The form 1099–CAP should not show the fair market value of the D stock provided to the shareholder. C and D are not required to file and furnish forms 1099–CAP with respect to shareholders who receive only D stock in exchange for their C stock.

*Example 4.* The facts are the same as in *example 3,* except the C shareholders receive cash instead of short term notes. The C shareholders exchange their shares through a transfer agent. Under section 6045, the transfer agent is required to report the amount of cash paid to the C shareholders in the transaction. C and D are not required to file information returns under paragraph (b) of this section, unless C or D knows or has reason to know that the transfer agent did not file the required information returns under section 6045.

(i) *Effective date.* This section applies to any acquisition of control and any substantial change in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction. If a reporting corporation described in the preceding sentence files its income tax return for the year in which the acquisition of control or the substantial change in capital structure occurs on or before January 13, 2003, such reporting corporation (or successor entity) shall file an interim statement (as described in paragraph (a)(3) of this section) on or before January 31, 2003. The applicability of this section expires on November 14, 2005.

**Par. 3.** Section 1.6045–3T is added to read as follows:

**§ 1.6045–3T Information reporting for an acquisition of control or a substantial change in capital structure (temporary).**

(a) *In general.* Any broker (as defined in § 1.6045–1(a)(1)) who receives a form 1099–CAP from a corporation pursuant to § 1.6043–4T as the record holder of stock in such corporation but who is not the actual owner thereof shall file a return of information with respect to the actual owner unless the actual owner is an exempt recipient as defined in § 1.6045–1(c)(3)(i).

(b) *Form, manner and time for making information returns.* The return required by paragraph (a) of this section must be on forms 1096 and 1099–CAP, or on an acceptable substitute statement. Such forms must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(c) *Contents of return.* A separate form 1099–CAP must be prepared for each owner showing—

(1) The name, address and taxpayer identification number of the actual owner;

(2) The number and class of shares in the corporation exchanged by the actual owner;

(3) The amount of cash and the fair market value of stock or other property provided to the actual owner in exchange for its stock, that would have been reported by the corporation under § 1.6043–4T if the corporation had provided the form 1099–CAP directly to the actual owner (rather than to the broker as nominee); and

(4) Such other information as may be required by form 1099–CAP.

(d) *Furnishing of forms to actual owners.* The form 1099–CAP prepared for each actual owner must be furnished to the actual owner on or before February 28 of the year following the

calendar year in which the actual owner receives stock, cash or other property.

(e) *Single Form 1099.* If a broker is required to file a form 1099 with respect to an owner under both this § 1.6045–3T and § 1.6045–1(b), the broker may satisfy the requirements of both sections by filing and furnishing one form 1099 that contains all the relevant information, as provided in the instructions to form 1099–CAP.

(f) *Effective date.* This section applies with respect to any form 1099–CAP received by a broker after November 13, 2002. The applicability of this section expires on November 14, 2005.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 4.** The authority citation for part 602 continues to read in part as follows:

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

**Par. 5.** In § 602.101, paragraph (b) is amended by adding the following entries in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 1.6043–4T | 1545–1812 |
| * * * * * | |
| 1.6045–3T | 1545–1812 |
| * * * * * | |

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: November 8, 2002.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 02–29199 Filed 11–13–02; 4:24 pm]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 36 CFR Part 7

**RIN 1024–AD06**

## Special Regulations; Areas of the National Park System

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The National Park Service (NPS) is postponing the implementation of some existing snowmobile regulations in Yellowstone National Park, the John D. Rockefeller, Jr., Memorial Parkway, and Grand Teton National Park for one year. This additional time is needed because the NPS has not had sufficient time to plan for and implement the NPS-managed, mass-transit, snowcoach-only system outlined in the existing Winter Use Plan and Record of Decision and to complete the Supplemental Environmental Impact Statement (SEIS).

**DATES:** This rule becomes effective December 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7248, Washington, DC 20240. Phone: (202) 208–4206. Email: *Kym_Hall@nps.gov.*

**SUPPLEMENTARY INFORMATION:** The NPS published the proposed rule on March 29, 2002 (67 FR 15145). Background information on this rulemaking is in the proposed rule.

### Analysis of Public Comments

We provided 60 days for public comment on our proposal, through May 28, 2002. By midnight of that day, we had received 7,709 comments in the form of individual letters, form letters, petitions and e-mails. Of the comments, 3,693 supported postponing the implementation of existing snowmobile regulations (the proposed rule) and 4,016 opposed the proposed rule. We received 403 comments from Gateway communities (Gardner and West Yellowstone, Montana, and Jackson and Cody, Wyoming), 1,195 from the surrounding states of Idaho, Montana and Wyoming (outside the Gateway communities) and 6,111 comments from the remainder of the United States.

The comment period for this rule ran concurrently with the comment period for the Draft SEIS. It is likely that many of the comments received during the rulemaking comment period were more likely intended to apply to the SEIS. Many of the comments went beyond the narrow focus of the proposed rule and opined on whether the NPS should alter its decision from November, 2000, to allow continued recreational snowmobile use in the three park units. The pending SEIS process will result in a determination of whether such use will occur. At this time the NPS believes it can accommodate some level of recreational use in the three park units.

The following is a summary of all substantive comments we received on the proposed rule and our responses to them.

*Issue*—Over 2,400 comments specifically supported the continued use of snowmobiles, objecting to any prohibitions, and encouraging proper management and use of new technology to solve snowmobile related problems.

*NPS Response*—These comments go beyond the narrow scope of the proposed rule and address issues under consideration in the SEIS process. In that process, NPS is considering alternatives that would allow some level of snowmobile use and include several elements of snowmobile management that will help to mitigate or resolve existing concerns related to snowmobile use. During the winter use season 2002–2003, NPS is implementing management measures to mitigate the effects of continued snowmobile use in the parks.

*Issue 2*—Several comments supported alternative 2 developed by the cooperating agencies.

*NPS Response*—These comments also go beyond the scope of the proposed rule. The NPS continues to evaluate the substance of alternative 2 in the SEIS process.

*Issue 3*—A few commentors said that they believe snowmobiles do not harm wildlife or the environment.

*NPS Response*—Studies cited in the FEIS document disturbance to wildlife and the potential harm to the environment from inadequately managed snowmobile use. The pilot program in Yellowstone National Park during the winter of 2001–2002 lessened these impacts to some extent. If the winter use plan for the three parks includes continued recreational use of snowmobiles, the plan will include features to further reduce and monitor these impacts.

*Issue 4*—Some commentors said that the ban on snowmobiles would be too devastating on the economy of local communities.

*NPS Response*—Again, these comments go beyond the scope of the proposed rule. The FEIS and draft SEIS disclosed potential adverse economic consequences from a ban of recreational snowmobile use. The NPS chose to phase out such use, rather than implement an immediate ban, in part based on those adverse impacts. Consequently, we are striving to develop a winter use management plan that continues to provide winter access to a variety of visitors while still protecting the parks as required by applicable law.

*Issue 5*—A few commentors said they wanted to continue to have the ability to access the park on their own snowmobile at their own pace and that this is the best way to experience the park.

*NPS Response*—This is beyond the scope of the proposed rule, but the issue is being considered as part of the SEIS process. The proposed rule allows personally owned snowmobiles to be used during the winter of 2002–2003.

*Issue 6*—Several commentors supported the idea of adaptive management so the parks could be responsive to new technology with regards to snowmobile management.

*NPS Response*—These comments are beyond the scope of the proposed rule. The draft SEIS, however, considered two alternatives that featured adaptive management strategies.

*Issue 7*—Nearly 900 commentors said they do not support any proposal for snowmobile access only with a guide.

*NPS Response*—Again, these comments are beyond the scope of the proposed rule. This issue will be addressed in the SEIS process. Current regulations do not require the use of snowmobile guides during the winter use season 2002–2003.

*Issue 8*—Several commentors expressed support for a 35 mph speed limit between West Yellowstone and Old Faithful.

*NPS Response*—The speed limit reduction (from 45 to 35 mph) between West Yellowstone and Old Faithful during last winter's pilot program administratively addressed winter issues in this corridor and is being evaluated. It is likely that a similar speed limit reduction will be utilized during this coming winter.

*Issue 9*—Several commentors supported the idea of partnerships between the NPS and private sector to expand winter use education with an emphasis on ethics, rules, safety and park appreciation.

*NPS Response*—The NPS will consider these ideas when implementing a final winter use decision.

*Issue 10*—Some commentors said that 4-stroke technology would sufficiently curb perceived environmental concerns.

*NPS Response*—These comments are beyond the scope of the proposed rule but this issue will be addressed in the SEIS process.

*Issue 11*—Over 900 commentors believe that snowmobiles and snowcoaches can coexist and that one should not be banned in favor of the other.

*NPS Response*—These comments were beyond the scope of the proposed rule. The NPS is using the SEIS process to consider whether to allow both kinds of snowmachine use on park routes.

*Issue 12*—Nearly 900 commentors supported interim daily entry limits based on historic daily averages. Others believe historic annual use levels should be maintained.

*NPS Response*—These comments are beyond the scope of the proposed rule but this issue will be addressed in the SEIS process. One of the goals of the NPS is to maintain historic levels of visitation. The SEIS process will result in a decision on how to accomplish that goal.

*Issue 13*—Several commentors supported the advance sale of park permits off-site.

*NPS Response*—This implementation feature is beyond the scope of the proposed rule. However, based on the results of the pilot program instituted during the 2001–2002 winter use season, it is planned that advance sale of park permits off-site will continue to occur throughout West Yellowstone this coming winter in order to reduce congestion at the entrances and to reduce NPS employee exposure to exhaust emissions.

*Issue 14*—Some commentors supported reasonable restrictions on snowmobiles rather than an outright ban.

*NPS Response*—Again, these comments are beyond the narrow scope of the proposed rule and address the decision NPS will make at the conclusion of the SEIS process. Different alternatives in the final SEIS will consider such restrictions (hours of operation, limited numbers of entries, speed limits, guided tours or specialized training, etc.) in order to mitigate impacts to resources and reduce conflicts between user groups. During winter use season 2002–2003, snowmobile use in Yellowstone and Grand Teton National Parks will continue at its current level.

*Issue 15*—Nearly 900 commentors said that travel by snowmobile should be discouraged between the hours of 9 pm and 8 am.

*NPS Response*—Current snowmobile regulations prohibit operations of snowmobiles between the hours of 9 pm and 8 am. For the winter use season 2002–2003, the park will be amending the hours of operation to prohibit use between the hours of 9 pm and 7 am. This additional hour of use in the morning should help alleviate congestion at the West Yellowstone entrance. Adjustments in the times of operation for snowmobiles and/or snowcoaches may be addressed in the final SEIS.

*Issue 16*—Over 1,300 commentors supported the delay of the implementation of the existing regulations until the SEIS is complete.

*NPS Response*—We agree and expect to have the SEIS complete by spring 2003. This delay will enable us to complete the process without implementing the 50% reduction that is due to go into effect during the winter use season 2002–2003 under the current regulations.

*Issue 17*—Nearly 4,000 commentors supported the existing regulations and/or a complete prohibition of snowmobiles in the three parks.

*NPS Response*—The NPS believes that implementing the 50% reduction in the winter of 2002–2003, as originally scheduled, is undesirable. One purpose of the staged phase-out of snowmobile use was to allow NPS, and local communities, sufficient time to convert to a mass-transit system within the park units. Both entities need additional time to accomplish this conversion. Additionally, under the ongoing SEIS process, the NPS is considering whether new snowmobile technology and some travel restrictions (such as guided trips and operator training) would allow recreational snowmobile use to continue in the park units.

*Issue 18*—Some commentors supported the use of mass-transit snowcoaches.

*NPS Response*—We agree that the use of mass-transit snowcoaches may be an effective way to allow the maximum amount of visitors with less impact to park resources. Snowcoach use is unaffected by this regulation and will continue under the existing regulations.

*Issue 19*—A few commentors said that further public comment was not warranted and that the original decision/rulemaking process was sound.

*NPS Response*—On June 29, 2001, the NPS entered into a settlement agreement with the International Snowmobile Manufacturers Association, State of Wyoming, and others to complete a Supplemental Environmental Impact Statement to the original EIS completed in October 2000. The SEIS was to incorporate ''any significant new or additional information or data submitted with respect to a winter use plan.'' Additionally, the NPS was to consider new information and data submitted regarding new snowmobile technologies. Because of the terms of the settlement agreement, and because the SEIS must follow the process established by the National Environmental Policy Act, soliciting additional public comment was legally required. Most importantly, the Secretary of the Interior and the Director of the NPS both agree that consultation with affected parties is the most productive way to facilitate the decision making process.

*Issue 20*—A few commentors said the NPS should not be pressured by the

snowmobile industry or business concerns.

*NPS Response*—We believe that it is in the public interest for the NPS to understand and communicate with all affected stakeholders, including the tourism businesses. However, our ability to balance the needs of all stakeholders is constrained by the following considerations: (1) Resource protection is the highest priority of any park; (2) the mandate of preserving park resources unimpaired for future generations may limit our ability to meet the desires of the commercial tourism industry; (3) the Service must consider the negative as well as the positive impacts that tourism may have on park neighbors. Additionally, the Service strives to understand the goals, capabilities, and limitations of the tourism industry and recognize that tourism businesses have financial obligations to meet and investments to protect.

Finally, the Regulatory Flexibility Act requires us to consider the economic impact to businesses from our rulemaking decisions. These businesses could be anything from snowmobile manufacturers to the hotel that provides a room for an out-of-town visitor coming to ride a snowmobile.

*Issue 21*—A few commentors believe that snowmobiles destroy the solitude of the winter experience.

*NPS Response*—Within the Final SEIS, we will consider whether and how to provide separate areas of use, or vary the use times, for different types of winter activities such as snowmobiling, snowcoach touring and cross-country skiing. This would allow each user group to enjoy the particular kind of experience for which they come to the park units.

*Issue 22*—Some commentors said that snowmobiles harm wildlife and wildlife habitat, threaten human health and safety, and pollute the air, ground and water with emissions.

*NPS Response*—During the winter use season 2002–2003, we will institute management measures that will help address some of these concerns. In the SEIS process, we are considering, among other options, management strategies to mitigate these impacts through guided tours and training to reduce conflicts with wildlife, provide off-site sales of passes to alleviate inhalation of emissions by NPS employees at the entrance gates, and use of new snowmobile technology to reduce emissions into the air, ground and water. Those strategies likely will include a monitoring program to evaluate these impacts and ensure that such visitor use does not cause unacceptable impacts.

*Issue 23*—Some commentors said that snowmobiles destroy natural peace and quiet and that they are concerned about the noise.

*NPS Response*—Although beyond the scope of this rulemaking the final SEIS is considering whether we can lessen the noise impacts from snowmobiles and snowcoaches to a point where such use in parks is appropriate. Additionally, the monitoring program we anticipated developing for the final SEIS will help determine the appropriate long-term use level to protect the visitor experience in the park units. The NPS is not making any changes to snowmobile use requirements as a method of reducing noise impacts during the winter use season 2002–2003. However, the increase in cleaner and quieter technology snowmobile engines within rental and administrative fleets may have beneficial affects on noise impacts in the park units.

*Issue 24*—A few commentors said that snowmobiles ruin the park experience for other visitors.

*NPS Response*—As previously indicated in this rulemaking, under the SEIS process the NPS is considering how to provide a variety of uses to allow different user groups each a chance for a unique experience. The objective in the SEIS is, in part, to reduce conflicts between user groups and allow for more enjoyable experiences regardless of the recreational activity. The NPS will continue to implement portions of the pilot program started in 2001 including such measures as increased grooming of roads, increased presence of NPS staff, and off-site sales of entrance passes in order to make the park experience more enjoyable for everyone.

*Issue 25*—A few commentors believe the NPS is in violation of laws and/or the Executive Orders pertaining to park management and off-road vehicle use.

*NPS Response*—We are cognizant of the legal and policy parameters guiding the management of visitor use in the park units. These requirements guide this decision as well as the development of any future plan for recreational snowmobile use in the parks.

The one year extension of the phase-out of certain provisions of the existing regulation is justified on the same basis as that stated with the publication of that regulation in January 2001:

> Under our Management Policies 2000, if there is an impairment of park resources and values from ongoing activities, as here, we must eliminate it as soon as reasonably possible. If the impairment is not from permanent impacts, as here, in determining how soon that is, we may make due allowance for avoiding unacceptable social, economic, or environmental effects of the action eliminating the impairment. (66 FR 7259, January 22, 2001)

As stated previously, NPS has not had sufficient time to implement the NPS-managed, mass-transit, snowcoach-only decision under the existing regulation and Record of Decision, and additional time is still needed to complete the SEIS. The impacts during the winter of 2002–03 are, in any event, anticipated to be less than those identified in the previous planning effort as a result of the various regulatory changes that will go into effect this winter, and the planned enhanced pilot project developed on the basis of our experience the past winter.

*Issue 26*—Some commentors said that snowmobiles belong on other lands (such as National Forests) and that there are plenty of other places for them to operate rather than in national parks.

*NPS Response*—We agree that there are a number of areas where snowmobiles can operate on other lands outside the national parks. We also know that visitors to the West Yellowstone area already spend the majority of their snowmobile visits utilizing lands outside the park units. NPS policy commits us to provide appropriate, high quality opportunities for visitors to enjoy parks. We also strive to maintain within parks an open, inviting atmosphere accessible to every segment of American society.

*Issue 27*—More than 1,700 commentors said that the NPS should listen to the EPA who said alternative 1a is the best alternative for the parks.

*NPS Response*—The NPS acknowledges that the presence of snowmobiles in these parks, whether operated by the public or the Park Service for administrative purposes, will have some level of negative impacts on park resources, just as the presence of any motorized vehicle, including snowcoaches, will also have negative impacts. We may allow such visitor uses so long as we manage them to minimize the impacts and ensure the impacts do not impair park resources and values.

*Issue 28*—Nearly 2,200 commentors said that they had concern for the protection of the park values and that the NPS should be providing a refuge away from machines and the other issues of city life.

*NPS Response*—NPS can and does allow a variety of recreational uses so long as those uses do not cause unacceptable impacts to park resources and values. Within the final SEIS, the NPS is considering how to provide various use areas throughout the parks

in order to allow for motorized and non-motorized activities. Each person characterizes his or her ''refuge'' and expectations of the ideal park visit in a different way. What one person values in the park experience may be contrary to another's. The NPS hopes to provide a wide spectrum of experiences to visitors from around the country and around the world.

*Issue 29*—One commentor said they thought the NPS was pre-decisional in proposing to implement alternative 1b from the draft SEIS and that public comments would not properly be considered within that process.

*NPS Response*—The basis for our determination to continue the phase-out of recreational snowmobile use in the parks is explained in our responses to issues 4, 17, and 25. This decision is supported by the environmental analysis conducted in the FEIS and explained in the Record of Decision. As indicated within this final rule, all public comments were read and considered.

**Snowplanes**

Over 1,200 other letters were received supporting on the continued use of snowplanes on Jackson Lake. The NPS specifically indicated in the proposed rule that snowplane use would not be reconsidered since it was not an element of the SEIS. The use of snowplanes on Jackson Lake continues to be prohibited.

**Compliance With Other Laws**

*Regulatory Planning and Review (Executive Order 12866)*

This document is a significant rule and has been reviewed 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.

This rule would delay most adverse economic impact from the existing rule for potentially two winter seasons, and there may be economic benefits resulting from the proposed extension. In the economic report ''Proposed Restrictions on Snowmobile Riding in the Greater Yellowstone Area Under the Delay Rule'' (MACTEC Engineering and Consulting of Georgia, Inc., BBL Sciences, and RTI International, November 2002) net economic gains are estimated to be between $3.0 million and $7.3 million. These estimates only include the monetized impacts of this rule, and do not include non-monetized values such as environmental effects. The full economic analysis can be viewed at *http://www.nps.gov/yell.*

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

Implementing actions under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific change.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

This rule will only postpone the phase out of snowmobiles for one year within specific park units. No grants or other forms of monetary supplements are involved.

(4) This rule may raise novel legal or policy issues.

The issue of prohibiting snowmobiles or allowing their continued use has generated local as well as national interest on the subject in the greater Yellowstone area. Previously, tens of thousands of public comments were received and analyzed in the development of the FEIS, Winter Use Management Plan, and existing regulations.

*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.*).

After considering the economic impacts of the delay rule on small entities, NPS concludes the delay rule will mitigate the impacts on small businesses during the winters of 2002–2003 and 2003–2004 relative to the impacts under the January 2001 rule. The NPS projects higher total levels of revenue for firms providing unguided and guided snowmobile rentals and snowcoach tours in those winters.

*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.

This rule would delay most adverse economic impact from the existing rule for one year, there may be economic benefits resulting from the proposed extension.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

Delaying the implementation of current snowmobile regulations for one year will have little effect on costs or prices for consumers, individual industries or any government agency.

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.

This rulemaking has no effect on methods of manufacturing or production and specifically influences only the Greater Yellowstone region of Wyoming, Montana and Idaho, not national or U.S. based enterprises.

*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.

This rule postpones the implementation of existing snowmobile regulations for one year. It imposes no other requirements on other agencies, governments, or the private sector.

*Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications.

This rule proposes to delay the implementation of certain existing snowmobile regulation for one year. Owners of private property within the boundaries of Grand Teton National Park will still be afforded access to their private property during the winter use season. No other property is affected.

*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.

This proposed rule effects use by the public of NPS administered lands. It has no outside effects on other areas and only addresses a portion of the use within parks.

*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*

This regulation does not require an information collection from 10 or more

parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

*National Environmental Policy Act*

In 2000, NPS completed a Final Environmental Impact Statement and issued a Record of Decision. That Record of Decision was the basis for the existing rule, and the rationale in that document supports the decision set forth in this rule. A Draft Supplemental Environmental Impact Statement (DSEIS) has been prepared to reconsider the Record of Decision.

*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) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Numerous tribes surrounding the greater Yellowstone area were consulted in the development of the Winter Use Plan and FEIS. The main concerns expressed by the tribes were the effects on wildlife by snowmobiles while operating inside the park units. The National Park Service is currently studying how to minimize adverse snowmobile-wildlife interactions in the SEIS. During the winter use season 2002–2003, the NPS will again provide additional staff presence to enforce existing regulations and educate visitors about proper snowmobile use in order to reduce conflicts between snowmobiles and wildlife. This rule has no effect on tribal lands or trusts.

*Drafting Information:* The principal contributors to this final rule are Robert J. Maguire, North District Ranger, Grand Teton National Park; Kym A. Hall, NPS Regulations Program Manager; and Barry Roth and Debra Hecox, Attorney-Advisors, Solicitor's Office.

**List of Subjects in 36 CFR Part 7**

District of Columbia, National Parks, Reporting and recordkeeping requirements.

## PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

2. In § 7.13, remove and reserve paragraph (l)(2), revise the introductory text of paragraph (l)(5), revise the introductory text of paragraph (l)(7), revise paragraph (l)(11)(i) , and revise the dates in the first sentence of (l)(11)(viii) to read as follows:

**§ 7.13 Yellowstone National Park.**

* * * * *

(l)(5) *What routes are designated for snowmobile use in the park during the winter seasons of 2002–2003 and 2003–2004?* During the winter use seasons of 2002–2003 and 2003–2004, the following routes are designated for snowmobile use:

* * * * *

(l)(7) *What limits are established for the number of snowmobiles permitted to use the park each day?* For the winter use season 2003–2004, the numbers of snowmobiles allowed to use the park each day are listed in the following table:

* * * * *

(l)(11)(i) Snowcoaches , and during the winter use seasons of 2002–2003 and 2003–2004 snowmobiles, may not be operated in the park between the hours of 9 p.m. and 7 a.m. except by authorization.

* * * * *

(l)(11)(viii) During the winter season of 2003–2004, snowmobiles must be accompanied by an NPS permitted guide and may not travel in groups of more than 11 snowmobiles.

* * * * *

3. In § 7.21, revise paragraph (a)(1), remove and reserve paragraph (a)(2), revise paragraph (a)(4) introductory text, revise paragraph (a)(5) introductory text, and revise paragraph (a)(9)(vi) to read as follows:

**§ 7.21 John D. Rockefeller, Jr., Memorial Parkway.**

* * * * *

(a)(1) *May I operate a snowmobile in the Parkway?* You may operate a snowmobile in the Parkway in compliance within the public use limits and operating conditions established in this section until the end of the winter use season of 2003–2004 at which time snowmobile use in the Parkway is prohibited except for essential administrative use and in emergency situations as determined by the Superintendent.

* * * * *

(a)(4) *What routes are designated for snowmobile use in the Parkway in the winter use seasons of 2002–2003 and 2003–2004?* During the winter use seasons of 2002–2003 and 2003–2004, the following routes are designated for snowmobile use:

* * * * *

(a)(5) *What limits are established for the number of snowmobiles permitted to use the Parkway each day?* For the winter use season 2003–2004, the numbers of snowmobiles allowed to use the Parkway each day are listed in the following table:

* * * * *

(a)(9)(vi) Snowcoaches, and during the winter use seasons of 2002–2003 and 2003–2004 snowmobiles, may not be operated in the park between the hours of 9 p.m. and 7 a.m. except by authorization.

* * * * *

4. In § 7.22, revise paragraph (g)(1), remove and reserve paragraphs (g)(2) and (g)(3), revise paragraph (g)(4), revise paragraph (g)(6), and revise paragraph (g)(7)(vi) to read as follows:

**§ 7.22 Grand Teton National Park.**

* * * * *

(g)(1) *May I operate a snowmobile in Grand Teton National Park?* During the winter use seasons of 2002–2003 and 2003–2004, you may operate a snowmobile on the routes and areas designated in paragraphs (g)(4) and (g)(6) of this section in compliance with public use limits and operating standards established by the Superintendent. Effective the winter use season of 2004–2005, snowmobile use will be restricted to the routes and purposes in paragraphs (g)(10), (11), (12), and (13) of this section. All other snowmobile use is prohibited, except for essential administrative use and in emergency situations as determined by the Superintendent.

* * * * *

(g)(4) Effective until the end of the winter use season 2002–2003, the following water surface is designated for snowmobile use: The frozen surface of Jackson Lake.

* * * * *

(g)(6) *What routes and limits are designated for snowmobile use in the park during the winter use seasons of 2002–2003 and 2003–2004?* For the winter use seasons of 2002–2003 and 2003–2004, the Continental Divide Snowmobile Trail along U.S. 26/287 from Moran to the eastern park boundary and along U.S. 89/287 from Moran to the north park boundary is designated for snowmobile use. The Superintendent may open or close this route after taking into consideration the location of wintering wildlife, appropriate snow cover, and other factors that may relate to public safety. During the winter use season of 2003–

2004 a maximum of 25 snowmobiles are allowed to use this route each day.

* * * * *

(g)(7)(vi) Snowcoaches, and during the winter use seasons of 2002–2003 and 2003–2004 snowmobiles, may not be operated in the park between the hours of 9 p.m. and 7 a.m.

* * * * *

Dated: November 8, 2002.

**J. Steven Griles,**

*Deputy Secretary of the Interior.*

[FR Doc. 02–29028 Filed 11–15–02; 8:45 am]

**BILLING CODE 4310–70–P**

## POSTAL SERVICE

## 39 CFR Part 501

## Authorization To Manufacture and Distribute Postage Meters

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations for inspecting postage meter production facilities that are located outside the continental United States. This rule requires the manufacturer to reimburse the Postal Service for certain costs incurred by required inspections of production facilities located outside the continental United States.

**DATES:** The rule is effective November 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Wayne Wilkerson, manager of Postage Technology Management, at 703–292–3782, or by fax at 703–292–4050.

**SUPPLEMENTARY INFORMATION:** Title 39, Code of Federal Regulations (CFR) part 501, Authorization to Manufacture and Distribute Postage Meters, requires the Postal Service to inspect meter production facilities to determine if the facilities satisfy Postal Service requirements for meter and component security and production quality. A manufacturer may have valid business reasons for selecting a particular location for its production facilities. However, when a manufacturer chooses to locate these facilities outside the continental United States, conducting the required inspections of such facilities places an undue cost burden on the Postal Service. The Postal Service is requiring the manufacturer to reimburse the travel-related costs.

The proposed rule was published in the **Federal Register** on May 9, 2002 [Vol. 67, No. 90, page 31168], with a request for submission of comments by June 10, 2002. We received two submissions from postage meter manufacturers in response to the solicitation of public comments. The Postal Service gave thorough consideration to the comments it received, modified the proposed rule as appropriate, and now announces the adoption of the final rule.

**Discussion of Comments**

1. Both commenters opposed having the provider become responsible for the costs incurred by the Postal Service when it conducts required inspections of provider facilities located outside the continental U.S. One commenter claimed that this requirement is both unfair and unreasonable, since it puts an undue burden on a company with production facilities outside the U.S., and therefore places non-U.S.-based companies at a disadvantage. The commenter also noted that in the global economy, it is unreasonable to expect products to be sourced from a single country. The other commenter noted that even though providers have maintained facilities in Europe for years, the Postal Service has not asked that the providers pay postal expenses for travel to these European locations. The commenter requested that European production facilities be exempt from the new rule.

The Postal Service understands the concern about having providers pay the costs incurred for Postal Service personnel who travel outside the continental United States to inspect production facilities. The initially approved foreign manufacturing and production facilities were located in Europe. The Postal Service was able to minimize its cost by conducting periodic, routine, security inspections of multiple production locations on a single trip. Ongoing routine inspections of these long-established locations have resolved many of the security issues that can arise during facility startup. Although the final rule includes no exemption from the requirement for manufacturers to pay for Postal Service inspections of European production facilities, the Postal Service plans to continue its policy of funding the cost of certain inspection trips, as it has in the past, at its discretion. Postal Service funding will be limited to trips for routine inspections when the Postal Service can conduct multiple inspections and costs are not excessive. The Postal Service must limit its cost exposure by requiring manufacturers to pay the travel-related costs for inspections outside the continental United States whenever the costs are associated with particular security issues related to the manufacturer's products, or with the startup or implementation of a new plant or of a new or substantially changed manufacturing process. The Postal Service revised the proposed rule in response to this comment.

2. One commenter noted that when the Postal Service inspected overseas facilities in the past, the inspection team often visited more than one manufacturer or facility on a given trip. The other commenter noted that it is unreasonable to require the provider to pay travel expenses for inspections, which are conducted in the interests of the Postal Service. The commenter suggested that each organization consider whether the expense of travel is justified by the benefit gained. If it is not, then the trip should be postponed and not billed to another organization. The commenter noted that requirement for providers to reimburse the Postal Service also raises the issue of who is to decide the specifics of travel, including the number of Postal Service representatives.

Although the decision on where to locate production facilities for meter products or components is not one in which the Postal Service would expect to participate, such decisions may have the effect of increasing Postal Service costs incurred in the administration of the postage meter program. Given the financial constraints under which the Postal Service must operate, and our determination to avoid additional revenue security issues, the Postal Service cannot allow the business decisions of providers to determine the security of Postal Service revenues or to increase Postal Service costs indiscriminately. However, in recognition of the concerns expressed, the Postal Service is adding paragraph 501.2(c)(i) to clarify the final rule by defining how the Postal Service will control the costs allocated to the manufacturer. For example, the Postal Service will combine trips to more than one facility whenever possible and will limit the number of Postal Service representatives on the inspection team to the minimum number required to conduct the inspection.

3. It has come to the attention of the Postal Service that companies are considering using production facilities in certain foreign countries where political or other impediments may prevent the Postal Service from conducting security evaluations of these facilities. Postal Service approval to distribute meters produced in such facilities may be suspended until such time as satisfactory inspections may be conducted. In recognition of this concern, the Postal Service is adding paragraph 501.2(c)(ii) to clarify the final rule.

**List of Subjects in 39 CFR Part 501**

Administrative practice and procedure, Postal Service.

**The Amendment**

For the reasons set out in this document, the Postal Service is amending 39 CFR part 501 as follows:

## PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

1. The authority citation for part 501 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Public Law 95–452, as amended); and 5 U.S.C. App. 3.

2. Amend § 501.2 by revising the introductory text and paragraphs (c) and (d) to read as follows:

**§ 501.2 Manufacturer qualification.**

Any concern wanting authorization to manufacture and/or lease postage meters for use by licensees under *Domestic Mail Manual* P030 must:

* * * * *

(c) Have, or establish, and keep under its supervision and control, adequate production facilities suitable to carry out the provisions of §§ 501.15 through 501.21 to the satisfaction of the Postal Service. The production facilities must be subject to unannounced inspection by representatives of the Postal Service. If the provider's production facilities are located outside the continental United States, the provider will be responsible for all reasonable and necessary travel-related costs incurred by the Postal Service to conduct the inspections. Travel-related costs are determined in accordance with Postal Service Handbook F–15, *Travel and Relocation.* At its discretion, the Postal Service may continue to fund routine inspections outside the continental United States as it has in the past, provided the costs are not associated with particular security issues related to a manufacturer's product, or with the start-up or implementation of a new plant or of a new or substantially changed manufacturing process.

(i) When conducting an inspection outside the continental United States, the Postal Service will make every effort to combine the inspection with other inspections in the same general geographic area in order to enable affected manufacturers to share the costs. The Postal Service team conducting such inspections will be limited to the minimum number necessary to conduct the inspection. All air travel will be contracted for at the rates for official government business, when available, under such rules respecting class of travel as apply to those Postal Service representatives inspecting the facility at the time the travel occurs.

(ii) If political or other impediments prevent the Postal Service from conducting security evaluations of meter manufacturing facilities in foreign countries, Postal Service approval to distribute meters produced in those facilities may be suspended until such time as satisfactory inspections may be conducted.

(d) Have, or establish, and keep under its active supervision and control adequate facilities for the control, distribution, and maintenance of meters and their replacement or secure disposal or destruction when necessary.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 02–29097 Filed 11–15–02; 8:45 am]

**BILLING CODE 7710–12–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 600 and 660

**[Docket No. 020606142–2234–02; I.D. 041802F]**

**RIN 0648–AP39**

## Magnuson-Stevens Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Correction

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

**ACTION:** Correction to final rule.

**SUMMARY:** This document contains a correction to a final rule published on October 29, 2002. It removes an amendatory instruction that was inadvertently published in the October 29, 2002 document.

**DATES:** November 18, 2002.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 29, 2002, (67 FR 65902) NMFS published a final rule in the **Federal Register** to amend tier qualifications to include sablefish landings taken under the provisions of an exempted fishing permit (EFP) from 1984–1985 with setnet gear north of 38° N. lat. Setnet EFP landings will be added to the current pot (trap) and longline landings to qualify a sablefish-endorsed permit for its tier assignment. This rule is intended to recognize historical sablefish landings made by current primary season participants.

**Correction**

In the FR Doc. 02–27360 in the issue of Tuesday, October 29, 2002 (67 FR 65902) make the following correction:

1. On page 65906, in the third column, under instruction 7.(i), remove '' and (g)(2).''

Dated: November 12, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 02–29183 Filed 11–15–02; 8:45 am]

**BILLING CODE 3510–22–S**

# Proposed Rules

Federal Register
Vol. 67, No. 222
Monday, November 18, 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 ENERGY

## 10 CFR Parts 1021 and 1022

**RIN 1901–AA94**

## Compliance With Floodplain and Wetland Environmental Review Requirements

**AGENCY:** Department of Energy.

**ACTION:** Proposed rule; opportunity for public comment.

**SUMMARY:** This proposed rule would revise the Department of Energy's (DOE's) floodplain and wetland environmental review requirements to add flexibility and remove unnecessary procedural burdens by: Simplifying DOE public notification procedures for proposed floodplain and wetland actions; exempting additional actions from the floodplain and wetland assessment provisions of these regulations; providing for immediate action in an emergency; expanding the existing list of sources that may be used in determining the location of floodplains and wetlands; and allowing floodplain and wetland assessments for actions proposed to be taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to be coordinated with the CERCLA environmental review process rather than the National Environmental Policy Act (NEPA) process. In addition, the proposed revisions would make the rule easier to use by reordering sections, clarifying requirements, and eliminating provisions that are no longer necessary. The proposed revisions would streamline existing procedures and add no new or additional requirements. This proposed revision also would provide a conforming change to 10 CFR part 1021 to allow for issuance of a floodplain statement of findings in a final environmental impact statement (EIS) or separately.

**DATES:** Interested persons should submit comments by January 14, 2003.

**ADDRESSES:** You should address written comments on the proposed revisions to Carolyn Osborne, U.S. Department of Energy, Office of NEPA Policy and Compliance, 1000 Independence Avenue SW., Washington, DC 20585–0119. You also may e-mail written comments to: *carolyn.osborne@eh.doe.gov* or submit them by facsimile to (202) 586–7031.

**FOR FURTHER INFORMATION CONTACT:** For information regarding DOE's regulations for compliance with floodplain and wetland environmental review requirements or these proposed revisions, contact Carolyn Osborne at the above address. Telephone (202) 586–4600 or leave a message at (800) 472–2756.

For information on DOE's NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, at the above address and telephone numbers.

**SUPPLEMENTARY INFORMATION:**

I. Background
  A. Executive Orders 11988 and 11990
  B. 10 CFR Part 1022
II. Purpose of the Revisions to 10 CFR Parts 1021 and 1022
III. Description of Proposed Revisions to the Existing Rules
  A. Proposed Changes to 10 CFR Part 1021
  B. Proposed Changes to 10 CFR 1022 Subpart A—General
  C. Proposed Changes to 10 CFR 1022 Subpart B—Procedures for Floodplain and Wetland Reviews
IV. Procedural Review Requirements
  A. Review Under Executive Order 12866
  B. Review Under Executive Order 12988
  C. Review Under Executive Order 13132
  D. Review Under Executive Order 13175
  E. Reviews Under the Regulatory Flexibility Act
  F. Review Under the Paperwork Reduction Act
  G. Review Under the National Environmental Policy Act
  H. Review Under the Unfunded Mandates Reform Act
  I. Review Under Executive Order 13211
  J. Review Under the Treasury and General Government Appropriations Act
V. Public Comment Procedures

## I. Background

We published our regulations entitled ''Compliance with Floodplain/Wetlands Environmental Review Requirements'' (10 CFR Part 1022) on March 7, 1979 (44 FR 12596) to implement the requirements of Executive Order 11988, ''Floodplain Management'' (42 FR 2951, May 24, 1977), and Executive Order 11990, ''Protection of Wetlands'' (42 FR 26961, May 24, 1977).

### *A. Executive Orders 11988 and 11990*

Executive Orders 11988 and 11990 direct Federal agencies to consider and protect the beneficial values of floodplains and wetlands, and Executive Order 11988 also requires Federal agencies to consider, and implement protection from, the risk of loss from floods. The Executive Orders direct that Federal agencies evaluate the potential impacts of, and look for alternatives to, actions proposed in a floodplain or wetland. The Executive Orders also direct that agencies locate any new development outside floodplains and any new construction outside wetlands whenever there is a practicable alternative for doing so. When the action must proceed in a floodplain or wetland, the responsible agency is to implement steps to mitigate any potential harm. The assessment process under the Executive Orders is to include an opportunity for public review, and the Executive Orders are to be implemented through existing procedures, including those used to comply with NEPA, to the extent possible. The Executive Orders contain other informational requirements, including that Federal agencies notify the White House Office of Management and Budget (OMB) when new budget requests involve actions proposed to be in a floodplain or wetland and that Federal agencies provide certain information during transfers of property to non-Federal parties.

While this basic framework is the same in both Executive Orders, they differ in three important ways. First, Executive Order 11988 requires an assessment for any action proposed in a floodplain, whereas Executive Order 11990 only requires an assessment for new construction in a wetland. Second, Executive Order 11988 directs that if an agency finds that there is no practicable alternative to undertaking the action in a floodplain, then the agency will circulate a brief notice explaining the basis for its finding. Executive Order 11990 contains no similar provision for actions in wetlands. Finally, Executive Order 11988 requires the use of certain building standards and related measures for development in a floodplain. There is nothing comparable in Executive

Order 11990 related to construction in a wetland.

*B. 10 CFR Part 1022*

Central to our implementation of Executive Orders 11988 and 11990 are the floodplain and wetland assessment processes contained in subpart B of 10 CFR part 1022. The assessments ensure that we fulfill the substantive provisions of the Executive Orders to examine alternatives to undertaking actions in a floodplain or wetland, potential impacts on the beneficial values of floodplains and wetlands, and possible mitigation measures. As required by the Executive Orders, we look for practicable alternatives to locating a proposed action in a floodplain or wetland and only conduct a floodplain or wetland assessment when no alternative location is practicable. Our processes also ensure that we fulfill the procedural provisions of the Executive Orders to allow early public review of our proposals for certain activities in a floodplain or wetland, provide notice of a finding that there are no practicable alternatives to undertaking an action in a floodplain, and make use of existing processes, including those used to implement NEPA.

Our floodplain and wetland assessment process has five steps. First, we determine early in the planning process for all proposals if a floodplain or wetland assessment is required, based on the location of the proposed action and the applicability provisions in our regulation, which are taken from the Executive Orders. As noted above, Executive Order 11988 requires an assessment for a broader set of actions proposed in a floodplain than Executive Order 11990 requires for actions proposed in a wetland. Our requirements in part 1022 reflect this difference. When an action is proposed in a wetland that is located in a floodplain, we apply the more encompassing requirements for an action proposed in a floodplain.

Second, if a floodplain or wetland assessment is required, we provide public notice and allow at least 15 days for public review of our proposal. If we are preparing an EIS for the proposal, then we may incorporate this announcement into the EIS notice of intent required under applicable NEPA regulations. Otherwise, we announce the opportunity for early public review through a public notice that describes the proposed action and its location and is published in the **Federal Register** as soon as practicable after we determine that an assessment is required. The public review process itself is integrated with the NEPA process to the extent possible or else conducted separately.

Third, we prepare the floodplain or wetland assessment. If we are also preparing an EIS or environmental assessment (EA), then we usually incorporate the floodplain or wetland assessment into the NEPA documentation. Otherwise, we separately document the floodplain or wetland assessment. In either case, we describe the proposed action and include a map showing the location of the proposed action with respect to the floodplain or wetland. We discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain or wetland. For actions proposed in a floodplain, the assessment evaluates effects of the proposed action on lives and property and evaluates natural and beneficial floodplain values. For actions proposed in a wetland, the assessment evaluates effects on the survival, quality, and natural and beneficial values of the wetland. The floodplain or wetland assessment also considers alternatives that may avoid adverse effects and incompatible development in floodplains or wetlands and addresses mitigation measures.

Fourth, we determine whether there are any practicable alternatives to locating the proposed action in a floodplain or wetland. If we find that there are not, then before taking action in a floodplain we publish a brief statement of findings describing the proposed action, explaining why the action is proposed in a floodplain, listing alternatives considered, stating whether the action conforms to state or local floodplain protection standards, and describing steps to be taken to minimize potential harm to or within the floodplain. The statement of findings may be incorporated into the finding of no significant impact (FONSI) or final EIS, as appropriate, or issued separately. Where no EA or EIS is required, we publish the statement of findings in the **Federal Register** and distribute copies to appropriate government agencies and to those who commented during the public review of our proposal. We endeavor to allow at least 15 days of public review of the statement of findings before implementing a proposed action in a floodplain. There is no similar format or procedure for findings regarding whether there are any practicable alternatives to locating a proposed action in a wetland.

Fifth, we follow up decisions to locate actions in a floodplain or wetland through methods appropriate for the circumstances of each action.

The current rule contains one exemption from the requirement to prepare a floodplain or wetland assessment, which is for routine maintenance of existing facilities and structures on DOE property within a floodplain or wetland. By routine maintenance, we mean those activities needed as a normal part of operations to maintain and preserve facilities and structures in a condition suitable for continued use for their designated purpose. Routine maintenance does not include upgrades, improvements, or replacements that significantly extend the originally intended useful life of a facility or structure or that change its purpose. Where unusual circumstances indicate the possibility of adverse impacts on a floodplain or wetland, though, we will consider the need for a floodplain or wetland assessment even for routine maintenance activities.

Other requirements in 10 CFR part 1022 that implement aspects of Executive Orders 11988 and 11990 address building standards, providing floodplain and wetland information to external parties, property management, and budget requests. Although these requirements are designed to promote awareness of the values of floodplains and wetlands and the risks of flood loss, they are not part of the floodplain and wetland assessment process.

## II. Purpose of the Revisions to 10 CFR Parts 1021 and 1022

The Secretary of Energy has approved issuance and publication of this notice of proposed rulemaking.

We propose to revise 10 CFR part 1022 to add flexibility to our implementation of the Executive Orders, remove unnecessary procedural burdens, and make the rule easier to use by reordering sections, clarifying requirements, and eliminating provisions that are no longer needed. These changes stem from our experience implementing the existing requirements over the past 20 years. We expect these changes to improve our ability to meet our goals for floodplain and wetland protection in a timely and cost-effective manner. We propose to revise 10 CFR part 1021 to allow floodplain statements of findings to be issued in a final EIS or separately.

The major revisions we propose would: (1) Simplify our public notification procedures for proposed floodplain and wetland actions by emphasizing local publication as opposed to publication in the **Federal Register**, (2) exempt additional actions from the floodplain and wetland

assessment provisions of these regulations, (3) provide for immediate action in an emergency with documentation to follow, (4) expand the existing list of credible sources that may be used in determining the location of floodplains and wetlands, and (5) allow floodplain and wetland assessments for actions proposed to be taken under CERCLA to be coordinated with the CERCLA environmental review process rather than the NEPA process. The proposed revisions would make the rule easier to use by reordering sections to parallel the assessment process, clarifying requirements (such as the differences between floodplain and wetland actions and their respective assessment requirements), and simplifying the rule by deleting provisions that are no longer applicable. The proposed revisions would streamline existing procedures and add no new requirements.

Rather than require publication in the **Federal Register** of every public notice announcing a proposed action in a floodplain or wetland or describing the findings of our floodplain assessment, we propose to allow case-by-case decisions on how to issue notices to best meet local needs (in proposed sections 1022.12 and 1022.14). We would continue to integrate our floodplain and wetland notices with other public notices related to the proposed action, such as a notice of intent to prepare an EIS on the proposal. We also would continue to distribute notices directly to interested parties, such as government and non-government agencies, as appropriate. We would, however, only require publication of a notice and a floodplain statement of findings in the **Federal Register** if our proposal may result in effects of national concern on a floodplain or wetland. A hypothetical example of an action that could have effects of national concern because of its national prominence and ecological function and the potential environmental effects of such a proposal would be a proposal for a project in the Everglades.

As noted above, part 1022 currently does not ordinarily require a floodplain or wetland assessment for routine maintenance of existing facilities and structures on DOE property in a floodplain or wetland. We propose to exempt four additional classes of floodplain and wetland actions from subpart B, Procedures for Floodplain and Wetland Reviews. At proposed section 1022.5(d)(2), we would add exemptions for three similar classes of activities (site characterization, environmental monitoring, and environmental research activities) on DOE or non-DOE property in a floodplain or wetland, unless the activities would involve building a structure; involve draining, dredging, channelizing, filling, diking, impounding, or related activities; or result in long-term change to the ecosystem. At proposed section 1022.5(d)(3), we would add an exemption for minor modification of an existing facility or structure in a floodplain or wetland to improve safety or environmental conditions, unless the modification would result in a significant change in the expected useful life of the facility or structure or would involve building a structure or draining, dredging, channelizing, filling, diking, impounding, or related activities. Our experience with these classes of actions is that they are of short duration with very small intrusion in a floodplain or wetland and have very small or no adverse impact on a floodplain or wetland. Additionally, these classes of actions typically lead to improved environmental protection or public and worker safety. For each of these exemptions, if unusual circumstances arise, we would consider the need for a floodplain or wetland assessment in order to consider any unusual circumstances associated with a particular proposal that indicate the possibility of adverse impact on a floodplain or wetland (proposed section 1022.5(e)).

We propose to clarify our provision for immediate action in the event of an emergency (proposed section 1022.16(a)). The existing rule allows minimum time periods prior to implementation of a proposal to be waived in response to emergency circumstances. We propose that action may be taken during an emergency without complying with provisions of these regulations. We also propose, however, that after taking action, we would assess the environmental impacts of our emergency actions and consider potential mitigation in conjunction with our NEPA regulations for emergency actions (10 CFR 1021.343(a)) or our CERCLA procedures.

The existing rule establishes a 15-day waiting period between issuance of the notice of proposed floodplain action and issuance of the floodplain statement of findings, and another 15-day waiting period after issuance of the floodplain statement of findings before implementing the proposed floodplain action. For a proposed wetland action, the existing rule requires a 15-day waiting period after issuance of the notice of proposed action before implementing the action. In the event of statutory deadlines or overriding considerations of program or project expense or effectiveness, the existing rule provides for waiving any of the waiting periods except the 15-day period between issuing a notice of proposed floodplain action and the floodplain statement of findings. We propose to add a provision allowing the waiver of all minimum waiting periods under the same exigent circumstances (*i.e.*, in the event of statutory deadlines or overriding considerations of program or project expense or effectiveness) (proposed section 1022.16(b)). This change would allow us additional flexibility when a floodplain assessment is not being prepared as part of a NEPA or CERCLA review. The waiver of a waiting period under this rule would not affect timing requirements of our NEPA regulations or of CERCLA procedures.

We propose to expand the existing list of sources that may be used in determining the location of floodplains and wetlands (proposed sections 1022.11(b) and (c)). For floodplain determinations we have relied upon Flood Insurance Rate Maps, Flood Hazard Boundary Maps, and information from the relevant land administering agency or from agencies with floodplain determination expertise. We propose to also use information in safety basis documents as defined at 10 CFR part 830 and in DOE environmental documents, *e.g.*, NEPA and CERCLA documents. For wetland determinations, we have relied upon the U.S. Fish and Wildlife Service National Wetlands Inventory, other government-sponsored wetland or land-use inventories, U.S. Department of Agriculture Natural Resources Conservation Service Local Identification Maps, and U.S. Geological Survey Topographic Maps. We propose to also use the U.S. Army Corps of Engineers ''Wetlands Delineation Manual'' (Wetlands Research Program Technical Report Y–87–1, January 1987) or successor document and DOE environmental documents, *e.g.,* NEPA and CERCLA documents. These changes would allow us to take advantage of information sources that were not available when this regulation was first promulgated and to use better the considerable research and documentation completed for safety, planning, and other purposes at DOE sites. When there are differences among these information sources, we will use the most authoritative information available relative to site conditions.

We propose adding provisions acknowledging that floodplain and wetland assessments for actions proposed to be taken under CERCLA would be coordinated with the CERCLA

environmental review process, not the NEPA process (proposed sections 1022.2(b), 1022.11(a), and 1022.13(c)). As we first promulgated our 10 CFR Part 1022 requirements approximately two years before CERCLA became law, this change would update the rule to be consistent with our current policy and practice regarding environmental reviews under CERCLA.

To make the rule simpler and easier to use, we propose to reorder sections, add clarifications, delete text, and make numerous stylistic changes. These proposed changes would not alter applicable requirements. The existing rule has two subparts, A and B. We propose reordering sections in Subpart B to only address provisions associated with floodplain and wetland assessment processes. All other requirements currently in Subpart B would be moved to a proposed new subpart (Subpart C, Other Requirements).

We propose to clarify how this regulation applies differently to actions proposed in a floodplain, and actions proposed in a wetland but not in a floodplain, consistent with provisions in Executive Orders 11988 and 11990 and our existing regulation. We would not change any requirements in this regard; rather we propose to revise definitions of floodplain, floodplain action, and wetland action (proposed section 1022.4) to better describe our intent and the way we implement this regulation. These changes, and related changes to maintain consistency throughout the regulation, clarify that we treat a proposal that would be located in both a wetland and a floodplain as we would any other action proposed to be located in a floodplain.

We propose to delete text that is repeated between sections in the existing rule, and in one case, we would delete an entire section (existing section 1022.21) that specifies we will periodically review these regulations and make revisions. Existing section 1022.21 is not required for us to propose additional changes to this rule at a future date, and therefore, we propose deleting it as unnecessary. We also propose to delete language that was needed to transition the rule into effect but that is no longer needed (proposed section 1022.5).

The details of these and other proposed changes are described below in section III, Description of Proposed Revisions to the Existing Rule. Because we often reference our existing rule to describe our proposed changes, you may want to refer to it. Our existing 10 CFR Part 1022 regulations are available on the Internet at *http://tis.eh.doe.gov/nepa/tools/tools.htm* under the heading ''NEPA Regulations'' or you may request a copy from Carolyn Osborne at either of the telephone numbers listed above under **FOR FURTHER INFORMATION CONTACT.**

## III. Description of Proposed Revisions to the Existing Rules

### *A. Proposed Changes to 10 CFR Part 1021*

We propose to revise section 1021.313 to make it consistent with our proposed new section 1022.14(c), as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022, and below. Currently, section 1021.313(c) requires a DOE final EIS to include any floodplain statement of findings required by Part 1022. This requirement is overly prescriptive and is inconsistent with the flexibility afforded under existing section 1022.15 and proposed section 1022.14(c) to include a floodplain statement of findings in a final EIS or to issue the statement of findings separately. Under our proposal, section 1021.313(c) would track the language at the new section 1022.14(c).

### *B. Proposed changes to 10 CFR 1022 Subpart A—General*

#### *Section 1022.1 Background*

To provide guidance on implementing Executive Order 11988, Floodplain Management, we propose adding a reference to the Federal Interagency Floodplain Management Taskforce document, ''A Unified National Program for Floodplain Management'' (FEMA 248, June 1994). We also propose adding words from Executive Orders 11988 and 11990 emphasizing two purposes of the regulation: That Federal agencies are to avoid development in a floodplain or new construction in a wetland wherever there is a practicable alternative and to ensure the evaluation of potential impacts associated with proposed new construction in wetlands. These changes would add no new requirements.

#### *Section 1022.2 Purpose and Scope*

As described above in section II, we propose identifying the CERCLA review process as an alternative mechanism for implementing the regulation. Sections 1022.11(a) and 1022.13(c) (detailed below) would be revised to reflect this additional flexibility.

#### *Section 1022.3 Policy*

To better group floodplain and wetland policy statements, we propose reordering paragraphs within this section. We also propose updating the reference to construction requirements in proposed paragraph (a)(4) from ''regulations promulgated by the Federal Insurance Administration pursuant to the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*'' to ''the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program building standards.'' Also, we propose moving a requirement concerning transactions to a new section 1022.21(b) in a new Subpart C, Other Requirements, discussed below, so that proposed paragraph (a)(6) would only state policy: ''Inform parties during transactions guaranteed, approved, regulated, or insured by DOE of the hazards associated with locating facilities and structures in a floodplain.''

#### *Section 1022.4 Definitions*

We propose to change our definition of ''action'' to clarify that it includes any activity necessary to carry out DOE's responsibilities for the tasks listed in Executive Orders 11988 and 11990, rather than that it includes any activity ''including, but not limited to,'' those tasks listed in the Executive Orders. This proposed language more closely parallels the Executive Orders.

We propose deleting the definition of ''base flood'' and incorporating it into the definition of ''base floodplain.''

We propose to revise the definitions of ''environmental assessment,'' ''environmental impact statement,'' and ''finding of no significant impact'' to reference the Council on Environmental Quality's (CEQ's) and DOE's NEPA regulations at 40 CFR parts 1500–1508 and 10 CFR part 1021, respectively. Our NEPA regulations were not in place when 10 CFR part 1022 was promulgated.

We propose to simplify the definition of ''floodplain'' by creating separate definitions for ''base floodplain'' and ''critical action floodplain.'' We also propose to define the critical action floodplain as, at a minimum, the 500-year floodplain. While for most proposed actions, we prepare a floodplain assessment if the action would be located in the 100-year floodplain, for a proposed critical action (*i.e.*, an action for which even a slight chance of flooding poses an unacceptable risk) we prepare a floodplain assessment if it would be located in the critical action floodplain. We normally define the critical action floodplain in terms of the estimated 500-year flood for an area. We would add the option to define the critical action floodplain in terms of a less frequent (and therefore more severe) flood when another requirement applicable to the proposal requires consideration of the less frequent flood event. For example, if the hazard

assessment for a proposal considers the consequences of a less frequent flood (*e.g.*, the 10,000-year flood), then we would use that less frequent flood to define the critical action floodplain for the proposal.

We propose to clarify the definition of ''floodplain action'' by adding ''including any DOE action in a wetland that is also within the floodplain.''

We propose to add a definition for ''floodplain and wetland values'' to describe the range of issues to be addressed in a floodplain or wetland assessment under the existing section 1022.12(a)(2) and proposed section 1022.13(a)(2). We adapted the proposed definition from that used by FEMA (44 CFR 9.4) and terms used in Executive Orders 11988 and 11990.

We propose to delete the definition of ''floodproofing,'' because the term is not used in the rule.

We propose simplifying our definition of ''new construction'' by deleting the reference to October 1, 1977, as the starting point for applicability of the definition. That clause appropriately exempted certain actions underway before Executive Order 11990 became effective, but it is no longer necessary.

We propose to change the name and definition of ''public notice.'' We would call the notice a ''notice of proposed floodplain action'' or a ''notice of proposed wetland action'' to better reflect its purpose to announce that a proposed action would be in a floodplain or wetland, respectively, the location of the floodplain or wetland, and the opportunity for public review. We also propose to delete any requirements on how to issue the notice from the definition and instead to include such requirements in proposed section 1022.12, Notice of proposed action.

We propose to change the name ''statement of findings'' to ''floodplain statement of findings'' and to delete any requirements from the definition and instead to include such requirements in proposed section 1022.14, Findings.

We propose changing our definition of ''wetland'' to make it consistent with the Clean Water Act implementing regulations of both the U.S. Army Corps of Engineers (33 CFR 328.3(b)) and the U.S. Environmental Protection Agency (40 CFR 230.41(a)(1)), as the definition in the existing rule was taken from Executive Order 11990. This proposed revision would involve deleting the examples of ''similar areas such as sloughs, potholes, wet meadows, river outflow, mudflats and natural ponds.'' An important note about the proposed definition is that it is more broadly defined than the wetlands over which the U.S. Army Corps of Engineers has regulatory jurisdiction (33 CFR 328.3(a) and 328.4). The broader definition we use for this rule is consistent with Executive Order 11990 in order to ensure that we apply appropriate protections to valuable wetlands that might not qualify as wetlands subject to the Corps' jurisdiction (*e.g.,* some wet meadows, forested wetlands, playas, Carolina bays).

We propose to modify the definition of ''wetland action'' to specify that it applies to any DOE action ''related to new construction'' that takes place in a wetland not located in a floodplain. This change would make the definition consistent with Executive Order 11990, which requires a wetland assessment only for activities related to new construction in a wetland.

*Section 1022.5 Applicability*

We propose deleting a significant portion of text from the existing section 1022.5 because it is outdated or redundant of other sections of the rule. The result would be a more concise section, reduced from eight to four paragraphs, which is easier to read. We propose deleting text from existing paragraphs (b) and (c) that exempts actions that were underway when the rule was issued. Any such actions have since been completed, and the text is no longer necessary. We would delete text from existing paragraphs (d), (e), and (f) that repeats parts of the definition of ''action'' (proposed section 1022.4); this results in deletion of the entirety of paragraph (f). We would also delete existing paragraph (h) since it is repetitive of the definition of floodplain action (proposed section 1022.4).

We propose relocating requirements regarding license, easement, lease, transfer, or disposal of property to non-Federal public or private parties from existing section 1022.5(d) to proposed section 1022.21(a), Property management, in a new Subpart C, Other Requirements. From existing section 1022.5(e), we propose moving the requirements for applicants for assistance into proposed section 1022.23, Applicant responsibilities (proposed redesignation from existing section 1022.13), described below.

We propose adding four exemptions from the requirements for preparing a floodplain or wetland assessment to paragraph (d). These proposed exemptions are described above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022.

*Section 1022.6 Public Inquiries*

We propose moving this section from Subpart B (where it had been designated section 1022.20) to Subpart A because it is more appropriately a part of general statements related to this rule. We also propose updating the contact to which inquiries may be directed from the Assistant Secretary for Environment to the Office of NEPA Policy and Compliance.

*C. Proposed Changes to 10 CFR 1022 Subpart B—Procedures for Floodplain and Wetland Reviews*

We propose reordering the sections in this subpart to better reflect the sequence of events in our process for preparing a floodplain or wetland assessment and to relocate to subparts A and C those requirements not directly related to the preparation of a floodplain or wetland assessment. The particular changes are described below for each section in proposed subpart B.

*Section 1022.11 Floodplain or Wetland Determination*

We propose to change section 1022.11(a) by adding a reference to environmental review requirements under the CERCLA process to conform to the proposed change in section 1022.2(b), discussed above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022.

As also discussed above in section II, we propose to expand the list of information sources that may be used to determine if a proposed action would be located in a floodplain or wetland (proposed sections 1022.11(b) and (c)). We also propose to update references to two information sources. FEMA, rather than the Federal Insurance Administration of the Department of Housing and Urban Development, would be cited because FEMA currently maintains primary responsibility for interagency planning to address Federal floodplain management requirements (proposed section 1022.11(b)). We also propose to change the existing reference to the Soil Conservation Service to the Natural Resources Conservation Service to reflect the agency's current name (proposed sections 1022.11(b) and (c)).

We propose to add a new section (proposed 1022.11(d)) that would specify whether a floodplain or wetland assessment is required based on the location of the proposed action. This paragraph would clarify existing requirements by associating the determination made pursuant to sections 1022.11(b) and (c) with the definitions of critical action, floodplain action, and wetland action.

*Section 1022.12 Notice of Proposed Action (Proposed Redesignation From Section 1022.14 Public Review)*

We propose to change, in proposed section 1022.12 and throughout the rule, all references to ''public notice'' to ''notice of proposed floodplain action'' or ''notice of proposed wetland action'' to better reflect the purpose of the notice.

We propose to change existing sections 1022.14(b) and (c) by deleting the requirement that DOE always publish a notice in the **Federal Register** for floodplain or wetland actions for which no EIS is required. This proposal is explained above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022. We also propose to move the requirement regarding timing for issuance of a notice of proposed action from existing section 1022.14(b) to proposed section 1022.15, Timing. This would consolidate requirements related to timing of steps in the floodplain and wetland assessment processes, as discussed below.

*Section 1022.13 Floodplain or Wetland Assessment (Proposed Redesignation From Existing Section 1022.12)*

We propose emphasizing in proposed paragraph (a)(2) that the assessment shall incorporate floodplain and wetland values that are appropriate to the location under evaluation. This would underscore the need to focus only on those values most appropriate to local conditions and also to clarify that when evaluating a proposal for an action within a wetland located in a floodplain, we consider both floodplain and wetland values, as appropriate. This proposed revision would reference a new definition of floodplain and wetland values (described above for proposed section 1022.4) that lists several topics that might be included in the assessment. Although these changes do not add any new requirement, they do add further guidance about how the assessment should be performed.

We propose adding to proposed paragraph (c) that when an EA or EIS is not being prepared for the proposed floodplain or wetland action, the assessment ''shall be prepared separately or incorporated when appropriate into another environmental review process (*e.g.*, CERCLA).'' This revision highlights our flexibility to incorporate compliance with these regulations within processes other than NEPA, as appropriate and as discussed in other sections above.

*Section 1022.14 Findings (Proposed Redesignation From Section 1022.15 Notification of Decision)*

We propose a new section (1022.14(c)) to describe how to issue a statement of findings for floodplain actions for which no EA or EIS is being prepared. For these floodplain actions, we would distribute copies of the floodplain statement of findings to government agencies and to others who submitted comments on the proposed action. We propose to publish the floodplain statement of findings in the **Federal Register** only when the proposed floodplain action may result in effects of national concern to a floodplain or wetland or both. The proposed change would parallel the process described in the CEQ regulations on Public Involvement (40 CFR 1506.6(b)(2)) and is reflected in the proposed changes to section 1022.4. We also propose that when a floodplain statement of findings is published in the **Federal Register** the statement does not need to contain a map (as otherwise required) but that the statement should indicate where a location map is available. A wetland finding may be prepared and distributed at DOE's discretion.

We also propose a new section (1022.14(d)) regarding the distribution of floodplain statements of findings to state governments. We propose to update the existing reference to Office of Management and Budget Circular A–95 (from the existing section 1022.15) and refer instead to Executive Order 12372, Intergovernmental Review of Federal Programs, and DOE's implementing regulations at 10 CFR part 1005, Intergovernmental Review of *Department of Energy Programs.* Executive Order 12372 directs Federal agencies to rely on state and local processes for state and local government coordination and for review of proposed Federal financial assistance and direct Federal development.

*Section 1022.15 Timing (Proposed Redesignation From Section 1022.18 Timing of Floodplain/Wetlands Actions)*

We propose to relocate the requirements regarding timing in sections 1022.14(c) and 1022.18 of the existing rule to proposed section 1022.15. This would consolidate references to the time periods for DOE to consider public comments after issuing a notice of proposed floodplain action or a notice of proposed wetland action or a floodplain statement of findings.

*Section 1022.16 Variances*

We propose to add a section providing a variance for emergency actions (proposed section 1022.16(a)) that would, as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022, reflect provisions in our NEPA procedures (10 CFR 1021.343(a)). We also propose to incorporate into this section as paragraph (b) the existing variance (1022.18(c) in the existing rule) that allows abbreviated schedules in some circumstances and to broaden the applicability of this variance as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022. We also propose to add a section 1022.16(c) requiring consultation with the Office of NEPA Policy and Compliance whenever this section is being implemented.

*Subpart C—Other Requirements*

We propose adding a new subpart to consolidate requirements that are not general policy (subpart A) nor a part of the floodplain and wetland assessment processes (subpart B).

*Section 1022.21 Property Management*

We propose a new section that would consolidate existing requirements from sections 1022.5(d) and 1022.3(b)(8) of the existing rule. These sections address property in a floodplain or wetland that is proposed for license, easement, lease, transfer, or disposal to non-Federal public or private parties and any transaction that DOE guarantees, approves, regulates, or insures that is related to an area located in a floodplain. There are no substantive changes in this new consolidated section.

*Section 1022.22 Requests for Authorizations or Appropriations (Proposed Redesignation From Section 1022.16)*

We propose to move this section into Subpart C, Other Requirements, for the reasons stated above.

*Section 1022.23 Applicant Responsibilities (Proposed Redesignated From Section 1022.13)*

We propose revising this section to allow flexibility in what information we request of applicants for any use of real property (*e.g.*, license, easement, lease, transfer, or disposal), permits, certificates, loans, grants, contract awards, allocations, or other forms of assistance or other entitlement related to activities in a floodplain or wetland. The section currently states that DOE may require the applicant to prepare a report that satisfies the floodplain or

wetland assessment provisions of this regulation. We propose revising this section to state that we may require applicants to provide information necessary for DOE to comply with the requirements of this regulation. This change emphasizes that we will ask for that information necessary and appropriate for us to comply with the requirements of this regulation relative to each particular application.

*Section 1022.24 Interagency Cooperation (Proposed Redesignation From*

*Section 1022.19 Selection of a Lead Agency and Consultation Among Participating Agencies)*

No substantive changes to this section are proposed.

**IV. Procedural Review Requirements**

*A. Review Under Executive Order 12866*

Today's proposed regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), as amended by Executive Order 13258 (67 FR 9385, February 26, 2002). Accordingly, today's proposed regulatory action would not be subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

*B. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4779, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Assistant Secretary for Environment, Safety and Health has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

*C. Review Under Executive Order 13132*

Today's regulatory action has been determined not to be a ''policy that has federalism implications,'' that is, it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibility among the various levels of government under Executive Order 13132 (64 FR 43255, August 10, 1999). Accordingly, no ''federalism summary impact statement'' was prepared or subjected to review under the Executive Order by the Director of the Office of Management and Budget.

*D. Review Under Executive Order 13175*

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on ''Consultation and Coordination with Indian Tribal Governments,'' DOE may not issue a discretionary rule that has ''tribal implications'' and imposes substantial direct compliance costs on Indian tribal governments. DOE's Assistant Secretary for Environment, Safety and Health has determined that the proposed rule would not have such effects and concluded that Executive Order 13175 does not apply to this proposed rule.

*E. Reviews Under the Regulatory Flexibility Act*

The proposed revisions to the existing regulations have been reviewed under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). The Act requires preparation of an initial regulatory flexibility analysis for any regulation that is likely to have a significant economic impact on a substantial number of small entities. Today's proposed revisions to 10 CFR Parts 1021 and 1022 would amend DOE policies and streamline existing procedures for environmental review of actions proposed in a floodplain or wetland under two Executive Orders. The proposed actions would neither increase the incidence of floodplain and wetland assessments nor increase burdens associated with carrying out such an assessment. Therefore, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

*F. Review Under the Paperwork Reduction Act*

No additional information or recordkeeping requirements are imposed by this proposed rulemaking. The proposed changes would actually reduce paperwork requirements by eliminating a requirement that public notices always be published in the **Federal Register** and by adding to the number of exemptions from requirements for preparing a floodplain or wetland assessment. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

*G. Review Under the National Environmental Policy Act*

DOE has concluded that promulgation of these proposed revisions to existing regulations falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the proposed revisions to 10 CFR parts 1021 and 1022 would amend DOE's policies to streamline and simplify existing procedures for environmental review of actions proposed in a floodplain or wetland under two Executive Orders. The proposed regulations are covered under the categorical exclusion in paragraph A6, ''Rulemakings, Procedural'' (rulemakings that are strictly procedural) to Appendix A to Subpart D, 10 CFR part 1021. Accordingly, neither an EA nor an EIS is required.

*H. Review Under the Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE

has determined that the proposed revisions to 10 CFR parts 1021 and 1022 published today do not contain any Federal mandates affecting small governments, so these requirements do not apply.

*I. Review Under Executive Order 13211*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs in the Office of Management and Budget a Statement of Energy Effects for any significant energy action. Today's proposed rule is not a significant energy action, as that term is defined in the Executive Order. Accordingly, DOE has not prepared a Statement of Energy Effects.

*J. Review Under the Treasury and General Government Appropriations Act*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a ''Family Policymaking Assessment'' for any proposed rule that may affect family well-being. The proposed rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE's Assistant Secretary for Environment, Safety and Health has concluded that it is not necessary to prepare a Family Policymaking Assessment.

**V. Public Comment Procedures**

You should submit comments by January 17, 2003, but we will consider comments received after that date to the extent practicable. We continue to experience occasional mail delays due to extra processing required for the delivery of mail to Federal agencies, and we will take this into consideration. However, you are encouraged to submit comments electronically or via a service offering a guaranteed delivery date. Comments should be submitted to the street address, e-mail address, or fax number indicated in the **ADDRESSES** section of this notice. Written comments should be identified on the documents themselves and on the outside of the envelope, on the fax cover page, or in the e-mail message with the designation ''Compliance with Floodplain and Wetland Environmental Review Requirements.'' We are not scheduling any public meetings on the proposed revisions, but we will arrange a public meeting if the public expresses sufficient interest. Comments will not be accepted on provisions of 10 CFR part 1021 that are not subject to change by this revision.

All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the DOE Freedom of Information Office Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as two copies from which the information claimed to be exempt by law from public disclosure has been deleted. The Department is responsible for the final determination with regard to disclosure or non-disclosure of the information and for treating it accordingly under the Freedom of Information Act section on ''Handling Information of a Private Business, Foreign Government, or an International Organization'' (10 CFR 1004.11).

**List of Subjects in 10 CFR Part 1022**

Flood plains, Wetlands.

Issued in Washington, DC, on November 12, 2002.

**Beverly A. Cook,**

*Assistant Secretary, Environment, Safety and Health.*

For the reasons set forth in the preamble, parts 1021 and 1022 of chapter III of title 10, Code of Federal Regulations are proposed to be amended as follows:

## PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

1. The authority citation for part 1021 continues to read as follows:

**Authority:** 42 U.S.C. 7254; 42 U.S.C. 4321 *et seq.*

**§ 1021.313 [Amended]**

2. In § 1021.313, paragraph (c), the last sentence is amended as follows:

a. Remove the word ''shall'' and insert in its place the word ''may''.

b. Remove the period and add the words '', or may be issued separately.'' at the end of the sentence.

## PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

3. Part 1022 is revised to read as follows:

## PART 1022—COMPLIANCE WITH FLOODPLAIN AND WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS

**Subpart A—General**

Sec.
1022.1 Background.
1022.2 Purpose and scope.
1022.3 Policy.
1022.4 Definitions.
1022.5 Applicability.
1022.6 Public inquiries.

**Subpart B—Procedures for Floodplain and Wetland Reviews**

1022.11 Floodplain or wetland determination.
1022.12 Notice of proposed action.
1022.13 Floodplain or wetland assessment.
1022.14 Findings.
1022.15 Timing.
1022.16 Variances.
1022.17 Follow-up.

**Subpart C—Other Requirements**

1022.21 Property management.
1022.22 Requests for authorizations or appropriations.
1022.23 Applicant responsibilities.
1022.24 Interagency cooperation.

**Authority:** E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p. 121.

### Subpart A—General

**§ 1022.1 Background.**

(a) Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977) directs each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the E.O. is provided in the floodplain management guidelines of the U.S. Water Resources Council (40 FR 6030, February 10, 1978) and in ''A Unified National Program for Floodplain Management'' prepared by the Federal Interagency Floodplain Management Taskforce (Federal Emergency Management Agency, FEMA 248, June 1994). E.O. 11990—Protection of Wetlands (May 24, 1977) directs all Federal agencies to issue or amend existing procedures to ensure consideration of wetlands protection in decisionmaking and to ensure the evaluation of the potential impacts of any new construction proposed in a wetland.

(b) It is the intent of the E.O.s that Federal agencies implement both the floodplain and the wetland provisions through existing procedures such as those established to implement the National Environmental Policy Act

(NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). In those instances where the impacts of the proposed action are not significant enough to require the preparation of an environmental impact statement (EIS) under section 102(2)(C) of NEPA, alternative floodplain or wetland evaluation procedures are to be established. As stated in the E.O.s, Federal agencies are to avoid direct or indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

**§ 1022.2 Purpose and scope.**

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities under E.O. 11988 and E.O. 11990, including:

(1) DOE policy regarding the consideration of floodplain and wetland factors in DOE planning and decisionmaking; and

(2) DOE procedures for identifying proposed actions located in a floodplain or wetland, providing opportunity for early public review of such proposed actions, preparing floodplain or wetland assessments, and issuing statements of findings for actions in a floodplain.

(b) To the extent possible, DOE shall accommodate the requirements of E.O. 11988 and E.O. 11990 through applicable DOE NEPA procedures or, when appropriate, the environmental review process under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*).

**§ 1022.3 Policy.**

DOE shall exercise leadership and take action to:

(a) Incorporate floodplain management goals and wetland protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable:

(1) Reduce the risk of flood loss;

(2) Minimize the impact of floods on human safety, health, and welfare;

(3) Restore and preserve natural and beneficial values served by floodplains;

(4) Require the construction of DOE structures and facilities to be, at a minimum, in accordance with FEMA National Flood Insurance Program building standards;

(5) Promote public awareness of flood hazards by providing conspicuous delineations of past and probable flood heights on DOE property that has suffered flood damage or is in an identified floodplain and that is used by the general public;

(6) Inform parties during transactions guaranteed, approved, regulated, or insured by DOE of the hazards associated with locating facilities and structures in a floodplain;

(7) Minimize the destruction, loss, or degradation of wetlands; and

(8) Preserve and enhance the natural and beneficial values of wetlands.

(b) Undertake a careful evaluation of the potential effects of any proposed floodplain or wetland action.

(c) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

(d) Identify, evaluate, and as appropriate, implement alternative actions that may avoid or mitigate adverse floodplain or wetland impacts.

(e) Provide opportunity for early public review of any plans or proposals for floodplain or wetland actions.

**§ 1022.4 Definitions.**

The following definitions apply to this part:

*Action* means any DOE activity necessary to carry out its responsibilities for:

(1) Acquiring, managing, and disposing of Federal lands and facilities;

(2) Providing DOE-undertaken, -financed, or -assisted construction and improvements; and

(3) Conducting activities and programs affecting land use, including but not limited to water- and related land-resources planning, regulating, and licensing activities.

*Base floodplain* means the 100-year floodplain that is a floodplain with a 1.0 percent chance of flooding in any given year.

*Critical action* means any DOE action for which even a slight chance of flooding would be too great. Such actions may include, but are not limited to, the storage of highly volatile, toxic, or water reactive materials.

*Critical action floodplain* means, at a minimum, the 500-year floodplain that is a floodplain with a 0.2 percent chance of flooding in any given year.

*Environmental assessment* (EA) means a document prepared in accordance with the requirements of 40 CFR 1501.4(b), 40 CFR 1508.9, 10 CFR 1021.320, and 10 CFR 1021.321.

*Environmental impact statement* means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA and its implementing regulations at 40 CFR parts 1500–1508 and 10 CFR part 1021.

*Facility* means any human-made or -placed item other than a structure.

*FEMA* means the Federal Emergency Management Agency.

*Finding of no significant impact* means a document prepared in accordance with the requirements of 40 CFR 1508.13 and 10 CFR 1021.322 that briefly presents the reasons why an action will not have a significant effect on the human environment and for which an EIS therefore will not be prepared.

*Flood or flooding* means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

*Floodplain* means the lowlands adjoining inland and coastal waters and relatively flat areas and floodprone areas of offshore islands including, at a minimum, that area inundated by a 1.0 percent or greater chance flood in any given year.

*Floodplain action* means any DOE action that takes place in a floodplain, including any DOE action in a wetland that is also within the floodplain, subject to the exclusions specified at section 1022.5(c) and (d) of this part.

*Floodplain and wetland values* means the qualities of or functions served by floodplains and wetlands that can include, but are not limited to, water resource values (*e.g.*, natural moderation of floods, water quality maintenance, groundwater recharge), living resource values (*e.g.*, conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability), cultural resource values (*e.g.*, open space, natural beauty, scientific study, outdoor education, archeological and historic sites, recreation), and cultivated resource values (*e.g.*, agriculture, aquaculture, forestry).

*Floodplain or wetland assessment* means an evaluation consisting of a description of a proposed action, a discussion of its potential effects on the floodplain or wetland, and consideration of alternatives.

*Floodplain statement of findings* means a brief document issued pursuant to section 1022.14(b) and (c) of this part that describes the results of a floodplain assessment.

*High-hazard areas* means those portions of riverine and coastal floodplains nearest the source of flooding that are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.

*Minimize* means to reduce to the smallest degree practicable.

*New construction,* for the purpose of compliance with E.O. 11990 and this part, means the building of any structures or facilities, draining, dredging, channelizing, filling, diking, impounding, and related activities.

*Notice of proposed floodplain action and notice of proposed wetland action* mean a brief notice that describes a proposed floodplain or wetland action, respectively, and its location and that affords the opportunity for public review.

*Practicable* means capable of being accomplished within existing constraints, depending on the situation and including consideration of many factors, such as the existing environment, cost, technology, and implementation time.

*Preserve* means to prevent modification to the natural floodplain or wetland environment or to maintain it as closely as possible to its natural state.

*Restore* means to reestablish a setting or environment in which the natural functions of the floodplain or wetland can again operate.

*Structure* means a walled or roofed building, including mobile homes and gas or liquid storage tanks.

*Wetland* means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

*Wetland action* means any DOE action related to new construction that takes place in a wetland not located in a floodplain, subject to the exclusions specified at section 1022.5(c) and (d) of this part.

### § 1022.5 Applicability.

(a) This part applies to all organizational units of DOE, including the National Nuclear Security Administration, except that it shall not apply to the Federal Energy Regulatory Commission.

(b) This part applies to all proposed floodplain or wetland actions, including those sponsored jointly with other agencies.

(c) This part does not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving a wetland that are located on non-Federal property.

(d) Subject to paragraph (e) of this section, subpart B of this part does not apply to:

(1) Routine maintenance of existing facilities and structures on DOE property in a floodplain or wetland;

(2) Site characterization, environmental monitoring, or environmental research activities in a floodplain or wetland, unless these activities would involve building any structure; involve draining, dredging, channelizing, filling, diking, impounding, or related activities; or result in long-term change to the ecosystem; and

(3) Minor modification of an existing facility or structure in a floodplain or wetland to improve safety or environmental conditions unless the modification would result in a significant change in the expected useful life of the facility or structure or involve building any structure or draining, dredging, channelizing, filling, diking, impounding, or related activities.

(e) Although the actions listed in paragraphs (d)(1), (d)(2), and (d)(3) of this section normally have very small or no adverse impact on a floodplain or wetland, where unusual circumstances indicate the possibility of adverse impact on a floodplain or wetland, DOE shall determine the need for a floodplain or wetland assessment.

### § 1022.6 Public inquiries.

Inquiries regarding DOE's floodplain and wetland environmental review requirements may be directed to the Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, or a message may be left at 1–800–472–2756, toll free.

## Subpart B—Procedures for Floodplain and Wetland Reviews

### § 1022.11 Floodplain or wetland determination.

(a) Concurrent with its review of a proposed action to determine appropriate NEPA or CERCLA process requirements, DOE shall determine the applicability of the floodplain management and wetland protection requirements of this part.

(b) DOE shall determine whether a proposed action would be located within a base or critical action floodplain consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) Flood Insurance Rate Maps or Flood Hazard Boundary Maps prepared by FEMA;

(2) Information from a land-administering agency (*e.g.*, Bureau of Land Management, Natural Resources Conservation Service) or from other government agencies with floodplain-determination expertise (*e.g.*, U.S. Army Corps of Engineers);

(3) Information contained in safety basis documents as defined at 10 CFR part 830; and

(4) DOE environmental documents, *e.g.*, NEPA and CERCLA documents.

(c) DOE shall determine whether a proposed action would be located within a wetland consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) U.S. Army Corps of Engineers ''Wetlands Delineation Manual,'' Wetlands Research Program Technical Report Y–87–1, January 1987, or successor document;

(2) U.S. Fish and Wildlife Service National Wetlands Inventory or other government-sponsored wetland or land-use inventories;

(3) U.S. Department of Agriculture Natural Resources Conservation Service Local Identification Maps;

(4) U.S. Geological Survey Topographic Maps; and

(5) DOE environmental documents, *e.g.*, NEPA and CERCLA documents.

(d) Pursuant to § 1022.5 of this part and paragraphs (b) and (c) of this section, DOE shall prepare:

(1) A floodplain assessment for any proposed floodplain action in the base floodplain or for any proposed floodplain action that is a critical action located in the critical action floodplain; or

(2) A wetland assessment for any proposed wetland action.

### § 1022.12 Notice of proposed action.

(a) For a proposed floodplain or wetland action for which an EIS is required, DOE shall use applicable NEPA procedures to provide the opportunity for early public review of the proposed action. A notice of intent to prepare the EIS may be used to satisfy the requirement for DOE to publish a notice of proposed floodplain or wetland action.

(b) For a proposed floodplain or wetland action for which no EIS is required, DOE shall take appropriate steps to send a notice of proposed floodplain or wetland action to appropriate government agencies and to persons or groups known to be interested in or potentially affected by the proposed floodplain or wetland action. DOE also shall distribute the notice in the area where the proposed action is to be located (*e.g.*, by publication in local newspapers, through public service announcements,

by posting on- and off-site). In addition, for a proposed floodplain or wetland action that may result in effects of national concern to the floodplain or wetland or both, DOE shall publish the notice in the **Federal Register**.

**§ 1022.13 Floodplain or wetland assessment.**

(a) A floodplain or wetland assessment shall contain the following information:

(1) *Project Description.* This section shall describe the proposed action and shall include a map showing its location with respect to the floodplain and/or wetland. For actions located in a floodplain, the nature and extent of the flood hazard shall be described, including the nature and extent of hazards associated with any high-hazard areas.

(2) *Floodplain or Wetland Impacts.* This section shall discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain and/or wetland. This section shall include impacts on the natural and beneficial floodplain and wetland values (§ 1022.4) appropriate to the location under evaluation. In addition, the effects of a proposed floodplain action on lives and property shall be evaluated. For an action proposed in a wetland, the effects on the survival, quality, and function of the wetland shall be evaluated.

(3) *Alternatives.* DOE shall consider alternatives to the proposed action that avoid adverse impacts and incompatible development in the floodplain and/or wetland, including alternate sites, alternate actions, and no action. DOE shall evaluate measures that mitigate the adverse effects of actions in a floodplain and/or wetland including, but not limited to, minimum grading requirements, runoff controls, design and construction constraints, and protection of ecologically-sensitive areas.

(b) For proposed floodplain or wetland actions for which an EA or EIS is required, DOE shall prepare the floodplain or wetland assessment concurrent with and included in the appropriate NEPA document.

(c) For floodplain or wetland actions for which neither an EA nor an EIS is prepared, DOE shall prepare the floodplain or wetland assessment separately or incorporated when appropriate into another environmental review process (*e.g.*, CERCLA).

**§ 1022.14 Findings.**

(a) If DOE finds that no practicable alternative to locating or conducting the action in the floodplain or wetland is available, then before taking action DOE shall design or modify its action in order to minimize potential harm to or within the floodplain or wetland, consistent with the policies set forth in E.O. 11988 and E.O. 11990.

(b) For actions that will be located in a floodplain, DOE shall issue a floodplain statement of findings, normally not to exceed three pages, that contains:

(1) A brief description of the proposed action, including a location map;

(2) An explanation indicating why the action is proposed to be located in the floodplain;

(3) A list of alternatives considered;

(4) A statement indicating whether the action conforms to applicable floodplain protection standards; and

(5) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

(c) For floodplain actions that require preparation of an EA or EIS, DOE may incorporate the floodplain statement of findings into the finding of no significant impact or final EIS, as appropriate, or issue such statement separately.

(d) DOE shall send copies of the floodplain statement of findings to appropriate government agencies and to others who submitted comments on the proposed floodplain action.

(e) For proposed floodplain actions that may result in effects of national concern, DOE shall publish the floodplain statement of findings in the **Federal Register**, describing the location of the action and stating where a map is available.

(f) For floodplain actions subject to E.O. 12372—Intergovernmental Review of Federal Programs (July 14, 1982, 47 FR 30959), DOE shall send the floodplain statement of findings to the State in accordance with 10 CFR Part 1005—Intergovernmental Review of Department of Energy Programs and Activities.

**§ 1022.15 Timing.**

(a) For a proposed floodplain action, DOE shall allow 15 days for public comment following issuance of a notice of proposed floodplain action. DOE shall reevaluate the practicability of alternatives to the proposed floodplain action and the mitigating measures, taking into account all substantive comments received, after the close of the public comment period and before issuing a floodplain statement of findings. After issuing a floodplain statement of findings, DOE shall endeavor to allow at least 15 days of public review before implementing a proposed floodplain action. If a **Federal Register** notice is required, the 15-day period begins on the date of publication in the **Federal Register**.

(b) For a proposed wetland action, DOE shall allow 15 days for public comment following issuance of a notice of proposed wetland action. After the close of the public comment period, DOE shall reevaluate the practicability of alternatives to the proposed wetland action and the mitigating measures, taking into account all substantive comments received, before implementing a proposed wetland action. If a **Federal Register** notice is required, the 15-day period begins on the date of publication in the **Federal Register**.

**§ 1022.16 Variances.**

(a) *Emergency actions.* DOE may take actions without observing all provisions of this part in emergency situations that demand immediate action. To the extent practicable prior to taking an emergency action, or as soon as possible after taking such an action, DOE shall document the emergency actions in accordance with NEPA procedures at 10 CFR 1021.343(a) or CERCLA procedures in order to identify any adverse impacts from the actions taken and any further necessary mitigation.

(b) *Timing.* If statutory deadlines or overriding considerations of program or project expense or effectiveness exist, DOE may waive the minimum time periods in § 1022.15 of this subpart.

(c) *Consultation.* To the extent practicable prior to taking an action pursuant to paragraphs (a) or (b) of this section, or as soon as possible after taking such an action, the cognizant DOE program or project manager shall consult with the Office of NEPA Policy and Compliance.

**§ 1022.17 Follow-up.**

For those DOE actions taken in a floodplain or wetland, DOE shall verify that the implementation of the selected alternative, particularly with regard to any adopted mitigation measures, is proceeding as described in the floodplain or wetland assessment and the floodplain statement of findings.

## Subpart C—Other Requirements

**§ 1022.21 Property management.**

(a) If property in a floodplain or wetland is proposed for license, easement, lease, transfer, or disposal to non-Federal public or private parties, DOE shall:

(1) Identify those uses that are restricted under applicable floodplain or wetland regulations and attach other

appropriate restrictions to the uses of the property; or

(2) Withhold the property from conveyance.

(b) Before completing any transaction that DOE guarantees, approves, regulates, or insures that is related to an area located in a floodplain, DOE shall inform any private party participating in the transaction of the hazards associated with locating facilities or structures in the floodplain.

**§ 1022.22 Requests for authorizations or appropriations.**

It is DOE policy to indicate in any requests for new authorizations or appropriations transmitted to the White House Office of Management and Budget, if a proposed action is located in a floodplain or wetland and whether the proposed action is in accord with the requirements of E.O. 11988 and E.O. 11990 and this part.

**§ 1022.23 Applicant responsibilities.**

DOE may require applicants for any use of real property (*e.g.*, license, easement, lease, transfer, or disposal), permits, certificates, loans, grants, contract awards, allocations, or other forms of assistance or other entitlement related to activities in a floodplain or wetland of the requirements of this part to provide information necessary for DOE to comply with this part.

**§ 1022.24 Interagency cooperation.**

If DOE and one or more agencies are directly involved in a proposed floodplain or wetland action, in accordance with DOE's NEPA or CERCLA procedures, DOE shall consult with such other agencies to determine if a floodplain or wetland assessment is required by Subpart B of this part, identify the appropriate lead or joint agency responsibilities, identify the applicable regulations, and establish procedures for interagency coordination during the environmental review process.

[FR Doc. 02–29071 Filed 11–15–02; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–200–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Saab Model SAAB 340B Series Airplanes Equipped With Hamilton Sundstrand Propellers

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 340B series airplanes equipped with Hamilton Sundstrand propellers. This proposal would require a one-time inspection of two remote controlled circuit breakers (RCCB), located in specific electrical compartments, to identify the part number, and replacement of the RCCBs with new RCCBs having a different part number if necessary. This action is necessary to ensure removal of 35-ampere (amp) RCCBs on a 50-amp electrical circuit. Incorrect RCCBs on an electrical circuit could result in erroneous tripping of the RCCBs (even though an overload condition does not exist), premature failure of the RCCBs, loss of power to the feather pump system, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by December 18, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–200–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-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–200–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 Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–200–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate,

ANM–114, Attention: Rules Docket No. 2002–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 340B series airplanes. The LFV advises that these airplanes were manufactured with 50-ampere (amp) remote controlled circuit breakers (RCCB) installed. However, the illustrated parts catalog incorrectly references a 35-amp RCCB, which is specific to Dowty propellers. A 35-amp RCCB on a 50-amp electrical circuit, if not corrected, could result in erroneous tripping of the RCCBs (even though an overload condition does not exist), premature failure of the RCCBs, loss of power to the feather pump system, and consequent reduced controllability of the airplane.

**Explanation of Relevant Service Information**

Saab has issued Service Bulletin 340–61–038, dated January 30, 2002, which describes procedures for a one-time inspection to identify the part number of the RCCB located in electrical compartment 407VU and the RCCB located in electrical compartment 408VU, and replacement of RCCBs with certain part numbers with new RCCBs having different part numbers if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1–172, dated January 31, 2002, in order to assure the continued airworthiness of these airplanes in Sweden.

**FAA's Conclusions**

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, 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 Proposed 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, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

**Cost Impact**

The FAA estimates that 251 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $15,060 or $60 per airplane.

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

**Regulatory Impact**

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**SAAB Aircraft AB:** Docket 2002–NM–200–AD.

*Applicability:* Model SAAB 340B series airplanes equipped with Hamilton Sundstrand propellers, 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 erroneous tripping of the remote controlled circuit breakers (RCCB) (even though an overload condition does not exist), premature failure of the RCCBs, loss of power to the feather pump system, and consequent reduced controllability of the airplane, accomplish the following:

**Inspection and Replacement, If Necessary**

(a) Within 6 months after the effective date of this AD, perform a one-time inspection of RCCB 29KFC located in electrical compartment 407VU, and RCCB 30KFC located in electrical compartment 408VU, to identify the part number, per the Accomplishment Instructions of Saab Service Bulletin 340–61–038, dated January 30, 2002.

(1) If both RCCBs are identified as part number (P/N) M83383–01–09, no further action is required by this paragraph.

(2) If any RCCB is identified as P/N M83383–02–07, prior to further flight, replace the RCCB with an RCCB having P/N M83383–01–09, per the service bulletin.

**Part Installation**

(b) As of the effective date of this AD, no person shall install an RCCB, P/N M83383–02–07, in electrical compartment 407VU or electrical compartment 408VU, on any airplane.

**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, Transport Airplane Directorate, FAA. 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 2:** 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 sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in Swedish airworthiness directive 1–172, dated January 31, 2002.

Issued in Renton, Washington, on November 8, 2002.

**Vi L. Lipski,**

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

[FR Doc. 02–29116 Filed 11–15–02; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–295–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 777–200 and 777–300 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 and 777–300 series airplanes. This proposal would require application of high-temperature sealant to the strut aft dry bay. This action is necessary to prevent leakage of hydraulic fluid into the strut aft dry bay, where high temperatures associated with the adjacent primary exhaust nozzle may ignite the fluid, resulting in an uncontrolled fire in the strut aft dry bay. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by January 2, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–295–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–295–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.

**FOR FURTHER INFORMATION CONTACT:** John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1024; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

*Submit comments using the following format:*

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–295–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–295–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received a report indicating that one operator had found coked hydraulic fluid in the strut aft dry bay, which is located directly above the primary exhaust nozzle. Investigation revealed that hydraulic fluid had leaked from the strut aft fairing through an unsealed gap between the strut aft bulkhead, the diagonal brace fitting, and the cowl fairing. This unsealed gap, if not corrected, permits leakage of hydraulic fluid into the strut aft dry bay, where high temperatures associated with the adjacent primary exhaust nozzle may ignite the fluid. The result would be an uncontrolled fire in the strut aft dry bay, which lacks fire detection or fire extinguishing equipment.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–54A0016, dated January 25, 2001, which describes procedures for application of high temperature sealant to fill the gap between the strut aft bulkhead, the diagonal brace fitting, and the aft cowl fairing. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

**Cost Impact**

There are approximately 298 airplanes of the affected design in the worldwide fleet. The FAA estimates that 95 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed application of sealant, and that the average labor rate is $60 per work hour. Required materials would cost approximately $20 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $24,700, or $260 per airplane.

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

The manufacturer may cover the cost of required materials and labor associated with this NPRM, subject to warranty conditions. As a result, the costs attributable to the proposed AD may be less than stated above.

**Regulatory Impact**

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Boeing:** Docket 2001–NM–295–AD.

*Applicability:* Model 777–200 and 777–300 series airplanes having line numbers 2 through 297 inclusive, 299, and 300; 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 (b) 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 leakage of hydraulic fluid into the strut aft dry bay, where high temperatures associated with the adjacent primary exhaust nozzle may ignite the fluid, resulting in an uncontrolled fire in the strut aft dry bay; accomplish the following:

**Application of Sealant**

(a) Within 1,000 flight hours after the effective date of this AD: Apply high-temperature sealant to the strut aft dry bays, in accordance with Boeing Alert Service Bulletin 777–54A0016, dated January 25, 2001.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. 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 2:** 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**

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

Issued in Renton, Washington, on November 8, 2002.

**Vi L. Lipski,**

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

[FR Doc. 02–29117 Filed 11–15–02; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–170–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; and DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas transport category airplanes listed above. This proposal would require a check of the slant pressure panels of the wheel wells of the left and right main landing gear (MLG) for water leakage, and repair of any leaks found. This action is necessary to prevent the accumulation of water in the wheel wells of the MLG during flight, which could freeze on the lateral control mixer and control cables, resulting in restricted lateral control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by January 2, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–170–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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–170–AD.'' The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The FAA has received numerous reports indicating water leakage from the slant pressure panel into the wheel well of the main landing gear (MLG) on certain McDonnell Douglas Model DC–9 series airplanes. The water froze on the lateral control mixer and control cables. If the slant pressure panel drain valve is clogged, or a drain system is not installed, any water that accumulates during flight will be squeezed out of the panel into the wheel well due to damaged sealant. Accumulation of water in the wheel wells of the MLG could freeze on the lateral control mixer and control cables, resulting in restricted lateral control and consequent reduced controllability of the airplane.

**Explanation of Relevant Service Information**

We have reviewed and approved Boeing Alert Service Bulletin DC9–53A295, Revision 01, including Appendix A, dated February 28, 2002, which describes procedures for a check of the slant pressure panels of the wheel wells of the left and right MLG for water leakage, and repair of any leaks found. The leak check includes the following:

- Pressurizing the airplane to 1 pound per square inch gage and checking the panels for leaks;
- Marking any leaks found;
- Pressurizing the airplane to 3 pounds per square inch gage and checking the panels for additional leaks;
- Marking any leaks found and depressurizing the airplane; and
- Repairing all leaks found and pressurizing the airplane to 3 pounds per square inch gage to verify that all leaks are repaired.

The service bulletin also recommends reporting initial leak check findings to the manufacturer. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed AD**

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

**Difference Between Service Information and Proposed AD**

Although the service bulletin recommends that operators report findings to the manufacturer after doing the initial leak check, this proposed AD does not include such a reporting requirement.

**Cost Impact**

There are approximately 1,919 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,159 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed leak check, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $278,160, or $240 per airplane.

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

planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**McDonnell Douglas:** Docket 2001–NM–170–AD.

*Applicability:* All Model DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes; and DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 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 the accumulation of water in the wheel wells of the left and right main landing gear (MLG), which could freeze on the lateral control mixer and control cables, resulting in restricted lateral control and consequent reduced controllability of the airplane; accomplish the following:

**Leak Check/Repair**

(a) Prior to the accumulation of 40,000 flight hours since date of manufacture, or within 18 months after the effective date of this AD, whichever is later: Do a check of the slant pressure panels of the wheel wells of the left and right MLG for water leakage (including pressurizing the airplane and checking the panels for leaks; depressurizing the airplane to repair leaks; and pressurizing the airplane again to verify that all leaks are repaired), per the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–53A295, Revision 01, including Appendix A, dated February 28, 2002. If any leaks are found, before further flight, repair per the service bulletin. If no leaks are found, no further action is required by this AD.

**Credit for Actions Done per Previous Issue of Service Bulletin**

(b) Accomplishment of the check for water leakage and repair of leaks found, before the effective date of this AD, per Boeing Alert Service Bulletin DC9–53A295, including Appendix A, dated May 8, 2001, is acceptable for compliance with paragraph (a) of this AD.

**Note 2:** Although Boeing Alert Service Bulletins DC9–53A295, including Appendix A, dated May 8, 2001; and Revision 01, including Appendix A, dated February 28, 2002; recommend that operators report findings to the manufacturer after doing the initial leak check, this AD does not contain such a reporting requirement.

**Alternative Methods of Compliance**

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

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

**Special Flight Permit**

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

Issued in Renton, Washington, on November 8, 2002.

**Vi L. Lipski,**

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

[FR Doc. 02–29118 Filed 11–15–02; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–143321–02]**

**RIN 1545–BB60**

## Information Reporting Relating to Taxable Stock Transactions

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

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** In the rules and regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to information reporting relating to taxable stock transactions. This document contains proposed regulations under section 6043(c) requiring information reporting by a corporation if control of the corporation is acquired or if the corporation has a recapitalization or other substantial change in capital structure. This document also contains proposed regulations under section 6045 concerning information reporting requirements for brokers with respect to transactions described in section 6043(c). The text of the temporary regulations serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by February 18, 2003. Outlines of topics to be discussed at the public hearing scheduled for March 5, 2003, at 10 a.m., must be received by February 12, 2003.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG–143321–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m.

to: CC:ITA:RU (REG–143321–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.* The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Nancy L. Rose (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622–7190 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by January 17, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility; The accuracy of the estimated burden associated with the proposed collection of information (*see* below); How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in 26 CFR 1.6043–4(a) and (b) and in 26 CFR 1.6045–3. The information is required be reported to ensure that shareholders properly recognize gain from corporate acquisitions and changes in capital structure. The collection of information is mandatory. The likely respondents are large corporations.

The estimated total annual reporting and recordkeeping burden in proposed § 1.6043–4(a), requiring the filing of form 8806, is 2 hours. The estimated total annual reporting and recordkeeping burden in proposed §§ 1.6043–4(b) and 1.6045–3 is 15 minutes for each form 1099-CAP and 10 minutes for form 1096.

The estimated annual burden per respondent and/or recordkeeper will vary dependent on the number of forms 1099–CAP required to be filed.

The estimated number of respondents under the proposed regulations is 350. The estimated number of respondents under the temporary regulations, for transactions occurring after December 31, 2001, is 5.

The estimated annual frequency of reporting on form 8806 and form 1096 is 1. The estimated annual frequency of reporting on form 1099–CAP is 1 for each shareholder.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background and Explanation of Provisions**

Temporary regulations in the rules and regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 6043 and 6045. The temporary regulations set forth information reporting requirements relating to acquisitions of control and substantial changes in capital structure. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments and these proposed regulations.

As set forth in the preamble to the temporary regulations, public comments are specifically invited with regard to the potential for duplicate reporting under these proposed regulations and with regard to the burden of compliance with the reporting requirements under the proposed regulations.

**Proposed Effective Date**

The provisions of these regulations under section 6043 are proposed to be applicable for any acquisition of control and change in capital structure occurring after the date on which these regulations are published in the **Federal Register** as final regulations. The provisions of these regulations under section 6045 are proposed to be applicable for any form 1099–CAP received by a broker after the date on which these regulations are published in the **Federal Register** as final regulations.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing has been scheduled for March 5, 2003, beginning at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish

to present oral comments must submit electronic or written comments by February 18, 2003, and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight copies) by February 12, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal author of this notice of proposed rulemaking is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration).

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

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

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

**Par. 2.** Section 1.6043–4 is added to read as follows:

**§ 1.6043–4 Information returns relating to certain acquisitions of control and changes in capital structure.**

(The text of proposed § 1.6043–4 is the same as the text of § 1.6043–4T published elsewhere in this issue of the **Federal Register**.)

**Par. 3.** Section 1.6045–3 is added to read as follows:

**§ 1.6045–3 Information reporting for acquisitions of control or substantial changes in capital structure.**

(The text of proposed § 1.6045–3 is the same as the text of § 1.6045–3T published elsewhere in this issue of the **Federal Register**.)

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 02–29200 Filed 11–13–02; 4:24pm]

**BILLING CODE 4830–01–P**

## LEGAL SERVICES CORPORATION

## 45 CFR Part 1602

## Procedures for Disclosure of Information Under the Freedom of Information Act

**AGENCY:** Legal Services Corporation (LSC).

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This NPRM proposes several revisions to the LSC regulations implementing the Freedom of Information Act. The proposed revisions would add provisions detailing the submitter's rights process, provide LSC with express authority to defer action on pending and additional requests and appeals when a requester has an outstanding fee balance, and clarify the applicable fee waiver standards. LSC also proposes to revise the applicable fee structure to better reflect LSC's costs in complying with FOIA. Finally, the NPRM contains proposed technical changes to reflect current LSC nomenclature.

**DATES:** Comments on this NPRM are due on January 2, 2003.

**ADDRESSES:** Written comments may be submitted by mail, fax or email to Mattie C. Condray Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE., Washington, DC 20002–4250; (202) 336–8817 (phone); (202) 336–8952 (fax); *mcondray@lsc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mattie C. Condray, (202) 336–8817 (phone).

**SUPPLEMENTARY INFORMATION:** LSC is subject to the Freedom of Information Act (FOIA) by the terms of the Legal Services Corporation Act. 42 U.S.C. 2996d(g).[1] LSC has implemented FOIA by adopting regulations which contain the rules and procedures the Corporation follows in making agency records available to the public under FOIA. As part of an overall review of LSC's regulations, LSC determined that a variety of amendments to LSC's FOIA regulation are in order and part 1602 was assigned a high priority for rulemaking. In light of the above, at the August 24, 2002, meeting of the Board of Directors, the Board identified Part 1602 as an appropriate subject for rulemaking and LSC subsequently announced that it was initiating a Notice and Comment rulemaking to consider revisions to its FOIA regulations.

**Submitter's Rights Process**

Pursuant to current LSC practice, if a request is received for the grant application records of a current or prospective recipient, LSC provides that applicant with an opportunity to request that some or all of the records requested be withheld from disclosure prior to LSC sending its response to the requester. This practice, which is consistent with current FOIA law, is not described or discussed in the regulations. The submitter's rights process affords important rights to grant applicants and also impacts requesters who have to wait until the submitter's rights process has been completed to obtain releasable records subject to this process. LSC believes that it is important, therefore, for this process to be explicitly set forth in Part 1602. Accordingly, LSC proposes to add a new section 1602.14, Submitter's rights process, which would formally incorporate the Corporation's current practice into the regulations.

At the outset, LSC notes that its submitter's rights process is based on the submitter's rights process outlined in Federal Executive Order No. 12,600 (June 23, 1987). E.O. 12,600 required Federal agencies to ''establish procedures to notify submitters of records containing confidential information [information arguably subject to FOIA Exemption 4] * * * when those records are requested under the Freedom of Information Act * * *.'' (Emphasis added) Although LSC is not a Federal agency, and, therefore, not subject to E.O. 12,600, LSC chose to develop a policy consistent with the Order. LSC believes that grant application records are the only records likely to contain ''confidential information,'' the release of which could cause competitive harm. Thus, the current submitter's rights process is only invoked in relation to requests for grant application information, but not other records submitted by recipients. LSC is, at this time, proposing to keep the process limited to requests for grant application materials, but specifically invites comment on whether there are other records submitted by recipients which would likely be subject to withholding under Exemption 4.

Under the proposed new section, when the Corporation receives a FOIA request seeking the release of a submitter's grant application(s), or portions thereof, the Corporation would provide prompt written notice of the request to the submitter in order to

[1] Absent this authority, LSC would not otherwise be subject to FOIA since LSC is not an agency, department or instrumentality of the Federal government. 42 U.S.C. 2996d(e)(1).

afford the submitter with an opportunity to object to the disclosure of the requested records (or any portion thereof). If a submitter who has received notice of a request for the submitter's records objects to the disclosure of the records (or any portion thereof), the submitter would have to submit a written detailed statement identifying the information for which disclosure is objected to and specifying the grounds for withholding the information under the confidential information exemption of FOIA or this Part. The submitter's statement would have to be provided to LSC within seven business days of the date of the notice from the Corporation and if the submitter failed to respond to the notice from LSC within that time, LSC would deem the submitter to have no objection to the disclosure of the information.

Upon receipt of written objection to disclosure by a submitter, LSC would be required to consider the submitter's objections and specific grounds for withholding in deciding whether to release the disputed information. Whenever LSC decided to disclose information over the objection of the submitter, LSC would be required to give the submitter written notice that the Corporation was rejecting the submitter's withholding request (including an explanation of why the request was being rejected) and informing the submitter that the submitter shall have 5 business days from the date of the notice of proposed release to appeal that decision to the LSC President, whose decision would be final.

Under proposed paragraph (d), the submitter's rights process would not apply if (1) LSC determines, upon initial review, that the information requested is exempt from disclosure; (2) the information has been previously published or officially made available to the public; or (3) disclosure of the information is required by statute (other than FOIA) or LSC regulations.

In addition, LSC proposes to include provisions requiring that: (1) Whenever a requester files a lawsuit seeking to compel disclosure of a submitter's information, LSC would have to promptly notify the submitter; (2) whenever LSC provides a submitter with notice and opportunity to object to disclosure under this section, LSC would also notify the requester; and (3) whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC would notify the requester.

LSC also proposes to add a definition of the term ''submitter'' as that term would be used in this section. The definition proposed to be added at section 1602.2(k) would define ''submitter'' as any person or entity from whom the Corporation receives a grant application.

**Authority to Defer Action Pending Receipt of Payment of Fees**

Many, if not most, agency FOIA regulations contain a provision permitting the agency to suspend continuing work on any pending requests and appeals from requesters who are 30 or more days in arrears on FOIA fees which they have been charged. Our regulations provide LSC with the authority to require anticipated fees for new requests be paid in advance for requesters with outstanding overdue bills, but do not expressly contain the authority to cease processing other existing requests, including appeals. Having this express authority would be helpful to the Corporation to avoid wasting resources on ''nuisance'' requesters who chronically have several requests and/or appeals pending before the Corporation at the same time, while being in arrears on properly assessed fees from prior requests to the Corporation. Accordingly, LSC proposes to add a new paragraph to section 1602.13, Fees, to provide for this authority. Specifically, the proposed new language would provide express authority to the Corporation to cease processing existing requests, including action on appeals, from a requester who is more than 30 days late in paying a properly assessed FOIA fee. This new language would appear as a new paragraph (j) and the current paragraphs (j), (k) and (l) would be redesignated as paragraphs (k), (l), and (m), respectively.

**Fee Waiver Criteria**

Requesters of records under FOIA are generally expected to pay reasonable fees related to the processing of FOIA requests. However, the statute also provides for waivers or reductions of fees when certain enumerated criteria are met. Section 1602.13(f) of the current regulation restates the basic fee waiver criteria as set forth in the statute. By way of contrast, the Department of Justice (DOJ) FOIA regulations on fee waiver criteria are more detailed, providing more guidance, based on long standing case law in this area, on the meaning of each of the factors to be considered in assessing fee waiver requests. LSC believes it would be helpful to both LSC and requesters for the LSC FOIA regulations to provide additional guidance in this area. By having a better understanding of the criteria, requesters can better prepare fee waiver requests and there will be less opportunity for disagreements and confusion as to when a fee waiver or reduction is appropriate. LSC is, accordingly, proposing to add language to each of the subparagraphs setting forth the factors upon which fee waiver determinations are made that provides a greater explanation of that factor.

Specifically, 1602.13(f)(1) of the current regulation lists the factors that the Corporation assesses in order to determine whether disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government. The first factor currently reads:

(i) The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the Corporation or Federal government.''

LSC proposes to add a sentence to this subparagraph explaining that the subject of the requested records must concern identifiable operations or activities of the Corporation or the Federal government, with a connection that is direct and clear, not remote or attenuated.

The second factor currently reads:

(ii) The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of Corporation or Federal government operations or activities.

LSC proposes to add language noting that the requested records must be meaningfully informative about government operations or activities in order to be likely to contribute to an increased public understanding of those operations or activities and that the disclosure of information that is already in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding where nothing new would be added to the public's understanding.

The third factor currently reads:

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested records will contribute to ''public understanding.''

LSC proposes to provide additional guidance on the meaning of this factor by adding language explaining that: The disclosure must contribute to a reasonably broad audience of persons interested in the subject, as opposed to the personal interest of the requester; a requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered; and that it shall be presumed that a representative of the

news media will satisfy this consideration.

The fourth factor currently reads:

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute ''significantly'' to public understanding of Corporation or Federal government operations or activities.

LSC proposes to include additional guidance in this factor that the public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure must be enhanced by the disclosure to a significant extent.

Section 1602.13(f)(2) sets forth the factors used by LSC to determine whether disclosure of the information is not primarily in the commercial interest of the requester. The first factor currently reads:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.

LSC proposes to add a sentence to this subparagraph explaining that LSC shall consider any commercial interest of the requester (with reference to the definition of ''commercial use'' in this Part) or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure.

The second factor reads:

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily'' in the commercial interest of the requester.

LSC proposes to add language specifying that a fee waiver or reduction is justified where the public interest standard is greater in magnitude than that of any identified commercial interest in disclosure and that LSC ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. That is, if the public interest standard has been satisfied, the fact that a news media requester has a commercial interest (*i.e.*, in selling newspapers, etc.) will not ordinarily serve to prevent that requester from getting a fee waiver or reduction. LSC further proposes to add language providing that disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed primarily to serve a public interest.

In each of these cases, the language proposed to be added is consistent with the current regulations and LSC practice, FOIA case law and government-wide FOIA practice. As noted above, LSC believes the additions will aid in public understanding of the meaning and application of the fee waiver criteria.

**Miscellaneous Amendments**

There are several instances throughout the regulation where the regulation makes reference to the ''Office of the General Counsel.'' The Office of the General Counsel was renamed the Office of Legal Affairs in 1999. LSC, therefore, proposes to substitute the name ''Office of Legal Affairs'' for ''Office of the General Counsel'' each time it appears in sections 1602.6 and 1602.8 of the regulations.

Section 1602.5, Public reading room, sets forth, among other things, the address of LSC's public reading room. The address listed, 750 First Street, NE., Washington, DC, 20002, is currently correct. However, LSC will be moving in June 2003 to new permanent headquarters. LSC proposes to add language to this section providing the address of the LSC public reading room in LSC's new home: 3333 K St., NW., Washington, DC 20007.

In accordance with FOIA, LSC charges fees for processing FOIA requests and providing copies of requested documents. LSC's schedule of applicable fees is set forth in section 1602.13(e). The current schedule of fees was adopted in 1998 and no longer accurately reflects LSC's costs in responding to FOIA requests. LSC, therefore, proposes to increase fees for search and review time and for copying.

LSC's fees for search and review time are based on LSC's pay schedule, which is divided into broad ''pay bands.'' In the four years since the regulation was last amended, LSC's pay bands have increased to keep up with inflation. The current midpoint of each band is now:

Band 1: $16.15
Band 2: $26.66
Band 3: $39.15
Band 4: $51.41
Band 5: $54.99

LSC proposes to amend the search and review rates to reflect these current 2002 pay rates. LSC notes that the current regulation provides for one blended rate for Bands 4 and 5. LSC is proposing to separate these rates, providing separate search and review time rates for Bands 4 and 5. These changes will permit LSC to recover fees that are more in line with its actual costs relating to search and review activities.

Under the current regulation, LSC charges $0.10 per page for standard paper photocopying. LSC's actual costs for photocopying are now closer to $0.15 per page. LSC proposes to increase copying costs to $0.13 per page so as to better reflect LSC's costs, while still providing a small discount to requesters. In addition, LSC proposes to substitute the term ''Express mail'' for ''special delivery'' where it appears in section 1602.13(e)(7) to reflect current terminology.

**List of Subjects in 45 CFR Part 1602**

Freedom of information, Reporting and recordkeeping requirements.

For reasons set forth above, LSC proposes to amend 45 CFR part 1602 as follows:

## PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 1602 continues to read as follows:

**Authority:** 42 U.S.C. 2996d(g); 5 U.S.C. 552.

2. Section 1602.2, would be amended by adding a new paragraph (k) to read as follows:

### § 1602.2 Definitions.

* * * * *

(k) *Submitter* means any person or entity from whom the Corporation receives grant application records.

3. Paragraph (a) of § 1602.5 would be revised to read as follows:

### § 1602.5 Public reading room.

(a) The Corporation will maintain a public reading room at its office at 750 First Street, NE., Washington, DC, 20002. After June 1, 2003, the Corporation's public reading room will be located at its office at 3333 K Street, NW., Washington, DC, 20007. This room will be supervised and will be open to the public during the regular business hours of the Corporation for inspecting and copying records described in paragraph (b) of this section.

* * * * *

### § 1602.6 [Amended]

4. Section 1602.6 would be amended by replacing the words ''Office of the General Counsel'' in the second sentence with the words ''Office of Legal Affairs.''

### § 1602.8 [Amended]

5. Paragraph (b) of § 1602.8, would be amended by replacing the words ''Office of the General Counsel'' each of the three times that phrase appears in the paragraph with the words ''Office of Legal Affairs.''

6. Section 1602.3 would be amended by:

a. Revising paragraphs (e) and (f);

b. Redesignating paragraphs (j) through (l) as paragraphs (k) through (m) respectively; and

c. Adding a new paragraph (j).

**§ 1602.13 Fees.**

* * * * *

(e) The schedule for charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Manual search for and review of records will be charged as follows:

(i) Band 1: $16.15

(ii) Band 2: $26.66

(iii) Band 3: $39.15

(iv) Band 4: $51.41

(v) Band 5: $54.59

(vi) Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: actual charges as incurred;

(3) Duplication by paper copy: 13 cents per page;

(4) Duplication by other methods: actual charges as incurred;

(5) Certification of true copies: $1.00 each;

(6) Packing and mailing records: no charge for regular mail;

(7) Express mail: actual charges as incurred.

(f) *Fee waivers.* A requester may seek a waiver or reduction of fees below the fees established under paragraph (e) of this section. A fee waiver or reduction request will be granted where LSC has determined that the requester has demonstrated that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations of the Corporation or Federal government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government, the Corporation shall consider the following four factors:

(i) The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the Corporation or Federal government.'' The subject of the requested records must concern identifiable operations or activities of the Corporation or Federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of Corporation or Federal government operations or activities. The requested records must be meaningfully informative about government operations or activities in order to be likely to contribute to an increased public understanding of those operations or activities. The disclosure of information that is already in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested records will contribute to ''public understanding.'' The disclosure must contribute to a reasonably broad audience of persons interested in the subject, as opposed to the personal interest of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute ''significantly'' to public understanding of Corporation or Federal government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. LSC shall consider any commercial interest of the requester (with reference to the definition of ''commercial use'' in this part) or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily'' in the commercial interest of the requester. A fee waiver or reduction is justified where the public interest is greater in magnitude than that of any identified commercial interest in disclosure. LSC ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed primarily to serve a public interest.

(3) Where LSC has determined that a fee waiver or reduction request is justified for only some of the records to be released, LSC shall grant the fee waiver or reduction for those records.

(4) Requests for fee waivers and reductions shall be made in writing and must address the factors listed in this paragraph as they apply to the request.

* * * * *

(j) When a requester has previously failed to pay a properly charged FOIA fee within 30 days of the date of billing, the Corporation may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee before the Corporation begins to process a new request or continues to process a pending request (including appeals) from that requester.

* * * * *

7. A new 1602.14, would be added to read as follows:

**§ 1602.14 Submitter's rights process.**

(a) When the Corporation receives a FOIA request seeking the release of a submitter's grant application(s), or portions thereof, the Corporation shall provide prompt written notice of the request to the submitter in order to afford the submitter with an opportunity to object to the disclosure of the requested records (or any portion thereof). The notice shall reasonably describe the records requested and inform the submitter of the process required by paragraph (b) of this section.

(b) If a submitter who has received notice of a request for the submitter's records desires to object to the disclosure of the records (or any portion thereof), the submitter must identify the information for which disclosure is objected and provide LSC with a written detailed statement to that effect. The statement must be submitted to the FOIA Officer in the Office of Legal Affairs and must specify the grounds for withholding the information under FOIA or this part. In particular, the submitter must demonstrate why the information is commercial or financial information that is privileged or confidential. The submitter's statement

must be provided to LSC within seven business days of the date of the notice from the Corporation. If the submitter fails to respond to the notice from LSC within that time, LSC will deem the submitter to have no objection to the disclosure of the information.

(c) Upon receipt of written objection to disclosure by a submitter, LSC shall consider the submitter's objections and specific grounds for withholding in deciding whether to release the disputed information. Whenever LSC decides to disclose information over the objection of the submitter, LSC shall give the submitter written notice which shall include:

(1) A description of the information to be released and a notice that LSC intends to release the information;

(2) A statement of the reason(s) why the submitter's request for withholding is being rejected; and

(3) Notice that the submitter shall have 5 business days from the date of the notice of proposed release to appeal that decision to the LSC President, whose decision shall be final.

(d) The requirements of this section shall not apply if:

(1) LSC determines upon initial review of the requested records they should not be disclosed;

(2) The information has been previously published or officially made available to the public; or

(3) Disclosure of the information is required by statute (other than FOIA) or LSC regulations.

(e) Whenever a requester files a lawsuit seeking to compel disclosure of a submitter's information, LSC shall promptly notify the submitter.

(f) Whenever LSC provides a submitter with notice and opportunity to oppose disclosure under this section, LSC shall notify the requester that the submitter's rights process under this section has been triggered. Whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC shall notify the requester.

**Victor M. Fortuno,**

*General Counsel and Vice President for Legal Affairs.*

[FR Doc. 02–29123 Filed 11–15–02; 8:45 am]

**BILLING CODE 7050–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[I.D. 110502B ]**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper Grouper Fishery of the South Atlantic Region; Amendment 13; Public Hearing; Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Scoping Meeting

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

**ACTION:** Notice of public hearing and scoping meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a public hearing to address findings from the SAW/SARC (Stock Assessment Workshop/Stock Assessment Review Committee) process for the red porgy stock assessment. The hearing will include an overview of the recent Stock Assessment Workshop findings and the conclusions from the Stock Assessment Review Committee. In addition, the Council will conduct a public scoping meeting addressing issues affecting the spiny lobster fishery.

**DATES:** The red porgy public hearing and the public scoping meeting for spiny lobster will be held on Monday, December 2, 2002. See **SUPPLEMENTARY INFORMATION** for specific times for the public hearing and the scoping meeting.

**ADDRESSES:** The public hearing and scoping meeting will be held in New Bern, NC (see **SUPPLEMENTARY INFORMATION**).

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366; fax: 843–769–4520; email address: *kim.iverson@safmc.net*.

**SUPPLEMENTARY INFORMATION:** A 1999 stock assessment showed red porgy stocks to be overfished and emergency action was taken to restrict both the commercial and recreational fishery, including a one fish per person recreational bag limit, a 50–pound (22.7–kg) incidental catch limit for the commercial sector, and a closed commercial season from January through April. A subsequent stock assessment and review through the SAW/SARC process concluded that red porgy stocks remain overfished and the current management measures are warranted at this time. The Council is conducting the hearing in order to receive input from the public regarding these findings and obtain information regarding the effects of the current regulations. This information will be considered as the Council moves forward with the development of Amendment 13 to the Snapper Grouper Fishery Management Plan.

The scoping meeting will address issues affecting the spiny lobster fishery. These issues will include defining overfishing, possible federal regulation changes regarding the use of ''shorts'' or undersized lobsters used for bait by commercial harvesters, allowing the expansion of the commercial fishery north of Florida, and the distribution of tailing permits for spiny lobster.

The public hearing will be held at 6 p.m. with the public scoping meeting immediately following at the following location and date:

1. *December 2, 2002*: Sheraton Grand New Bern, 100 Middle Street, New Bern, NC 28560, telephone: 1–800–326–3745 or 252- 638–8112.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council (see **ADDRESSES**) by November 29, 2002.

Dated: November 8, 2002.

**Bruce C. Morehead,**

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

[FR Doc. 02–29184 Filed 11–15–02; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[I.D. 110102J]**

## Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna; Petition for Rulemaking

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

**ACTION:** Notice of receipt of a petition for rulemaking; request for comments.

**SUMMARY:** NMFS announces receipt of, and requests public comment on, a petition from the North Carolina Division of Marine Fisheries (Petitioner)

to initiate rulemaking to amend the current Atlantic bluefin tuna (BFT) allocation criteria and to create a winter time-period subquota. The Petitioner has requested that NMFS commence the rulemaking process as soon as possible.

**DATES:** Comments must be received no later than 5 p.m., Eastern Standard Time, on December 18, 2002.

**ADDRESSES:** Written comments on the petition should be sent to Brad McHale, Highly Migratory Species Management Division, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope: ''Comments on Petition for Rulemaking.'' Comments may also be sent via a facsimile (fax) to (978) 281–9340. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the letter constituting the petition are available upon request at the address mentioned above.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale, Fishery Management Specialist, (978) 281–9260.

**SUPPLEMENTARY INFORMATION:**

**Petition for Rulemaking**

On October 16, 2002, the Petitioner submitted a request to NMFS to initiate rulemaking for a regulatory amendment to 50 CFR 635.27 that would allocate 23 percent of the General category BFT quota to a new December 1 through January 31 time-period subquota. In 2002, the initial General Category quota equaled 647 mt, thus 23 percent would equal 150 mt. The Petitioner states that the quota allocated to the late season General category fishery does not provide reasonable opportunity to harvest BFT when they appear off the South Atlantic coast. The Petitioner believes that there is inequity in the current General category BFT management scheme and that it is necessary to create a General category December through January subquota to ensure fair and equitable treatment to all General category permit holders. The Petitioner explains that the current allocation of General category quota disadvantages General category permit holders who wish to commercially pursue BFT in the South Atlantic, confounds the collection of fishery data, and confounds management for optimum yield.

The Petitioner notes that the proposed amendment could remedy the above inequities, address concerns over National Standard 4, benefit all U.S. BFT fishermen, and have significant economic benefits to South Atlantic fishing communities. The Petitioner also recognizes the proposed amendment could have some negative effects on participants who exploit available quota during earlier time-period subquotas. However, the Petitioner believes that the negative impacts could be mitigated if New England fishermen elect to pursue the BFT as they move south of the South Atlantic states.

The Petitioner acknowledges that operating under the National Standards set forth in the Magnuson-Stevens Fishery Conservation and Management Act is a NOAA priority and policy. To that end, the Petitioner believes that the proposed amendment addresses serious issues related to several National Standards. The Petitioner also believes that the proposed amendment is consistent with specific objectives contained in the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), including improved coordination of domestic conservation and management of the highly migratory species fisheries, considering the multi-species nature of these fisheries, overlapping regional and individual participation, international management concerns, and other relevant factors, as well as maintaining the fishing season and geographic range of the fishery within its historic context to improve scientific monitoring and enhance fishing opportunities. In addition, the Petitioner notes that the 2002 quota specifications and General category effort controls acknowledge that the BFT fishery has changed in recent years with higher catch rates in the fall/winter. According to Petitioner, the proposed amendment would allow more time to harvest the General category subquota and minimize the need to increase harvest limits to levels that could negatively affect prices to U.S. fishermen in international markets.

**Issue Background**

The request made by the Petitioner has been recently discussed in several public forums. During the development of the issue of opening a southern commercial handgear BFT fishery, the HMS Advisory Panel and public extensively discussed establishing a set-aside quota for a North Carolina General category fishery. However, the HMS AP did not reach consensus on whether or not to allow a new southern commercial fishery. At that time, NMFS maintained its position that allowing new gear types and large scale fisheries for BFT would not be consistent with rebuilding overfished stocks and preventing overfishing. In analyzing a variety of long-term effort controls in the BFT fishery, the HMS FMP concluded that the status quo management regime for the General category would assist attainment of optimum yield and address allocation issues by lengthening the season over time and space in a category with high participation and catch rates.

During the 2002 HMS AP meeting, representatives from North Carolina presented a proposal to allocate General category BFT quota during a time and/or in an area so that North Carolina fishermen would have local access to the commercial handgear fishery. The HMS AP again extensively discussed the issue but did not reach consensus.

During the comment period for the 2002 BFT Quota Specifications and General Category Effort controls, NMFS received numerous comments, stating that North Carolina should have its own winter General category set-aside quota. These comments also stated that the current General category allocation scheme discriminates between residents of different states and fails to provide equitable fishing opportunities across different geographical areas. Commenters also requested that there be a December through January time-period subquota established for southern states.

At that time, NMFS maintained the current quota allocation scheme and did not implement a specific set-aside quota for North Carolina. NMFS stated it would continue to assess the order of magnitude and scope of the fishing activities that would be associated with a North Carolina General category BFT fishery and would continue to work with the HMS AP to address potential solutions.

**Request for Comments**

This document solicits comments from the public regarding the need to proceed with rulemaking to amend the current General category BFT quota allocation schedule and the provision that closes the General category BFT fishery on December 31 of each year. NMFS is specifically requesting that the public provide comments on the social, economic, and biological impacts this regulatory amendment would have on the General category BFT Fishery. NMFS will consider this information in determining whether to proceed with the development of amended regulations requested by the petition.

Dated: November 12, 2002.

**John H. Dunnigan,**

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

[FR Doc. 02–29215 Filed 11–15–02; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register
Vol. 67, No. 222
Monday, November 18, 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

### Forest Service

### Del Norte County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Del Norte County Resource Advisory Committee (RAC) will meet on December 3, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Pub. L. 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

**DATES:** The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington Boulevard, Crescent City, California.

**FOR FURTHER INFORMATION CONTACT:** Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *lchapman@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Agenda items include presentations on Title II projects from project proponents, and a discussion of legacy Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: November 8, 2002.

**S.E. 'Lou' Woltering,**

*Forest Supervisor.*

[FR Doc. 02–29115 Filed 11–15–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DoC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Minority Business Development Agency.

*Title:* Performance Database (formerly the Business Development Report (BDR) System), Phoenix (formerly Automated Business Enterprise Locator System (ABELS)) and the Opportunity Database Systems.

*Agency Form Number:* None.

*OMB Approval Number:* Formerly 0640–0002.

*Type of Request:* Revision, with change, of a previously approved collection for which approval has expired.

*Burden:* 50, 1050 and 1,570 hours annually, respectively.

*Number of Respondents:* 50, 1,050 and 1,570, respectively.

*Avg. Hours per Response:* 3–15 minutes.

*Needs and Uses:* The purpose of the Performance, Phoenix and Opportunity databases is to provide an electronic system for (1) entering the accomplishments (Performance) of MBDA's funded organizations, (2) entering minority-owned businesses doing business in the United States (Phoenix), and matching contract opportunities with eligible minority companies listed in the Phoenix database (Opportunity).

Specific uses of the on-line Performance Database include:

The documentation of actual performance accomplishments of each funded organization compared with stated goals in its cooperative agreement with MBDA. The Performance database permits tracking of each funded organization's goals using a number of general and specific variables. The flexibility of the database permits new variables to be added as needed.

The verification of the summary performance accomplishments cited in narrative reports. Based on the results, performance data and other qualitative information obtained during MBDA quarterly monitoring will determine whether a specific cooperative agreement should be terminated or other actions are needed to improve performance.

The advantage of daily tracking of performance is that it will enable managers not only to terminate non-performing funded organizations but, more importantly, to address performance problems early in their development.

Identifies minority business clients receiving Agency-sponsored business development services in the form of management and technical assistance, the kind of assistance each receives, and the impact of that assistance on the growth and profitability of the client firms.

The preparation of special reports analyzing program activities and services by business types, industry trends, business starts, geographic profiles, successful capital and marketing opportunities, and other program elements.

The system permits client identification using a unique computer-assigned identifier for each funded organization. This identification is related to all client data fields. Number of clients assisted, types of assistance, number of hours of assistance, dollar amounts of loans, bonds and contracts, as well as a number of other variables are available for analysis on each client and funded organization.

MBDA requires this information to monitor, evaluate, and plan Agency programs which effectively enhance the development of the minority business sector.

Using information collected, MBDA produces *ad hoc* and recurring reports on its funded organizations, client services activities and accomplishments. Because MBDA's major funded activity is client service, the reports generated are a primary agency reporting and planning mechanism.

The purpose of this collection will be to establish a framework for assessing and evaluating projects' performance.

The Phoenix database constitutes the Minority Business Development Agency's (MBDA) listing of minority-owned businesses doing business in the United States. The Opportunity database contains public and private

contract and other opportunities. The system matches contract opportunities with eligible minority companies listed in the Phoenix database. The information entered in the Phoenix database will be used to assist minority enterprises with marketing of goods and services.

The purpose for collecting this information is to enable entities with an interest in contracting with a minority firm to identify potential minority contractors according to various criteria. MBDA uses the Phoenix database in conjunction with the Opportunity database to refer listed minority companies contracts and other business opportunities via email and fax. The Opportunity database matches contract opportunities with eligible minority companies listed in the Phoenix database. Specific information on the Opportunity form, such as ''key words'' and NAICS codes, are compared with like information contained in the Phoenix database of minority companies. When a match is made, the eligible minority companies will be notified of any contract opportunity and the offeror of the opportunity will be notified of any eligible minority companies. These systems reside on Y2K (year 2000) compliant platforms connected to the service-provider network via the Internet.

*Affective Public:* Individuals, businesses or other for-profit and not-for-profit institutions.

*Frequency:* Annually.

*Respondents Obligation:* Voluntary.

*OMB Desk Officer:* Mr. David Rostker (202) 395–3895.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek , Departmental Paperwork Clearance Officer, (202) 482–3129, U.S. Department of Commerce, Electronic Government Division, Office of the Chief Information Officer, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Dave Rostker at OMB.

Dated: November 5, 2002.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 02–29202 Filed 11–15–02; 8:45 am]

**BILLING CODE 3510–21–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**[Case No. 02–BXA–07]**

### Action Affecting Export Privileges; Oerlikon Schweisstechnik AG

### Order

The Bureau of Industry and Security, United States Department of Commerce (''BIS''), has notified Oerlikon Schweisstechnik AG (also known in Switzerland as Oerlikon-Welding Ltd.) (''Oerlikon''), of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1994 & Supp. V 1999)) (''Act''),[1] and the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2002)) (''Regulations''),[2] based on allegations in a charging letter issued to Oerlikon that alleged that Oerlikon committed three violations of the Regulations. Specifically, the charges are that Oerlikon violated Sections 764.2(c), 764.2(d), and 764.2(e) of the Regulations by soliciting the export of cellulose from the U.S. to Iran and conspiring to export cellulose from the U.S. to Iran without the required authorization from the Office of Foreign Assets Control, Department of the Treasury, as required by the Regulations, and taking an action that Oerlikon knew to be a violation of the Regulations.

BIS and Oerlikon having entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

*It is therefore ordered:*

First, that, for a period of one year from the date of this Order, Oerlikon Schweisstechnik AG (also known in Switzerland as Oerlikon-Welding Ltd.), Neumbrunnerstrasse 50, CH–8050 Zurich, Switzerland, shall be denied its U.S. export privileges as described herein (hereinafter the ''denial period''). Oerlikon, and all of its successors, assigns, officers, representatives, agents, and employees, may not participate, directly or indirectly, in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a person subject to this order any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a person subject to this order of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a person subject to this order acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a person subject to this order of any item subject to the EAR that has been exported from the United States;

D. Obtain from a person subject to this order in the United States any items subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 CFR 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 FR 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2002). The violations charged occurred in 2000. The Regulations governing the violations are codified at 15 CFR parts 730–774 (2000). They are substantially the same as the 2002 version of the Regulations which govern the procedural aspects of this case.

been or will be exported from the United States and which is owned, possessed or controlled by a person subject to this order, or service any item, or whatever origin, that is owned, possessed or controlled by a person subject to this order if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this order.

Fourth, that this order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-orgin technology.

Fifth, that, as authorized by Section 766.18(c) of the Regulations, the final six months of the denial period set forth above shall be suspended for one year from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, Oerlikon has not committed a violation of the Act or any regulation, order or license issued thereunder.

Sixth, that a civil penalty of $33,000 is assessed against Oerlikon which shall be paid to the U.S. Department of Commerce within thirty days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Seventh, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (1993 and Supp. 2000)), the civil penalty owned under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Oerlikon will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Eighth, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Oerlikon. Accordingly, if Oerlikon should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Oerlikon's export privileges for a period of one year from the date of entry of this Order.

Ninth, that the charging letter, the Settlement Agreement, and this Order shall be made available to the public.

Tenth, that a copy of this Order shall be delivered to the United States Coast Guard ALJ Docketing Center, 40 Gay Street, Baltimore, Maryland 21202–4022, notifying that office that case number 02–BXA–07 naming Oerlikon as a respondent is withdrawn from adjudication, as provided by Section 766.18(b) of the Regulations.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 12th day of November 2002.

**Michael J. Garcia,**

*Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 02–29192 Filed 11–15–02; 8:45 am]

**BILLING CODE 3510–DT–M**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Regulations and Procedures Technical Advisory Committee; Notice of Open Meeting

The Regulations and Procedures Technical Advisory Committee will meet on December 3, 2002, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

**Agenda**

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on pending regulations.
4. Discussion on status/plans for TSR MTOP limit regulation.
5. Discussion on deemed export license processing and standard conditions.
6. Review and discussion of encryption regulation recommendations.
7. Discussion on AES/SED issues.
8. Status of CCL user friendliness recommendations.
9. Discussion on enforcement/red flag recommendations.
10. Working group reports.
11. Election of Chair.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials, two weeks prior to the meeting date, to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS, MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: November 13, 2002.

**Lee Ann Carpenter,**

*Committee Liaison Officer.*

[FR Doc. 02–29159 Filed 11–15–02; 8:45 am]

**BILLING CODE 3510–JT–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 111302B]**

### Proposed Information Collection; Comment Request; Vessel Monitoring System for Atlantic Highly Migratory Species

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

**DATES:** Written comments must be submitted on or before January 17, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Chris Rilling, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315

East-West Highway, Silver Spring, MD 20910 (phone 301–713–2347).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Under the proposed information requirement, vessels fishing for Atlantic highly migratory species (HMS) with pelagic longline gear on board would be required to install and operate a vessel monitoring system (VMS). On May 28, 1999, the National Marine Fisheries Service (NMFS) issued a regulation, 50 CFR 635.69(a), requiring all commercial pelagic longline vessels fishing for Atlantic HMS to install a NMFS-approved VMS.

The Bluewater Fisherman's Association filed a lawsuit challenging the VMS requirement, and the U.S. District Court for the District of Columbia remanded the regulation to the Secretary of Commerce for further consideration. On August 29, 2001 NMFS submitted a reconsideration memorandum to the court analyzing alternatives to and reaffirming the need for fleetwide implementation of VMS in the Atlantic pelagic longline fishery. On October 15, 2002, the U.S. District Court for the District of Columbia issued a final order that denied plaintiff's objections to the VMS regulation. Based on this ruling, NMFS is seeking to reinstate OMB approval for this information collection as required by the Paperwork Reduction Act.

If approved, automatic position reports would be submitted on an hourly basis whenever the vessel is at sea. The information would aid in the enforcement of fishery regulations and could allow for delayed offloading after a closure.

Vessel operators would also be required to follow an equipment installation checklist and submit it to NMFS. The checklist provides information on the hardware and communications service selected by each vessel. NMFS would use the returned checklists to ensure that position reports are received and to aid NMFS in troubleshooting problems.

**II. Method of Collection**

Checklists would be submitted in paper form. Position reports would be automatically sent electronically by the vessel monitoring system units.

**III. Data**

*OMB Number*: 0648–0372.

*Form Number*: None.

*Type of Review*: Regular submission.

*Affected Public*: Business and other for-profit organizations.

*Estimated Number of Respondents*: 320.

*Estimated Time Per Response*: 4 hours for installation of equipment; 2 hours for annual maintenance of the equipment (beginning in the second year); 0.033 seconds per automated position report from the automated equipment; and 5 minutes to complete and return a one-time installation checklist.

*Estimated Total Annual Burden Hours*: 1,101.

*Estimated Total Annual Cost to Public*: $654,423.

**IV. Request for Comments**

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 8, 2002.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 02–29182 Filed 11–15–02; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 102902A ]**

### Atlantic Highly Migratory Species; Advisory Panel Meetings.

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

**ACTION:** Notification of Advisory Panel meetings.

**SUMMARY:** NMFS will hold joint meetings of the Atlantic Highly Migratory Species Advisory Panel (HMS AP) and the Atlantic Billfish Advisory Panel (Billfish AP), February 10 through 12, 2003, in Silver Spring, MD. The intent of these meetings is to consider alternatives for the conservation and management of highly migratory species.

**DATES:** The joint HMS-Billfish AP meetings will be held from 1 p.m. to 5 p.m. on Monday, February 10; from 8 a.m. to 5 p.m. on Tuesday, February 11; and from 8 a.m. to 5 p.m. on Wednesday, February 12, 2003.

**ADDRESSES:** The AP meetings will be held in the Holiday Inn, 8777 Georgia Ave. (Rt. 97), Silver Spring, MD 20910. Phone: 301–589–0800.

An agenda and materials related to the AP meeting will be available after January 2, 2003. Please contact Carol Douglas or Othel Freeman, Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910, 301–713–2347, for meeting logistics or materials.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald G. Rinaldo, 301–713–2347.

**SUPPLEMENTARY INFORMATION:** The actions to be discussed by the APs are necessary to address requirements of the Magnuson-Stevens Fishery Conservation and Management Act and to implement recommendations of the International Commission for the Conservation of Atlantic Tunas as required by the Atlantic Tunas Convention Act, for the conservation and management of highly migratory species.

**Special Accomodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dr. Rinaldo (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meetings.

**Authority:** 16 U.S.C. 961 *et seq.*, and 16 U.S.C. 1801 *et seq.*

Dated: November 8, 2002.

**Bruce C. Morehead,**

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

[FR Doc. 02–29185 Filed 11–15–02; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 111202C]**

### Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Joint Mid-Atlantic Fishery Management Council (MAFMC) and the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Industry Advisors will hold a public meeting.

**DATES:** Wednesday, December 4, 2002, from 9 a.m. until 4 p.m.

**ADDRESSES:** The meeting will be held at the Renaissance Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA, telephone 610–521–5900.

*Council address*: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904. ASMFC, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Furlong, Executive Director, MAFMC, telephone 302–674–2331, ext. 19. Vince O'Shea, Executive Director, ASMFC, telephone 202–289–6400, ext. 304.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to discuss the 2003 recreational management measures for summer flounder, scup, and black sea bass.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal Council action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issue 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 this emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office at least 5 days prior to the meeting date.

Dated: November 12, 2002.

**Richard W. Surdi,**

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

[FR Doc. 02–29186 Filed 11–15–02; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 111202E]**

## New England Fishery Management Council; Public Meetings

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Oversight in December, 2002. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will held on Monday, December 2, 2002, at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

*Council address*: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Groundfish Oversight Committee will meet to review the Draft Amendment 13 and accompanying Supplemental Environmental Impact Statement (SEIS) prior to its submission to NMFS. This document is being prepared for submission in December based on a court order in the case of Conservation Law Foundation et al. v. Secretary of Commerce. NMFS has petitioned the court to allow a delay in submitting the document, and the Council has sent a letter for the court asking for at least a one year delay. If a delay is granted by the court, further work will be completed before the Amendment is submitted.

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

This meeting is 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: November 13, 2002.

**Richard W. Surdi,**

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

[FR Doc. 02–29217 Filed 11–15–02; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 111202D]**

## North Pacific 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 North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings December 2–9, 2002, in Anchorage, Alaska.

**DATES:** The meetings will be held on December 2, 2002 through December 9, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The Anchorage Hilton Hotel, 500 W 3rd Avenue, Anchorage, Alaska 99501.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Council staff, Phone: 907–271–2809.

**SUPPLEMENTARY INFORMATION:** The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, December 2, and continue through Friday, December 6, 2002. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, December 2, and continue through Wednesday, December 4, 2002. Other Committees to be held during the week: Joint Protocol/Council/Board of Fish, 6 p.m. on Tuesday, December 3 in the King Salmon Room. Ecosystem Panel (Council, SSC, AP) 1 p.m.–5 p.m. on Tuesday, December 3 in the Aspen/Spruce Room.

The Council will begin its plenary session at 8 a.m. on Wednesday, December 4, continuing through Tuesday December 9. All meetings are

open to the public except executive sessions.

*Council Plenary Session*: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Report:
(a) Executive Director's Report
(b) NMFS Management Report
(c) Alaska Department of Fish &Game (ADF&G) Management Report
(d) Coast Guard Report
(e) United States Fish & Wildlife Service Report
(f) National Academy of Science Steller Sea Lion report
(g) Vessel Monitoring System (VMS) National Committee report (if available)

2. Crab Rationalization: Receive Committee reports and determine preferred alternatives for completed trailing amendments. Discuss Environmental Impact Statement (EIS) progress and alternatives. Provide direction/alternatives on Pribilof blue king crab rebuilding plan.

3. Gulf of Alaska (G0A) Rationalization; Receive report from GOA Work Group, discuss alternatives for formal analysis, and provide direction to staff and work group.

4. Essential Fish Habitat (EFH): Receive Committee report and clarify mitigation alternatives for analysis.

5. American Fisheries Act Issues: Final action on Pacific cod sideboard issues (T). Review initial co-op reports and agreements (full reports in February).

6. Improved Retention/Improved Utilization (IR/IU): Receive Committee report and clarify mitigation alternatives for analysis.

7. Groundfish Issues: Final report from F40 review. Review NMFS discussion paper on Bering Sea and Aleutian Islands (BSAI) rockfish management. Review alternative for total allowable catch (TAC)-setting process amendment package. Review and approve BSAI and GOA Stock Assessment and Fishery Evaluation(SAFE) report and recommend final catch specifications and bycatch apportionments for 2003. Review discussion paper on Amendment 64 (BSI fixed gear Pacific cod allocations) and finalize alternatives for analysis.

8. Staff Tasking: Review tasking and committees and provide direction to staff.

9. Other Business: Approve AP and SSC appointments for 2003

*Scientific and Statistical Committee*: The SSC agenda will include the following issues:

(a) C–3 EFH
(b) Review Halibut log book data
(c) C–1 Rationalization (T)
(d) D–1(a) F40 Final Report
(e) D–1(b,c) BSAI Rockfish and TAC setting
(f) D–1(d,e) BSAI/GOA SAFE
(g) American Fisheries Act

*Advisory Panel*: The Advisory Panel will address the same agenda issues as the Council, with the exception of the Reports under Item #1 of the Council agenda.

Although non-emergency issues not contained in this agenda may come before the discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal Council action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issue 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 this 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 Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: November 12, 2002.

**Richard W. Surdi,**

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

[FR Doc. 02–29216 Filed 11–15–02; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 111202B]**

### South Atlantic 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 South Atlantic Fishery Management Council (Council) will hold meetings of its Snapper Grouper Committee, Finance Committee, Highly Migratory Species Committee, Advisory Panel Selection Committee (closed session), Habitat Committee and Dolphin Wahoo Committee. A joint meeting will also be held between the Snapper Grouper Committee and the Snapper Grouper Advisory Panel. A public hearing will be held on the red porgy stock assessment and review. Additional public comment periods will be held to address lobster issues and the final Dolphin Wahoo Fishery Management Plan. There will also be a full Council Session.

**DATES:** The meetings will be held in December 2002. See SUPPLEMENTARY INFORMATION for specific dates and times.

**ADDRESSES:** The meetings will be held at the Sheraton Grand New Bern, 100 Middle Street, New Bern, NC 28560; telephone: (1–800) 326–3745 or (252) 638–8112.

Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer; telephone: 843–571–4366 or toll free at 866/SAFMC–10; fax: 843–769–4520; email: kim.iverson@safmc.net.

**SUPPLEMENTARY INFORMATION:**

### Meeting Dates

1. *Joint Snapper Grouper Committee and Advisory Panel Meeting: December 2, 2002, 1:30 p.m.- 5:30 p.m. and continued on December 3, 2002, from 8:30 a.m. until 10 a.m.*

The Snapper Grouper Committee will meet jointly with the Advisory Panel (AP) to receive updates on red porgy management including a presentation on the SAW/SARC (Stock Assessment Workshop/Stock Assessment Review Committee) findings and the status of the North Carolina observer work on red porgy bycatch. The Committee and AP will also receive updates on the snapper/grouper electronic logbook study and the economic data collection program using logbooks. Following the presentations, the Committee and AP will receive an overview of draft Amendment 13 to the Snapper Grouper Fishery Management Plan (FMP) and will provide input for the document.

2. *Public Hearing for Red Porgy followed immediately by a public scoping meeting on issues affecting the spiny lobster fishery: December 2, 2002, 6 p.m.*

3. *Snapper Grouper Committee Meeting: December 3, 2002, 10 a.m. until 6 p.m. and continued December 4, 2002, from 8:30 a.m. until 3 p.m.*

The Snapper Grouper Committee will meet to receive an update on the SEDAR (Southeastern Data, Assessment and

Review) process as it currently relates to the status of vermilion snapper and black sea bass and also hear from NOAA Fisherie's Southeast Regional Office regarding the status of their capacity work for the snapper grouper and black sea bass fisheries. The Snapper Grouper Committee will also review draft Amendment 13 and develop recommendations for the Council.

4. *Finance Committee Meeting: December 4, 2002, 3 p.m. until 4 p.m.*

The Finance Committee will meet to review and approve the Calendar Year (CY) 2003 budget.

5. *Highly Migratory Committee Meeting: December 4, 2002, 4 p.m. until 5 p.m.*

The Highly Migratory Species Committee will meet to discuss bluefin tuna allocation issues and hear a report on the fall ICCAT (International Commission for the Conservation of Atlantic Tunas) Advisory Committee meeting and a summary of the ICCAT meeting.

6. *Habitat Committee Meeting: December 5, 2002, 8:30 a.m. until 10:30 a.m.*

The Habitat Committee will meet to review Advisory Panel recommendations. The Committee will also address revisions of its Policy Statement.

7. *Advisory Panel Selection Committee Meeting (CLOSED): December 5, 2002, 10:30 a.m. until 12 noon.*

The Advisory Panel Selection Committee will meet in to review current applications for advisory panel positions and develop recommendations.

8. *Dolphin Wahoo Committee Meeting: December 5, 2002, 1:30 p.m. until 3:30 p.m.*

The Dolphin Wahoo Committee will meet to develop recommendations on submission of the Dolphin Wahoo FMP for formal Secretarial review.

9. *Council Session: December 5, 2002, 4 p.m. until 6 p.m.*

From 4 p.m. 4:15 p.m., the Council will have a Call to Order, introductions and roll call, adoption of the agenda, and approval of the September 2002 meeting minutes.

From 4:15 p.m. 5 p.m., the Council will hear recommendations from the Dolphin Wahoo Committee and take action for final approval of the Dolphin Wahoo FMP for submission for formal Secretarial review. Beginning at 4:15 p.m., a public comment period will be held on the final Atlantic Dolphin Wahoo FMP.

From 5 p.m. 6 p.m., the Council will receive a legal briefing on litigation affecting the Council (CLOSED SESSION).

10. *Council Session: December 6, 2002, 8:30 a.m. 12 Noon.*

From 8:30 a.m. 9 a.m., the Council will hear a report from the Snapper Grouper Committee and take into consideration recommendations regarding draft Amendment 13 to the Snapper Grouper FMP.

From 9 a.m. 9:15 a.m., the Council will receive a report from the Habitat Committee.

From 9:15 a.m. 9:30 a.m., the Council will hear recommendations from the Advisory Panel Selection Committee and appoint new advisory panel members.

From 9:30 a.m. 9:45 a.m., the Council will hear a report from the Highly Migratory Species Committee.

From 9:45 a.m. 10 a.m., The Council will hear a report from the Finance Committee and approve the CY 2003 budget.

From 10 a.m. until 10:15 a.m., the Council will develop recommendations to the Regional Administrator for NOAA Fisheries on Expempted Fisheries Permits for the North Carolina Aquariums and the South Carolina Aquarium.

From 10:15 a.m. until 10:45 a.m., the Council will receive a report on the Marine Fishery Stock Assessment Improvement Plan.

From 10:45 a.m. until 11 a.m., the Council will receive a status report on Amendment 6 to the Shrimp FMP.

From 11 a.m. until 11:30 a.m., the Council will hear NOAA Fisheries status reports on the Golden/Red Crab FMP management unit issue, Shrimp Amendment 5 implementation, the Sargassum FMP, the SEDAR Committee Process and implementation of the ACCSP (Atlantic Coast Cooperative Statistics Program) in the Southeast Region. NOAA Fisheries will also give status reports on landings for Atlantic king mackerel, Gulf king mackerel (eastern zone), Atlantic Spanish mackerel, snowy grouper & golden tilefish, wreckfish, greater amberjack and south Atlantic octocorals.

From 11:30 a.m. 12 noon, the Council will hear agency and liaison reports, discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council 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 the Council office (see **ADDRESSES**) by November 29, 2002.

Dated: November 13, 2002.

**Richard W. Surdi,**

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

[FR Doc. 02–29218 Filed 11–15–02; 8:45 am]

**BILLING CODE 3510–22–S**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY:** Commodity Futures Trading Commission.

**Sunshine Act Meetings**

**TIME AND DATE:** 11 a.m., Friday, December 6, 2002.

**PLACE:** 1155 21st NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**FOR MORE INFORMATION CONTACT:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02–29318 Filed 11–14–02; 12:10 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, December 13, 2002.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**FOR MORE INFORMATION CONTACT:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of Commission.*

[FR Doc. 02–29319 Filed 11–14–02; 12:10 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, December 20, 2002.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**FOR MORE INFORMATION CONTACT:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02–29320 Filed 11–14–02; 12:10 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, December 27, 2002.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**FOR MORE INFORMATION CONTACT:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02–29321 Filed 11–14–02; 12:10 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10 a.m., Thursday, December 5, 2002.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Adjudicatory Matters.

**FOR MORE INFORMATION CONTACT:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02–29322 Filed 11–14–02; 12:11 pm]

**BILLING CODE 6351–01–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission of OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by December 18, 2002.

*Title and OMB Number:* Information Collection in Support of DoD Acquisition Process (Solicitation Phase); OMB Number 0704–0187.

*Type of Request:* Extension.

*Number of Respondents:* 161,355.

*Responses Per Respondent:* 12.1 (average).

*Annual Responses:* 1,954,238.

*Average Burden Per Response:* 5.05 hours.

*Annual Burden Hours:* 9,870,858.

*Needs and Uses:* This information collection requirement pertains to information that an offeror must submit to the Department of Defense in response to a request for proposals or an invitation for bids and not covered separately by another OMB clearance. DoD uses this information to evaluate offers; determine whether the offered price is fair and reasonable; and determine which offeror to select for contract award. DoD also uses this information in determining whether to provide precious metals as Government-furnished material; whether to accept alternate preservation, packaging, or packing; and whether to trade in existing personal property toward the purchase of new items. Specific DFARS requirements were discussed in 67 FR 46180, dated July 12, 2002.

*Affected Public:* Business or Other For-Profit; Not-For-Profit Institutions.

*Frequency:* On Occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 12, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 02–29100 Filed 11–5–02; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the Defense Policy Board Advisory Committee

**AGENCY:** Department of Defense, Defense Policy Board Advisory Committee.

**ACTION:** Notice.

**SUMMARY:** The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on December 5–6, 2002, from 0900 to 1800.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: November 12, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 02–29099 Filed 11–15–02; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Draft Department of Defense Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice''

**AGENCY:** General Counsel of the Department of Defense.

**ACTION:** Notice of availability.

**SUMMARY:** Executive Order 12473, July 13, 1984, states that the Secretary of Defense shall cause the Manual for Courts-Martial to be reviewed annually and recommend to the President any appropriate amendments. Under the direction of the General Counsel of the Department of Defense, a Joint Service Committee on Military Justice (JSC) has been established to accomplish this review and make recommendations for amendments to the Manual. Department of Defense Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice'' provides for the organization, functions, and procedures applicable to the JSC and the annual review process. The Office of Management and Budget (OMB) has provided all government agencies guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated to the public. OMB has directed the agencies to publish a notice in the **Federal Register** by May 1, 2002, that their draft policies complying with the OMB requirement are available for public view and comment on their public Web sites. The draft Department of Defense Directive is available on the Deputy General Counsel (Personnel and Health Policy), Office of the General Counsel public Web site located at *http://www.defenselink.mil/dodgc/php*.

**DATES:** Consideration will be given to all comments received on or before January 17, 2003.

**ADDRESSES:** Submit comments to Robert E. Reed. ODGC (P&HP), Office of the General Counsel of the Department of Defense, 1600 Defense Pentagon, Room 3E999, Washington, DC 20301–1600.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert E. Reed, ODGC (P&HP), 703–695–1055, *reedr@osdgc.osd.mil*.

Dated: September 24, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02–29127 Filed 11–15–02; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF ENERGY

### Waste Isolation Pilot Plant Disposal Phase Supplemental Environmental Impact Statement

**AGENCY:** U.S. Department of Energy.

**ACTION:** Amendment to a Record of Decision.

**SUMMARY:** The U.S. Department of Energy (DOE) has decided to revise its approach for managing approximately 0.97 metric tons (MT) of plutonium-bearing materials (containing about 0.18 MT of surplus plutonium) that are currently located at the Rocky Flats Environmental Technology Site (RFETS). The Department has decided to repackage and transport these materials for direct disposal as transuranic waste (TRUW) at the Waste Isolation Pilot Plant (WIPP) near Carlsbad, New Mexico instead of shipping them to the Savannah River Site (SRS) in South Carolina for storage pending possible disposition. These materials will be repackaged to meet the WIPP waste acceptance criteria (WAC) for TRUW and safeguards termination requirements. DOE has prepared a supplement analysis for this action pursuant to 10 CFR 1021.314, entitled *Supplement Analysis for the Disposal of Certain Rocky Flats Plutonium-Bearing Materials at the Waste Isolation Pilot Plant* (WIPP SA) (DOE/EIS–0026–SA–3, November 2002). On the basis of that document, DOE has concluded this action would not result in significant environmental impacts or in impacts significantly different from those analyzed in the *Waste Isolation Pilot Plant Disposal Phase Supplemental Environmental Impact Statement* (SEIS–II) (DOE–EIS–0026–FS2, September 1997).

**ADDRESSES:** Copies of the SEIS–II, the WIPP SA, this Amended Record of Decision, and other documents referenced herein, can be obtained by contacting the Center for Environmental Management Information, P.O. Box 23769, Washington, DC 20026–3769, telephone 1–800–736–3282 (in Washington, DC: 202–863–5084).

**FOR FURTHER INFORMATION CONTACT:** For information concerning the management of plutonium-bearing materials currently stored at Rocky Flats, contact: Dr. W. Eric Huang, Program Manager, Rocky Flats Office (EM–33), Office of Site Closure, Environmental Management, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, Telephone: 301–903–4630.

For information concerning DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–4600, or leave a message at 1–800–472–2756.

**SUPPLEMENTARY INFORMATION:**

#### Background

Historically, Rocky Flats has used a material identification system that segregated plutonium-bearing materials by process origin and/or to designate the subsequent process steps for plutonium recovery and recycle. The categorization is known as Item Description Codes (IDCs). In January 1993, these IDCs were grouped into two major categories, Product and Residue, in order to plan and manage the future disposition of the Site's plutonium-bearing materials. The characterization of plutonium-bearing materials as Product or Residue was based on the average plutonium concentration of each IDC, the relative ease or difficulty of recovery, and/or whether an IDC was traditionally considered Product or Residue. In general, the Product category was comprised of IDCs with average plutonium concentrations greater than 50 percent by weight. However, an IDC could be designated as residue material although some individual items within this IDC exceed 50 percent by weight. Similarly, an IDC could be designated as Product material although some individual items within this IDC are less than 50 percent by weight.

DOE has already decided to dispose of the Residue materials at WIPP as transuranic waste (TRUW).[1] *See* ''Record of Decision on the Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site,'' 63 FR 66136 (December 1, 1998) and ''Amended Record of Decision on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site,'' 66 FR 4803 (January 18, 2001). The Product materials were originally part of a set of materials destined to be repackaged and sent to the Savannah River Site (SRS) for storage and possible subsequent disposition. *See* ''Record of Decision on the Storage and Disposition of Weapons-Usable Fissile Materials,'' 62 FR 3014 (January 21, 1997) and ''Amended Record of Decision on the

[1] For waste classification, DOE specifically defines TRUW as waste containing more than 100 nanocuries of alpha emitting transuranic isotopes per gram of waste with half-lives greater than 20 years except as noted in Chapter III of DOE Guide 435.1–1.

Surplus Plutonium Disposition Program,'' 67 FR 19432 (April 19, 2002). However, as the Rocky Flats closure plans matured, a more detailed review has been undertaken of the items within the Product oxide IDCs. This evaluation revealed that a significant quantity of the materials in the Product oxide IDCs contained plutonium concentrations comparable to the Residue materials. Additionally, these items contained the same plutonium compounds and many of the same impurities and physical characteristics as the materials in the Residue IDCs. In fact, these low assay oxides from the Product IDCs:

- Originated from the same aqueous recovery processes and/or contain impurities similar to the Wet Residue category; or
- Originated from the same pyrochemical processes and/or contained impurities similar to the Salt Residue category; or
- Originated from the same process lines and/or contained impurities comparable to the Ash Residue category.

DOE has therefore concluded that by reason of their similarity to the materials already slated for disposal at WIPP, an additional approximately 0.97 MT of low assay oxides (containing about 0.18 MT of surplus plutonium) from the Product IDCs should be disposed of in the same fashion after being repackaged to meet the requirements for safeguards termination and the WIPP waste acceptance criteria (WAC).

**Additional NEPA Review**

DOE has prepared a supplement analysis for this proposed action, entitled *Supplement Analysis for the Disposal of Certain Rocky Flats Plutonium-Bearing Materials at the Waste Isolation Pilot Plant* (DOE/EIS–0026–SA–3, November 2002). This supplement analysis was prepared to determine whether the activities associated with repackaging approximately 0.97 MT of plutonium-bearing materials (containing about 0.18 MT of surplus plutonium) at RFETS, shipping the materials to WIPP, and disposal at WIPP would present any significant new information or circumstances relevant to environmental concerns. The supplement analysis indicated that the potential impacts of the proposed action were small and not significantly different from the impacts evaluated in the SEIS–II.

With respect to repackaging, the impacts of ordinary operations would be bounded by the analysis in the SEIS–II, even when adding the very small impacts from repackaging the proposed action material to those of repackaging the other Rocky Flats material currently slated for disposal at WIPP. This is due to the fact that the SEIS–II contemplated the repackaging of considerably more plutonium than the total amount of plutonium that will actually be repackaged at RFETS. The SEIS–II analyzed repackaging and sending to WIPP 17,000 cubic meters of TRUW, but DOE projects that no more than approximately 12,500 cubic meters will eventually be sent. With regard to the most severe accident scenario, an earthquake, the impacts would be greater than predicted in the SEIS–II because the proportion of plutonium in the containers being repackaged is larger than in the containers analyzed in the SEIS–II. But the difference is not significant because the impacts are still small, and because the earthquake scenario has a predicted frequency of less than once over 100,000 years.

The impacts from transporting and disposing of the proposed action materials are small and bounded by those predicted in the SEIS–II. With respect to transportation, the impacts are bounded by the analysis contained in the SEIS–II for two reasons. First, once the material has been repackaged for shipment, the shipments containing those packages will be in all applicable respects similar to the shipments analyzed in the SEIS–II. Second, the actual number of shipments from RFETS to WIPP will be fewer than the number of shipments analyzed in the SEIS–II, even when the shipments of the proposed action materials are included. The SEIS–II assumed that approximately 2,100 shipments would be sent from RFETS to WIPP, but DOE projects that no more than 1,700 shipments, including the 45 shipments for the proposed action, will be sent. With respect to disposal, once the material at issue has been repackaged, it will meet the WIPP waste acceptance criteria, the relevant consideration used in analyzing the impacts of disposing of the material analyzed in the SEIS II. Furthermore, the volume (and impacts) of material slated for disposal from all sites, including the proposed action material, will remain well below the total analyzed in the SEIS–II.

**Other Considerations**

This proposed action will reduce the technical uncertainty associated with removing these materials from RFETS and thus will enhance DOE's ability to meet the RFETS site closure schedule. In order to send these materials to SRS as originally planned, they would need to be stabilized and repackaged to meet DOE–STD–3013 requirements. Because of their low density, it would be difficult to efficiently repackage these materials to meet these requirements. The 3013 containers are relatively small and were developed for high density plutonium metal and oxides. Also, these materials contain impurities which present a significant technical challenge to maintaining the moisture specifications of the DOE–STD–3013 requirements. Sending these materials to WIPP as TRUW eliminates this technical risk.

**Conclusion**

DOE has determined that repackaging and transporting approximately 0.97 MT of RFETS plutonium-bearing materials (containing about 0.18 MT of surplus plutonium) for direct disposal at the WIPP would not constitute a substantial change in actions previously analyzed. Furthermore, this proposed action would not constitute significant new circumstances or information relevant to environmental concerns and bearing on the previously analyzed action or its impacts. The potential impacts associated with the new action are encompassed within the activities and impacts analyzed under Action Alternative 1 of the SEIS–II. Therefore, DOE does not need to undertake additional NEPA analysis before issuing this amendment.

**Decision**

After consideration of the potential environmental impacts identified in the SEIS–II and the WIPP SA, DOE has decided to dispose of at WIPP approximately 0.97 MT of the plutonium-bearing materials (containing about 0.18 MT of surplus plutonium) currently located at RFETS. These materials would be repackaged to meet the WIPP WAC and safeguards termination requirements.

This Amended Record of Decision is effective upon being made public, in accordance with DOE's NEPA implementation regulations (10 CFR 1021.315).

Issued in Washington, DC, on November 8, 2002.

**Jessie Hill Roberson,**

*Assistant Secretary for Environmental Management.*

[FR Doc. 02–29161 Filed 11–15–02; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Agency Information Collection Activities: Submission for OMB Review; Comment Request.

**SUMMARY:** The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

**DATES:** Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

**ADDRESSES:** Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*BAllen@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 426–1103, Fax at (202) 426–1081, or e-mail at *Herbert.Miller@eia.doe.gov*.

**SUPPLEMENTARY INFORMATION:** This section contains the following information about the energy information collections submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–800–804, 807, 810–814, 816, 817, 819M, and 820, ''Petroleum Supply Reporting System''.
2. Energy Information Administration.
3. OMB Number 1905–0165.
4. One-year extension.
5. Mandatory.
6. EIA's Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude oil, petroleum products, and natural gas liquids. The data are published by EIA and are used by public and private analysts. Respondents are operators of petroleum refineries, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tankers, barges, and oil importers.

With respect to its currently approved PSRS survey forms, EIA is proposing a few changes that would be implemented in surveys for the 2003 reporting period. When soliciting public comments, EIA proposed additional changes for the 2003 reporting period as well as changes that would have been implemented beginning in 2004. EIA received a large number of comments. EIA needs additional time to adequately consider the comments and to ensure that changes in the information collections fully address concerns raised by the public. For that reason, EIA has decided to propose only a few changes for the 2003 reporting period and to request approval for collecting information only for 2003. During 2003, EIA will again solicit comments on the PSRS surveys and request OMB approval before conducting any surveys for the 2004 report period.

An additional reason for delaying the majority of the proposed changes is EIA's development of a new processing system for EIA's PSRS surveys. Significant changes to the surveys in 2003 could have severe negative impacts on timely development of the new processing system which in turn would interfere with EIA's on-going weekly, monthly, and annual information products on the petroleum industry.

The only PSRS survey changes proposed for 2003 are:

- EIA–807, Propane Telephone Report—This survey is currently conducted on a monthly basis for six months and on a weekly basis for the remaining six months. EIA is proposing to conduct this survey on a weekly basis throughout the year and to add an element on non-fuel propylene stocks.
- EIA–816, Monthly Natural Gas Liquids Report—EIA will add four items to collect natural gas information (*i.e.*, receipts, inputs to other products, shipments, and plant fuel use).

7. Business or other for-profit; State, local or tribal government; Federal government.

8. 60,006 hours (2,240 respondents × 21.03 responses per year × 1.27 hours).

**Statutory Authority:** Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, November 12, 2002.

**Jay Casselberry,**

*Forms Clearance Officer, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 02–29162 Filed 11–15–02; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[IC03–583–000, FERC–583]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

November 8, 2002.

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Consideration on the collection of information is due by January 13, 2003.

**ADDRESSES:** Information on the proposed energy information collection can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–583–000. Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt and comments. User assistance for electronic filings is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''FERRIS'' link. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 208–2425, and by e-mail at *michael.miller@ferc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Abstract**

The information collected under the requirements of FERC–583 ''Annual Kilowatt Generating Report (Annual Charges)'' (OMB No. 1902–0136) is used by the Commission to implement the statutory provisions of section 10(e) of the Federal Power Act (FPA), part I, 16 U.S.C. 803(e) which requires the Commission to collect annual charges from hydropower licensees for, among other things, the cost of administering part I of the FPA and for the use of United States dams. In addition, the Omnibus Budget Reconciliation Act of 1986 (OBRA) authorizes the Commission to ''assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.'' The information is collected annually and used to determine the amounts of the annual charges to be assessed licensees for reimbursable government administrative costs and for the use of government dams. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 11.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually | Number of responses per respondent | Average burden hours per response | Total annual burden hours |
|---|---|---|---|
| (1) | (2) | (3) | (1)×(2)×(3) |
| 660 | 1 | 2 | 1,320 |

*Estimated cost burden to respondents:* 1,320 hours/2,080 hours per year × $117,041 per year = $74,276. The cost per respondent = $113.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–29160 Filed 11–15–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2197–056]**

## Alcoa Power Generating Inc.; Notice Granting Late Intervention

November 8, 2002.

On September 6, 2002, the Commission issued a notice of the request for a temporary license amendment to deviate from reservoir drawdown schedules and refill requirements, filed August 29, 2002, by Alcoa Power Generating Inc., for the Yadkin Project No. 2197, located on the Yadkin/Pee Dee River in Montgomery, Stanley, Davidson, Rowan, and Davie Counties, North Carolina. The notice established October 7, 2002, as the deadline for filing motions to intervene in the proceeding.

On October 16, 2002, a motion to intervene was filed late by Mr. Jim L. Shuping. Granting the late motion to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the late motion to intervene filed in this proceeding by Mr.

[1] 18 CFR 385.214 (2001).

Jim L. Shuping is granted, subject to the Commission's rules and regulations.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–29138 Filed 11–15–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–45–000]**

## ANR Pipeline Company; Notice of Tariff Filing

November 12, 2002.

Take notice that on October 29, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 148, with an effective date of December 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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. 02–29149 Filed 11–18–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER02–1656–009 and ER02–2576–001]**

## California Independent System Operator Corporation; Notice of Technical Conference

November 8, 2002.

The Federal Energy Regulatory Commission Staff is convening a technical conference regarding the Comprehensive Market Redesign 2002 of the California Independent System Operator Corporation (CAISO) to assess the progress of the Stakeholder Working Groups, and to facilitate continued discussions between the CAISO and stakeholders regarding the development of the remaining elements of the CAISO market redesign and to identify related implementation issues. The conference will be held on December 9, 2002 in a hearing room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC beginning at 9 am.

In preparation for this technical conference, the MD02 Stakeholder Working Groups should file by November 25, 2002, a Stipulation of Issues identifying which issues have been resolved and any issues that remain unresolved. For those issues that remain open, each party should prepare its own Statement of Position. The CAISO should file in the above captioned dockets by December 2, 2002, the presentation referenced in its October 29, 2002 Request for Technical Conference, including slides and accompanying narrative. The CAISO should include software development requirements as part of the presentation. The presentation should also be posted on the CAISO website. To make the most efficient use of the time allotted, all parties should be prepared to discuss the CAISO's posted presentation. The CAISO and its software vendors should be prepared to address technical requirements associated with implementation of revised market design elements.

For additional information concerning the conference, interested persons may contact Susan G. Pollonais at (202) 502–6011 or by electronic mail at *susan.pollonais@ferc.gov*. No telephone communication bridge will be provided at this technical conference.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–29135 Filed 11–15–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–65–000]**

## Cove Point LNG Limited Partnership; Notice of Tariff Filing

November 12, 2002.

Take notice that on November 6, 2002, Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Tariff Sheet No. 103; First Revised Tariff Sheet No. 105; First Revised Tariff Sheet No. 115; First Revised Tariff Sheet No. 117; and Second Revised Tariff Sheet No. 153, with an effective date of December 4, 2002.

Cove Point states that the proposed revised sheets are submitted to comply with the Commission's (Order No. 587–O). Order No. 587–O requires Cove Point to adopt Version 1.5 of the North American Energy Standards Board's (NAESB) standards.

Cove Point states that copies its filing has been served upon all of Cove Point'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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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. 02–29152 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER02–994–003]**

## Duke Energy Corporation; Notice of Filing

November 12, 2002.

Take notice that on October 31, 2002, Duke Energy Corporation (Duke), on behalf of Duke Electric Transmission (Duke ET), tendered for filing (i) a Generation Interconnection and Operating Agreement between Duke ET and South Carolina Public Service Authority (SCPSA), and (ii) an Amendment to the Restated Interchange Agreement between Duke Power Company and SCPSA dated February 10, 1992. Duke requests an effective date of January 1, 2003.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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:* November 21, 2002.

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

*Deputy Secretary.*

[FR Doc. 02–29144 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–64–000]**

## Gulf South Pipeline Company, LP; Notice of Proposed Changes in Gas Tariff

November 12, 2002.

Take notice that on November 5, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective December 5, 2002.

First Revised Sheet No. 301
First Revised Sheet No. 601
First Revised Sheet No. 714
Second Revised Sheet No. 1200
Third Revised Sheet No. 1201
First Revised Sheet No. 1202
First Revised Sheet No. 1203
Original Sheet No. 1204
Original Sheet No. 1205
Original Sheet No. 1206
Reserved Sheet Nos. 1207—1299
Second Revised Sheet No. 1413
Third Revised Sheet No. 1416
Second Revised Sheet No. 2502
First Revised Sheet No. 3605
First Revised Sheet No. 3615
First Revised Sheet No. 3702
Fourth Revised Sheet No. 3706
Third Revised Sheet No. 4000

Gulf South is proposing to revise its credit requirements to enable it to manage the risks inherent in today's marketplace. This proposal establishes clear creditworthy standards, shorter notice periods, and increased security requirements.

Copies of this filing have been served upon Gulf South's customers, 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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. 02–29151 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP03–8–000]**

## Regent Resources Ltd.; Notice of Application

November 8, 2002.

Take notice that on October 29, 2002, Regent Resources Ltd., (Regent), 1200, 603–7th Avenue SW., Calgary, Alberta Canada T2P 2T5, filed an application seeking Section 3 authorization and a Presidential Permit pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038, to site, construct, operate and maintain facilities at the United States—Canada border (International Boundary) for the importation of natural gas into the United States from Alberta, Canada, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Specifically, Regent proposes to construct and operate a gas meter station at an existing wellsite and a 2300-foot, 4-inch O.D. pipeline (Regent

Pipeline) extending directly south of the meter station in the Coutts area of the Province of Alberta. The last 30 foot section of the Regent Pipeline (border crossing) will interconnect with a new 4-inch pipeline (Connector Pipeline) to be constructed in the NW ¼ Section 1, Township 37N, Range 5W in Glacier County, Montana, by Regent Resources Inc., a Montana subsidiary of Regent. The Connector Pipeline will extend from the border crossing in an southeasterly direction for a distance of approximately 19,400 feet and tie in with EnCana Corporation's existing gathering system and processing facility located in Northern Montana.

Regent states that the proposed construction will allow unprocessed gas from existing shut-in wells in the Alberta Province to be imported into the existing U.S. gathering and processing system, thereby providing increased Canadian resource development with accompanying local, state and provincial socio-economics benefits.

Any questions regarding the application should be directed to Shaun Hedges, Operations Manager, Regent Resources Ltd, at (406) 264–0018.

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 November 29, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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 instructions on the Commission's Web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–29134 Filed 11–15–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 309]**

## Reliant Energy Mid-Atlantic Power Holdings, LLC; Notice of Authorization for Continued Project Operation

November 12, 2002.

On October 11, 2000, Reliant Energy Mid-Atlantic Power Holdings, LLC, licensee for the Piney Project No. 309, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 309 is located on the Clarion River in Clarion County, Pennsylvania.

The license for Project No. 309 was issued for a period ending October 12, 2002. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 309 is issued to Reliant Energy Mid-Atlantic Power Holdings, LLC for a period effective October 13, 2002, through October 12, 2003, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before October 13, 2003, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Reliant Energy Mid-Atlantic Power Holdings, LLC is authorized to continue operation of the Piney Project No. 309 until such time as the Commission acts on its application for subsequent license.

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

*Deputy Secretary.*

[FR Doc. 02–29147 Filed 11–18–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–58–000]**

### Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

November 12, 2002.

Take notice that on October 31, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, and First Revised Volume No. 2, revised tariff sheets as listed on Appendix A to the filing, to become effective December 1, 2002. In addition, Texas Eastern submitted its Annual Interruptible Revenue Reconciliation Report pursuant to its Amended Global Settlement.

Texas Eastern states that the revised tariff sheets and the Annual Interruptible Revenue Reconciliation Report contained in the filing are being filed (i) pursuant to Section 15.6, Applicable Shrinkage Adjustment (ASA), and Section 15.8, Periodic Reports, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1, (ii) in compliance with the Stipulation and Agreement (Global Settlement) approved by the Commission in its order issued May 12, 1994 [67 FERC ¶ 61,170, reh'g denied, 68 FERC ¶ 61,062 (1994)], and (iii) in compliance with the Joint Stipulation and Agreement Amending Global Settlement (Amended Global Settlement) approved by the Commission in its order issued August 28, 1998 [84 FERC ¶ 61,200 (1998)].

Texas Eastern states that by this filing, it is reducing by approximately 25% the level of its ASA Usage Surcharge included in its rates, and reflecting minor changes in its ASA Percentages, which are designed to retain in-kind the projected quantities of gas required for the operation of Texas Eastern's system in providing service to its customers. These adjustments are effective for the twelve month period beginning December 1, 2002.

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern and interested state commissions, as well as to all parties to the Settlement in Docket No. RP85–177–119, *et al.*

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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. 02–29150 Filed 11–18–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP01–236–008, RP00–553–011, and RPoo–481–008]**

### Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

November 8, 2002.

Take notice that on October 30, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing, as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing.

Transco states that the purpose of this filing is to comply with the Commission's Order on Rehearing and Clarification issued on August 29, 2002 in the referenced proceeding.

Transco states that it will serve copies of the instant filing on its affected 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. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–29143 Filed 11–15–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 719]**

### Trinity Conservancy Inc.; Notice of Authorization for Continued Project Operation

November 12, 2002.

On October 31, 2000, Trinity Conservancy Inc., licensee for the Trinity Project No. 719, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 719 is located on Phelps and James Creeks in Chelan County, Washington.

The license for Project No. 719 was issued for a period ending November 1, 2002. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the

Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 719 is issued to Trinity Conservancy Inc. for a period effective November 2, 2002, through November 1, 2003, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 2, 2003, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Trinity Conservancy Inc. is authorized to continue operation of the Trinity Project No. 719 until such time as the Commission acts on its application for subsequent license.

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

*Deputy Secretary.*

[FR Doc. 02–29148 Filed 11–18–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER97–1523–071, et al.]**

## Central Hudson Gas & Electric Corporation, et al.; Electric Rate and Corporate Filings

November 7, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Central Hudson Gas & Electric, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool, New York Independent System Operator, Inc.

[Docket Nos. ER97–1523–071, OA97–470–066, and ER97–4234–064]

Take notice that on October 30, 2002, the New York Independent System Operator, Inc. (NYISO) filed an analysis of its current method of addressing storm watch conditions and of alternative options for cost recovery.

The NYISO has served a copy of this filing on each party designated on the official service list in Docket Nos. ER97–1523–003, –004, –005, –006, –052, –061, OA97–470–004, –005, –006, ER97–4234–002, –003, –004 and EC99–31–001 in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 CFR 2010 (2002).

*Comment Date:* November 20, 2002.

### 2. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1420–006]

Take notice that on November 1, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a First Revised, Volume No. 1 Resulting Company Tariff in compliance with the Commission's Order issued on May 31, 2002 in Midwest Independent Transmission System Operator, Inc., Docket No. ER02–1420–000, 99 FERC ¶ 61,250 (2002). In addition, the Midwest ISO also submitted the Second Revised Resulting Company Agreement in compliance with the Commission's Order issued on October 11, 2002 in Midwest Independent Transmission System Operator, Inc., Docket No. ER02–1420–001, 101 FERC ¶ 61,044 (2002).

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. 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 Web site at *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:* November 22, 2002.

### 3. Williams Energy Marketing & Trading Company

[Docket Nos. ER03–132–000]

Take notice that on November 1, 2002, Williams Energy Marketing & Trading Company (Williams) tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, and part 35 of the Commission's Regulations, 18 CFR 35, revised pages to the Reliability Must-Run Service Agreements (RMR Agreements) between Williams and the California Independent System Operator Corporation (ISO) for certain RMR units located at the Alamitos and Huntington Beach Generating Stations.

The purpose of the filing is to update Williams' existing RMR Agreements to reflect an extension of the two existing RMR Agreements and certain annual updates to Schedules A, B, C D and J of the RMR Agreements. Copies of the filing were served upon the ISO and Southern California Edison Company.

*Comment Date:* November 22, 2002.

### 4. New England Power Pool

[Docket No. ER03–133–000]

Take notice that on November 1, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted (1) the Eighty-Ninth Agreement Amending New England Power Pool Agreement, which changes how NEPOOL Votes are calculated at NEPOOL Technical Committees, and (2) the Ninetieth Agreement Amending New England Power Pool Agreement, which reduces the financial assurance requirement of a Non-Municipal Participant in certain circumstances under the Financial Assurance Policy for NEPOOL Members. A January 1, 2003 effective date was requested for each of these Agreements.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

*Comment Date:* November 22, 2002.

### 5. New England Power Pool

[Docket No. ER03–134–000]

Take notice that on November 1, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Citadel Energy Products LLC (Citadel), and to terminate the

memberships of Enron Energy Services, Inc. (EESI). The Participants Committee requests a November 1, 2002 effective date for commencement of participation in NEPOOL by Citadel and for the termination of EESI.

The NEPOOL Participants Committee states that copies of these materials were sentthe New England state governors and regulatory commissions and the Participants in NEPOOL.

*Comment Date:* November 22, 2002.

**6. Sierra Pacific Power Company**

[Docket No. ER03–137–000]

Take notice that on November 1, 2002, Sierra Pacific Power Company (Sierra) filed a revision to the General Transfer Agreement (GTA) between Sierra and Bonneville Power Administration (BPA).

Sierra states that the revision would increase the total monthly facilities charge from $130,755 to $133,289 to reflect a change in the percentage of initial capital investment used to calculate the Estimated O&M Charge. Sierra requests that the increased charge be made effective at 2400 hours on November 30, 2002.

Copies of this filing were served on the Public Utilities Commission of Nevada, the Public Utilities Commission of California, the Nevada Bureau of Consumer Protection and Bonneville Power Administration.

*Comment Date:* November 22, 2002.

**7. PacifiCorp**

[Docket No. ER03–138–000]

Take notice that on November 1, 2002 PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Notice of Cancellation of Service Agreement No. 63 under PacifiCorp's FERC Electric Tariff, Volume No. 12 for service between Hinson Power Company and PacifiCorp.

Copies of this filing were supplied to Hinson Power Company, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

*Comment Date:* November 22, 2002.

**8. California Power Exchange Corporation**

[Docket No. ER03–139–000]

Take notice that on November 1, 2002, the California Power Exchange Corporation (CalPX) tendered for filing an amendment to its Rate Schedule FERC No. 1. CalPX files this amendment pursuant to the Commission's August 8, 2002 order in Docket No. ER02–2234–000 (100 FERC ¶ 61,178), which required CalPX to make a new rate filing every six months to recover current expenses. The amendment therefore covers expenses projected for the period January 1 through June 30, 2003, and CalPX requests an effective date of January 1, 2003.

CalPX states that it has served copies of the filing on its participants, on the California ISO, and on the California Public Utilities Commission.

*Comment Date:* November 22, 2002.

**9. Concord Electric Company, Exeter & Hampton Electric Company, Unitil Energy Systems, Inc.**

[Docket No. ER03–140–000]

Take notice that on November 1, 2002, Concord Electric Company (CECo), Exeter & Hampton Electric Company (E&H), and Unitil Energy Systems, Inc. (UES), filed with the Federal Energy Regulatory Commission, pursuant to Section 205 of the Federal Power Act and 18 CFR 35.13, the amended Open Access Transmission Tariffs (OATT) of CECo and E&H. The Companies request an effective date of December 1, 2002, for the changes to the OATTs. The Companies also requested approval for the reclassification of transmission facilities as distribution facilities.

The Companies have requested a waiver of the Commission's regulations to permit the changes to become effective as of December 1, 2002.

*Comment Date:* November 22, 2002.

**10. Public Service Electric and Gas Company**

[Docket No. ER03–141–000]

Take notice that on November 1, 2002, Public Service Electric and Gas Company (PSE&G) submitted for filing a revised Interconnection Agreement, reflecting revisions to an existing Interconnection Agreement dated August 2000 between PSE&G and the Joint Owners of the Salem Generating Station and Switchyard. Copies of this filing were served on the Joint Owners and on PJM Interconnection, L.L.C.

*Comment Date:* November 22, 2002.

**11. Southern California Edison Company**

[Docket No.ER03–142–000]

Take notice, that on November 1, 2002, Southern California Edison Company (SCE) tendered for filing a revision to its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Substitute First Revised Original Volume No. 6, to reflect a change to SCE's Reliability Services Rates, and revisions to certain Existing Transmission Contracts (ETC) to provide for the assessment of a charge for Reliability Services to SCE's ETC customers with loads in SCE's historic control area.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator, the California Electricity Oversight Board, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and the wholesale customers with loads in SCE's historic control area.

*Comment Date:* November 22, 2002.

**12. Public Service Company of New Hampshire, New Hampton Village Precinct**

[Docket No. ER03–143–000]

Take Notice that Public Service Company of New Hampshire, on November 1, 2002, tendered for filing a revised rate for delivery service provided to the New Hampton (New Hampshire) Village Precinct under its Interconnection and Delivery Service Agreement, Original Service Agreement No. 25 under FERC Electric Tariff, First Revised Volume No. 1. This revision represents a decrease from the current rate of $1.55 per Kva/month to $0.98 per Kva/month for all bills rendered on or after January 1, 2003.

Copies of this filing were served upon the Office of the Attorney General for the State of New Hampshire, and the Executive Director and Secretary of the New Hampshire Public Utilities Commission and the State of New Hampshire Office of Consumer Advocate.

*Comment Date:* November 22, 2002.

**13. Public Service Company of New Hampshire Town of Ashland, Electric Light Dept.**

[Docket No. ER03–144–000]

Take Notice that Public Service Company of New Hampshire, on November 1, 2002, tendered for filing a revised rate for delivery service provided to the Town of Ashland (New Hampshire), Electric Light Department under its Interconnection and Delivery Service Agreement, FERC Original Service Agreement No. 24 under FERC Electric Tariff, First Revised Volume No.1. This revision represents a decrease from the current rate of $1.55 per Kva/month to $0.98 per Kva/month for all bills rendered on or after January 1, 2003.

Copies of this filing were served upon the Office of the Attorney General for the State of New Hampshire, and the Executive Director and Secretary of the New Hampshire Public Utilities Commission and the State of New Hampshire Office of Consumer Advocate.

*Comment Date:* November 22, 2002.

**14. Public Service Company of New Hampshire, New Hampton Village Precinct**

[Docket No. ER03–145–000]

Take Notice that Public Service Company of New Hampshire, on November 1, 2002, tendered for filing a revised rate for delivery service provide to the New Hampton (New Hampshire) Village Precinct under its Interconnection and Delivery Service Agreement, FERC Original Service Agreement No. 25. This revision represents a decrease from the current rate of $1.55 per Kva/month to $0.98 per Kva/month for all bills rendered on or after January 1, 2003.

Copies of this filing were served upon the Office of the Attorney General for the State of New Hampshire, and the Executive Director and Secretary of the New Hampshire Public Utilities Commission and the State of New Hampshire Office of Consumer Advocate.

*Comment Date:* November 22, 2002.

**15. Portland General Electric Company**

[Docket No. ER03–146–000]

Take notice that on November 1, 2002, Portland General Electric Company (PGE) filed with the Federal Energy Regulatory Commission a proposed revision to PGE's Energy Imbalance Service tariff sheets of its Open Access Transmission Tariff.

PGE requests that the Commission make the amended tariff sheets effective as of January 1, 2003.

*Comment Date:* November 22, 2002.

**16. ISO New England Inc.**

[Docket No. ER03–147–000]

Take notice that on November 1, 2002, ISO New England Inc. (ISO) made a filing under Section 205 of the Federal Power Act of revised tariff sheets for recovery of its administrative costs for 2003. The ISO requests that these sheets be allowed to go into effect on January 1, 2003.

Copies of the transmittal letter were served upon all Participants in the New England Power Pool (''NEPOOL'') and all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as on the governors and utility regulatory agencies of the six New England States, and NECPUC. Participants were also served with the entire filing electronically. The entire filing is posted on the ISO's Web site *www.iso-ne.com*.

*Comment Date:* November 22, 2002.

**17. ISO New England Inc.**

[Docket No. ER03–148–000]

Take notice that on November 1, 2002, ISO New England Inc. (ISO) made a filing under Section 205 of the Federal Power Act of changes to its Capital Funding Tariff. The ISO requests that the changes to the Capital Funding Tariff be allowed to go into effect on January 1, 2003.

Copies of the transmittal letter were served upon all Participants in the New England Power Pool (''NEPOOL''), as well as on the governors and utility regulatory agencies of the six New England States, and NECPUC. Participants were also served with the entire filing electronically. The entire filing is posted on the ISO's Web site *www.iso-ne.com*.

*Comment Date:* November 22, 2002.

**18. Duke Energy Corporation**

[Docket No.ER03–149–000]

Take notice that on November 1, 2002, Duke Energy Corporation (Duke) tendered for filing the Sixth Amendment to the Interconnection Agreement between Duke and North Carolina Municipal Power Agency Number 1. Duke requests an effective date of January 1, 2003 for the Sixth Amendment.

*Comment Date:* November 22, 2002.

**19. Commonwealth Edison Company**

[Docket No. ER03–150–000]

Take notice that on November 1, 2002, Commonwealth Edison Company (ComEd) submitted for filing four unexecuted Service Agreements entered into between ComEd and NRG Power Marketing Inc. under ComEd's Open Access Transmission Tariff (OATT). ComEd requests an effective date of January 1, 2003 for all of the Service Agreements. Copies of the filing were served upon NRG Power Marketing Inc. and the Illinois Commerce Commission.

*Comment Date:* November 22, 2002.

**20. New York Independent System Operator, Inc.**

[Docket No. ER03–151–000]

Take notice that on November 1, 2002, the New York Independent System Operator, Inc. (NYISO) filed a revision to its Market Administration and Control Area Services Tariff (Services Tariff) to extend the effective date of the Emergency Demand Response Program.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

*Comment Date:* November 22, 2002.

**21. Wisconsin Public Service Corporation**

[Docket No. ER03–152–000]

Take notice that Wisconsin Public Service Corporation (WPSC) and Upper Peninsula Power Company (UPPCO), on November 1, 2002, each tendered for filing a power purchase agreement (PPA) with each other, pursuant to Section 205 of the Federal Power Act (FPA). WPSC and UPPCO each requests that the Commission accept the PPA to become effective on January 1, 2003, sixty days after the date of this filing.

Copies of the filing were served upon the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

*Comment Date:* November 22, 2002.

**22. Consumers Energy Company**

[Docket No. ER03–153–000]

Take notice that on November 1, 2002, Consumers Energy Company (Consumers) tendered for filing a service agreement for unbundled wholesale power service to Edison Sault Electric Company (Customer) pursuant to Consumers' Cost-Based Power Sales Tariff (Tariff No. 7) accepted for filing in Docket No. ER97–964–000. The service agreement has an effective date of January 1, 2003. The service agreement supercedes the Customer's current sales Rate Schedule (Consumers Rate Schedule FERC No. 85) but retains some terms from the Rate Schedule.

Copies of the filing have been served on the Michigan Public Service Commission and the Customer.

*Comment Date:* November 22, 2002.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://*

*www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–29136 Filed 11–15–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. P 11797–000]**

## Grande Pointe Power Corporation; Notice of Availability of Environmental Assessment

November 8, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) 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) reviewed the application for an original minor license for the Three Rivers Project, located on the St. Joseph River in the city of Three Rivers, St. Joseph County, Michigan, and has prepared an environmental assessment (EA) for the project. In this EA, the staff has analyzed the potential environmental effects of the existing project and concluded that licensing the project, with staff's recommended measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY,contact (202)502–8659.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix ''Three Rivers Project No. 11797–000,'' to all comments. For further information, please contact Sean Murphy at (202) 502–6145 or at *sean.murphy@ferc.gov*.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–29139 Filed 11–15–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## PacifiCorp—Bear River Projects; Soda Project No. 20–019, Caribou and Franklin Counties, Idaho Grace-Cove Project No. 2401–007, Oneida Project No. 472–017; Notice of Intention To Hold Public Meeting for Discussion of the Draft Environmental Impact Statement for the Bear River Hydroelectric Projects

November 8, 2002.

On October 23, 2002, the Commission staff mailed the Bear River Projects Draft Environmental Impact Statement (DEIS) to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals.

The DEIS was noticed in the **Federal Register** on November 1, 2002 (61 FR 6243), and comments are due December 31, 2002. The DEIS evaluates the environmental consequences of the construction, operation, and maintenance of the Bear River Projects in Idaho. The DEIS also evaluates the environmental effects of implementing the comprehensive settlement that replaces the applicant's proposal and agency recommendations, as well as evaluates staff's recommendations, and the no-action alternative. The projects are partially located on United States lands administered by the Bureau of Land Management.

A public meeting, which will be recorded by an official stenographer, is scheduled on Thursday, December 12, 2002, starting at 7:00 pm at the Caribou County Senior Center, 60 S. Main Street, Soda Springs, Idaho.

At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS for the Commission's public record.

For further information, please contact Susan O'Brien at (202) 502–8449, or *susan.obrien@ferc.gov*, Federal Energy Regulatory Commission, Office of Energy Projects, 888 First St. NE., Washington, DC 20426.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–29137 Filed 11–15–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 11887–000]**

## Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 8, 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:* 12388–000.

c. *Date Filed:* October 7, 2002.

d. *Applicant:* The City of Austin Electric Utility Department d/b/a Austin Energy.

e. *Name and Location of Project:* The Austin Energy Hydroelectric Project would be located at the existing Longhorn Dam owned by the City of Austin, on the Colorado River in Travis County, Texas.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

g. *Applicant Contact:* Bob Kahn, Vice President, Austin Energy, 721 Barton Springs Road, Austin, TX 78704–1194, (512) 322–6572.

h. *FERC Contact:* Mr. Lynn R. Miles, (202) 502–8763.

i. *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–12388–000) 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.

j. *Competing Application:* Project No. 12244–000, *Date Filed:* June 17, 2002, *Due Date:* October 7, 2002.

k. *Description of Project:* The proposed project would consist of: (1) The existing Longhorn Dam, a 506-foot-long, gated, concrete-gravity structure, which is 416 feet at the crest of the dam, (2) the existing Town Lake which has a surface area of 525 acres with a storage capacity of 6,000 acre-feet at a normal maximum water surface elevation of 428 msl, (3) a powerhouse containing one generating unit with an installed capacity of 2 MW, (4) an existing 69 kv transmission line approximately 0.5 mile long, and (5) appurtenant facilities. The project would have an annual generation of 8 GWh.

l. 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 toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

m. Competing Applications—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

n. 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.

o. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. 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. 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 Compliance and Administration, 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.

q. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–29142 Filed 11–15–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

November 12, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2516–026–WV.

c. Date filed: December 17, 2001.

d. *Applicant:* Allegheny Energy Supply Company, LLC.

e. *Name of Project:* Dam No. 4 Hydro Station.

f. *Location:* On the Potomac River, near the Town of Shepherdstown, in Berkeley and Jefferson Counties, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Charles L. Simons, Allegheny Energy Supply Company, LLC, 4350 Northern Pike, Monroeville, PA 15146, (412) 858–1675.

i. *FERC Contact:* Peter Leitzke, (202) 502–6059 or *peter.leitzke@ferc.gov*.

j. *Cooperating agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing documents described in item k below.

k. Deadline for filing motions to intervene and protests and requests for cooperating agency status: 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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests for cooperating agency status 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 (*http://www.ferc.gov*) under the ''e-Filing'' link. Please include the project number (P–2516–026) on any comments or motions filed.

l. This application has been accepted, but is not ready for environmental analysis at this time.

m. The existing Dam No. 4 Hydro Station Project consists of: (1) a 200-foot-long, 80-foot-wide headrace; (2) a stone and concrete powerhouse containing three generating units with a total installed capacity of 1,900 kilowatts; (3) a 350-foot-long, 90-foot-wide tailrace; (4) a substation; (5) a 4.5-mile-long, 34.5-kilovolt transmission line; and (6) appurtenant facilities. The applicant estimates that the total average annual generation would be 7,886 megawatthours. All generated power is sold to Allegheny Power for use in the existing electric grid system serving West Virginia and Maryland. The project dam and reservoir are owned by the United States and operated by the National Park Service.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website 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 1–866–208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

p. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document for comments—December 2002

Notice of application is ready for environmental analysis—March 2003

Notice of the availability of the EA—September 2003

Ready for Commission's decision on the application—November 2003

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

Notice of the availability of the final EA—December 2003

Ready for Commission's decision on the application—December 2003

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

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

*Deputy Secretary.*

[FR Doc. 02–29145 Filed 11–18–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

November 12, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2517–012–WV.

c. Date filed: December 17, 2001.

d. *Applicant:* Allegheny Energy Supply Company, LLC.

e. *Name of Project:* Dam No. 5 Hydro Station.

f. *Location:* On the Potomac River, near the Town of Hedgesville, in Berkeley County, West Virginia.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Charles L. Simons, Allegheny Energy Supply Company, LLC, 4350 Northern Pike, Monroeville, PA 15146, (412) 858–1675.

i. *FERC Contact:* Peter Leitzke, (202) 502–6059 or *peter.leitzke@ferc.gov*.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing documents described in item k below. k. Deadline for filing motions to intervene and protests and requests for cooperating agency status: 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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests for cooperating agency status 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 (*http://www.ferc.gov*) under the ''e-Filing'' link. Please include the project number (P–2517–012) on any comments or motions filed.

l. This application has been accepted, but is not ready for environmental analysis at this time.

m. The existing Dam No. 5 Hydro Station Project consists of: (1) a 100-foot-long, 80-foot-wide headrace; (2) a brick and concrete powerhouse containing two generating units with a total installed capacity of 1,210 kilowatts; (3) a 250-foot-long, 90-foot-wide tailrace; (4) a substation; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 5,945 megawatthours. All generated power is sold to Allegheny Power for use in the existing electric grid system serving West Virginia and Maryland. The project dam and reservoir are owned by the United States and operated by the National Park Service.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website 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 1–866–208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

p. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document for comments—December 2002

Notice of application is ready for environmental analysis—March 2003

Notice of the availability of the EA—September 2003

Ready for Commission's decision on the application—November 2003

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

Notice of the availability of the final EA—December 2003

Ready for Commission's decision on the application—December 2003

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

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

*Deputy Secretary.*

[FR Doc. 02–29146 Filed 11–18–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12114–001]**

### Big Rock Power Partners; Notice of Surrender of Preliminary Permit

November 8, 2002.

Take notice that Big Rock Power Partners, permittee for the proposed Old Campbell Project, has requested that its preliminary permit be terminated. The permit was issued on February 12, 2002, and would have expired on January 31, 2005. The project would have been located on Old Campbell Creek in Humboldt County, California.

The permittee filed the request on September 24, 2002, and the preliminary permit for Project No. 12114 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–29141 Filed 11–15–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 11843–002]**

### Gene Arlin Shanks; Notice of Surrender of Preliminary Permit

November 8, 2002.

Take notice that Gene Arlin Shanks, permittee for the proposed Elfin Inian Project, has requested that its preliminary permit be terminated. The permit was issued on December 6, 2000, and would have expired on November 30, 2003. The project would have been located on Elfin Cove near the town of Elfin Cove, Alaska.

The permittee filed the request on August 20, 2002, and the preliminary permit for Project No. 11843 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under18 CFR part 4, may be filed on the next business day.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–29140 Filed 11–15–02; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7409–6]**

### Availability of FY 01 Grant Performance Reports for States of Alabama, Florida, Georgia, Mississippi, South Carolina, and Tennessee, and the Commonwealth of Kentucky

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

**ACTION:** Notice of availability of grantee performance evaluation reports.

**SUMMARY:** EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of seven state air pollution control programs (Alabama Department of Environmental Management; Florida Department of Environmental Protection; Georgia Department of Natural Resources; Kentucky Department for Environmental Protection; Mississippi Department of Environmental Quality; South Carolina Department of Health and Environmental Control; and Tennessee Department of Environment & Conservation) and 15 local programs (Jefferson County Department of Health, AL; City of Huntsville Department of Natural Resources, AL; Broward County Environmental Quality Control Board, FL; Jacksonville Air Quality Division, FL; Hillsborough County Environmental Protection Commission, FL; Dade County Environmental Resources

Management, FL; Palm Beach County Public Health Department, FL; Pinellas County Department of Environmental Management, FL; Jefferson County, KY; Forsyth County Environmental Affairs Department, NC; Mecklenburg County Department of Environmental Protection, NC; Western North Carolina Regional Air Pollution Control Agency, NC; Chattanooga-Hamilton County Air Pollution Control Bureau, TN; Knox County Department of Air Pollution Control, TN; and Nashville-Davidson County Metropolitan Health Department, TN). The 22 evaluations were conducted to assess the agencies' performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection. The evaluations for the remainder of the State and local governments will be published at a later date.

**ADDRESSES:** The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW., Atlanta, Georgia 30303, in the Air, Pesticides, and Toxics Management Division.

**FOR FURTHER INFORMATION CONTACT:** Marie Persinger (404) 562–9048, for information concerning the States of Alabama and Georgia and the Commonwealth of Kentucky; Gloria Knight, (404) 562–9064, for information concerning the States of Florida and Mississippi; or Rayna Brown for the States of North Carolina, South Carolina, and Tennessee. They may be contacted at the above Region 4 address.

Dated: November 6, 2002.

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

*Regional Administrator, Region 4.*

[FR Doc. 02–29173 Filed 11–15–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7409–7]**

## National Environmental Justice Advisory Council; Notification of Meeting and Public Comment Period; Open Meetings

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, we now give notice that the National Environmental Justice Advisory Council (NEJAC), along with the various subcommittees, will meet on the dates and times described below. All times noted are eastern standard time. All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are *not* available from the NEJAC. The NEJAC and the subcommittee meetings will take place at the Marriot Inner Harbor Hotel, 110 South Eutaw Street, Baltimore, MD 21201. The meeting dates are as follows: December 9, 2002, through December 12, 2002. This is the fifth in a series of focused policy issue meetings for the NEJAC. To help prepare for this specific focused policy issue meeting the following background information is provided:

### Request and Policy Issue

The Charter for the NEJAC states that the advisory committee shall provide independent advice to the Administrator on areas that may include, among other things, ''advice on EPA's progress, quality and adequacy in planning, developing and implementing environmental justice strategies, projects and programs'' relating to environment justice. In order to provide such independent advice, the Agency requests that the NEJAC convene a focused, issue-oriented public meeting in Baltimore, MD. The meeting shall be used to receive comments on, discuss, and analyze issues related to water quality, fish consumption and environmental justice. The Agency, furthermore, requests that the NEJAC produce a comprehensive report on the differing views, interests, concerns, and perspectives expressed by the stakeholder participants on the focused policy issue, and provide advice and recommendations for the Agency's review and consideration. In order to fulfill this charge, the NEJAC is being asked to discuss and provide recommendations regarding the following broad public policy question: ''How can EPA better promote innovation in the field of pollution prevention, waste minimization, and related areas to more effectively ensure clean, healthy and sustainable environment for all people, including low income, minority and tribal communities?''

### Meeting

Registration for the NEJAC meeting will begin on Monday, December 9, 2002, at 12 noon. The NEJAC will convene Monday, December 9, 2002, from 3 p.m. to 6 p.m. On Monday from 4 p.m. to 6 p.m. there will be Pollution Prevention Case Study Presentation. The NEJAC will reconvene on Tuesday, December 10, 2002, from 8:30 a.m. to 5 p.m. The meeting on Tuesday will be organized to create the best environment for a deliberative process. The meeting will be conducted in a round table fashion, except during the public comment session. A public comment period dedicated to the focused policy issue is scheduled for Tuesday evening, December 10, 2002, from 7 p.m. to 9 p.m. General environmental justice public comment issues will be heard on Tuesday evening, following the focus policy public comment issues. The following Subcommittees will meet on Wednesday, December 11, 2002, from 9 a.m. to 6 p.m.: Air and Water; Enforcement; Health and Research; Indigenous Peoples; International; and Waste and Facility Siting. The full NEJAC will reconvene Thursday, December 12, 2002, from 9 a.m. to 5 p.m. to wrap up all business requiring Executive Council action. All times shown are local time.

Any member of the public wishing additional information on the subcommittee meetings should contact the specific Designated Federal Official at the telephone number listed below.

| Subcommittee | Federal official | Telephone number |
|---|---|---|
| Enforcement | Ms. Shirley Pate | 202/564–2607 |
| Health & Research | Ms. Brenda Washington | 202/564–6781 |
| | Ms. Aretha Brockett | 202/564–0911 |
| International | Ms. Wendy Graham | 202/564–6602 |
| Indigenous Peoples | Mr. Danny Gogal | 202/564–2576 |
| Waste/Facility Siting | Mr. Kent Benjamin | 202/566–0185 |
| Air & Water | Mr. Wil Wilson | 202/564–1954 |

| Subcommittee | Federal official | Telephone number |
|---|---|---|
| | Ms. Alice Walker | 202/564–0498 |

Members of the public who wish to participate in the public comment period should pre-register by November 29, 2002. Members of the public are encouraged to provide comments relevant to the focus issue being deliberated by the NEJAC. Individuals or groups making oral presentations during the public comment period will be limited to a total time of five minutes. Only one representative from a community, organization, or group will be allowed to speak. Any number of written comments can be submitted for the record. The suggested format for individuals making public comment should be as follows:

Request to Make Public Comment Speaker's Template:

Name of Speaker: _____
Name of Organization/Community: ____
Address/Phone/Fax/Email: _____
Description of Concern: _____
Relationship to the Policy Issue: _____
Recommendations/Desired Outcome: __

If you wish to submit written comments of any length (at least 50 copies), they should also be received by November 29, 2002. Comments received after that date will be provided to the Council as logistics allow. All information should be sent to the address or fax number cited below.

**Registration**

Pre-registration for all attendees is recommended. To receive a registration form, call the number listed below or visit the web site. Correspondence concerning registration should be sent to Ms. Victoria Robinson of Tetra Tech Environmental Management, Inc. at: 1881 Campus Commons, Suite 200, Reston, VA 20191, phone: 703/390–0641 or fax: 703/391–5876. Hearing-impaired individuals or non-English speaking attendees wishing to arrange for a sign language or foreign language interpreter, may make appropriate arrangements using these numbers also. In addition, NEJAC offers a toll-free Registration Hotline at 1–888/335–4299 or send an e-mail to *nejac@ttemi.com.* For on-line registration, you may visit the Internet site: *http://www.epa.gov/compliance/environmentaljustice/nejac/next_meeting.html.*

Dated: November 8, 2002.

**Charles Lee,**

*Designated Federal Officer, National Environmental Justice Advisory Council.*

[FR Doc. 02–29174 Filed 11–15–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7409–5]**

### Interstate Lead Company (ILCO) Superfund Site/Leeds, AL; Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Proposed Settlement.

**SUMMARY:** Under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Voltex Batteries, Inc. *et al.*, d/b/a/ Steve Drive Enterprises, Inc. (Respondent) entered into a *de minimis* administrative order on consent with the Environmental Protection Agency (EPA), whereby the Respondent, in exchange for the United States' covenant not to sue, agrees to pay EPA $8,700 and the ILCO Site Remediation Group $21,300 for its share of the past and future response costs, including a premium, for the ILCO Superfund Site located in Leeds, Jefferson County, Alabama. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Ms. Brenita Richardson at the above address within 30 days of the date of publication.

Dated: October 21, 2002.

**Anita L. Davis,**

*Acting Chief, CERCLA Program Services Branch, Waste Management Division.*

[FR Doc. 02–29175 Filed 11–15–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7409–4]**

### Prestige Chemical Company Superfund Site; Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed administrative order on consent.

**SUMMARY:** The Environmental Protection Agency is proposing to enter into an administrative order on consent pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, regarding the Prestige Chemical Company Superfund Site located in Senoia, Coweta County, Georgia, with the following parties: Brett, Inc.; Clayton Collision Center, Inc.; Heng's, Inc.; M & G Auto Enterprises, Inc.; Perdue's Paint and Body Shop, Inc.; Stone Mountain Body Shop, Inc.; Tony Infinger, Inc., and Wade Industries, Inc. The settlement is designed to resolve fully each settling *de minimis* party's liability at the Site through a covenant not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and provides contribution protection. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula Batchelor, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, Waste Management Division, CERCLA Enforcement Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of this publication.

Dated: October 25, 2002.

**Anita L. Davis,**

*Acting Chief, CERCLA Program Services Branch, Waste Management Division.*

[FR Doc. 02–29176 Filed 11–15–02; 8:45 am]

**BILLING CODE 6560–50–P**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### SES Performance Review Board

**AGENCY:** Equal Employment Opportunity Commission (EEOC).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the appointment of members of the EEOC Performance Review Board.

**FOR FURTHER INFORMATION CONTACT:** Angelica E. Ibarguen, Director, Office of Human Resources, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, (202) 663–4306.

**SUPPLEMENTARY INFORMATION:** Pursuant to the requirements of section 4314(c)(1) through (5) of Title 5, U.S.C., notice is given that the following employees will serve as members of the EEOC Performance Review Board: Ms. Angelica E. Ibarguen, Director, Office of Human Resources (Chairperson); Mr. Chester V. Bailey, Director, Milwaukee District Office (Member); Ms. H. Joan Ehrlich, Acting Director, Office of Communications and Legislative Affairs (Member); Ms. Gwendolyn Young Reams, Associate General Counsel for Appellate Services (Member); Mr. Michael Dougherty, Director, State and Local Programs, Office of Field Programs (Member); and Ms. Sallie T. Hsieh, Director, Office of Information Technology (Alternate).

Signed at Washington, DC, on this 7th day of November 2002.

For the Commission.

**Cari M. Dominguez,**

*Chair.*

[FR Doc. 02–29163 Filed 11–15–02; 8:45 am]

**BILLING CODE 6570–01–M**

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Notice of Open Special Meeting of the Renewable Energy Exports Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

**SUMMARY:** The Renewable Energy Exports Advisory Committee was established by the Board of Directors at Ex-Im Bank to assist the Bank in meeting its objective of supporting U.S. exporters in renewable energy industries. In addition, the goal is to seek advice from the private sector about best practices when addressing renewable energy export.

*Time and Place:* Friday, December 6, 2002, at 9:30 a.m. to 12 p.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

*Agenda:* Agenda items include a discussion of the Committee's recommendations to Ex-Im Bank.

*Public Participation:* The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 4, 2002, Nichole Westin, Room 1257, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3542 or TDD (202) 565–3377.

**FURTHER INFORMATION:** For further information, contact Nichole Westin, Room 1237, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3542.

**David C. Chavern,**

*Deputy General Counsel*

[FR Doc. 02–29102 Filed 11–18–02; 8:45 am]

**BILLING CODE 6690–01–M**

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

**SUMMARY:** The Sub-Saharan Africa Advisory Committee was established by P.L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

*Time and Place:* Wednesday, December 4, 2002, at 9:30 a.m. to 12:30 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

*Agenda:* This meeting will focus on improving deal flow for transactions in sub-Saharan Africa. SAAC members and the Bank staff will discuss potential committee recommendations and the industry-specific experience of particular SAAC members.

*Public Participation:* The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to November 25, 2002, Teri Stumpf, Room 1215, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

**FURTHER INFORMATION:** For further information, contact Teri Stumpf, Room 1215, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3502.

**David C. Chavern,**

*Deputy General Counsel.*

[FR Doc. 02–29103 Filed 11–15–02; 8:45 am]

**BILLING CODE 6690–01–M**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 02–2752]**

### Verification of ITFS, MDS, and MMDS Pending Legal Matters

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document the Federal Communications Commission, (Commission), Wireless Telecommunications Bureau, seeks to verify ITFS, MDS, and MMDS legal matters pending in the Broadband Licensing System. The Commission is requesting that all ITFS, MDS and MMDS licensees, applicants, and other parties with pending legal pleadings review and verify the legal pleadings information in the released Appendix. Also, the Commission is requesting that ITFS, MDS, and MMDS licensees and applicants submit written requests for continued processing for all legal pleadings filed prior to March 25, 2002. Finally, at the Commission will close the review and verification period on December 17, 2002.

**DATES:** Comments are due on or before December 18, 2002 and reply comments are due on or before January 2, 2003.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* Supplementary Information for filing instructions.

**FOR FURTHER INFORMATION CONTACT:** John J. Schauble, Chief, Policy and Rules Branch, Kim Varner, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, or Stephen Svab, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division at (202) 418–0680

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Public*

*Notice*, DA 02–2752, released on October 18, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 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: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

On March 25, 2002, the Wireless Telecommunications Bureau (WTB) became responsible for the administration of the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS) (collectively, the Services). Prior to March 25, 2002, the Services were administered by the former Mass Media Bureau using the Broadband Licensing System (BLS) as the licensing database for the Services. As part of the transition process, WTB seeks to ensure that it has a complete and accurate list of all pending ITFS, MDS, and MMDS pending legal matters. In order to facilitate this process WTB is requesting that all ITFS, MDS and MMDS licensees, applicants and other parties with pending pleadings relating to those services review and verify the information contained in the attached appendix. In addition, in order to process efficiently all pending petitions, and other requests, WTB is requesting that applicants and petitioners re-affirm, in writing, that continued processing of certain petitions and other legal matters, as detailed below is desired.

It is very important that all ITFS, MDS, and MMDS licensees and applicants carefully review this public notice and the appendix hereto. Failure to follow the instructions in this public notice may result in the dismissal of pending applications and other matters.

WTB is attaching to the Public Notice an appendix concerning legal matters. The Appendix lists all pending ITFS/MDS/MMDS legal matters such as petitions to deny, petitions for reconsideration, petitions for reinstatement, applications for review, informal complaints, petition for declaration for forfeiture, informal requests for action and waiver requests. This list of the type of legal matters is not exhaustive, but rather is representative of the type of actions on file with WTB.

Within sixty days of the release of this public notice, petitioners with legal pleadings regarding the Services that are pending before the Commission (including those pending before its delegated authorities) are requested to verify and to act, where appropriate, by reviewing the attached Appendix for the following: (1) That its pending pleading(s) is/are listed in the Appendix, (2) for petitions with a filing date prior to March 25, 2002, that action on the pending pleading(s) is still requested, (3) identify those legal proceedings for which the Commission's files are incomplete, and (4) verify that all outstanding responsive pleadings in a specific matter have been filed.

If the pleading information listed in the Appendix is accurate, has a filing date after March 25, 2002, and there is no indication in the Appendix that pleadings are missing from the Commission's files, no further action is required. If a pending petition is not listed in the Appendix and processing is requested, the petitioner shall submit within sixty days of the release of this public notice two date-stamped copies of the omitted petition and all related pleadings to the Commission, as well as a copy to the opposing party(ies). If sent by United States Postal Service first-class mail, Express Mail, and Priority Mail, the pleadings should be sent to the following address: Office of the Secretary, Attention: MDS/ITFS Legal Matters, Federal Communications Commission, 445 12th Street SW., TW–325, Washington, DC 20554.

Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only by the Commission's contractor, Vistronix, Inc., at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering 236 Massachusetts Avenue, NE. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, for all pending legal matters with a filing date prior to March 25, 2002, the party that filed such pleading or request (or its successor-in-interest) must request within sixty days of the release date of this public notice, in writing, that we continue processing such legal matter. Such party(ies) shall file a letter indicating their continued interest in prosecuting the matter to the addresses indicated above in this subsection. Otherwise, the matter will be deemed dismissed with prejudice.

Also, the Appendix lists certain legal proceedings for which the Commission does not have complete files. With respect to those proceedings, both the petitioner and the respondent are required within sixty days of the release of this public notice to submit two date-stamped copies of all missing pleadings within their possession because the Commission's files in these cases are incomplete. Copies of pleadings should be filed to the addresses indicated previously in this paragraph.

Finally, if a responsive pleading to a legal matter remains outstanding, the respondent must file said pleading within sixty days from the date of this public notice. We are taking this action because we note that there are several pending motions for extension of time to file oppositions or replies to various pleadings. We believe the public interest would best be served by requiring the submission of all responsive pleadings in order to expedite the resolution of those pending matters. By this public notice, we hereby set sixty days from the release date of this public notice as the date for filing all responsive pleadings in cases involving ITFS/MDS/MMDS applications or licenses for which pending motions for extension of time have been filed. Such parties shall file the responsive pleading(s) to the addresses indicated above in this subsection. Absent highly unusual circumstances, no further extensions of time are contemplated.

*Termination of Review Period*

At the end of the sixty-day review period, WTB will evaluate and update, where appropriate, all information received in response to this public notice. For any legal matters for which written affirmations requesting further processing have not been received, those legal matters will be dismissed with prejudice.

*Contact Information*

For all questions relating to this Public Notice, contact John J. Schauble, Chief, Policy and Rules Branch, Kim Varner, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, or Stephen Svab, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division at (202) 418–0680.

**FCC Notice Required by the Paperwork Reduction Act**

The public reporting for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD–PERM, Paperwork Reduction Project (3060–0893), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to *jboley@fcc.gov.* Please Do Not Send Your Response To This Address.

Remember—You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060–0893.

The Foregoing Notice is Required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–28891 Filed 11–15–02; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 2, 2002.

**A. Federal Reserve Bank of Minneapolis** (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

*1. David A. Beito 2002 GST Trust A, Kathryn A. Beito 2002 GST Trust A, Laura E. Beito 2002 GST Trust A, David A. Beito 2002 GST Trust B, Kathryn A. Beito 2002 GST Trust B, Laura E. Beito 2002 GST Trust B, and David A. Beito, as trustee of these trusts, a group acting in concert,* all of Thief River Falls, Minnesota; to acquire voting shares of GATO Holdings, Inc., Thief River Falls, Minnesota, and thereby indirectly acquire voting shares of Northern State Bank of Thief River Falls, Thief River Falls, Minnesota.

*2. Patrick A. Wick,* Turtle Lake, Wisconsin; to acquire voting shares of Turtle Bancshares, Inc., Turtle Lake, Wisconsin, and thereby indirectly acquire voting shares of Bank of Turtle Lake, Turtle Lake, Wisconsin.

**B. Federal Reserve Bank of Kansas City** (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Central of Kansas, LP and Edward C. Rolfs and Thomas Rolfs as co-Trustees of CKI Management Trust, dated January 1, 2003,* all of Junction City, Kansas; to acquire voting shares of Central of Kansas, Inc., Junction City, Kansas, and thereby indirectly acquire voting shares of Central National Bank, Junction City, Kansas.

Board of Governors of the Federal Reserve System, November 12, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02–29114 Filed 11–15–02; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 12, 2002.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. Central Missouri Shares, Inc.,* Lebanon, Missouri; to become a bank holding company by acquiring 100 percent of Central Shares, Inc., Lebanon, Missouri, and thereby indirectly acquire Central Bank, Lebanon, Missouri.

*2. First Federal Financial Corporation of Kentucky,* Elizabethtown, Kentucky; to become a bank holding company by acquiring 100 percent of First Federal Savings Bank of Elizabethtown, Elizabethtown, Kentucky, upon its conversion from a federally chartered savings bank to a state chartered bank.

*3. Tate Interim, Inc.,* Senatobia, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Tate Financial Corporation, Senatobia, Mississippi, and thereby indirectly acquire Senatobia Bank, Senatobia, Mississippi.

Board of Governors of the Federal Reserve System, November 12, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02–29113 Filed 11–15–02; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors, National Center for Infectious Diseases: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

*Name:* Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

*Time and Date:* 8:30 a.m.—3:30 p.m., December 12–13, 2002.

*Place:* CDC, Auditorium B, Building 1, Clifton Road, Atlanta, Georgia 30333.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: Program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

*Matters to be Discussed:* Agenda items will include:

1. Opening Session: NCID Update
   a. Institute of Medicine
   b. Global Strategy
   c. Budget
2. Program Update:
   a. West Nile
   b. Prion Disease
   c. Influenza Pandemic Planning
   d. Polio Lab Survey
3. Bioterrorism Updates and Discussion
   a. Organizational Update
   b. Smallpox
   c. Quarantine
   d. Global Health Security
4. Board meets with Director, CDC
5. Discussions and Recommendations

Other agenda items include announcements/introductions; follow-up on actions recommended by the Board May 2002; consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

*Contact Person for More Information:* Tony Johnson, Office of the Director, NCID, CDC, M/S C–19, 1600 Clifton Road, NE., Atlanta, Georgia 30333, email *tjohnson3@cdc.gov;* telephone 404/639–0100.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 12, 2002.

**Burma Burch,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–29154 Filed 11–15–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifiers: CMS–843 and CMS–841, 842, 844–853]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

*Agency:* Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Durable Medicare Equipment Regional Carrier, Certificate of Medical Necessity and Supporting Documentation Requirements; *Form No.:* CMS–843 (OMB# 0938–0875); *Use:* This information is needed to correctly process claims and ensure that claims are properly paid. These forms contain medical information and supporting documentation necessary to make appropriate claims determinations. Suppliers and physicians will complete these forms and as needed supply additional routine supporting documentation necessary to process claims; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Federal Government, Not-for-profit institutions; *Number of Respondents:* 2,700; *Total Annual Responses:* 129,000; *Total Annual Hours:* 32,250.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Durable Medical Equipment Regional Carrier, Certificate of Medical Necessity and Supporting Documentation Requirements; *Form No.:* CMS–841, 842, 844–853 (OMB# 0938–0679); *Use:* This information is needed to correctly process claims and ensure that claims are properly paid. These forms and supporting documentation contain medical information necessary to make appropriate claims determinations. Suppliers and physicians will complete these forms and as needed supply additional routine supporting documentation necessary to process claims; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government; *Number of Respondents:* 137,300; *Total Annual Responses:* 6.7 million; *Total Annual Hours:* 1.13 million.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 7, 2002.

**John P. Burke, III,**

*Paperwork Reduction Act Team Leader, , CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.*

[FR Doc. 02–29129 Filed 11–15–02; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02E–0024]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; GLEEVEC

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for GLEEVEC and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

**FOR FURTHER INFORMATION CONTACT:** Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product GLEEVEC (imatinib mesylate). GLEEVEC is indicated for the treatment of patients with chronic myeloid leukemia (CML) in blast crisis, accelerated phase, or in chronic phase after failure of interferon-alpha therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for GLEEVEC (U.S. Patent No. 5,521,184) from Novartis Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of GLEEVEC represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for GLEEVEC is 1,098 days. Of this time, 1,025 days occurred during the testing phase of the regulatory review period, while 73 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* May 10, 1998. The applicant claims April 9, 1998, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 10, 1998, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* February 27, 2001. FDA has verified the applicant's claim that the new drug application (NDA) for GLEEVEC (NDA 21–335) was initially submitted on February 27, 2001.

3. *The date the application was approved:* May 10, 2001. FDA has verified the applicant's claim that NDA 21–335 was approved on May 10, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 599 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by January 17, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 19, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (see **ADDRESSES**). Three copies of any information is to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 24, 2002.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 02–29187 Filed 11–15–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01E–0405]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; EVOXAC

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for EVOXAC and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of

Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

**FOR FURTHER INFORMATION CONTACT:** Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product EVOXAC (Cevimeline HCl). EVOXAC is indicated for the treatment of symptoms of dry mouth in patients with Sjogren's Syndrome. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for EVOXAC (U.S. Patent No. 4,855,290) from the State of Israel, Israel Institute for Biological Research, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of EVOXAC represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for EVOXAC is 1,733 days. Of this time, 1,230 days occurred during the testing phase of the regulatory review period, while 503 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* April 16, 1995. The applicant claims March 17, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was April 16, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* August 27, 1998. The applicant claims August 26, 1998, as the date the new drug application (NDA) for EVOXAC (NDA 20–989) was initially submitted. However, FDA records indicate that NDA 20–989 was submitted on August 27, 1998.

3. *The date the application was approved:* January 11, 2000. FDA has verified the applicant's claim that NDA 20–989 was approved on January 11, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,133 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (*see* **ADDRESSES**) written or electronic comments and ask for a redetermination by January 17, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 19, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information is to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 24, 2002.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 02–29188 Filed 11–15–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Peripheral and Central Nervous System Drugs Advisory Committee; Amendment of Notice

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

**ACTION:** Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Peripheral and Central Nervous System Drugs Advisory Committee. This meeting was announced in the **Federal Register** of October 18, 2002 (67 FR 64400). The amendment is being made to reflect a change in the *Date and Time* and *Agenda* portions of the meeting. The meeting was originally scheduled for November 18 and 19, 2002. However, due to administrative complications, the discussions on November 19, 2002, will be postponed until a later date. There are no other changes.

**FOR FURTHER INFORMATION CONTACT:** Sandra Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12543. Please call the Information Line for up-to-date information on this meeting.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 18, 2002 (67

FR 64400), FDA announced that a meeting of the Peripheral and Central Nervous System Drugs Advisory Committee would be held on November 18 and 19, 2002. On page 64400, in the second column, the *Date and Time* and *Agenda* portions of the meeting are amended to read as follows:

*Date and Time*: The meeting will be held on November 18, 2002, from 8 a.m. to 5 p.m.

*Agenda*: On November 18, 2002, the committee will discuss the role of brain imaging as an outcome measure in phase 3 trials of putative therapeutic drugs for Alzheimer's disease; the discussions will not focus on specific drugs or on specific applications to the agency. The agency is considering whether brain imaging modalities can be utilized as surrogate markers; that is, as primary outcomes in definitive clinical trials to measure drug effect in lieu of clinical outcomes. The committee will specifically discuss the following issues in reference to each imaging modality:

1. How is the surrogate imaging modality best validated?

2. If one uses an imaging modality to support a disease-modifying effect claim, how does one establish that such an effect occurs?

3. Has any surrogate imaging modality been validated at the present time?

4. Even if no surrogate imaging modality has currently been validated, is it appropriate to use one or more such modalities as primary or ancillary outcome measures of efficacy in phase 3 clinical trials?

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 13, 2002.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 02–29294 Filed 11–14–02; 1:54 pm]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### Program Exclusions: October 2002

**AGENCY:** Office of Inspector General, HHS.

**ACTION:** Notice of program exclusions.

During the month of October 2002, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

| Subject city, state | Effective date |
|---|---|
| **PROGRAM-RELATED CONVICTIONS** | |
| BARNABAS, RAVI ..... EGLIN AFB, FL | 11/20/2002 |
| BERSHATSKI, FANYA ..... STUDIO CITY, CA | 11/20/2002 |
| BOYKIN, LATRICE ..... LITTLE ROCK, AR | 11/20/2002 |
| BURNETTE, MARILYN ..... RICHTON, MS | 11/20/2002 |
| CARVAJAL, JOSE MIGUEL ..... COLEMAN, FL | 11/20/2002 |
| CHYORNY, ANNE ..... BEVERLY HILLS, CA | 11/20/2002 |
| CORDOVA, SANDRA ..... CHIMAYO, NM | 11/20/2002 |
| CRAIG, CHERYL ..... CALEDONIA, MS | 11/20/2002 |
| CRUMPTON, TERLESA M ..... MARIANNA, FL | 11/20/2002 |
| DARUKA, PATRICIA A ..... WARWICK, RI | 11/20/2002 |
| DAVIS, TRACEY DESHON ..... LITTLE ROCK, AR | 11/20/2002 |
| DAVIS, LINDA ..... LITTLE ROCK, AR | 11/20/2002 |
| DAVIS, ERNESIA LASHAWN .. N LITTLE ROCK, AR | 11/20/2002 |
| DECAPOTE, ONELIA ..... MIAMI, FL | 11/20/2002 |
| DUCKETT, BRUCE DEVLON .. FLINT, MI | 11/20/2002 |
| FERGUSON, PATRICIA M ..... VANCLEAVE, MS | 11/20/2002 |
| FISHER, SHERRY LYNNE ..... SPOKANE, WA | 11/20/2002 |
| GARCIA, MARTIZA ..... MIAMI, FL | 11/20/2002 |
| GARCIA, MARITZA ..... MIAMI, FL | 11/20/2002 |
| GINN, AARON C ..... ASHLAND, KY | 11/20/2002 |
| HARDY, ANDREW JR ..... OAK PARK, MI | 11/20/2002 |
| HIPPOLYTE, JOSEPH WABUZOH JR ..... LOMPOC, CA | 11/20/2002 |
| JRAGATSBANYAN, ART ..... LOS ANGELES, CA | 11/20/2002 |
| LANGINIKORO, HAROLD J ..... LYNNWOOD, WA | 11/20/2002 |
| NELMS, ANGELA ..... DAYTON, OH | 11/20/2002 |
| OSMAN, MOHAMED AWAD .... RICHMOND, VA | 11/20/2002 |
| PATTON, PATRICIA ANN ..... MARIANNA, AR | 11/20/2002 |
| PEREZ, JESUS ..... MIAMI, FL | 11/20/2002 |
| PRESTON, KENDA L ..... CANTON, OH | 11/20/2002 |
| RESPIRATORY DRUGGIST, INC ..... FOLEY, AL | 11/20/2002 |
| REYES, RAMON ..... HIALEAH, FL | 11/20/2002 |
| ROSS, SHAMEKEA ..... COLUMBUS, OH | 11/20/2002 |
| SCHMIDT, KATHLEEN LYNN ALEXANDRIA, MN | 11/20/2002 |
| SOILEAU, JOSEPH L ..... CAMERON, LA | 11/20/2002 |
| STEINBERG, EDWARD M ..... N MIAMI BEACH, FL | 11/20/2002 |
| SWIATEK, DAWN M ..... CHICAGO, IL | 11/20/2002 |
| TAGUMASI, ABNER ..... CARSON, CA | 11/20/2002 |
| VAUGHN, TRACY ALLEN ..... FOLEY, MN | 11/20/2002 |
| WALTZ, DAVID MATHEW ..... BEAVERTON, MI | 11/20/2002 |
| WATTS, VICKIE LANELL ..... TEMPLE, TX | 11/20/2002 |
| **FELONY CONVICTION FOR HEALTH CARE FRAUD** | |
| SODERSTROM, RITA MARLENE ..... CLIFTON, CO | 11/20/2002 |
| STROM, JOHN DAVID ..... STOW, OH | 11/20/2002 |
| **FELONY CONTROL SUBSTANCE CONVICTION** | |
| BAYBO, KAREN A ..... ST LOUIS, MO | 11/20/2002 |
| BURNS, JOANNE KLINA ..... PROSPECT PARK, PA | 11/20/2002 |
| DE LA FLOR, RICHARD ..... TOLEDO, OH | 11/20/2002 |
| HEMMERLING, BONNIE DEE FRANKFORT, IN | 11/20/2002 |
| KENTER, BARBARA SUSAN .. OMAHA, NE | 11/20/2002 |
| MAGGARD-ISON, EDNA LOUISE ..... KING CITY, MO | 11/20/2002 |
| PETRY, SAMANTHA L ..... ALDERSON, WV | 11/20/2002 |
| ROSENAUER, JENNIFER A .... CHESTERFIELD, MO | 11/20/2002 |
| SANTISTEVAN, KELLY K ..... HELPER, UT | 11/20/2002 |
| SMITH, PAMELA M ..... SINKING SPRING, PA | 11/20/2002 |
| **PATIENT ABUSE/NEGLECT CONVICTIONS** | |
| EDWARDS, JACQUELINE RENEE ..... | 11/20/2002 |

| Subject city, state | Effective date |
|---|---|
| DETROIT, MI | |
| FERNANDEZ, EDNA L ..... MARINA, CA | 11/20/2002 |
| FIGURES, SANDRA ..... DERMOTT, AR | 11/20/2002 |
| HARRIS, YOLANDA ..... CHARLESTON, MS | 11/20/2002 |
| HENRY, PAUL ..... PARMA HGTS, OH | 11/20/2002 |
| HOPPE, JUDITH PHILOMENE EDEN VALLEY, MN | 11/20/2002 |
| JOHNSON, MATTHEW PAUL AZURE ..... BEMIDJI, MN | 11/20/2002 |
| MCNEAL, CAROL G ..... ALEXANDRIA, LA | 11/20/2002 |
| NANCE, BENJAMIN ..... BRENT, AL | 11/20/2002 |
| PROEHL, ARDY RENEE ..... MAPLETON, MN | 11/20/2002 |
| STAFFEN, RANDY ..... JEFFERSON, OH | 11/20/2002 |
| STONE, BRIAN L ..... CONWAY, AR | 11/20/2002 |
| WILSON, NATASHA ..... CLEVELAND, OH | 11/20/2002 |

**LICENSE REVOCATION/SUSPENSION/ SURRENDERED**

| | |
|---|---|
| ABRAHAM, JANIS ..... NATCHITOCHES, LA | 11/20/2002 |
| ACOSTA, FANNY ..... GLENDORA, CA | 11/20/2002 |
| BAILES, WILLIAM HUBERT .... FRESNO, CA | 11/20/2002 |
| BAILEY, JEFFREY DEAN ..... SAN DIEGO, CA | 11/20/2002 |
| BLANK, NOELLE M ..... EL PASO, TX | 11/20/2002 |
| BLANKENSHIP, RAMONA ..... OVIEDO, FL | 11/20/2002 |
| BOONE, CHRISTY WILLIAMS ROCKY MOUNT, NC | 11/20/2002 |
| BROOKS, JANICE YVONNE ... UPLAND, CA | 11/20/2002 |
| BROUSSARD, SHANNON L .... FORT WORTH, TX | 11/20/2002 |
| BROWN, JAMES R ..... ENFIELD, CT | 11/20/2002 |
| BUKOWSKY, KELLY SUZANNE ..... LOCKHART, TX | 11/20/2002 |
| BUSTER, PATRICIA LOUISE .. TEXARKANA, TX | 11/20/2002 |
| CAINE, MARY ELIZABETH ..... OLIVE BRANCH, MS | 11/20/2002 |
| CANTERBERRY, JANE ARMSTRONG ..... HASTINGS, NE | 11/20/2002 |
| CARRIL, ANTHONY ..... MIAMI, FL | 11/20/2002 |
| CESENA, ALBERTO ..... BLYTHE, CA | 11/20/2002 |
| CROWL, BARBARA M ..... HASTINGS, NE | 11/20/2002 |
| CUBILLOS, MARY CHRISTINA NORFOLK, NE | 11/20/2002 |
| DAVIS, JUDY K ..... BAYTOWN, TX | 11/20/2002 |
| DEAN, BARBARA FARLEY ..... HOUSTON, TX. | 11/02/2002 |
| DELCAMBRE, TAMMY ..... BILOXI, MS | 11/20/2002 |
| DEROUEN, TAMARA ..... SACRAMENTO, CA | 11/20/2002 |
| DUSTIN, DANYA D ..... BYLAS, AZ | 11/20/2002 |
| EDWARDS, SHANDA L ..... ROCK ISLAND, IL | 11/20/2002 |
| EENHUIS, DAWN BARNES ..... BARNESVILLE, MN | 11/20/2002 |
| EGGERS, AUTUMN MARIE .... LITTLE ROCK, AR | 11/20/2002 |
| ELLIG, MICHAEL HOWARD .... ODESSA, TX | 11/20/2002 |
| ERDMAN, DENNIS ..... PAYSON, AZ | 11/20/2002 |
| ERNST, LAURA LEE ..... SIMI VALLEY, CA | 11/20/2002 |
| FARRAN, KALEEN ROSE ..... WICHITA, KS | 11/20/2002 |
| FEELEY, RACHEL G ..... MANVILLE, RI | 11/20/2002 |
| FORTUNATO, JOSE IGNACIO VALLEJO, CA | 11/20/2002 |
| FREDERICK, EDMOND GUINN ..... MAURICEVILLE, TX | 11/20/2002 |
| FREY, KATHRYN ANN ..... PALM DESERT, CA | 11/20/2002 |
| FRONICK, KAREN MARIE ..... HOUSTON, TX | 11/20/2002 |
| GARCIA, RANDAL LEE ..... BLACK BUTTE RANCH, OR | 11/20/2002 |
| GARCIA, NANCY PARE ..... TUSCON, AZ | 11/20/2002 |
| GEMMELL, WILLIAM S ..... BRATTLEBORO, VT | 11/20/2002 |
| GIFFORD, CRAIG P ..... SALT LAKE CITY, UT | 11/20/2002 |
| GILL, MISSY L ..... APPALACHIA, VA | 11/20/2002 |
| GORDON, MARCIA G ..... ARLINGTON HGTS, IL | 11/20/2002 |
| GREENWELL, JOSIANNE MARIE GOFF ..... MORGANFIELD, KY | 11/20/2002 |
| GRIDDINE, WILLIAM ERWIN .. VAN NUYS, CA | 11/20/2002 |
| GRIER, LISHA D ..... VIRGINIA BEACH, VA | 11/20/2002 |
| GRIFFIN, CONSTANCE ROBINSON ..... NEWPORT NEWS, VA | 11/20/2002 |
| HARRIS, JAMES E ..... LAS VEGAS, NV | 11/20/2002 |
| HARWELL, CHERYL EVANS .. WOODVILLE, TX | 11/20/2002 |
| HIGGENBOTTOM, CAROL DENISE ..... FARMERSBURG, IN | 11/20/2002 |
| HILLER, DONALD JOHN ..... PHOENIX, AZ | 11/20/2002 |
| HOLLAND, DOUGLAS THOMAS JR ..... ELK GROVE, CA | 11/20/2002 |
| JONES, MICHAEL LYNN ..... NEW CASTLE, IN | 11/20/2002 |
| KIMBLE, LLOYD ..... SAN ANTONIO, TX | 11/20/2002 |
| KOSTEL, JEFFRY P ..... CHICAGO, IL | 11/20/2002 |
| LAKE, STEPHEN ..... BEVERLY HILLS, CA | 11/20/2002 |
| MALONE, EVELYN DEMETRA HOUSTON, TX | 11/20/2002 |
| MAROUCHOC, LORRAINE M JIM THORPE, PA | 11/20/2002 |
| MATTHEWS, HAZEL ..... VALLEJO, CA | 11/20/2002 |
| MCCASH, SHARLIE F ..... AZLE, TX | 11/20/2002 |
| MCDERMOTT, DONNA LYNN ANGLETON, TX | 11/20/2002 |
| MIGLIN, ROBERT ANTHONY ENCINO, CA | 11/20/2002 |
| MILLER, JUDITH ..... COGAN STATION, PA | 11/20/2002 |
| MITCHELL, GINA M ..... N KINGSTOWN, RI | 11/20/2002 |
| MOMAH, CLEMENT I ..... BEL AIR, MD | 11/20/2002 |
| MONTIGNY, HOLLY ..... WESTPORT, MA | 11/20/2002 |
| MORALES, ALMARIO ..... VALLEJO, CA | 11/20/2002 |
| MORRIS, ANNE MARTIN ..... VICKSBURG, MS | 11/20/2002 |
| MUNSON, MILTON ANDREW OMAHA, NE | 11/20/2002 |
| MURRAY, LAWRENCE FRANKLIN ..... LUCERNE, CA | 11/20/2002 |
| NODA, CARLOS M ..... MIAMI, FL | 11/20/2002 |
| PERRINO, PAMELA SUZANNE ..... PHOENIX, AZ | 11/20/2002 |
| PURVIN, JONATHAN MARK ... SANDY, UT | 11/20/2002 |
| RAFFIELD, MICHAEL CORBETT ..... FLORENCE, AL | 11/20/2002 |
| RASCO, LINDA M C ..... MARIETTA, GA | 11/20/2002 |
| RECTOR, BRENDA LEE ..... ORO VALLEY, AZ | 11/20/2002 |
| RESENDIZ, ROLAN ..... TURLOCK, CA | 11/20/2002 |
| RHOADES, KAROLYN S ..... OKEECHOBEE, FL | 11/20/2002 |
| RILEY, KACHINA SU ..... HOLLY HILL, FL | 11/20/2002 |
| ROWLAND, KEVIN A ..... BRAYMER, MO | 11/20/2002 |
| RUTZ, CATHERINE DOUGHERTY ..... LINCOLN, NE | 11/20/2002 |
| SANTOS, ANA PAULA ..... PHILADELPHIA, PA | 11/20/2002 |
| SCHLEUGER, LAURA ANN .... LINCOLN, NE | 11/20/2002 |
| SCHMITZ, E HEATHER ..... BISMARCK, ND | 11/20/2002 |
| SHANNON, PENNY M ..... VIRGINIA BEACH, VA | 11/20/2002 |
| SPENCE, JASON KEITH ..... SAN FRANCISCO, CA | 11/20/2002 |
| STEVENS, DORSIE MAE ..... TULSA, OK | 11/20/2002 |
| TUSING, TRACEY L ..... FLORISSANT, MO | 11/20/2002 |
| WHITE, HELEN L ..... OAKLAND, CA | 11/20/2002 |

**FEDERAL/STATE EXCLUSION/ SUSPENSION**

| | |
|---|---|
| BROWN, LOWELL JEROME ... | 11/20/2002 |

| Subject city, state | Effective date |
|---|---|
| SPRINGFIELD, IL | |
| MINOR, PANDORA M | 11/20/2002 |
| NEW ORLEANS, LA | |
| OKWUJE, PHILLIP | 11/20/2002 |
| CHICAGO, IL | |
| **OWNED/CONTROLLED BY CONVICTED ENTITIES** | |
| AMG MEDICAL SERVICES, INC | 11/20/2002 |
| N MIAMI BEACH, FL | |
| GARSON & GARSON CHARTERED | 11/20/2002 |
| MIAMI, FL | |
| S FLORIDA HEARING SVC, INC | 11/20/2002 |
| PITTSBURGH, PA | |
| SOUTH FLORIDA THERAPEUTIC, INC | 11/20/2002 |
| MIAMI, FL | |
| **DEFAULT ON HEAL LOAN** | |
| DREYER, FRANK J | 10/10/2002 |
| SPOKANE, WA | |
| RIIS, MARK L | 11/20/2002 |
| GRAND PRAIRIE, TX | |

Dated: November 6, 2002.

**Katherine B. Petrowski,**

*Director, Exclusions Staff, Office of Inspector General.*

[FR Doc. 02–29130 Filed 11–15–02; 8:45 am]

BILLING CODE 4150–04–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4736–N–17]**

## Notice of Proposed Information Collection for Public Comment on the Low-Income Public Housing Operating Budget, Supporting Schedules and Board Resolution

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

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments Due Date: January 17, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

*This Notice also lists the following information:*

*Title of Proposal:* Low-Income Public Housing Operating Budget, Supporting Schedules and Board Resolution.

*OMB Control Number:* 2577–0026.

*Description of the need for the information and proposed use:* The operating budget and supporting forms are submitted by the Public Housing Agency (PHA) for the low-income housing program. The operating budget provides a summary of proposed/budget receipts and expenditures by major category, as well as blocks for indicating approval of budget receipts and expenditures by the PHA and HUD. The supporting forms provide the detail of how the amount shown on the operating budget were arrived at, as well as justification of certain specified amounts. The information is reviewed by HUD to determine if the plan of operation adopted by the PHA and amounts included therein are reasonable for the efficient and economical operation of the development(s), and the PHA is in compliance with HUD procedures to assure that sound management practices will be followed in the operation of the development. A small number of PHAs (200) are still required to submit their operating budget packages to HUD, namely those that are troubled, those that are recently out of troubled status of at risk of becoming troubled, or those that are at risk of fiscal insolvency. PHAs are still required to prepare their operating budgets and submit them to their Board for approval prior to their operating subsidy being approved by HUD. The operating budgets must be kept on file for review, if requested.

*Agency form numbers, if applicable:* HUD–52564, HUD–52566, HUD–52567, HUD–52571, HUD–52573, HUD–52574.

*Members of affected public:* State, or Local Government.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* 200 troubled PHAs, annual, 116 hours = 23,000 hours. 3300 PHAs submitting operating budgets to their Boards and keeping them on file, annual, 116 hours = 382,800. The total burden hours for this collection are 405,800.

*Status of the proposed information collection:* Reinstatement, without change.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 8, 2002.

**Michael Liu,**

*Assistant Secretary for Public and Indian Housing.*

BILLING CODE 4210–33–M

# Operating Budget

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (exp. 6/30/2001)

**See page four for Instructions and the Public reporting burden statement**

| a. Type of Submission | b. Fiscal Year Ending | c. No. of months (check one) | d. Type of HUD assisted project(s) |
|---|---|---|---|
| ☐ Original ☐ Revision No.: | | ☐ 12 mo. ☐ Other (specify) | 01 ☐ PHA/IHA-Owned Rental Housing<br>02 ☐ IHA Owned Mutual Help Homeownership<br>03 ☐ PHA/IHA Leased Rental Housing<br>04 ☐ PHA/IHA Owned Turnkey III Homeownership<br>05 ☐ PHA/IHA Leased Homeownership |
| e. Name of Public Housing Agency / Indian Housing Authority (PHA/IHA) | | | |
| f. Address (city, State, zip code) | | | |
| g. ACC Number | h. PAS / LOCCS Project No. | | i. HUD Field Office |
| j. No. of Dwelling Units | k. No. of Unit Months Available | m. No. of Projects | |

| Line No. | Acct. No. | Description (1) | Actuals Last Fiscal Yr. 19____ PUM (2) | ☐ Estimates ☐ or Actual Current Budget Yr. 19____ PUM (3) | Requested Budget Estimates: PHA/IHA Estimates PUM (4) | PHA/IHA Estimates Amount (to nearest $10) (5) | HUD Modifications PUM (6) | HUD Modifications Amount (to nearest $10) (7) |
|---|---|---|---|---|---|---|---|---|
| **Homebuyers Monthly Payments for** | | | | | | | | |
| 010 | 7710 | Operating Expense | | | | | | |
| 020 | 7712 | Earned Home Payments | | | | | | |
| 030 | 7714 | Nonroutine Maintenance Reserve | | | | | | |
| **040** | **Total** | Break-Even Amount (sum of lines 010, 020, and 030) | | | | | | |
| 050 | 7716 | Excess (or deficit) in Break-Even | | | | | | |
| 060 | 7790 | Homebuyers Monthly Payments - Contra | | | | | | |
| **Operating Receipts** | | | | | | | | |
| 070 | 3110 | Dwelling Rental | | | | | | |
| 080 | 3120 | Excess Utilities | | | | | | |
| 090 | 3190 | Nondwelling Rental | | | | | | |
| **100** | **Total** | Rental Income (sum of lines 070, 080, and 090) | | | | | | |
| 110 | 3610 | Interest on General Fund Investments | | | | | | |
| 120 | 3690 | Other Income | | | | | | |
| **130** | **Total** | Operating Income (sum of lines 100, 110, and 120) | | | | | | |
| **Operating Expenditures - Administration** | | | | | | | | |
| 140 | 4110 | Administrative Salaries | | | | | | |
| 150 | 4130 | Legal Expense | | | | | | |
| 160 | 4140 | Staff Training | | | | | | |
| 170 | 4150 | Travel | | | | | | |
| 180 | 4170 | Accounting Fees | | | | | | |
| 190 | 4171 | Auditing Fees | | | | | | |
| 200 | 4190 | Other Administrative Expenses | | | | | | |
| **210** | **Total** | Administrative Expense (sum of line 140 thru line 200) | | | | | | |
| **Tenant Services** | | | | | | | | |
| 220 | 4210 | Salaries | | | | | | |
| 230 | 4220 | Recreation, Publications and Other Services | | | | | | |
| 240 | 4230 | Contract Costs, Training and Other | | | | | | |
| **250** | **Total** | Tenant Services Expense (sum of lines 220, 230, and 240) | | | | | | |
| **Utilities** | | | | | | | | |
| 260 | 4310 | Water | | | | | | |
| 270 | 4320 | Electricity | | | | | | |
| 280 | 4330 | Gas | | | | | | |
| 290 | 4340 | Fuel | | | | | | |
| 300 | 4350 | Labor | | | | | | |
| 310 | 4390 | Other utilities expense | | | | | | |
| **320** | **Total** | Utilities Expense (sum of line 260 thru line 310) | | | | | | |

| Name of PHA / IHA | | | | Fiscal Year Ending | | | | |
|---|---|---|---|---|---|---|---|---|
| Line No. | Acct. No. | Description (1) | Actuals Last Fiscal Yr. 19____ PUM (2) | ☐ Estimates ☐ or Actual Current Budget Yr. 19____ PUM (3) | Requested Budget Estimates PHA/IHA Estimates PUM (4) | Amount (to nearest $10) (5) | HUD Modifications PUM (6) | Amount (to nearest $10) (7) |
| **Ordinary Maintenance and Operation** | | | | | | | | |
| 330 | 4410 | Labor | | | | | | |
| 340 | 4420 | Materials | | | | | | |
| 350 | 4430 | Contract Costs | | | | | | |
| **360** | **Total** | Ordinary Maintenance & Operation Expense (lines 330 to 350) | | | | | | |
| **Protective Services** | | | | | | | | |
| 370 | 4460 | Labor | | | | | | |
| 380 | 4470 | Materials | | | | | | |
| 390 | 4480 | Contract costs | | | | | | |
| **400** | **Total** | Protective Services Expense (sum of lines 370 to 390) | | | | | | |
| **General Expense** | | | | | | | | |
| 410 | 4510 | Insurance | | | | | | |
| 420 | 4520 | Payments in Lieu of Taxes | | | | | | |
| 430 | 4530 | Terminal Leave Payments | | | | | | |
| 440 | 4540 | Employee Benefit Contributions | | | | | | |
| 450 | 4570 | Collection Losses | | | | | | |
| 460 | 4590 | Other General Expense | | | | | | |
| **470** | **Total** | General Expense (sum of lines 410 to 460) | | | | | | |
| **480** | **Total** | Routine Expense (sum of lines 210, 250, 320, 360, 400, and 470) | | | | | | |
| **Rent for Leased Dwellings** | | | | | | | | |
| 490 | 4710 | Rents to Owners of Leased Dwellings | | | | | | |
| **500** | **Total** | Operating Expense (sum of lines 480 and 490) | | | | | | |
| **Nonroutine Expenditures** | | | | | | | | |
| 510 | 4610 | Extraordinary Maintenance | | | | | | |
| 520 | 7520 | Replacement of Nonexpendable Equipment | | | | | | |
| 530 | 7540 | Property Betterments and Additions | | | | | | |
| **540** | **Total** | Nonroutine Expenditures (sum of lines 510, 520, and 530) | | | | | | |
| **550** | **Total** | Operating Expenditures (sum of lines 500 and 540) | | | | | | |
| **Prior Year Adjustments** | | | | | | | | |
| 560 | 6010 | Prior Year Adjustments Affecting Residual Receipts | | | | | | |
| **Other Expenditures:** | | | | | | | | |
| 570 | | Deficiency in Residual Receipts at End of Preceding Fiscal Yr. | | | | | | |
| **580** | **Total** | Operating Expenditures, including prior year adjustments and other expenditures (line 550 plus or minus line 560 plus line 570) | | | | | | |
| 590 | | Residual Receipts (or Deficit) before HUD Contributions and provision for operating reserve (line 130 minus line 580) | | | | | | |
| **HUD Contributions** | | | | | | | | |
| 600 | 8010 | Basic Annual Contribution Earned - Leased Projects-Current Year | | | | | | |
| 610 | 8011 | Prior Year Adjustments - (Debit) Credit | | | | | | |
| **620** | **Total** | Basic Annual Contribution (line 600 plus or minus line 610) | | | | | | |
| 630 | 8020 | Contributions Earned - Op. Sub - Cur. Yr.(before year-end adj) | | | | | | |
| 640 | | Mandatory PFS Adjustments (net) | | | | | | |
| 650 | | Other (specify) | | | | | | |
| 660 | | Other (specify) | | | | | | |
| 670 | | Total Year-end Adjustments/Other (plus or minus lines 640 thru 660) | | | | | | |
| 680 | 8020 | Total Operating Subsidy-current year (line 630 plus or minus line 670) | | | | | | |
| **690** | **Total** | HUD Contributions (sum of lines 620 and 680) | | | | | | |
| 700 | | Residual Receipts (or Deficit) (sum of line 590 plus line 690) Enter here and on line 810 | | | | | | |

| Name of PHA / IHA | Fiscal Year Ending |
|---|---|
| | / |

| | | Operating Reserve | PHA/IHA Estimates | HUD Modifications |
|---|---|---|---|---|
| | | **Part I - Maximum Operating Reserve - End of Current Budget Year** | | |
| 740 | 2821 | **PHA / IHA-Leased Housing - Section 23 or 10(c)**<br>50% of Line 480, column 5, form HUD-52564 | | |

| | | Part II - Provision for and Estimated or Actual Operating Reserve at Fiscal Year End | | |
|---|---|---|---|---|
| 780 | | Operating Reserve at End of Previous Fiscal Year - Actual for FYE (date) | | |
| 790 | | Provision for Operating Reserve - Current Budget Year (check one)<br>☐ Estimated for FYE<br>☐ Actual for FYE | | |
| 800 | | Operating Reserve at End of Current Budget Year (check one)<br>☐ Estimated for FYE<br>☐ Actual for FYE | | |
| 810 | | Provision for Operating Reserve - Requested Budget Year Estimated for FYE<br>Enter Amount from line 700 | | |
| 820 | | Operating Reserve at End of Requested Budget Year Estimated for FYE<br>(Sum of lines 800 and 810) | | |
| 830 | | Cash Reserve Requirement - _____ % of line 480 | | |

Comments

**PHA / IHA Approval** Name _____

Title _____

Signature _____ Date _____

**Field Office Approval** Name _____

Title _____

Signature _____ Date _____

Public reporting burden for this collection of information is estimated to average 116 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

**Instructions for Preparing Form HUD-52564, Operating Budget**

Separate Operating Budgets must be prepared for each separate Annual Contributions Contract (ACC). However, the supporting documentation can be combined for each Turnkey III project within an ACC, provided it clearly separates the cost by program and/or ACC number. Prepare all of the supporting documentation (Forms HUD-52573, HUD-52566 and HUD-52571) prior to finalizing the Operating Budget.

The headings for items a. through m. are self-explanatory.

**Columns:**

Column (2): Obtain actual P.U.M. amounts from the Statement(s) of Operating Receipts and Expenditures (Form HUD-52599) for the year preceding the current budget year.

Column (3): Include the actual (if available) or estimated PUM amounts for the current budget year.

Columns (4) and (5): Enter amounts on applicable lines from HUD Schedules and/or HA worksheets in column (5). After completing column (5) compute the P.U.M. amounts for Column (4) by dividing each figure in Column (5) by the No. of Unit Months of Availablity, item k.

Columns (6) and (7): Leave blank. If HUD modifies the HA estimates as a condition for approval, HUD will complete these columns and return a copy to the HA.

**Line Items**

Lines 010 through 060 are specific to the Turnkey III Owned Homeownership Program. These lines correspond to accounts 7710 through 7790, see Accounting Handbook 7510.1.

Line 460: Use this line, if applicable, for showing estimated interest on Administrative and Sundry Loans.

Line 490: This line is specific to the Section 23, Leased Rental Program.

Line 560: Use this line, if applicable, only in connection with budget revisions.

Line 570: Use this line, if applicable, for such items as carry-overs of unabsorbed deficiencies in residual receipts from prior years.

Line 630: Operating Subsidy Eligibility for the requested year before year end adjustments.

Lines 640 to 660: Year end adjustments to be funded in the requested budget year.

Line 700: An estimated decrease cannot be more than the amount available in the operating reserve at the beginning of the requested budget year (line 800).

**Special Instructions, Budget Revisions**

Budget revisions must be approved by the end of the PHA fiscal year.

When using this form for budget revisions, the following additional instructions are applicable:

No changes are to be made to Column (2) or Column (3).

No changes are to be made in the amount for Operating Subsidy Eligibility before year end adjustments (Line 630, or in Part I - Maximum Operating Reserve-End of Current Budget Year.

**Operating Reserves**

Operating reserves are calculated by individual Annual Contributions Contract except that the operating reserves for Section 23 Leased Housing Projects, Turnkey III Homeownership Projects (HA Owned or Leased) must be separately calculated and reported by project.

Line 780: Enter amount as of the last previous fiscal year (year preceding current budget year).

Line 790:

a. Enter estimated amount, if original budget, or actual amount, if revised budget.

b. Enter negative balance in parentheses. (The negative balance may not exceed the amount on line 780.)

Line 800: Enter sum of lines 780 and 790.

Line 810:

a. Enter estimated amount.

b. Enter negative balance in parentheses. (The negative balance may not exceed the amount on line 800.)

Line 820: Enter sum of lines 800 and 810.

Line 830: Enter percent of routine operating expenses (or minimum dollar amount) currently used by HUD as a performance measure to evaluate the cash requirements and/or operating reserve adequacy.

## Operating Budget
Schedule of All Positions and Salaries

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp.

**See back of page for Instructions and Public reporting burden statement**

| Name of Housing Authority | Locality | Fiscal Year End |
|---|---|---|

| Position Title and Name By Organizational Unit and Function | | Present Salary Rate | Requested Budget Year | | | Allocation of Salaries by Program | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | As of (date) | Salary Rate | Estimated Payment No. Months | Estimated Payment Amount | Management | Modernization | Development | Section 8 Programs | Other Programs | Longevity | Method of Allocation |
| (1) | (1a) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| | | | | | | | | | | | | |

To the best of my knowledge, all the information stated herein, as well as any information provided in the accompaniment herewith, is 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; 31 U.S.C. 3729, 3802)

Executive Director or Designated Official

Date



form HUD-52566 (3/95)
ref Handbook 7475.1

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

**Instructions for Preparation of Form HUD-52566**

This form is to be prepared to show proposed staffing for the Requested Budget Year. All employees of the Housing Authority must be listed.

**Identification:** The identification boxes at the top of the form are self-explanatory.

**Position Title and Name by Organizational Unit and Function:**

**Column (1):** List each position title according to Organizational Unit, i.e., Central Office, Central Maintenance, Project or Project Management Group, Section 8, Modernization, and Function within each organization unit, i.e., Office of Director, Accounting and Purchasing Section, Leasing and Occupancy Section, General Maintenance, etc. All seasonal temporary labor may be combined on a single line designated "Casual Labor" or "Temporary Labor."

**Column (1a):** For each position or group of positions as appropriate, enter an account designation as follows:

| | |
|---|---|
| AN-T | Administrative-Nontechnical positions |
| A-T | Administrative-Technical positions |
| M | Maintenance positions |
| U | Utilities Labor positions |
| O | Other positions such as staff attorneys and architectural and engineering personnel employed for the sole purpose of preparing plans and specifications for extraordinary maintenance jobs or for betterments and additions. |

**Column (2) Present Salary Rate:** Enter closing date of latest completed payroll in heading. Then, for each position listed in Column (1), enter the present annual salary rate in accordance with the latest payroll record. For new positions to be established in the Requested Budget Year, leave this column blank.

**Columns (3), (4), (5) Requested Budget Year:**

**Salary Rate:** For each position listed, enter the proposed salary rate for the Requested Budget Year.

**Estimated Payment:**

**No. Months:** For each position listed, enter the estimated equivalent number of full months of employment in the Requested Budget Year.

**Amount:** For each position listed, enter the estimated amount of salary to be paid during the Requested Budget Year.

**Allocation of Salaries by Program:** Columns (6) through (11) are to be completed by Housing Authorities who administer programs other than Management.

**Column (6)–Management:** For each position listed enter the amount of salary allocable to management related activities.

**Column (7)–Modernization Programs:** For each position listed enter the amount of salary allocable to Modernization (CIAP/Comprehensive Grant Program) related activities. The Housing Authority must have an approved CIAP/Comprehensive Plan budget with funds approved under Development Accounts 1410.1 and 1410.2.

**Column (8)–Development:** For each position listed, enter the amount of salary allocable to activities related to projects in development. Include in one amount the amount chargeable to Development Cost Accounts 1410 and 1425.

**Column (9)–Section 8 Programs:** For each position listed, enter the amount of salary allocable to activities related to Section 8 programs.

**Column (10)–Other Programs:** For each position listed, enter the amount of salary allocable to activities related to projects which are locally-owned, State-aided, etc., and to all other programs with which the Local Authority is concerned such as Urban Renewal, etc.

Note: This Column should also include the allocation of salary costs of shared resources, i.e., where staff or other resources are shared between a HA program and a program administered by an identity-of-interest non-profit entity, the salary cost must be equitably allocated to each program.

**Column (11)–Other:** For each position listed, enter the amount of salary allocable as a result of longevity compensation.

**Column (12)–Method of Allocation:** For each position or group of positions listed, show the method used for allocating the salaries listed.

On the basis of information shown on this schedule complete Form HUD-52573, Summary of Budget Data and Justifications, **Summary of Staffing and Salary Data** section, and Form HUD-52564, Operating Budget.

## Operating Budget
Schedule of Nonroutine Expenditures

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp. 6/30/2001)

**See back of page for Instructions and Public reporting burden statement**

| Local Housing Authority | Locality | Fiscal Year Ending |
|---|---|---|
| | | |

| Extraordinary Maintenance and Betterments and Additions (Excluding Equipment Additions) | | | | | | | Equipment Requirements | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Requested Budget Year | | | Requested Budget | | |
| Work Project Number (1) | Description of Work Project (List **Extraordinary Maintenance** and **Betterments and Additions** separately) (2) | Housing Project Number (3) | Total Estimated Cost (4) | Percent Complete Current Budget Year End (5) | Estimated Expenditure In Year (6) | Percent Complete Year End (7) | Description of Equipment Items (List **Replacements** and **Additions** separately) (8) | No. of Items (9) | Item Cost (10) | Estimated Expenditure In Year (11) |
| | | | | | | | | | | |

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)



form **HUD-52567** (3/95)
ref Handbook 7475.1

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

**Instructions for Preparation of Form HUD-52567**

Prepare this form to describe each work project, or job, of extraordinary maintenance, property betterments and additions, and replacement or addition of nonexpendable equipment scheduled for accomplishment in whole or in part during the Requested Budget Year.

**Identification:** The identification boxes at the top of the form are self-explanatory.

**Extraordinary Maintenance and Betterments and Additions**

**Column (1) Work Project Numbers:** For work projects to be started during the Requested Budget Year assign consecutive numbers to identify them with the classification of work and the LHA Fiscal Year, and enter the numbers in this column. For example: For Extraordinary Maintenance jobs to be started during the LHA Fiscal Year 1966, the number would be EM-66-1, EM-66-2, etc. and for Betterments and Additions jobs the numbers would be BA-66-1, BA-66-2, etc.

**Column (2) Description:** Describe each work project concisely, but sufficiently to give a full understanding of its nature and scope. For work projects started in previous years, point out any significant changes in nature and scope.

**Column (3) Housing Project Number:** Opposite each work project number and description enter the number of the Housing Projects at which the work is located.

**Column (4) Total Estimated Cost:** Enter a realistic estimate of the total cost of each work project based, to the extent practicable, on a thorough study of detailed specification of the work. If any part of the work is to be performed by Project staff the estimated cost should include the appropriate portion of their salaries. If there has been a change in the total estimated cost of work started in previous years, the revised total estimate should be entered and note to this effect included in the description column.

**Column (5) Percent Complete Current Budget Year End:** For work projects started in previous years, enter a realistic estimate of the percentage of work that will have been completed at the end of the Current Budget Year. This percentage may or may not correspond to the percentage of total estimated cost that will have been expended at that time.

**Requested Budget Year:**

**Column (6) Estimated Expenditure in Year:** For each work project enter a realistic estimate of the portion of Total Estimated Cost that will be expended during the Requested Budget Year. These estimates should include the appropriate portion of salaries of Project staff which is to perform any of the work.

**Column (7) Percent Complete Year End:** For each work project enter a realistic estimate of the percentage of work that will have been completed at the end of the Requested Budget Year. This percentage may or may not correspond to the percentage of total estimated cost that will have been expended at that time.

**Equipment Requirements**

**Column (8) Description:** Under a heading "Replacement of Equipment" list each type of nonexpendable equipment to be replaced, and separately under a heading "Property Additions" list each new type of nonexpendable equipment to be acquired. Give a brief description of each type and identify the Housing Project to which it is to be assigned.

**Column (9) Number of Items:** Enter the number of items of each type of equipment to be purchased for each Housing Project designated in Column (8).

**Column (10) Item Cost:** Enter estimated net cost of each item of equipment, e.g. purchase price, less discounts, trade-in allowances, and/or proceeds from disposition of equipment being replaced.

**Column (11) Estimated Expenditure in Year:** For each type of equipment, enter the estimated cost obtained by multiplying the number of items in Column 9 by the item cost in Column 10. Also, enter total cost of equipment listed under each of the headings "Replacement of Equipment" and "Property Additions."

**Totals**

a. The total in Column 6 for Extraordinary Maintenance should be entered on Line 510, Column 5, of form HUD-52564.

b. The total in Column 11 for Replacement of Equipment should be entered on Line 520, Column 5, of form HUD-52564.

c. The sum of the totals in Columns 6 and 11 for Property Betterments and Additions should be entered on Line 530, Column 5, of form HUD-52564.

# Operating Budget

Schedule of Administration
Expense Other Than Salary

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp. 6/30/2001)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

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| Name of Housing Authority | Locality | Fiscal Year End |
|---|---|---|
| | | |

| | (1) Description | (2) Total | (3) Management | (4) Development | (5) Section 8 | (6) Other |
|---|---|---|---|---|---|---|
| 1 | Legal Expense (see Special Note in Instructions) | | | | | |
| 2 | Training (list and provide justification) | | | | | |
| 3 | Travel<br>Trips To Conventions and Meetings (list and provide justification) | | | | | |
| 4 | Other Travel<br>Outside Area of Jurisdiction | | | | | |
| 5 | Within Area of Jurisdiction | | | | | |
| 6 | Total Travel | | | | | |
| 7 | Accounting | | | | | |
| 8 | Auditing | | | | | |
| 9 | Sundry<br>Rental of Office Space | | | | | |
| 10 | Publications | | | | | |
| 11 | Membership Dues and Fees (list organization and amount) | | | | | |
| 12 | Telephone, Fax, Electronic Communications | | | | | |
| 13 | Collection Agent Fees and Court Costs | | | | | |
| 14 | Administrative Services Contracts (list and provide justification) | | | | | |
| 15 | Forms, Stationary and Office Supplies | | | | | |
| 16 | Other Sundry Expense (provide breakdown) | | | | | |
| 17 | Total Sundry | | | | | |
| 18 | Total Administration Expense Other Than Salaries | | | | | |

To the best of my knowledge, all the information stated herein, as well as any information provided in the accompaniment herewith, is 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; 31 U.S.C. 3729, 3802)

Signature of authorized representative & Date

X



form **HUD-52571** (3/95)
ref Handbook 7475.1

Justification/Breakdown:

**Instructions for Preparation of Form HUD-52571**

Prepare this form to reflect detailed estimates of Administration Expense, other than salaries, and the distribution to all programs administered by the Housing Authority.

The identification boxes in the upper right hand corner are self-explanatory.

1. **Legal Expense**: Enter in Column (2), Line 1 the estimated cost of legal service. Enter in Columns (3) through (6) the pro rata shares of amounts in Column (2) chargeable to programs administered by the Housing Authority.

**Special Note**: The amount entered on Form HUD-52564 should also include salaries of Staff Attorneys as shown on Form HUD-52566 and included on line for "Other" in the Summary of Staffing and Salary Data section of Form HUD-52573.

2. **Training**: List and provide justification for all training.

**Travel Expense**: Justification must be provided for travel.

3. **Trips to Conventions and Meetings**: Under Justification/Breakdown, List each convention and meeting to be attended by commissioners and staff, with the location. Enter the number of persons expected to attend and show the aggregate number of travel days and the estimated total cost of each trip including subsistence allowance, cost of transportation, and reimbursable miscellaneous expenses. Enter the sum of the total costs of all trips in Column (2). Enter in Columns (3) through (6) the pro rata shares of amounts in Column (2) chargeable to programs administered by the Housing Authority.

4. **Other Travel: Outside Area of Jurisdiction**: Enter in Column (2), Line 4 the estimated cost for travel by commissioners and staff, including subsistence, transportation, and reimbursable miscellaneous expenses. Follow instructions 3 above for columns (3) through (6).

5. **Other Travel: Within Area of Jurisdiction**: Enter in Column (2), Line 5 the estimated cost for travel, including fixed monthly allowances for reimbursement on a mileage basis for use of privately owned automobiles; and reimbursement for authorized use of local public transportation. Follow instructions 3 above for columns (3) through (6).

6. **Total Travel:** Sum Lines 3, 4, and 5 for Columns (2) through (7) and enter total for each on Line 6 "Total Travel."

7, thru 16. **Accounting, Auditing and Sundry**: Enter the estimated total for all programs in Column (2) for each item of expense in Lines 7 through 16. In Columns (3) through (6) enter the pro rata share of amounts shown in Column (2) chargeable to all programs administered by the Housing Authority.

14. **Administrative Services Contracts**: List and provide justification for all contracts (excluding accounting contracts).

16. **All Other Sundry Expense**: List all items identified under this expense.

18. **Total Administration Expense Other Than Salaries**:

Add the amounts on the following Lines:

| | |
|---|---|
| Line 1 | Legal Expense |
| Line 2 | Training |
| Line 6 | Total Travel |
| Line 7 | Accounting |
| Line 8 | Auditing |
| Line 17 | Total Sundry |

On Line 18 enter the appropriate totals in Columns (2) through (6). The amount shown in Column (3), lines 1, 2, 6, 7, 8, and 17, should be carried forward to Lines 150 through 200 of Form HUD-52564, Operating Budget.

# Operating Budget

Summary of Budget Data and Justifications

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp. 6/30/2001)

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

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| Name of Local Housing Authority | Locality | Fiscal Year Ending |
|---|---|---|
| | | |

## Operating Receipts

**Dwelling Rental.** Explain basis for estimate. For HUD-aided low-rent housing, other than Section 23 Leased housing, state amount of latest available total HA monthly rent roll, the number of dwelling units available for occupancy and the number accepted for the same month end. Cite HA policy revisions and economic and other factors which may result in a greater or lesser average monthly rent roll during the Requested Budget Year. For Section 23 Leased housing, state the number of units under lease, the PUM lease price, and whether or not the cost of utilities is included. If not included, explain method for payment at utility costs by HA and/or tenant.

**Excess Utilities.** (**Not** for Section 23 Leased housing.) Check appropriate spaces in item 1, and explain "Other". Under item 2, explain basis for determining excess utility consumption. For example, Gas; individual check meters at OH-100-1, proration of excess over allowances at OH-100-2, etc. Cite effective date of present utility allowances. Explain anticipated changes in allowances or other factors which will cause a significant change in the total amount of excess utility charges during the Requested Budget Year.

1. Utility Services Surcharged: Gas ☐ Electricity ☐ Other ☐ (Specify) _____

2. Comments

**Nondwelling Rent.** (**Not** for Section 23 Leased housing.) Complete Item 1, specifying each space rented, to whom, and the rental terms. For example: Community Building Space - Nursery School - $50 per month, etc. Cite changes anticipated during the Requested Budget Year affecting estimated Non-dwelling Rental Income.

| 1. Space Rented | To Whom | Rental Terms |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

2. Comments

**Interest on General Fund Investments.** State the amount of present General Fund investment and the percentage of the General Fund it represents. Explain circumstances such as increased or decreased operating reserves, dwelling rent, operating expenditures, etc., which will affect estimated average monthly total investments in the Requested Budget Year. Explain basis for distribution of interest income between housing programs.

**Other Comments On Estimates of Operating Receipts.** Give comments on all other significant sources of income which will present a clear understanding of the HA's prospective Operating Receipts situation during the Requested Budget Year. For Section 23 Leased housing explain basis for estimate of utility charges to tenants.

## Operating Expenditures

**Summary of Staffing and Salary Data**

Complete the summary below on the basis of information shown on form HUD-52566, Schedule of All Positions and Salaries, as follows:

**Column (1)** Enter the total number of positions designated with the corresponding account line symbol as shown in Column (1), form HUD-52566.

**Column (2)** Enter the number of equivalent full-time positions allocable to HUD-aided housing in management. For example: A HA has three "A-NT" positions allocable to such housing at the rate of 80%, 70%, and 50% respectively. Thus, the equivalent full-time positions is two. (8/10 + 7/10 + 5/10).

**Column (3)** Enter the portion of total salary expense shown in Column (5) or Column (6), form HUD-52566, allocable to HUD-aided housing in management, other than Section 23 Leased housing.

**Column (4)** Enter the portion of total salary expense shown in Column (5) or Column (10), form HUD-52566, allocable to Section 23 Leased housing in management.

**Column (5)** Enter the portion of total salary expense shown in Column (5) or Column (7), form HUD-52566, allocable to Modernization programs (Comprehensive Improvement Assistance Program or Comprehensive Grant Program).

**Cloumn (6)** Enter the portion of total salary expense shown in Column (5) or Column (9), form HUD-52566, allocable to Section 8 Programs.

**Note:** The number of equivalent full-time positions and the amount of salary expense for all positions designated "M" on form HUD-52566 must be equitably distrtibuted to account lines **Ordinary Maintenance and Operation—Labor, Extraordinary Maintenance Work Projects,** and **Betterments and Additions Work Projects**.

| Account Line | Total Number of Positions (1) | HUD-Aided Management Program | | | | |
|---|---|---|---|---|---|---|
| | | Equivalent Full-Time Positions (2) | Salary Expense | | | |
| | | | Management (3) | Section 23 Leased Housing Only (4) | Modernization Programs (5) | Section 8 Program (6) |
| Administration—Nontechnical Salaries[1] | | | | | | |
| Administration—Technical Salaries[1] | | | | | | |
| Ordinary Maintenance and Operation—Labor[1] | | | | | | |
| Utilities—Labor[1] | | | | | | |
| Other (Specify) (Legal, etc.)[1] | | | | | | |
| Extraordinary Maintenance Work Projects[2] | | | | | | |
| Betterments and Additions Work Projects[2] | | | | | | |

1 Carry forward to the appropriate line on HUD-52564, the amount of salary expense shown in Column (3) on the corresponding line above. Carry forward to the appropriate line on HUD-52564 (Section 23 Leased Housing Budget), the amount of salary expense shown in Column (4) on the corresponding line above.

2 The amount of salary expense distributed to Extraordinary Maintenance Work Projects and to Betterments and Additions Work Projects is to be included in the cost of each individual project to be performed by the HA Staff, as shown on form HUD-52567.

Specify all proposed new positions and all present positions to be abolished in the Requested Budget Year. Cite prior HUD concurrence in proposed staffing changes or present justification for such changes. Cite prior HUD concurrence in proposed salary increases for Administration Staff or give justification and pertinent comparability information. Cite effective date for current approved wage rates (form HUD-52158) and justify all deviations from these rates.

**Travel, Publications, Membership Dues and Fees, Telephone and Telegraph, and Sundry.** In addition to "Justification for Travel to Conventions and Meetings" shown on form HUD-52571, give an explanation of substantial Requested Budget Year estimated increases over the PUM rate of expenditures for these accounts in the Current Budget Year. Explain basis for allocation of each element of these expenses.

**Utilities.** Give an explanation of substantial Requested Budget Year estimated increases over the PUM rate of expenditures for each utility service in the Current Budget Year. Describe and state estimated cost of each element of "Other Utilities Expense."

**Ordinary Maintenance & Operation—Materials.** Give an explanation of substantial Requested Budget Year estimated increases over the PUM rate of expenditures for materials in the Current Budget Year.

**Ordinary Maintenance & Operation—Contract Costs.** List each ordinary maintenance and operation service contracted for and give the estimated cost for each. Cite and justify new contract services proposed for the Requested Budget Year. Explain substantial Requested Budget Year increases over the PUM rate of expenditure for Contract Services in the Current Budget Year. If LHA has contract for maintenance of elevator cabs, give contract cost per cab.

**Insurance.** Give an explanation of substantial Requested Budget Year estimated increases in the PUM rate of expenditures for insurance over the Current Budget Year. Cite changes in coverage, premium rates, etc.

**Employee Benefit Contributions.** List all Employee Benefit plans participated in. Give justification for all plans to be instituted in the Requested Budget Year for which prior HUD concurrence has not been given.

**Collection Losses.** State the number of tenants accounts receivable to be written off and the number and total amount of all accounts receivable for both present and vacated tenants as of the month in which the estimate was computed.

**Extraordinary Maintenance, Replacement of Equipment, and Betterments and Additions.** Cite prior HUD approval or give justification for each nonroutine work project included in the Requested Budget and for those for future years which make up the estimate on form HUD-52570. Justifying information incorporated on or attached to form HUD-52567 need not be repeated here.

**Contracts.** List all contracts, other than those listed on page 3 of this form under Ordinary Maintenance & Operation (OMO). Cite the name of the contractor, type of contract, cost of contract, and contract period. Justification must be provided for all contract services proposed for the Requested Budget Year (RBY). Explain substantial RBY increases over the PUM rate of expenditure for these contracts in the Current Budget Year.

## PHA/IHA Board Resolution

Approving Operating Budget or Calculation of Performance Funding System Operating Subsidy

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp. 6/30/2001)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

Acting on behalf of the Board of Commissioners of the below-named Public Housing Agency (PHA)/Indian Housing Authority (IHA), as its Chairman, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the Board's approval of (check one or more as applicable):

(date)

☐ Operating Budget Submitted on: _____

☐ Operating Budget Revision Submitted on: _____

☐ Calculation of Performance Funding System Submitted on: _____

☐ Revised Calculation of Performance Funding System Submitted on: _____

I certify on behalf of the: (PHA/IHA Name) _____ that:

1. All regulatory and statutory requirements have been met;
2. The PHA has sufficient operating reserves to meet the working capital needs of its developments;
3. Proposed budget expenditures are necessary in the efficient and economical operation of the housing for the purpose of serving low-income residents;
4. The budget indicates a source of funds adequate to cover all proposed expenditures;
5. The calculation of eligibility for Federal funding is in accordance with the provisions of the regulations;
6. All proposed rental charges and expenditures will be consistent with provisions of law;
7. The PHA/IHA will comply with the wage rate requirements under 24 CFR 968.110(e) and (f) or 24 CFR 905.120(c) and (d);
8. The PHA/IHA will comply with the requirements for access to records and audits under 24 CFR 968.110(i) or 24 CFR 905.120(g); and
9. The PHA/IHA will comply with the requirements for the reexamination of family income and composition under 24 CFR 960.209, 990.115 and 905.315.

I hereby certify that all the information stated within, as well as any information provided in the accompaniment herewith, is 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; 31 U.S.C. 3729, 3802)

| Board Chairman's Name (type) | Signature | Date |
|---|---|---|
| | | |

Previous edition is obsolete

form **HUD-52574** (10/95)
ref. Handbook 7575.1

[FR Doc. 02–29110 Filed 11–15–02; 8:45 am]
BILLING CODE 4210–33–C

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4734–N–68]**

### Notice of Submission of Proposed Information Collection to OMB: Requisition for Disbursement of Sections 202 and 811 Capital Advance/ Loan Funds

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* December 18, 2002.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0178) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax No. (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, an hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Requisition for disbursement of Sections 202 & 811 Capital Advance/Loan Funds.

*OMB Approval Number:* 2502–0187.

*Form Numbers:* HUD 92403–CA, HUD 92403–EH.

*Description of the Need for the Information and Its Proposed Use:* Owner entities submit requisitions periodically (generally monthly) during construction to obtain Section 202/811 capital advance/loan funds. This collection identifies the owner, project, type of disbursement, items covered, name of the depository, and account number.

*Respondents:* Not-for-profit institutions.

*Frequency of Submission:* On occasion, Monthly.

| | Number of respondents | Annual re-sponses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 664 | 9.5 | | 0.5 | | 3,168 |

*Total Estimated Burden Hours:* 3,168.

*Status:* Reinstatement, with change, of previously approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 12, 2002

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 02–29108 Filed 11–15–02; 8:45 am]
BILLING CODE 4210–72–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4572–D–28]**

### Revocation of Delegation of Authority to Execute Legal Instruments Pertaining to Section 312 Rehabilitation Loans

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Notice of Revocation of Delegation of Authority.

**SUMMARY:** This notice advises the public that the Secretary, on May 22, 2002, revoked the delegation of authority of the President of the Government National Mortgage Association (Ginnie Mae), to execute legal instruments pertaining to Section 312 loans, and to redelegate the authority to execute such legal instruments.

**FOR FURTHER INFORMATION CONTACT:** Mary Kolesar, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–2470 (this is not a toll free number). This number may be accessed via TTY by calling the Federal Information Relay Service a 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On May 28, 1997 (62 FR 28889), the Secretary delegated to the President, Ginnie Mae the authority to execute in the name of the Secretary certain written instruments relating to Section 312 Rehabilitation Loans, including but not limited to: Deeds of release, quit claim deeds and deeds of reconveyance; substitutions of trustees; compromises; write-offs; close outs; releases related to insurance policies; assignments or satisfactions of notes, mortgages, deeds of trust and other security instruments; and any other written instrument or document related to, or necessary for, servicing or collection of a Section 312 loan, including any such instrument related to Section 312 loan servicing-related property management and disposition functions that were not delegated to the Assistant Secretary for Housing. The May 28, 1997 delegation of authority also authorized the President of Ginnie Mae to redelegate this authority.

This notice advises the public that on May 22, 2002, the Secretary revoked the delegation of authority to the President, Ginnie Mae that was published on May 28, 1997 (62 FR 28889) and that

revocation of this delegation is published in today's **Federal Register**.

Dated: November 8, 2002.

**Aaron Santa Anna,**

*Assistant General Counsel for Regulations.*

[FR Doc. 02–29106 Filed 11–15–02; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4572–D–29]**

### Revocation of Delegation of Authority to Execute Legal Instruments Pertaining to Section 312 Rehabilitation Loans

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

**ACTION:** Notice of revocation of delegation of authority.

**SUMMARY:** In this notice, the Secretary revokes the delegation of authority delegated to the President of the Government National Mortgage Association (Ginnie Mae), to execute legal instruments pertaining to Section 312 loans, and to redelegate the authority to execute such legal instruments.

**EFFECTIVE DATE:** May 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mary Kolesar, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–2470 (this is not a toll free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On May 28, 1997 (62 FR 28889), the Secretary delegated to the President, Ginnie Mae the authority to execute in the name of the Secretary certain written instruments relating to Section 312 Rehabilitation Loans, including but not limited to: Deeds of release, quit claim deeds and deeds of reconveyance; substitutions of trustees; compromises; write-offs; close outs; releases related to insurance policies; assignments or satisfactions of notes, mortgages, deeds of trust and other security instruments; and any other 2 written instruments or documents related to, or necessary for, servicing or collection of a Section 312 loan, including any such instrument related to Section 312 loan servicing-related property management and disposition functions that were not delegated to the Assistant Secretary for Housing. The May 28, 1997 delegation of authority also authorized the President, Ginnie Mae, to redelegate this authority.

This notice published in today's **Federal Register** revokes the delegation of authority to the President, Ginnie Mae, that was published on May 28, 1997 (62 FR 28889). This action is necessary because the Office of Community Planning and Development's Section 312 loans have been sold and the Government National Mortgage Association (Ginnie Mae) is no longer involved in servicing Section 312 loans.

Today's **Federal Register** notice does not affect delegations of authority to the Assistant Secretary for Community Planning and Development and to the Assistant Secretary for Housing—Federal Housing Commissioner.

**Authority:** Section 312 of the Housing Act of 1964, 42 U.S.C. 1452b; 12 U.S.C. 1701g–5C; and section C, Delegation of Authority, 48 FR 49384, October 25, 1983; Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 22, 2002.

**Mel Martinez,**

*Secretary of Housing and Urban Development.*

[FR Doc. 02–29107 Filed 11–15–02; 8:45 am]

**BILLING CODE 4210–32–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–030–00–1020–24]**

### Mojave Southern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting location and time for the Mojave Southern Great Basin Resource Advisory Council (Nevada).

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Mojave Southern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion will include managers' reports of field office activities; an update on the Southern Nevada Public Land Management Act of 1998; and other topics the council may raise.

All meetings are open to the public. The public may present written and/or oral comments to the council. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations should contact Phillip Guerrero at (702) 515–5046.

*Date and Time:* The RAC will meet January 9 and 10, 2003, April 3 and 4, 2003, June 19–21, 2003, and September 4 and 5, 2003. Please contact Phillip Guerrero RAC coordinator for specific times and locations, as the meetings move throughout the year. Contact Mr. Guerrero at 702–515–5046.

**FOR FURTHER INFORMATION CONTACT:** Phillip L. Guerrero, Public Affairs Officer, BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas NV 89130–2301, or by phone at (702) 515–5046.

Dated: November 1, 2002.

**Phillip L. Guerrero,**

*Public Affairs Officer, Las Vegas Field Office.*

[FR Doc. 02–28899 Filed 11–15–02; 8:45 am]

**BILLING CODE 4310–HC–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–957–00–1420–BJ: GP03–0016]**

### Filing of Plats of Survey: Oregon/Washington

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, on August 15, 2002.

**Willamette Meridian**

*Oregon*

T. 28 S., R. 10 W., accepted May 29, 2002.
T. 1 N., R. 36 E., accepted June 21, 2002.
T. 4 S., R. 5 W., accepted June 28, 2002.
T. 40 S., R. 6 E., accepted July 23, 2002.
T. 30 S., R. 2 W., accepted July 24, 2002.
T. 1 S., R. 33 E., accepted July 24, 2002.

*Washington*

T. 3 N., R. 19 E., accepted August 1, 2002.

The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, on September 26, 2002.

*Oregon*

T. 1 N., R. 33 E., accepted September 23, 2002.
T. 1 S., R. 5 W., accepted September 23, 2002.
T. 3 S., R. 5 W., accepted September 23, 2002.
T. 25 S., R. 11 W., accepted September 23, 2002.
T. 28 S., R. 11 W., accepted September 23, 2002.
T. 30 S., R. 3 W., accepted September 23, 2002.
T. 31 S., R. 4 W., accepted September 23, 2002.

T. 39 S., R. 3 W., accepted September 23, 2002.
T. 40 S., R. 4 E., accepted September 23, 2002.

*Washington*

T. 28 N., R. 38 E., accepted August 28, 2002.
T. 28 N., R. 39 E., accepted August 28, 2002.

The plat of survey of the following described lands is scheduled to be officially filed in the Oregon State Office, Portland, Oregon, 30 calendar days from the date of this publication.

*Washington*

T. 4 N., R. 23 E., accepted October 2, 2002.

A copy of the plats may be obtained from the Oregon State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, (333 SW. 1st Avenue) PO Box 2965, Portland, Oregon 97208.

**Robert D. DeViney, Jr.,**

*Branch of Realty and Records Services.*

[FR Doc. 02–29125 Filed 11–15–02; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of an information collection (1010–0072).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 280, ''Prospecting for Minerals other than Oil, Gas, and Sulphur on the Outer Continental Shelf,'' and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

**DATES:** Submit written comments by December 18, 2002.

**ADDRESSES:** You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0072), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to E-mail your comments to MMS, the address is: *rules.comments@MMS.gov.* Reference Information Collection 1010–0072 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

**FOR FURTHER INFORMATION CONTACT:** Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy, at no cost, of the regulations that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:** *Title:* 30 CFR part 280, Prospecting for Minerals other than Oil, Gas, and Sulphur on the Outer Continental Shelf.

*OMB Control Number:* 1010–0072.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Section 1337(k) of the OCS Lands Act authorizes the Secretary ''* * * to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.'' An amendment to the OCS Lands Act (Pub. L. 103–426) authorizes the Secretary to negotiate agreements (in lieu of the previously required competitive bidding process) for the use of OCS sand, gravel, and shell resources for certain specified types of public uses. The specified uses will support construction of governmental projects for beach nourishment, shore protection, and wetlands enhancement; or any project authorized by the Federal Government.

Section 1340 states that ''* * * any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area.'' The section further requires that permits to conduct such activities may only be issued if it is determined that: the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and do not disturb a site, structure, or object of historical or archaeological significance.

Section 1352 further requires that certain costs be reimbursed to the parties submitting required G&G information and data. Under the Act, permittees are to be reimbursed for the costs of reproducing any G&G data required to be submitted. Permittees are to be reimbursed also for the reasonable cost of processing geophysical information required to be submitted when processing is in a form or manner required by the Director and is not used in the normal conduct of the business of the permittee.

Regulations implementing these responsibilities are under 30 CFR part 280. On July 17, 2002, MMS published final regulations (67 FR 46855) with an effective date of August 16, 2002. Responses are mandatory or required to obtain or retain a benefit. No questions of a ''sensitive'' nature are asked. The MMS protects information considered proprietary according to 30 CFR 280.70 and applicable sections of 30 CFR parts 250 and 252, and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2).

MMS OCS Regions collect information required under part 280 to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the Government for certain costs. Respondents are required to submit form MMS–134 to provide the information necessary to evaluate their qualifications. The information is necessary for MMS to determine if the applicants for permits or filers of notices meet the qualifications specified by the Act. The MMS uses the information collected to understand the G&G characteristics of hard mineral-bearing physiographic regions of the OCS. It aids MMS in obtaining a proper balance among the potentials for environmental damage, the discovery of hard minerals, and adverse impacts on affected coastal States. Information from permittees is necessary to determine the propriety and amount of reimbursement.

*Frequency:* On occasion, annual; and as required in the permit.

*Estimated Number and Description of Respondents:* Approximately 1 permittee, 1 notice filer, and 1 adjacent State.

*Estimated Reporting and Recordkeeping ''Hour'' Burden:* The estimated annual ''hour'' burden for this information collection is a total of 108 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

| Citation 30 CFR part 280 | Reporting and recordkeeping requirement | Hour burden | Average number annual responses | Annual burden hours |
|---|---|---|---|---|
| 10; 11(a); 12; 13; Permit Forms | Apply for permit (form MMS–134) to conduct prospecting or G&G scientific research activities, including prospecting/scientific research plan and environmental assessment or required drilling plan. | 8 | 1 permit | 8 |
| 11(b); 12(c) | File notice to conduct scientific research activities related to hard minerals, including notice to MMS prior to beginning and after concluding activities. | 8 | 1 notice | 8 |
| 21(a) | Report to MMS if hydrocarbon/other mineral occurrences or environmental hazards are detected or adverse effects occur. | 1 | 1 report | 1 |
| 22 | Request approval to modify operations | 1 | 1 request | 1 |
| 23(b) | Request reimbursement for expenses for MMS inspection. | 1 | 1 request | 1 |
| 24 | Submit status and final reports quarterly or on specified schedule and final report. | 8 | 4 reports | 32 |
| 28 | Request relinquishment of permit | 1 | 1 relinquish | 1 |
| 31(b); 73(a), (b) | Governor(s) of adjacent State(s) submission to MMS: Comments on activities involving an environmental assessment; request for proprietary data, information, and samples; and disclosure agreement. | 1 | 1 submissions | 1 |
| 33, 34 | Appeal penalty, order, or decision—burden covered under 1010–0121 | | | 0 |
| 40; 41; 50; 51; Permit Forms | Notify MMS and submit G&G data/information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results, analyses, descriptions, etc. | 4 | 2 submissions | 8 |
| 42(b); 52(b) | Advise 3rd party recipient of obligations. Part of licensing agreement between parties; no submission to MMS | | | 0 |
| 42(c), 42(d); 52(c), 52(d) | Notify MMS of 3rd party transactions | 1 | 1 notice | 1 |
| 60; 60(a) | Request reimbursement for costs of reproducing data/information & certain processing costs. | 20 | 2 requests | 40 |
| 72(b) | Submit in not less than 5 days comments on MMS intent to disclose data/information. | 1 | 1 response | 1 |
| 72(d) | Contractor submits written commitment not to sell, trade, license, or disclose data/information. | 1 | 1 submission | 1 |
| Part 280 | General departure and alternative compliance requests not specifically covered elsewhere in part 280 regulations. | 2 | 1 request | 2 |
| Permit Forms | Request extension of permit time period | 1 | 1 extension | 1 |
| Permit Forms | Retain G&G data/information for 10 years and make available to MMS upon request. | 1 | 1 recordkeeper | 1 |
| Total Hour Burden | | | 21 | 108 |

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* We have identified no paperwork ''non-hour cost'' burdens associated with the collection of information.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the

accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on August 6, 2002, we published a **Federal Register** notice (67 FR 50895) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.80 (formerly § 280.0) provides the OMB control number for the information collection requirements imposed by the 30 CFR part 280 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 18, 2002.

*Public Comment Policy:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the 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.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: October 30, 2002.

**John V. Mirabella,**

*Acting Chief, Engineering and Operations Division.*

[FR Doc. 02–29157 Filed 11–15–02; 8:45 am]

**BILLING CODE 4310–MR–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–752 (Review)]**

### Crawfish Tail Meat From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on crawfish tail meat from China.

**SUMMARY:** The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on crawfish tail meat from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** November 4, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

**SUPPLEMENTARY INFORMATION:** On November 4, 2002, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (67 FR 50459, August 2, 2002) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 13, 2002.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 02–29221 Filed 11–15–02; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. TA–421–1]**

### Pedestal Actuators

#### Determination

On the basis of information developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 421(b)(1) of the Trade Act of 1974,[1] that pedestal actuators [2] from the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products.[3]

#### Proposals With Respect to Remedy [4]

Vice Chairman Jennifer A. Hillman and Commissioner Marcia E. Miller

[1] 19 U.S.C. 2451(b)(1).

[2] For purposes of this investigation, pedestal actuators consist of electromechanical linear actuators, imported with or without motors, or as part of scooter subassemblies, all the foregoing used for lifting and lowering, or for pushing or pulling. The products under investigation include any subassembly of pedestal actuator parts and components. Pedestal actuators are powered by fractional horsepower DC or AC motors, which drive a ball bearing screw or acme screw through a gear reducer to convert rotary to linear motion. The products are designed for flat or base mounting, have telescoping members, with bearings or bearing surfaces, and rigidly support the load and provide anti-rotation. Pedestal actuators are provided for in subheadings 8483.40.50 and 8483.40.80 and in heading 8501 of the Harmonized Tariff System of the United States.

[3] Chairman Deanna Tanner Okun and Commissioner Lynn M. Bragg make a negative determination.

[4] Chairman Deanna Tanner Okun and Commissioner Lynn M. Bragg, having made

Continued

propose that the President impose a quantitative restriction for a three-year period on imports of the subject pedestal actuators from China, in the amount of 5,626 units in the first year; 6,470 units in the second year; and 7,440 units in the third year.

Commissioner Stephen Koplan proposes that the President impose a quantitative restriction on pedestal actuators imported into the United States from China in the amount of 4,425 units in the first year; 4,514 units in the second year; and 4,604 units in the third year.

The Commissioners find that the respective actions that they propose are necessary to remedy the market disruption found to exist.

**Background**

Following receipt of a petition filed on August 19, 2002 on behalf of Motion Systems Corporation, the Commission instituted investigation No. TA–421–1, Pedestal Actuators From China, under section 421 of the Trade Act of 1974 to determine whether pedestal actuators from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing to be held in connection therewith was given by posting a copy of the notice on the Commission's Web site (*www.usitc.gov*) and by publishing the notice in the **Federal Register** of August 26, 2002 (67 FR 54822). The hearing was held on October 1, 2002 in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination to the President and U.S. Trade Representative on October 18, 2002; it transmitted its remedy proposals to the President and U.S. Trade Representative on November 7, 2002. The views of the Commission are contained in USITC Publication 3557 (November 2002), entitled Pedestal Actuators from China: Investigation No. TA–421–1.

By order of the Commission.

Issued: November 13, 2002.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 02–29220 Filed 11–15–02; 8:45 am]

**BILLING CODE 7020–02–P**

negative determinations regarding market disruption, were not eligible to vote on remedy.

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Immigration and Naturalization Service, DOJ.

**ACTION:** 30-Day Notice of Information Collection Under Review: Inspection of Persons Applying for Admission; Transit Without Visa (TWOV) and International-to-International Agreements; Liquidated Damages.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 28, 2002 at 67 FR 55276, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 18, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a current information collection.

(2) *Title of the Form/Collection:* Inspection of Persons Applying for Admission; Transit Without Visa (TWOV) and International-to-International Agreements; Liquidated Damages.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–19). Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The Service will use the data collected by the carrier to query the Interagency Border Inspection System (IBIS) to electronically access manifest and query results in advance of each flight's arrival. This information collection facilitates rapid inspection at ports-of-entry.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 400 carrier agreements at 5 hours per response and 1,500,000 queries at 1 minute (.016 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 26,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick

Henry Building, Suite 1600, Washington, DC 20530.

Dated: November 7, 2002.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 02–29189 Filed 11–15–02; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Immigration and Naturalization Service, DOJ.

**ACTION:** 30-Day Notice of Information Collection Under Review: Application to Replace Alien Registration Card; Form I–90.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 4, 2002 at 67 FR 56592, allowing for a 60-day public review and comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 18, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to Replace Alien Registration Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–90. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Not-for-profit institutions. The information collected will be used by the INS to determine eligibility for an initial Alien Registration Card, or to replace a previously issued card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 410,799 responses at 55 minutes (.916) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 376,292 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: November 7, 2002.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 02–29190 Filed 11–15–02; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 60-day notice of information collection under review: New collection; 2002 Census of Publicly Funded Forensic Crime Laboratories.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 17, 2003.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cynthia J. Schwimer, Comptroller, 202–307–0623, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information**

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* 2002 Census of Publicly Funded Forensic Crime Laboratories.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CFCL–1, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal. Other: None. This information collection is a census of public crime laboratories that perform forensic analyses on criminal evidence. The information will provide statistics on laboratories' capacity to analyze forensic crime evidence, the number, types, and sources of evidence received per year, the number, types, and cost of analyses completed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 400 respondents will complete a 1 hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the data collection is 400 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20004.

Dated: November 13, 2002.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 02–29203 Filed 11–15–02; 8:45 am]

**BILLING CODE 4410–18–M**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Labor Research Advisory Council; Notice of Meetings and Agenda

The Fall meetings of committees of the Labor Research Advisory Council will be held on December 9, 10, and 11, 2002. All of the meetings will be held in the Conference Center, of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Monday, December 9, 2002 9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 9

1. Review of the new Job Openings and Labor Turnover Survey (JOLTS) data.

2. Review of the new quarterly Covered Employment and Wages (CEW, or ES–202) data release.

3. Review of past and current approaches, and discussion of possible future approaches to benchmarking State and area labor force estimates to the Current Population Survey (CPS).

4. Review of the estimated impact of Census 2000 population weights and new race/ethnicity standards on CPS estimates.

5. Topics for next meeting.

1:30 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Room 9

1. 2001 Census of Fatal Occupational Injuries Briefing.

2. Hispanic Workers in the United States, an Analysis of Employment Distribution, Fatal Occupational Injuries, and Non-Fatal Occupational Injuries and Illnesses (Paper prepared for the National Academy of Sciences).

3. Follow-Back Surveys.

a. Respiratory chemical disease agents.

b. Workplace violence.

c. Truck Drivers.

4. Analysis of New Data on Hours at Work from 2002 Recordkeeping Change.

5. Internet data collection.

6. Other Survey of Occupational Injuries and Illnesses changes and updates

7. Upcoming publications

8. Budget update

9. Topics for next meeting

Tuesday, December 10, 2002 *9:30 a.m.—Committee on Compensation and Working Conditions—Meeting Room 9*

1. Contract expirations and work stoppages.

2. Discussion of paper on hours of work and paid time off.

3. Current data on Family and Medical Leave.

4. New data releases from the BLS compensation office.

5. New business.

6. Topics for next meeting.

*1:30 p.m.—Committee on Prices and Living Conditions—Meeting Room 9*

1. Analysis of the behavior of the new, superlative Consumer Price Index (CPI) that the Bureau first released this past August.

2. Discussion of efforts to adjust prices of telecommunications equipment for quality change in the Producer Price Index.

Wednesday, December 11, 2002 *9:30 a.m.—Committee on Productivity, Technology and Growth—Meeting Room 9*

1. Review of the assumptions underlying the aggregate economic projections

2. Revisions to major sector productivity series

3. Topics for next meeting

*Committee on Foreign Labor Statistics—Meeting Room 9*

1. International Comparisons of Hours Worked.

2. Technical cooperation activities.

3. Topics for next meeting.

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on 202–691–5970.

Signed at Washington, DC, this 8th day of November, 2002.

**Kathleen P. Utgoff,**

*Commissioner.*

[FR Doc. 02–29104 Filed 11–15–02; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No. D–10995, *et al.*]**

### Proposed Exemptions; A Northern Trust Company and Affiliates

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions,

unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffittb@pwba.dol.gov''*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**A Northern Trust Company and Affiliates; Located in Chicago, Illinois**

[Application No. D–10995]

**Proposed Exemption**

*Section I—Exemption for In-Kind Redemption of Assets*

If the proposed exemption is granted, the restrictions of section 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply,[1] to the in-kind redemption (the Redemption) by the Northern Trust Company Thrift-Incentive Plan (the Plan) (the Applicant) of shares (the Shares) of proprietary mutual funds currently offered by or offered in the future by investment companies for which the Northern Trust Company (Northern) or an affiliate thereof provides investment advisory and other services (the Mutual Funds), provided that the following conditions are met:

(A) The Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemption (other than customary transfer charges paid to parties other than Northern and any affiliates of Northern (Northern Affiliates);

(B) The assets transferred to the Plan pursuant to the Redemptions consist entirely of cash and Transferable Securities. Notwithstanding the foregoing, Transferable Securities which are odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the Plan receives a pro rata portion of the securities of the Mutual Fund upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of 3 p.m. Chicago time (local time for the closing of the exchanges) on the same day in accordance with Rule 2a–4 under the Investment Company Act of 1940, as amended (''1940 Act'') and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of Northern and Northern Affiliates);

(D) Northern or any affiliates thereof, does not receive any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with any redemption of the Shares;

(E) Prior to a Redemption, Northern provides in writing to an independent fiduciary, as such term is defined in Section II (an Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written authorization for such Redemption to Northern, such authorization being terminable at any time prior to the date of Redemption without penalty to the Plan, and such termination being effectuated by 3 p.m. Chicago time following the date of receipt by Northern of written or electronic notice regarding such termination (unless circumstances beyond the control of Northern delay termination for no more than one additional business day);

(G) Before authorizing a Redemption, based on the disclosures provided by the Mutual Fund to the Independent Fiduciary, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the Plan, and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties, and that the Redemption is in the best interest of the Plan and its participants and beneficiaries;

(H) Not later than thirty (30) business days after the completion of a Redemption, the relevant Fund will provide to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) The identity (and related aggregate dollar value) of each security provided to the Plan pursuant to the Redemption, including each security valued in accordance with Rule 2a–4 under the Investment Company Act of 1940, as amended (''1940 Act'') and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of Northern and Northern Affiliates);

[1] Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(iii) The current market price of each security received by the Plan pursuant to the Redemption, and

(iv) The identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Mutual Fund at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing;

(K) Each of the Plan's dealings with: the Mutual Funds, the investment advisors to the Mutual Funds (the Investment Advisers), the principal underwriter for the Mutual Funds, or any affiliated person thereof, are on a basis no less favorable to the Plan than dealings between the Mutual Funds and other shareholders holding shares of the same class as the Shares;

(L) Northern will maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Northern, the records are lost or destroyed prior to the end of the six year period, (ii) no party in interest with respect to the Plan other than Northern shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by paragraph (M) below;

(M)(1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the Plan or any duly authorized representative of such fiduciary, (iii) any participant, beneficiary, or union employee covered by the Plan or duly authorized representative of such participant, beneficiary, or union employee, (iv) any employer whose employees are covered by Plan and any employee organization whose members are covered by such Plan.

(2) None of the persons described in paragraphs (M)(1)(ii), (iii) and (iv) shall be authorized to examine trade secrets of Northern or the Mutual Funds, or commercial or financial information which is privileged or confidential; and

(3) Should Northern or the Mutual Funds refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (2) above, Northern shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

*Section II—Definitions*

For purposes of this proposed exemption,

(A) The term ''affiliate'' means:

(1) Any person (including corporation or partnership) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(B) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(C) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Mutual Fund's prospectus and statement of additional information, and other assets belonging to the Mutual Fund, less the liabilities charged to each such Mutual Fund, by the number of outstanding shares.

(D) The term ''Independent Fiduciary'' means a fiduciary who is: (i) Independent of and unrelated to Northern and its affiliates, and (ii) appointed to act on behalf of the Plan with respect to the in-kind transfer of assets from one or more Mutual Funds to or for the benefit of the Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Northern if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Northern, (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; except that an independent fiduciary may receive compensation from Northern in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision, and (iii) more than 2 percent (2%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by Northern and its affiliates in the fiduciary's current tax year.

(E) The term ''Transferable Securities'' shall mean securities (1) for which market quotations are readily available (as determined under in Rule 2a–4 of the 1940 Act) and (2) which are not: (i) Securities which, if distributed, would require registration under the 1933 Act: (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Mutual Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) which are not readily distributable; (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and (vi) securities subject to ''stop transfer'' instructions or similar contractual restrictions on transfer.

(F) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of ERISA (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

**Summary of Facts and Representations**

1. Northern Trust Corporation (Holding Company) is a bank holding company headquartered in Chicago,

Illinois and organized as a Delaware corporation. Northern, Northern Trust Investments, Inc. (NTI), and Northern Trust Global Investments-Europe (NTGI) are each direct or indirect wholly-owned subsidiaries of the Holding Company. NTI is registered under the Investment Advisers Act of 1940 (the Advisers Act).

2. Northern is the trustee of the Trust. The Plan is a defined contribution profit sharing plan and includes a section 401(k) arrangement maintained by Northern for certain current and former employees of Northern and Northern Affiliates. As of December 31, 2001, the Plan had approximately 8,817 participants and $854,420,878 in assets.

3. The Plan's Investment Committee (the Committee) determined that the Plan would benefit from the investment of the Trust's assets in certain mutual fund portfolios organized within Northern Institutional Funds (NIF), which is a Delaware business trust and an open-end diversified investment company registered under the 1940 Act. Both NTI and NTGI act as investment advisors of mutual funds offered by NIF.

4. At the time, the Committee considered the Mutual Funds to be an appropriate vehicle for diversifying the Plan's assets. In addition, the Committee determined that investment in the Mutual Funds by the Plan would allow the Plan to continue to use certain in-house investment management services which otherwise might not have been available. As a result, the Committee decided to invest the Plan's assets in the Mutual Funds in accordance with Prohibited Transaction Exemption 77–3 (PTE 77–3, 42 FR 18734 (1977)).[2]

5. One of the mutual funds in which the Plan is currently invested is the Northern Institutional Equity Index Portfolio (S&P 500 Index Portfolio). As of October 30, 2002 the Plan held approximately 18.75 percent of the shares of this Fund. The Committee now believes that the S&P 500 Fund under the Collective Trust is a more appropriate equity index option for the participants under the Plan than the S&P 500 Index Portfolio.[3] Northern estimates that once the Plan's *pro rata* share of the securities the S&P Index Portfolio are used to purchase shares in the S&P 500 fund under the Collective Trust, the Plan's interest in the S&P 500 fund under the Collective Trust will be less than 2 percent.

6. The Applicant represents that the Redemption, as proposed, is the appropriate means of effectuating this shift in investment strategy. In this regard, the Applicant represents that effecting a redemption of the Shares for cash, as provided for in PTE 77–3, followed by the reinvestment of such cash in securities similar to the securities underlying the redeemed Shares, would cause the Plan to incur certain costs, including potentially large brokerage expenses. As a result, the Committee represents that the proposed Redemption, being on an in-kind basis having no associated brokerage commission or other fees or expenses (other than customary transfer charges paid to parties other than Northern Affiliates), is a cost-effective means of implementing the investment strategy sought by Northern.[4]

7. If this proposed exemption is granted, Northern anticipates the Redemption of certain Shares offered by the S&P 500 Index Portfolio in the near future. This Mutual Fund is advised by NTI. Northern represents that it is possible that the Plan fiduciaries may at a later date determine that it is in the best interest of the Plan and its participants and beneficiaries to redeem the Plan's interest in other Mutual Funds for which Northern, NTI, NTGI or an affiliate of Northern provides investment advisory services. Consequently, in the event that this proposed exemption is granted, and to the extent that all of the terms and conditions of the exemption, as granted, are met, the relief requested herein shall apply to any such future redemption.[5]

8. The Applicant states that the proposed Redemption involves ministerial transactions to be performed in accordance with pre-established objective procedures. As a result, the Applicant represents that the proposed transactions do not permit the trustee or any affiliate of the trustee to use its influence or control to acquire particular securities from the Mutual Funds. In addition, the Applicant states that all Mutual Fund Shares are offered and sold exclusively through the use of prospectuses and materials provided pursuant to the requirements of the Securities Act of 1933 and the 1940 Act and the rules and regulations thereunder.

9. The Applicant states that, to the extent possible, the Plan will transfer Shares to a Mutual Fund in return for a proportionate share of the securities held by such Mutual Fund. According to the Applicant, the Plan will receive only cash and Transferable Securities pursuant to any Redemption. In this regard, each Transferable Security subject to a Redemption will be

[2] The Applicant has not requested exemptive relief with respect to any investment in the Mutual Funds by the Plan. The Applicant notes that the Plan may acquire or redeem shares in the Mutual Funds pursuant to PTE 77–3. In this regard, PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department is expressing no opinion in this proposed exemption regarding whether any of the transactions with the Mutual Funds by the Plan is covered by PTE 77–3. Also, the Applicant is not requesting any exemptive relief for the subsequent reinvestment of the Transferable Securities in a collective trust fund maintained by Northern (or one of its affiliates). In this regard, section 408(b)(8) of ERISA allows for the purchase of an interest in such a fund maintained by a party in interest which is a bank or at trust company if the requirements of section 408(b)(8) are satisfied. The Department is expressing no opinion in this proposed exemption regarding whether the reinvestment of the Transferable Securities is covered by section 408(b)(8) of ERISA.

[3] Collective investment funds have historically been valued monthly or quarterly and have not permitted daily additions or transfers. In addition, it has historically been difficult to transmit pricing information on collective investment funds to investors. Recently, the assets in the Collective Trust have been valued daily. Further, investors directing investments into the Collective Trust are able to transfer among investments on any trading day and are able to access daily pricing information using a toll-free telephone number. Because of these developments, the advantages of using a mutual fund investment option have dissipated when a comparable collective fund investment is available. Finally, the Plan will benefit financially from the change in investment because (i) unlike the S&P 500 Index portfolio under the Mutual Fund, the S&P 500 Index Fund in the Collective Trust charges no fund-level management fees and (ii) at this time, Northern does not plan to charge the Plan any account-level management fees in connection with its investment in the S&P 500 Index Fund in the Collective Trust.

[4] The Applicant represents that should there be additional in-kind transactions under this exemption involving the mutual funds advised by Northern or its affiliates, such in-kind transactions will only be effectuated where the independent fiduciary concludes that an in-kind transactions is in the best interests of the plan. Should the situation arise where the mutual fund intends to distribute securities rather than cash and the Plan intends to sell the majority of the securities once distributed, Northern will assume responsibility for any additional costs incurred as a result of this in-kind distribution and subsequent sale of securities from the mutual fund advised by Northern or its affiliates.

[5] As previously noted, the Department is expressing no opinion regarding the applicability of PTE 77–3 to the acquisition of the Shares by the Plan. In addition, the Department is expressing no opinion as to the applicability of section 404 of ERISA to the acquisition of the Shares by the Plan. In this regard, the Department directs the Applicant's attention to an advisory opinion issued to Federated Investors (Advisory Opinion 98–06A July 30, 1998), in which the Department noted that ''if the decision by a plan fiduciary to enter into a transaction is not ''solely in the interest'' of the plan's participants and beneficiaries, *e.g.*, if the decision is motivated by the intent to generate seed money that facilitates the marketing of the mutual fund, then the plan fiduciary would be liable for any loss resulting from such breach of fiduciary responsibility, even if the acquisition of mutual fund shares was exempt by reason of PTE 77–3.''

transferred in-kind to the Plan, except those permitted to be distributed in cash. However, assets that are not Transferable Securities will not be distributed, but the Plan's proportionate interest in these assets will be transferred in cash. The Applicant states that the proposed Redemption will be therefore carried out, to the extent possible, on a pro rata basis as to the number and kind of securities transferred to the Plan.[6] Notwithstanding the foregoing, cash may be paid for securities not amounting to round lots (including the amount of any fixed income security that is less than the minimum amount permitted to be traded[7]) or which would not amount to round lots if included in the distribution, fractional shares and accruals on such securities.

10. The Applicant represents that the Board of Trustees of the Mutual Funds has adopted a procedure for the distribution of in-kind redemption requests in conformance with the no action letter issued by the staff of the Securities and Exchange Commission in Signature Financial Group Inc.[8] The Applicant represents that pricing methodology included in this procedure complies with section 2a–4 of the 1940 Act.

11. With the exception noted in footnote 9, the Applicant represents that, for purposes of the Redemption, the values of the Mutual Fund securities will be determined based on the current market price of such securities as of 3:00 p.m. Chicago time on the date of the Redemption request (the Valuation Date). The value of the securities in each Mutual Fund will be determined by using the then-existing valuation procedures established by the Board of Trustees for the Mutual Fund that will comply with Rule 2a–4 of the 1940 Act. In this regard, the Applicant represents that the ''current market price'' for exchange-traded securities held by the Mutual Funds are generally determined by using the closing prices of the security on its ''primary exchange'' for that trading day.[9]

12. The Applicant represents that, not later than 30 business days after completion of a Redemption, the Mutual Funds will confirm in writing to the Independent Fiduciary the following: (i) The number of Mutual Fund shares held by the Plan immediately before the Redemption (and the related per Share net asset value and the aggregate dollar value of the shares held); (ii) the identity (and related aggregate dollar value) of each security provided to the Plan upon the Redemption as described above; (iii) the price of each such security for purposes of the Redemption: and (iv) the identity of each pricing service or market-maker consulted in determining the value of such securities. In accordance with the conditions of this proposed exemption, similar procedures will be implemented with respect to any future Redemption of Shares of the Mutual Funds by an employee benefit plan maintained by Northern for the benefit of certain of its employees or the employees of its affiliates.

13. Northern represents that Consulting Fiduciaries, Inc. (CFI), a registered investment adviser under the 1940 Act, has confirmed its independence from Northern and is qualified to serve as an independent fiduciary as that term is defined in Section II. CFI, in turn, represents that it understands and will accept the duties, responsibilities and liabilities in acting as a fiduciary under the Act for the Plan. CFI represents that, if it is appointed as the Independent Fiduciary, it will be responsible for: (i) Analyzing, from an investment perspective, the fairness and reasonableness of the methodology used with respect to the Redemption, (ii) giving its opinion as to the fairness and reasonableness of such methodology, as compared with a redemption for cash and subsequent reinvestment of such cash, based on such analysis. This determination and opinion is set forth in a written report dated April 1, 2002 (the ''Report''). Specifically, in the Report, CFI concludes that:

(a) the Redemption would likely avoid certain transaction costs otherwise incurred in a cash redemption; [10]

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[6] According to NTI, the securities actually transferred from the Mutual Fund will have a relative aggregate income tax basis which is approximately equal to (within 1%) the relative aggregate income tax basis of the securities which are not being distributed in the proposed Redemption.

[7] The minimum tradeable denomination of any fixed income security is determined by the issuer or by the depository company appointed by the issuer to custody the indicia of ownership of the fixed income security. The minimum tradeable denomination is an attribute of any particular bond issue, and neither the Mutual Funds nor the Plan has any discretion to modify it. The typical minimum tradeable denomination of a fixed income security ranges from $1,000 to $100,000.

[8] In the no action letter to Signature Financial Group, Inc., the Division of Investment Management of the SEC states that it will not recommend enforcement action pursuant to section 17(a) of the Investment Company Act of 1940 for certain in-kind distributions of portfolio securities to an affiliate of a mutual fund. Funds seeking to use this ''safe harbor'' must value the securities to be distributed to an affiliate in an in-kind distribution ''in the same manner as they are valued for purposes of computing the distributing fund's net asset value.'' The Applicant represents that, the Mutual Funds having adopted procedures in accordance with the Signature Financial Letter for use in affiliate transactions, and the Applicant must follow those procedures for transactions with its in-house plans, as these in-house plans are affiliates of the Mutual Funds. The Department agreed to the use of procedures consistent with the Signature Financial Letter for determining the value of the securities in this in-kind transaction, with the limitations described herein.

The Signature Financial Letter does not address the marketability of securities distributed in-kind. The range of securities distributed pursuant to this ''safe harbor'' may therefore be broader than the range of securities covered by SEC Rule 17a–7, 17 CFR 270.17a–7. In granting past exemptive relief with respect to in-kind transactions involving mutual funds, the Department has required that the securities being distributed in-kind fell within Rule 17a–7. One of the requirements of Rule 17a–7 is that the securities are those for which ''market quotations are readily available.'' SEC Rule 17a–7(a). The Department has determined, and the Applicant agrees, that exemptive relief in this case will also be limited to in-kind distribution of securities for which market quotations are readily available. The value of any other securities will be paid to the plan in cash. Under the exemption requested by the Applicant, the Plan will receive only securities for which market quotations are readily available (as determined pursuant to the Funds' procedures described above) or cash. The Applicant represents that, although the Signature Financial Letter does not necessarily require pro rata distributions, the procedures adopted by the Mutual Funds do require pro rata distributions for the transactions contemplated herein.

[9] The pricing procedures for the S&P 500 Index in the Mutual Fund and the S&P 500 Portfolio under the Collective Trust are identical, and the same prices are used daily to calculate the net asset value for both funds. For an exchange-traded security, Northern uses the closing price of the security on its ''primary exchange'' for that trading day, requesting such information from independent third-party vendors. Non-exchange traded securities, which would be bonds not traded on an exchange or the NASDAQ National Market System, are generally valued at the most recent quoted bid price. However, the independent pricing systems may use ''evaluated prices'' if they believe such prices more accurately reflect the fair market value of these securities, taking into account such factors as prices, yields, maturities, call features, ratings, institutional size, trading in similar groups of securities and developments related to specific securities. Northern's primary pricing vendor for the securities in S&P 500 indices is Interactive Data Systems, Inc. If timely information is not received from IDSI, Northern's price determination defaults to a secondary pricing vendor, *e.g.*, J. J. Kenny Co., Inc. Northern generally receives pricing information from vendors by 3:45 p.m. Chicago time on each trading day.

[10] With respect to the Redemption involving S&P 500 Index securities, CFI has concluded that the underlying securities are expected to be identical since the two investment funds are essentially identical and the in kind approach avoids the realization of trading commissions and exposure to market fluctuation. If the Northern proposes a future Redemption, it will request that the Independent Fiduciary determine whether the distributed securities will be appropriate investments in the collective investment trust into which the Plan will be investing. The Applicant represents that if the Independent Fiduciary determines that all of the distributed securities will be appropriate investments into the collective investment trust into which the Plan will invest, no further action will be required. If the Independent Fiduciary determines that some of the distributed securities will not be appropriate investments into

(b) The Shares and cash associated with the proposed Redemption will be calculated based on the Mutual Fund's respective statements of assets and liabilities, valued in accordance with the pricing procedures established by the Board of Trustees. In this regard, CFI has reviewed a sample spreadsheet developed by Northern to calculate the exact number of Shares and the residual cash to be transferred, and believes the information provided to be conceptually and mathematically correct;

(c) All securities held by the Mutual Funds, other than the non-Transferable Securities, are qualifying securities;

(d) The proposed transactions would be in compliance with the Plan's investment guidelines;

(e) The methodology used to conduct the Redemptions would be comparable to and no less favorable than a similar in-kind redemption reached at arms' length between unaffiliated parties. The Independent Fiduciary represents that, if this proposed exemption is granted and the Redemption is thereafter undertaken, it will be responsible for updating its findings and opinions to confirm whether such findings and opinions are applicable as of the anticipated date(s) of the Redemption. In this regard, CFI states that it will review the Redemption and confirm in writing whether such Redemption was effectuated consistent with the required criteria and procedures set forth in the Report. In carrying out this duty, CFI represents that, if the proposed exemption is granted and the Redemption occurs, it will conduct a post-exemption review, which will include: (i) Reviewing the Plan's current investment policy guidelines, (ii) reviewing the Plan's investment portfolio and the Mutual Fund's assets as of the most recent common date for which such data is available, (iii) estimating whether the Excluded Assets are consistent with the types of securities so defined, and whether the amount of these securities might be material, and (iv) ascertaining whether the policies, procedures and controls established for effectuating the transfers remain unchanged. Moreover, CFI represented that it will conduct a post-transfer review to provide an additional safeguard to the Plan. In this regard, CFI will evaluate and test whether the transfer was effectuated consistent with the required criteria and procedures and confirm this in writing. Consistent with this, CFI represents that if the exemption is granted and the redemption occurs, it will update the findings and opinions as set forth in the Report so as to confirm whether they still apply as of the expected date(s) of the transfer(s). CFI will provide its opinion that the proposed Redemption methodologies are fair to the Plan and reasonable in all material respects. In addition, CFI will state that the proposed Redemption is in the interest of the participants and beneficiaries of the Plan since the anticipated costs savings is likely to be material. CFI will conclude that if the exemption is granted, and all other essential facts and circumstances of the Redemption remain materially unchanged at the time Northern seeks to effectuate the Redemption, it will issue a favorable recommendation regarding the commencement of such effectuation.

14. In summary, it is represented that the proposed Redemption satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(A) The Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemption (other than customary transfer charges paid to parties other than Northern and Northern Affiliates);

(B) The assets transferred to the Plan pursuant to the Redemption consist entirely of cash and Transferable Securities. If the proposed transaction from one of the Mutual Funds does not consist entirely of Transferable Securities, the cash distributed would include an amount equal to the Plan's value of assets that are not Transferable Securities and the Plan's value of certain Transferable Securities permitted to be distributed in cash.

(C) With certain exceptions defined below, the Plan receives a pro rata portion of the securities of the Mutual Fund upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of 3:00 p.m. Chicago time on the same day in accordance with the then-existing procedures established by the Board of Trustees of the Mutual Fund which will comply with Rule 2a–4 of the 1940 Act (using sources independent of Northern and Northern Affiliates);

(D) Northern, or any affiliate thereof, does not receive any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act, in connection with any redemption of the Shares;

(E) Prior to a Redemption, Northern provides in writing to the Independent Fiduciary a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written authorization for such Redemption to Northern, such authorization being terminable at any time prior to the date of the Redemption without penalty to the Plan, and such termination being effectuated by the close of business following the date of receipt by Northern of written or electronic notice regarding such termination (unless circumstances beyond the control of Northern delay termination for no more than one additional business day);

(G) Before authorizing a Redemption, based on the disclosures provided by the Mutual Funds to the Independent Fiduciary, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the Plan, and comparable to and no less favorable than terms obtainable at arm's length between unaffiliated parties, and that the Redemption is in the best interest of the Plan and its participants and beneficiaries;

(H) Not later than 30 business days after the completion of a Redemption, the relevant Fund will provide to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) The identity (and related aggregate dollar value) of each security provided to the Plan pursuant to the Redemption, including each security valued in accordance with the procedures established by the Board of Trustees for the Mutual Funds,

(iii) The current market price of each security received by the Plan pursuant to the Redemption, and

(iv) The identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Mutual Fund at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, a random sampling

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the collective investment trust into which the Plan will invest, these securities would then be sold by the Plan on the relevant exchange for cash, and the cash would then be invested in the relevant collective fund. In this regard, the Department notes that the fiduciaries must determine, consistent with their fiduciary duties under section 404 of ERISA, whether it is prudent to accept an in-kind redemption of shares where the in-house plan may incur transaction costs in connection with the disposition of such redeemed securities shortly after receipt.

of the pricing information supplied by Northern; and

(K) Each of the Plan's dealings with: The Mutual Funds, the Investment Advisers, the principal underwriter for the Mutual Funds, or any affiliated person thereof, is on a basis no less favorable to the Plan than dealings between the Mutual Funds and other shareholders holding shares of the same class as the Shares.

*Notice to Interested Persons:* Every participant and beneficiary of the Plan will be notified within 30 days after publication of this proposed exemption in the **Federal Register**, including beneficiaries of deceased employees and alternate payees. The notice to employee organizations defined in section 3(4) of ERISA is not applicable, as none exist. Notice to current employees with electronic mail access will be provided in accordance with the requirements of DOL Reg. section 2520.104b–1(c). Notice to current employees without electronic mail access will be provided by interoffice delivery to their worksite. Notice to current employees on long-term disability or extended leave, terminated employees with account balances under the Plan, alternate payees and beneficiaries of deceased employees and former employees will be provided by first-class mail. The notice will contain a copy of the **Federal Register**, and will inform interested persons of their right to comment on and request a hearing with respect to the proposed exemption. All relevant persons will be notified within one month of the publication of this proposed exemption in the **Federal Register**. The notices will inform interested persons of their right to comment and/or request a hearing. Comments and requests for a hearing must be received by the Department not later than 60 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Andrea W. Selvaggio of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

**Michigan Conference of Teamsters Welfare Fund (the Plan); Located in Detroit, MI**

[Application No. L–11058]

**Proposed Exemption**

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a)(1)(A) and (D) of the Act shall not apply to the cash sale, by the Plan, of certain parcels of real estate (the Property) to the Detroit Teamsters Temple Association (DTTA), a party in interest with respect to the Plan and a lessee of a portion of such Property, provided that the following conditions are satisfied:

(a) DTTA pays the fair market value as determined by a qualified, independent appraiser on the date of the transaction.

(b) The sale transaction has been reviewed and approved by an Independent Fiduciary (the Independent Fiduciary), who was appointed by the United States District Court for the Eastern District of Michigan, Southern Division (the Court) for purposes of enforcing a settlement agreement dated January 21, 1998 (the Settlement Agreement).

(c) The sale is a one-time transaction for cash.

(d) The Plan pays no fees or commissions in connection with the sale.

**Summary of Facts and Representations**

1. The Plan (or the Applicant) is a multiemployer welfare plan established in 1949. It is maintained pursuant to collective bargaining agreements between the Michigan Teamsters Joint Council No. 43 (the Union) and the Motor Carriers Employers Association of Michigan and Michigan Cartagemen's Association (the Associations). The Plan is administered by a board consisting of six trustees (the Trustees), three of whom are appointed by the Union (the Union Trustees) and three of whom are appointed by the Associations (the Association Trustees).

The Plan provides health, disability and death benefits to approximately 17,590 employees of employers that contribute to the Plan, as well as the employees' estimated 30,000 beneficiaries. Most of the Plan's 17,590 participants are covered by collective bargaining agreements between their employers and a local union affiliated with the Union (the Local Union). As of March 31, 2001, the Plan had total assets of $259.9 million.

2. In the past, the Plan has been the subject of scrutiny by the Department. In this regard, after an investigation of the Plan in 1995, the Department concluded that the then-Trustees had violated their fiduciary duties to the Plan. Based on the investigation results, the Department filed an action against the Trustees and the Plan's executive director on February 29, 1996 in the United States District Court for the Eastern District of Michigan in *Reich* v. *Holmes,* Case No. 96–60051 (E.D. Mich.). In March 1996, the defendants agreed to a consent order and judgment in the action and paid $724,717 to the Plan for reimbursement of excessive administrative expenses and restoration of losses resulting from prohibited transactions during the period from April 1, 1989 through March 31, 1994, plus $125,283 in civil penalties under section 502(l) of the Act.

Several months later, in July 1996, a group of Plan participants sued the then-Trustees and others in *Jordan* v. *Michigan Conference of Teamsters Welfare Fund,* Case No. CIV 96–73113 (E.D. Mich.). In that action, the Court appointed a Special Fund Counsel to investigate the allegations in the complaint. Based on the report and recommendations of the Special Fund Counsel, the parties entered into the Settlement Agreement effective January 21, 1998, which was reviewed and approved by the Court.

3. The Settlement Agreement provided for the appointment of an Independent Fiduciary who would serve for a term of four years from the date of the Settlement Agreement (*i.e.*, until January 21, 2002), unless otherwise agreed or ordered by the Court. The Independent Fiduciary had broad authority under the Settlement Agreement to review all actions of the Trustees and all of the Plan's policies. Such Independent Fiduciary was responsible for overseeing the implementation of the terms of the Settlement Agreement and for making recommendations to the Trustees concerning the prudent operation of the Plan.

Mr. Marc Gertner, a partner with the firm of Shumaker, Loop and Kendrick, was appointed Independent Fiduciary under the Settlement Agreement. Mr. Gertner has practiced law in the multiemployer area since ERISA was enacted. He is also the editor of the *Trustee Handbook,* a guide for multiemployer plan trustees, and a speaker on fiduciary issues.

4. DTTA is a non-profit, ''membership'' corporation under Michigan law. DTTA has no stockholders, and its members are Local Unions affiliated with the Union. The Union lists DTTA as a subsidiary organization on its form ''LM–2'' filed with the Department. DTTA serves as the ''landlord'' for the Union, acquiring and renting property for use by the Union, the Local Unions and their members. DTTA is also an employer whose employees are covered by the Plan.

Robert Rayes, one of the Plan's Union Trustees, is the President of DTTA. The other Union Trustees, William Bernard and H.R. Hillard, are officers of the Local Unions affiliated with the Union.

5. Among the assets of the Plan are two parcels of unimproved, commercial land (Parcel A and Parcel B), located in Detroit, Michigan, and totaling approximately 2.05 acres. Parcel A is located at 2702–2744 Cochrane Street and consists of 24,800 square feet of land that is fully landscaped and fenced. Parcel B consists of 64,480 square feet of land located at 1538–1576 Spruce Street and 1535–1571 Perry Street. Approximately 39% of Parcel B is landscaped and fenced, while the remaining portion is an asphalt parking lot.

The Property is contiguous to other real estate owned by DTTA.[11] Since July 1999, DTTA has been leasing a portion of the Property (located at 1535, 1541 and 1547 Perry Street) from the Plan to provide parking space in connection with space leased to DTTA at 2700 Trumbull Avenue. Under a month-to-month lease agreement, DTTA pays the Plan $66.25 per month for the use of such property at 1535, 1541 and 1547 Perry Street.[12] The rent charged is intended to cover the Plan's costs for the Perry Street properties, with monthly rent representing one twelfth of the Plan's annual costs for taxes ($645), insurance ($50) and maintenance ($100) for the leased property. The lease will be terminated upon DTTA's purchase of the subject Property.

6. The Plan purchased the lots comprising the Property over a long period of time,[13] with the majority of the lots being acquired in 1964 and the final lots being purchased in 1992.[14] The total acquisition cost for the Property was $196,000 and it is represented that no financing arrangements were ever involved. Over that same period of time, the Plan made certain improvements to the Property, such as landscaping and fencing, and it incurred demolition expenses to remove unwanted structures. These improvements cost the Plan an additional $29,875. Further, the Plan expended approximately $21,435 in real estate taxes between 1996 and 2001, based on what information was available, thereby bringing its total acquisition and holding costs with respect to the Property to approximately $242,978.[15]

7. The Property is located in a section of Detroit where property values, according to Signature Associates (Signature), the Plan's real estate broker, are declining. There is abundant, vacant property and vacant or derelict buildings in the area, including Tiger Stadium. In this regard, the Casino, which opened in 2000, also is located in the general area and has purchased some vacant property for parking and other uses. Although the Casino has approached the Plan in the past about purchasing other real estate that the Plan owns on the east side of Trumbull Avenue, the Casino has not shown any interest in the Property or any other real estate on the west side of Trumbull Avenue.

8. In addition to the Property's declining value, the Applicant represents that the Plan continues to pay property taxes that are a drain on its assets, except for that portion of the Property covered by the lease with DTTA (which includes real estate taxes and other expenses associated with the leased portion). By selling the Property, the Applicant represents that the Plan will be able to convert this asset into cash and then invest the cash in a vehicle more appropriate to the Plan's investment needs. However, the Applicant states that selling the Property is a problem because, although Signature has actively marketed the Property since September 17, 2001 at an asking price of $175,000, only one potential buyer has made an inquiry and no offers have been made.[16] The only other entity that has shown any interest in buying the Property is DTTA, according to the Applicant. Therefore, the Applicant requests an administrative exemption from the Department to permit the proposed sale of such Property to DTTA.

9. DTTA proposes to purchase the Property from the Plan for cash consideration, to be payable at closing. The purchase price for the Property will reflect the fair market value of such Property, as determined by a qualified, independent appraiser, on the date of the sale. The Plan will not be required to pay any real estate fees or commissions in connection with the transaction. In addition, Mr. Rayes has and will continue to recuse himself as President of DTTA from participating in any of the Plan's decisions concerning the Property to avoid violating the self-dealing and conflict of interest prohibitions under section 406(b)(1) and (b)(2) of the Act.

10. The Property has been appraised by Mr. Laurence G. Allen, a qualified, independent appraiser and President of Allen & Associates, a real estate valuation and consulting firm located in Birmingham, Michigan. Mr. Allen is a member of the American Institute of Real Estate Appraisers and is currently licensed in Michigan as a State Certified Real Estate Appraiser.

Initially, Mr. Allen performed an appraisal of the Property in fee simple on November 15, 2000 and issued a ''restricted'' [17] appraisal report, dated December 19, 2000, for use of internal decision-making by the Trustees. Mr. Allen's appraisal was based on the Sales Comparison Approach to valuation. The scope of the appraisal included research into market trends that would affect the value of the Property.

Based on the initial appraisal report, Mr. Allen placed the fair market value of Parcel A at $1.70 per square foot on November 15, 2000. He determined that Parcel A would be worth $42,160 as if vacant, and that the improvements were worth $4,112. Thus, Mr. Allen

[11] In this regard, DTTA owns lots at 2741, 2723 and 2715 Trumbull Avenue, which are separated from the Property by an alley. In addition, DTTA owns lots at 1520 and 1546 Perry Street, which are adjacent to the Property.

[12] The Applicant represents that the lease between the Plan and DTTA for a portion of the Property is covered under Prohibited Transaction Exemptions (PTEs) 76–1 (41 FR 12740, March 26, 1976) and 77–10 (42 FR 33918, July 1, 1977). The Department, however, expresses no opinion herein on whether the leasing arrangement complies with the provisions of PTEs 76–1 and 77–10. Accordingly, the Department is not proposing any exemptive relief beyond that offered by these class exemptions.

[13] The Department is expressing no opinion herein on whether the acquisition and holding of the Property by the Plan violated any of the provisions of Part 4 of Title I of the Act.

[14] The Applicant represents that from the 1960s through the 1980s, the Trustees purchased abandoned lots, such as the Property, in order to create a buffer zone around the Plan's building, protect the Plan's investment in its building, and ensure the safety of Plan employees. The Applicant indicates that while the Plan does not regularly use the Property, the Trustees considered the purchases a reasonable response to the urban blight in the surrounding neighborhood. The Applicant further indicates that the more recent purchases of lots in the 1990s were made on behalf of the Plan by L. Keith Taylor, a former Plan employee. The Trustees concluded that the 1992 purchases of lots 2702, 2710, 2716, 2720, and 2727 Cochrane Street by Mr. Taylor were improper and commenced an action against him and a real estate company involved in the sales to recover amounts the Plan had paid for the lots. In 1998, the Plan settled the action, recovering approximately $4,200 plus interest from Mr. Taylor and the real estate company.

[15] Although the Plan has received rental income totaling $2,186 on that portion of the Property which is leased to DTTA, the lease payments are intended to cover the Plan's costs with respect to this property. Therefore, the Plan's net income on this portion of the Property is $0.

[16] The Property has also been entered into the CoStar database, which provides commercial real estate information to its members in the commercial real estate community.

[17] Mr. Allen considered the appraisal report to be restrictive because reliance on the report was limited to the client. Also, without other information contained in the appraiser's work file, Mr. Allen thought the report would not be understood properly.

concluded that the total fair market value of Parcel A was $46,000.

Similarly, Mr. Allen determined that Parcel B had a fair market value of $1.70 per square foot on November 15, 2000. He concluded that Parcel B was worth $109,616 as if vacant, and calculated the value of the improvements at $19,397, for a total fair market value of $129,000. Therefore, Mr. Allen placed the total appraised value of the Property, including the improvements, at $175,000 as of November 15, 2000.

In an updated appraisal report dated March 4, 2002, Mr. Allen again utilized the Sales Comparison Approach to valuation in order to calculate the value of the Property in fee simple in an ''as is'' condition.[18] The ''as is'' date of value for the appraisal was February 25, 2002, which was the date Mr. Allen states that the Property was last inspected.

Mr. Allen determined that Parcel A had a fair market value of $1.62 per square foot, or $40,176 as if vacant. With the addition of site improvements (*i.e.,* 100% landscaping and fencing around Parcel A) costing $2,863, Mr. Allen placed the total fair market value of Parcel A at $43,000 as of February 25, 2002.

With respect to Parcel B, Mr. Allen determined that the fair market value of this tract was $1.62 per square foot as of February 25, 2002. Mr. Allen concluded that Parcel B was worth $104,458 as if vacant, and calculated the value of the improvements (*i.e.*, 61% asphalt parking, 39% landscaping and partial fencing around Parcel B) at $13,565, for a total fair market value of $118,000. Thus, Mr. Allen placed the total appraised value of the Property including the improvements at $161,000 as of February 25, 2002.

Mr. Allen also concluded that the highest and best use of the Property is to provide parking for DTTA, an adjacent owner. In his analysis, Mr. Allen confirmed that the Property has special value to DTTA, and that the $161,000 appraised value takes into account a premium in the value of the Property to DTTA. Prior to the date of closing, Mr. Allen will again reevaluate the Property to determine whether or not there has been a change in the fair market value.

11. As stated above in Representation 2, the Settlement Agreement provided that Mr. Marc Gertner would continue to serve on behalf of the Plan as Independent Fiduciary until as late as January 21, 2002. However, Mr. Gertner concluded before that date that the terms of the Settlement Agreement had been implemented and that his involvement as Independent Fiduciary was no longer necessary. Accordingly, Mr. Gertner asked for and received the Court's permission to resign as Independent Fiduciary, effective October 31, 2001.

Mr. Gertner states that, prior to his resignation, he suggested to the Trustees that all unneeded, undeveloped real estate in the area of the Plan's office be listed for sale because he believed that it would be imprudent for an employee welfare plan to own land in the quantity held by the Plan. Although the Trustees authorized the sale of one parcel of real estate, Mr. Gertner states that his suggestion was met by resistance from some of the Trustees who felt that it was the wrong time to sell the remaining parcels of land comprising the Property, following the initial success of the nearby Motor City Casino (the Casino) and after the Mayor's announcement that he was working on a redevelopment plan for the general area, which included finding a developer and a new use for Tiger Stadium, as well as the rumored addition of motels and restaurants to the area. Mr. Gertner further indicates that, based on this information, he went along with the position of a majority of the Trustees to require that the Plan hold onto the Property because he did not believe it would be prudent or proper to miss out on a major upward surge in property values over the next year or two.

In the 18 months following the October 1999 decision to take the Property off the market, Mr. Gertner represents that messages were sent to the Casino stating that the Trustees were thinking of relisting the Property. In addition, Mr. Gertner indicates that he held discussions with real estate firms, lawyers, accountants and business people in the Greater Detroit area in order to determine what action to take with respect to the Property. After these discussions, Mr. Gertner determined that there was little hard, demonstrable evidence to support an expectation that the value of the Property would appreciate and, by the summer of 2001, he said he concluded that the proposed sale transaction would be in the Plan's best interests.

12. In a letter dated September 26, 2002 (the 2002 Letter), Mr. Gertner provided the Department with an updated and current opinion regarding the appropriateness of the proposed transaction. Mr. Gertner represents in the 2002 Letter that, at the August 28, 2002 meeting of the Trustees, he was redesignated as the Independent Fiduciary for the purpose of evaluating the proposed exemption transaction on behalf of the Plan. Aside from providing additional insight into fluctuating real estate values in the vicinity of the Property, as Independent Fiduciary, Mr. Gertner certifies in the 2002 Letter that it is prudent, proper and in the best interests of the Plan, its participants and their beneficiaries to effect the proposed sale of the Property as soon as possible to the highest responsible third-party offeror or, if none, to DTTA. Mr. Gertner states that he has based this conclusion on his review of the exemption application, as well as on Mr. Allen's independent appraisal of the Property. In addition, Mr. Gertner states that he held discussions with the Plan's Executive Director and the Plan's Counsel. Further, Mr. Gertner represents that he made inquiries of the listing realtor and the Detroit counsel who represented him and the Plan on real estate issues during his tenure as Independent Fiduciary. Based on this due diligence and after consideration of the matters at hand, Mr. Gertner explains that it remains his firm and unequivocal opinion that it is prudent, proper and in the best interests of the Plan participants and beneficiaries to proceed with the proposed sale transaction.

Moreover, Mr. Gertner states that the issue concerning undeveloped property, such as the Property, is how soon it can be sold and converted into investable cash at the highest obtainable price, but at all times in a prudent and proper, ERISA-compliant manner. He opines that following an apparent spurt in values, fanned by hopes of a city plan of revitalization and a rampant rumor-mill, values have trended downward, and that it appears from his due diligence, there is no reason to presume a change in this trend.

Mr. Gertner also asserts that since the Property produces minimal rental income, it is a net cash drain on the Plan due to taxes, insurance and maintenance. Because the Plan has no apparent nor imminent need or use for any of the Property, Mr. Gertner believes that the sale of such Property to a third party or to DTTA will convert a cash-draining asset into cash which can be invested by one or more of the Plan's investment managers in accordance with the Plan's investment objectives in order to produce income to provide benefits to the participants and their beneficiaries. Mr. Gertner notes that the Plan's corpus could always use additional funds and that now appears to be an opportune time for reinvestment.

[18] Although the restriction was removed from the updated appraisal, Mr. Allen noted that the appraisal report had been prepared solely for the Trustees and the Department as part of the proposed sale transaction.

13. The Applicant represents that the proposed transaction is administratively feasible since the sale will be completed at closing, and no ongoing involvement by the Department is required to safeguard the interests of the Plan's participants and beneficiaries. Furthermore, the Applicant states that the transaction is in the best interests of the Plan's participants and their beneficiaries because it will permit the Plan to convert an asset with a declining value and an annual out-of-pocket tax expense into cash proceeds that can be invested to provide a better return. The Applicant also states that this, in turn, will benefit the Plan's participants and beneficiaries by increasing the Plan's assets and enhancing the Plan's ability to provide benefits and improve benefits. Finally, the Applicant asserts that the transaction is protective of the rights of the participants and beneficiaries because the transaction will be for cash with no deferred payments, involves only a small percentage of the Plan's total assets, and has been reviewed by the Plan's Independent Fiduciary who has determined that such transaction is protective of the interests of the Plan's participants and beneficiaries.

14. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) DTTA will pay the most current appraised value as determined by a qualified, independent appraiser.

(b) The sale transaction has been reviewed and approved by an Independent Fiduciary who was appointed by the Court for purposes of enforcing the terms of the Settlement Agreement.

(c) The sale will be a one-time transaction for cash.

(d) The Plan will pay no fees or commissions in connection with the sale.

**Notice to Interested Persons**

The Trustees will provide notice of the proposed exemption to all Plan participants as interested parties, by personal delivery or by first class mail within 10 days of the date of publication of the notice of proposed exemption in the **Federal Register**. The notice will include a copy of the proposed exemption and a supplemental statement in substantially the same form as set forth in 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on the proposed exemption. Comments regarding the proposed exemption are due within 40 days of the date of publication of the notice of pendency in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

**The Profit Sharing Trust of Dr. Ferdinand G. Mainolfi (the Plan) Located in Baltimore, MD**

[Exemption Application No. D–11108]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code [19] shall not apply to the proposed sale of parcels of improved real property (the Property) by the Plan to Ferdinand G. Mainolfi (Dr. Mainolfi), a disqualified person with respect to the Plan; provided that: (1) The sale will be a one-time transaction for cash; (2) as a result of the sale, the Plan will receive the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the transaction; (3) the Plan will pay no commissions, fees, or other expenses in connection with the sale; and (4) the terms of the sale will be no less favorable to the Plan than terms it would have received under similar circumstances in arm's length negotiations with unrelated third parties.

**Summary of Facts and Representations**

1. The Plan is a defined contribution profit sharing plan sponsored by Ferdinand G. Mainolfi, Inc. (the Employer). The Employer is engaged in the practice of medicine in Baltimore, Maryland. Dr. Mainolfi is the sole shareholder of the Employer, the only participant in the Plan, and serves as the trustee of the Plan. The Plan had, as of August 31, 2001, total assets of approximately $940,992.

2. The Property which is the subject of this exemption is located in the northeastern quadrant of Carroll County Maryland, less than two miles from the center of Manchester, Maryland, approximately two miles south of the Pennsylvania State Line, and three miles from the Baltimore County line. The neighborhood consists of a diversity of housing styles ranging from larger homes on farms and very large lots to older more modest houses and cottages interspersed with active agricultural operations and forest.

The Property consists of two (2) parcels which border each other. The parcels are known respectively as the Mainolfi Farm (Parcel 1) and the Benjamin Lot (Parcel 2). The Plan acquired these parcels in two transactions with sellers unrelated to Dr. Mainolfi. It is represented that the Plan purchased the Property for long term investment.

It is represented that a sharecropper, who is unrelated to Dr. Mainolfi, has been farming the tillable land on the Property, retaining the income, and paying all related expenses, in exchange for being responsible for the care and maintenance of the Property. It is represented that the Property has never been used personally by Dr. Mainolfi or any other party in interest. Dr. Mainolfi represents that he has made periodic inspections of the Property in satisfaction of his responsibility as trustee.

The Plan acquired Parcel 1 on August 10, 1971, for a purchase price of $32,000 from Mr. and Mrs. William Ensor, Jr. The Plan financed the purchase with a mortgage obtained from the sellers. Parcel 1 is comprised of 37.48 acres of land traversed by a stream. There are open spaces and large, mature shade trees throughout the parcel. A residence and outbuildings are located on an elevated section on the western edge of Parcel 1. There is proximity to a lake with facilities for boating and swimming. Parcel 1 is bounded on the east by woods, on the west by several large tracts of farmland, on the north by a floodplain, and on the south by Parcel 2.

The Plan acquired Parcel 2 on May 9, 1974, for a purchase price of $29,000 from Mr. Donald Benjamin. It is represented that the Plan financed the purchase with a mortgage from Baltimore Federal Savings and Loan. Parcel 2, consisting of 9.3119 acres, is entirely wooded, and is traversed by two streams.

3. This exemption is requested to permit the Plan to sell the Property to Dr. Mainolfi for the appraised fair market value of the Property on the date of sale. Dr. Mainolfi, acting as trustee for the Plan, wishes to sell the Property, which is illiquid.

It is represented that the proposed transaction is feasible in that it involves a one-time sale of the Property for cash. In addition, the Plan will be able to sell the Property without incurring any

[19] Pursuant to 29 CFR 2510.3–2(d), the Plan is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

further expense of searching for a buyer and without paying brokerage commissions, fees, or other expenses as a result of the sale. It is anticipated that once the Property is sold the cash proceeds will be invested so as to diversify the assets of the Plan.

In the opinion of Dr. Mainolfi, the proposed transaction is protective of the participant and beneficiaries of the Plan in that the sale price would be based on the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale.

4. An appraisal of the Property was prepared by Herbert A. Davis, GRI (Mr. Davis) and Donna D. Fried, SRA (Ms. Fried), of Appraisal Connection, Inc., in Baltimore, Maryland. It is represented that Mr. Davis and Ms. Fried are qualified to perform the appraisal of the Property. In this regard, Mr. Davis is a graduate of the Realtors Institute of Maryland and has attended courses offered by the American Institute of Real Estate Appraisers. Ms. Fried has, from 1991 to the present, been licensed by the State of Maryland as a certified residential real estate appraiser. Ms. Fried is a member of the National Association of Real Estate Appraisers, the Maryland Association of Appraisers, Inc., and the Appraisal Institute, SRA.

It is further represented that both appraisers are independent in that neither has a present or prospective interest in the Property, nor any personal interest or bias with respect to the participants in the proposed transaction. It is represented that neither the employment nor the compensation of the appraisers was conditioned upon the appraised value of the Property, nor were the appraisers required to report a predetermined value or base the appraisal on a requested minimum value for the Property.

After physically inspecting the Property, the appraisers concluded the Property is not currently suited to subdivision due to location, zoning, and expense considerations. Taking into account the sales of similar properties in the recent past and having made adjustment to the reported sale prices of these comparable properties, it was determined by the sales comparison method of appraisal that the fair market value of the Property was $400,000, as of February 5, 2002.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 4975(a) of the Code because:

(a) The sale of the Property will be a one-time transaction for cash;

(b) As a result of the sale, the Plan will receive the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale;

(c) The Plan will pay no commissions, fees, or other expenses as a result of the transaction;

(d) The terms of the sale will be no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties;

(e) The Plan will be able to invest the proceeds from the sale of the Property in order to diversify the assets of the Plan; and

(f) The Plan will be able to dispose of the Property which is illiquid.

**Notice to Interested Persons**

Because Dr. Mainolfi is the only participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13 day of November, 2002.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 02–29197 Filed 11–15–02; 8:45 am]

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 2002–49; Exemption Application No. L–10929 *et al.*]**

### Grant of Individual Exemptions; Twin City Iron Workers Apprenticeship and Training Fund (the Trust Fund)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In

addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

**Twin City Iron Workers Apprenticeship and Training Fund (the Trust Fund) Located in St. Paul, Minnesota**

[Prohibited Transaction Exemption No. 2002–49; Exemption Application No. L–10929]

*Exemption*

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply effective May 22, 2000 to the past purchase of a certain parcel of unimproved real property (the Property) by the Trust Fund from the Twin City Union No. 512 of Bridge, Structural and Ornamental Workers, Inc. (the Building Corporation), a party in interest with respect to the Trust Fund. This exemption is conditioned upon the adherence to the material facts and representations described in the proposed exemption and upon the satisfaction of the following conditions:

(a) The purchase of the Property by the Trust Fund was a one-time transaction for cash;

(b) The Trust Fund paid no more than the lesser of: (i) $48,000; or (ii) the fair market value of the Property as determined at the time of the transaction;

(c) The fair market value of the Property was established by an independent, qualified, real estate appraiser that was unrelated to the Building Corporation or any other party in interest with respect to the Trust Fund;

(d) The Trust Fund did not pay any commissions or other expenses with respect to the transaction;

(e) Standard Valuations, Inc. (SVI), acting as an independent, qualified fiduciary for the Trust Fund, determined that the transaction was in the best interest of the Trust Fund and its participants and beneficiaries;

(f) SVI monitored various aspects of the purchase of the Property until closing, including the environmental reports concerning the Property, and took whatever action was necessary to protect the interests of the Trust Fund; and

(g) The purchase price paid by the Trust Fund for the Property represented no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on August 9, 2002 at 67 FR 51878.

**FOR FURTHER INFORMATION CONTACT:** Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

**Child Health Corporation America (CHCA) Located in Shawnee Mission, KS**

[Prohibited Transaction Exemption 2002–50; Exemption Application No. L–10939]

*Exemption*

The restrictions of sections 406(a) and 406(b) of the Act shall not apply to the (1) purchase, by a welfare plan (the Plan), whose hospital sponsor (the Hospital) is a member of CHCA, of third party insurance, through CHCA, the broker of record and a party in interest with respect to such Plan; and

(2) the receipt of an insurance sales commission by CHCA from the third party insurance company, in connection with the purchase of an insurance policy with the assets of the Plan.

This exemption is subject to the following conditions:

(a) The transactions are effected by CHCA in the ordinary course of its business.

(b) Each Plan pays no more than adequate consideration for an insurance policy that is brokered by CHCA.

(c) Prior to the execution of the transactions, CHCA provides each Hospital, which serves as the independent fiduciary of a Plan it sponsors, with the following written documentation:

(1) A statement setting forth the insurance sales commissions, expressed as a percentage of the gross annual premium payments that will be paid by the insurance company to CHCA with respect to the purchase of the insurance policy;

(2) A description of the charges, fees, discounts, penalties or adjustments which may be imposed under the insurance policy in connection with the purchase, holding, exchange, termination or sale of such policy; and

(3) A full description of CHCA's procedure for offsetting a Plan's allocable portion of insurance sales commissions that are received by CHCA and which are attributable to participant (*i.e.*, employee) contributions for welfare benefits paid through a Plan (the Participant Paid Premiums) against the amounts otherwise payable by such Plan for future premium contributions (the Premium Adjustment; the Premium Adjustment Procedure).

(d) Following the receipt of such information, the Hospital independent fiduciary acknowledges receipt of such information to CHCA, in writing, and approves the transactions on behalf of the respective Plan.

(e) On an annual basis, CHCA discloses all direct expenses it has incurred to independent Plan fiduciaries of its member Hospitals, including any Premium Adjustments that have been made.

(f) The transactions are on terms that are at least as favorable to a Plan as those available in arm's length transactions with an unrelated party.

(g) The combined total of all fees, insurance sales commissions and other consideration received by CHCA in connection with the purchase of insurance policies issued by a third party insurer or the provision of services to a Plan is not in excess of ''reasonable compensation'' within the contemplation of section 408(b)(2) and 408(c)(2) of the Act.

(h) There is no increased cost to a Plan nor any diminution in any benefit received by a Plan participant or beneficiary as a result of CHCA's receipt of insurance sales commissions.

(i) The Plan receives a Premium Adjustment based upon the excess of insurance sales commissions received that are attributable to Participant Paid Premiums over direct costs related to Participant Paid Premiums, if any, incurred by CHCA, in accordance with

the Premium Adjustment Procedure, the steps of which are as follows:

(1) At the end of each calendar year, CHCA separates the total premiums paid between each Hospital and its respective Plan and the Participant Paid Premium portion of each total.

(2) CHCA calculates the commissions that are paid based on the Participant Paid Premiums.

(3) CHCA calculates the amount available for the patronage dividend by subtracting aggregate direct expenses incurred under its insurance program from the total commissions.

(4) CHCA calculates a breakdown of the commissions on a percentage basis based upon the ratio of Hospital paid premiums to Participant Paid Premiums.

(5) CHCA allocates the amounts available for the patronage dividend based upon the percentages determined above in subparagraph (i)(4).

(6) CHCA sends a check to the insurer with instructions to allocate such amount of Premium Adjustments attributable to commissions paid on Participant Paid Premiums on a per Hospital basis to be applied against a Plan participant's insurance rate schedule.

(7) CHCA requests written confirmation from the insurer that the Premium Adjustment has been made.

(j) CHCA establishes and maintains a system of internal and external accounting controls for the Premium Adjustment Procedure.

(k) CHCA retains an independent auditor to audit, on an annual basis, the Premium Adjustments made to the affected Plans.

(l) Within 90 days following the publication, in the **Federal Register**, of the notice granting the final exemption, CHCA makes full restitution to the participants of each affected Plan whose assets are attributed to CHCA's past fee arrangement with an independent broker and its subsequent compensation arrangement with the UNUM Life Insurance Company.

(m) CHCA maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons described in paragraph (n) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of CHCA, such records are lost or destroyed prior to the end of such six year period; and

(2) No party in interest, other than CHCA, shall be subject to the civil penalty that may be assessed under section 502(i), or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (m).

(n)(1) Except as provided in subparagraph (n)(2) and notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (m) are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employees or representatives of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan which has the authority to purchase an insurance policy by or on behalf of a Plan or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of a Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in subparagraph (n)(1)(B) or (C) shall be authorized to examine the trade secrets of CHCA or commercial or financial information which is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this proposed exemption, refer to the notice of proposed exemption published on August 9, 2002 at 67 FR 51880.

*Written Comments*

The Department received one written comment with respect to the proposed exemption and no requests for a public hearing. The written comment, which was submitted by CHCA, clarifies the operative language of the notice in the following areas:

1. *Deletion of the Phrase ''Attributed to Participant (i.e., Employee) Contributions.''* In describing the transactions that will be covered by the exemption, the initial paragraph of the proposal refers to CHCA's receipt of an insurance sales commission from a third party insurer, in connection with the purchase of an insurance policy with Plan assets that are ''attributed to participant (*i.e.*, employee) contributions.'' CHCA suggests the deletion of the phrase ''attributed to participant (*i.e.*, employee) contributions'' because it believes that the language implies that there are assets other than employee premium payments that will be subject to the exemption.

2. *Deletion of the Phrase ''Plan Assets'' and Substitution with the Phrase ''Participant Paid Premiums.''* In the general conditions section of the proposed exemption, subparagraph (c)(3) states, in part, that prior to the execution of the transactions covered by the exemption, CHCA will provide each Hospital, which serves as the independent fiduciary of the Plan that it sponsors, with a full description of CHCA's procedure for offsetting a Plan's allocable portion of insurance sales commissions that CHCA receives and which are attributable to ''Plan assets'' against amounts otherwise payable by such Plan for future premium contributions.

CHCA requests that subparagraph (c)(3) of the proposal be modified by deleting the term ''Plan assets'' and substituting language to denote that the reference is meant to include employee contributions (*i.e.*, premiums) that are paid through each Hospital Plan. CHCA represents that it is important from its internal administrative perspective that individuals who perform the Premium Adjustment calculations can follow the exemption in detail and understand the type of information they should provide to insurance companies and to its member Hospitals.

Therefore, CHCA suggests that subparagraph (c)(3) of the final exemption be revised to read as follows:

(c)(3) A full description of CHCA's procedure for offsetting a Plan's allocable portion of insurance sales commissions that are received by CHCA and which are attributable to participant (*i.e.*, employee) contributions for welfare benefits paid through a Plan (the Participant Paid Premiums) against the amounts otherwise payable by such Plan for future premium contributions (the Premium Adjustment; the Premium Adjustment Procedure).

3. *Other Clarifications.* In the proposal, paragraph (i) of the conditions states that a Plan will receive a Premium Adjustment based upon the excess of insurance sales commissions over direct costs, if any, incurred by CHCA, in accordance with the Premium Adjustment Procedure, the steps of which are also set forth therein. In order to clarify that this condition pertains to ''Participant Paid Premiums,'' CHCA recommends that paragraph (i) and subparagraphs (1), (4) and (6) of paragraph (i) be revised to read as follows:

(i) The Plan receives a Premium Adjustment based upon the excess of insurance sales commissions received that are attributable to Participant Paid Premiums over direct costs related to Participant Paid Premiums, if any, incurred by CHCA, in accordance with the Premium Adjustment Procedure, the steps of which are as follows:

(1) At the end of each calendar year, CHCA separates the total premiums paid between each Hospital and its respective Plan and the

Participant Paid Premium portion of each total.

(2) CHCA calculates the commissions that are paid based on the Participant Paid Premiums.

* * * * *

(4) CHCA calculates a breakdown of the commissions on a percentage basis based upon the ratio of Hospital paid premiums to Participant Paid Premiums.

* * * * *

(6) CHCA sends a check to the insurer with instructions to allocate such amount of Premium Adjustments attributable to commissions paid on Participant Paid Premiums on a per Hospital basis to be applied against a Plan participant's insurance rate schedule.

* * * * *

CHCA believes that without these changes, there would be room for misunderstanding.

The Department concurs with the aforementioned clarifications to the proposal that have been provided by CHCA and it has made the suggested changes to the operative language of the final exemption. The Department also notes the corresponding changes to the Summary of Facts and Representations of the proposed exemption. Accordingly, after giving full consideration to the entire record, including CHCA's written comment, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. L–10939) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of November, 2002.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 02–29196 Filed 11–15–02; 8:45 am]

**BILLING CODE 4510–29–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Notice of Meeting

**TIME AND DATE:** 10 a.m., Thursday, November 21, 2002.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Request from a Federal Credit Union to Convert to a Community Charter.
2. *Final Rule:* Part 702 of NCUA's Rules and Regulations, Prompt Corrective Action (PCA).
3. *Proposed Rule:* Section 702.206 of NCUA's Rules and Regulations, PCA, Net Worth Restoration Plans.
4. *Proposed Rule:* Interpretive Ruling and Policy Statement (IRPS) 02–4, Amending the Regulatory Flexibility Act Provisions of IRPS 87–2.
5. *Proposed Rule:* Interpretive Ruling and Policy Statement (IRPS) 02–3, Section 701.1 of NCUA's Rules and Regulations, Amendments to NCUA's Chartering and Field of Membership Policies.
6. NCUA's Annual Performance Plan for 2003.
7. NCUA's Operating Budget for 2003/2004.
8. NCUA's Operating Fee Scale for 2003.

**RECESS:** 11:15 a.m.

**TIME AND DATE:** 11:30 a.m., Thursday, November 21, 2002.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** 1. Three (3) Insurance Appeals. Closed pursuant to Exemptions (6) and (7).

**FOR FURTHER INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

**Beckey Baker,**

*Secretary of the Board.*

[FR Doc. 02–29323 Filed 11–14–02; 12:10 pm]

**BILLING CODE 7535–01–M**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Notice.

**SUMMARY:** Under the paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection.

**DATES:** Written comments (see below for details) on this notice must be received by January 17, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

*Comments:* Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to respondents, including through the use of automated

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

**FOR FURTHER INFORMATION CONTACT:** For further information or for a copy of the collection instruments and instructions contact Ms. Suzanne H. Plimpton, Reports Clearance Officer, via surface mail: National Science Foundation, ATTN: NSF Reports Clearance Officer, Suite 295, 4201 Wilson Boulevard, Arlington, VA 22230; telephone (703) 292–7556; e-mail *splimpto@nsf.gov;* or FAX (703) 292–9188.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* 2003 National Survey of College Graduates.

*OMB Approval Number:* 3145–0141.

*Expiration Date of Approval:* April 30, 2001.

*Type of Request:* Intent to seek approval to reinstate an information collection for three years.

1. *Abstract:* The National Survey of College Graduates (NSCG), formerly called the National Survey of Natural and Social Scientists and Engineers, has been conducted biennially since the 1970s. The 2003 NSCG will consist of a sample of individuals under the age 76 with at least a bachelor's degree as of April 1, 2000, the day of Census 2000. The 2003 NSCG will be the baseline survey for NSCG surveys for the rest of the decade. The purpose of this longitudinal study is to provide national estimates on the science and engineering workforce and changes in employment, education, and demographic characteristics. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to ''* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government.'' The NSCG is designed to comply with these mandates by providing information on the supply and utilization of the nation's scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT labor force data system, which produces national estimates of the size and characteristics of the country's science and engineering population. The Foundation uses this information to prepare congressionally mandated reports such as Women, Minorities and Persons with Disabilities in Science and Engineering and Science and Engineering Indicators. A public release file of collected data, designed to protect respondent confidentiality, will be made available to researchers on CD–ROM and on the World Wide Web.

The Bureau of the Census, as in the past, will conduct the study for NSF. Questionnaires will be mailed in October 2003 and nonrespondents to the mail questionnaire will be followed by computer-assisted interviewing. The survey will be collected in conformance with the Privacy Act of 1974 and the individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical puposes, analyzing data, and preparing scientific reports and articles.

2. *Expected Respondents:* A sample of approximately 180,000 persons identified as having at least a bachelor's degree will receive the mail questionnaire. The sample will be selected according to generally accepted probability sampling procedures.

3. *Burden on the Public:* The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. NSF estimates that the total annual burden will be 75,000 hours during the year.

Dated: November 12, 2002.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 02–29105 Filed 11–15–02; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Notice of Intent To Seek Approval To Reinstate an Information Collection

**AGENCY:** National Science Foundation.

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

**SUMMARY:** The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 1 year.

**DATES:** Written comments on this notice must be received by January 17, 2003, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone 703–292–7556; or send e-mail to *splimpton@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

**SUPPLEMENTARY INFORMATION:** *Title of Collection:* Evaluation of NSF Support for Undergraduate Research Opportunities (URO).

*OMB Number:* 3145–0121.

*Expiration Date of Approval:* Not applicable.

*Type of Request:* Intent to seek approval to reinstate an information collection for one year.

*Abstract:* ''Evaluation of NSF Support for Undergraduate Research Opportunities (URO).''

*Proposed Project:* The National Science Foundation (NSF) manages a number of programs that provide meaningful research experiences for undergraduate students. This suite of programs include: Research Experiences for Undergraduates (REU), both the Site and Supplement components; Research in Undergraduate Institutions (RUI); the undergraduate research components in several of NSF's large research centers programs, *e.g.*, Engineering Research Centers (ERC) Programs, Science and Technology Centers (STCs); and several institution-wide resources development programs in which undergraduate research experiences are often one component.

These Programs provide a wide range of US undergraduate students with opportunities to conduct hands-on research under the mentorship of graduate students, postdoctoral fellows, and faculty in various types of higher education institutions, including small liberal arts colleges, minority-serving institutions, research universities, as well as non-profit institutions in which science or engineering research is conducted.

The purpose of the proposed evaluation is to examine the impact of undergraduate research experiences supported by NSF on the undergraduate student and faculty and other mentors who participate. Study questions include: Why do undergraduates choose to participate in research activities? What are the perceived advantages and disadvantages to faculty for mentoring undergraduates in research activities? What are the criteria for selecting students for research activities? What kinds of activities comprise undergraduate ''research'' experiences? How do undergraduate research experiences affect students' decisions about their academic and work future?

*Use of the Information:* The information will allow NSF to review its portfolio of programs in which a substantial number of undergraduates participate in research projects of faculty and other mentors to determine whether there needs to be any rebalancing. In addition, it will include an inventory of undergraduate research opportunities around the US and contribute to the literature on best practices in undergraduate research experiences.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 20 minutes per response.

*Respondents:* Individuals.

*Estimated Number of Respondents:* 9000.

*Estimated Total Annual Burden on Respondents:* 3000 hours—9000 respondents at 20 minutes each.

*Frequency of Responses:* One time.

*Comments:* Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond.

Dated: November 13, 2002.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 02–29214 Filed 11–15–02; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 30–33887–CivP (EA 01–302), ASLBP No. 03–805–01–CivP]**

### High Mountain Inspection Service, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and sections 2.205, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding: High Mountain Inspection Service, Inc., Mills, Wyoming; Order Imposing Civil Monetary Penalty.

This Board is being established pursuant to the request of High Mountain Inspection Service, Inc., for a hearing regarding an order issued by the NRC staff, dated September 30, 2002, entitled ''Order Imposing Civil Monetary Penalty'' (67 FR 63,170 (Oct. 10, 2002)).

The Board is comprised of the following administrative judges:

Ivan W. Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents and other materials shall be filed with the Panel Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 12th day of November, 2002.

**G. Paul Bollwerk, III,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 02–29213 Filed 11–15–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–17]**

### Portland General Electric Company Trojan Independent Spent Fuel Storage Installation; Notice of Docketing of Materials License SNM–2509 Amendment Application

By letter dated October 18, 2002, Portland General Electric Company (PGE) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission), in accordance with 10 CFR part 72, requesting the amendment of the Trojan Independent Spent Fuel Storage Installation (ISFSI) license (SNM–2509) and the Technical Specifications for the ISFSI located at Columbia County, Oregon. PGE is seeking Commission approval to amend the materials license and the ISFSI Technical Specifications to reflect a change in the Holtec International Multi-Purpose Canister (MPC) helium backfill pressure upper limit.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–17 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this amendment, see the application dated October 18, 2002, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publically available records component of NRC's Agencywide Documents Access and Management System (ADAMS). The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

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

For the Nuclear Regulatory Commission.

**Christopher M. Regan,**

*Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 02–29209 Filed 11–15–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 4, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

*Wednesday, December 4, 2002—9:30 a.m. until 12 Noon*

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the proposed agenda.

Dated: November 12, 2002.

**Howard J. Larson,**

*Acting Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 02–29211 Filed 11–15–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Safety Research Program

**Notice of Meeting**

The ACRS Subcommittee on Safety Research Program will hold a meeting on December 4, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Wednesday, December 4, 2002—1:00 p.m. until the conclusion of business*

The Subcommittee will continue to discuss the ACRS 2003 report on the NRC-sponsored research programs. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Dr. Richard P. Savio (telephone 301/415–7363) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the proposed agenda.

Dated: November 12, 2002.

**Howard J. Larson,**

*Acting Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 02–29212 Filed 11–15–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 050–00400]**

### License No. NPF–63; Carolina Power and Light Company; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), has issued a Director's Decision with regard to a Petition dated November 5, 2001, filed by Mr. Jim Warren from NC WARN, hereinafter referred to as the ''Petitioner.'' The Petition was supplemented on February 12, 2002, with another letter on the same topic. The Petition concerns the rail transport of spent nuclear fuel by Carolina Power and Light Company (CP&L).

The Petitioner requested that NRC take immediate action to halt the rail shipments of spent nuclear fuel by CP&L due to the terrorist attacks on September 11, 2001, and the continuing threat of terrorism.

As the basis for the request, the Petitioner raised concerns stemming from recent terrorist attacks, and the fact the Petitioner believes the trains transporting the spent nuclear fuel are slow-moving targets. The Petitioner considers such transport to be potentially unsafe for the citizens in his state and especially for those along the transport route.

On January 16, 2002, the NRC Petition was reviewed by a Petition Review Board (PRB). During the review, the PRB decided not to grant the part of the Petition that requested immediate halting of the rail shipments of spent nuclear fuel. Additionally, the letter dated February 12, 2002, supplementing the initial position taken by Mr. Warren and further requesting that NRC halt the rail shipments of spent nuclear fuel, did not change the decision of the PRB.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to CP&L for comment on August 29, 2002. The Petitioner responded with comments on September 27, 2002, and

the licensee responded on September 24, 2002. The comments and the NRC staff's response to those comments are included in the Director's Decision.

The Director of the Office of Nuclear Material Safety and Safeguards has determined that the requests to immediately halt rail shipments of spent nuclear fuel shipments by CP&L be denied. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 [DD–02–05], the complete text of which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the NRC's Web site (*http://www.nrc.gov*) on the World Wide Web, under the ''Public Involvement'' icon.

NRC staff has determined that the established system of existing regulations for spent nuclear fuel transport, coupled with the additional security measures from the recently issued transportation Orders, adequately protect the transportation of spent nuclear fuel. Thus, the Petition sent by Mr. Warren of NC WARN to halt CP&L rail shipments of spent nuclear fuel has been denied.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the Decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 12th day of November, 2002.

For the Nuclear Regulatory Commission.

**Martin J. Virgilio,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 02–29210 Filed 11–15–02; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** (67 FR 68702, November 12, 2002).

**STATUS:** Closed meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**ANNOUNCEMENT OF MEETINGS:** Additional meetings.

The Securities and Exchange Commission held a closed meeting on Tuesday, November 12, 2002. The subject matter of that meeting was a regulatory matter bearing enforcement implications.

The Commission will hold an open meeting on Tuesday, November 19, 2002, at 2 p.m., in Room 1C30, the William O. Douglas Room.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

The Commission will also hold a closed meeting on Wednesday, November 20, 2002, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the open meeting scheduled for Tuesday, November 19, 2002, at 2 p.m., will be:

1. The Commission will consider whether to propose amendments to implement section 802 of the Sarbanes-Oxley Act of 2002. These proposed rules would specify the information that must be retained by auditors for a five-year period subsequent to the completion of an audit or review of a registrant's financial statements. In particular, the proposed rules would specify that auditors should retain workpapers and other documents that form the basis of the audit or review and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review and contain conclusions, opinions, analyses, or financial data related to the audit or review.

2. The Commission will consider proposing amendments to its existing requirements regarding auditor independence to enhance the independence of accountants that audit and review financial statements and prepare attestation reports filed with the Commission. As directed by section 208(a) of the Sarbanes-Oxley Act of 2002, the Commission is considering proposing rules to:

- Revise its regulations related to the non-audit services that, if provided to an audit client, would impair an accounting firm's independence;
- Require that an issuer's audit committee pre-approve all audit and non-audit services provided to the issuer by the auditor of an issuer's financial statements;
- Prohibit partners on the audit engagement team from providing audit services to the issuer for more than five consecutive years;
- Prohibit an accounting firm from auditing an issuer's financial statements if certain members of management of that issuer had been members of the accounting firm's audit engagement team within the one-year period preceding the commencement of audit procedures;
- Require that the auditor of an issuer's financial statements report certain matters to the issuer's audit committee, including ''critical'' accounting policies used by the issuer; and
- Require disclosures to investors of information related to the audit and non-audit services provided by, and fees paid by the issuer to, the auditor of the issuer's financial statements.

In addition, under the proposed rules to be considered by the Commission, an accountant would not be independent from an audit client if any partner, principal or shareholder of the accounting firm who is a member of the engagement team received compensation based directly on any service provided or sold to that client other than audit, review and attest services.

3. The Commission will consider a recommendation to issue jointly, with the Department of the Treasury and the Board of Governors of the Federal Reserve System, a report to Congress on applying the anti-money laundering requirements of the Bank Secrecy Act to investment companies, as required by section 356(c) of the USA Patriot Act. The proposed report recommends regulations to apply the requirements of the Bank Secrecy Act to investment companies, including certain unregistered investment companies.

The subject matter of the closed meeting scheduled for Wednesday, November 20, 2002, at 10 a.m., will be:

Formal orders of investigation;
Institution and settlement of injunctive actions; and
Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if

any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: November 13, 2002.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 02–29310 Filed 11–14–02; 11:44 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

## 800America.com, Inc.; Order of Suspension of Trading

November 13, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of 800America.com, Inc. (''800America''), because of questions regarding: The accuracy of assertions by 800America, and by others, in press releases and/or in 800America's public filings, concerning, among other things, the earnings, revenues, expenses, and assets reported by 800America in its public filings since at least January 1, 2000; unregistered offerings being conducted by, among others, 800America's Chief Executive Officer; the criminal history of 800America's Chief Executive Officer; the identity of persons in control of the operations and management of 800America; and the criminal history of a person in control of the operations and management of 800America.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 11:00 a.m. EST, on Wednesday, November 13, 2002 through 11:59 p.m. EST, on Tuesday, November 26, 2002.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02–29239 Filed 11–13–02; 4:58 pm]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46785; File No. SR–Amex–2002–55]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Instituting a Pilot Program To Amend the Listing Standards for Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940

November 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On November 1, 2002, the Amex filed amendment no. 1 to the proposed rule change with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change on a five-month pilot basis (''pilot'').

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend sections 101 and 1003 of the Amex Company Guide on a five-month pilot basis to include specific initial and continued listing standards applicable to closed-end funds.

Below is the text of the proposed rule change. Proposed new language is *italicized.*

* * * * *

**Section 101**

(a)–(d)—No Change.

*(e) Closed-End Management Investment Companies—The Exchange will generally authorize the listing of a closed-end management investment company registered under the Investment Company Act of 1940 (a ''Closed-End Fund'') that meets the following criteria:*

*(1) Size—market value of publicly held shares or net assets of at least $20,000,000; or*

*(2) A Closed-End Fund which is part of a group of Closed-End Funds which are or will be listed on the Exchange, and which are managed by a common investment adviser or investment advisers who are ''affiliated persons'' as defined in Section 2(a)(3) of the Investment Company Act of 1940 as amended (the ''Group''), is subject to the following criteria:*

i. *The Group has a total market value of publicly held shares or net assets of at least $75,000,000;*

ii. *The Closed-End Funds in the Group have an average market value of publicly held shares or net assets of at least $15,000,000; and*

iii. *Each Closed-End Fund in the Group has a market value of publicly held shares or net assets of at least $10,000,000.*

*(3) Distribution—See section 102(a).*

Commentary .01—No Change.

**Section 1003**

(a)—No Change.

(b) Limited Distribution—Reduced Market Value—The Exchange will normally consider suspending dealings in, or removing from the list, a security when any one or more of the following conditions exist:

(i)–(iv)—No Change.

*(v) Closed-End Funds:*

*(A) If the total market value of publicly held shares and net assets are each less than $5,000,000 for more than 60 consecutive days; or*

*(B) It ceases to qualify as a closed-end fund under the Investment Company Act of 1940 (unless the resultant entity otherwise qualifies for listing).*

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claudia Crowley, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 31, 2002 (''amendment no. 1''). In amendment no. 1, among other things, the Exchange: (1) Amended proposed section 101(e)(2) of the Amex Company Guide to remove duplicative language and to explicitly provide that the listing standards applicable to a group of closed-end funds will apply to all listed funds with a common investment adviser or investment advisers who are ''affiliated persons'' as defined in section 2(a)(3) of the Investment Company Act of 1940; (2) clarified that all closed-end funds listed on Amex with a common investment adviser or investment advisers who are affiliated persons will be considered part of a ''fund family,'' regardless of when the individual funds were listed; (3) represented that the Amex will not have discretion to list a closed-end fund that does not satisfy the quantitative criteria set forth in section 101(e) of the Amex Company Guide, but will have discretion to exclude a closed-end fund that otherwise satisfies the criteria; and (4) requested accelerated approval of the proposed rule change on a five-month pilot basis.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, 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 Exchange is proposing to incorporate initial and continued listing standards specifically applicable to closed-end management investment companies registered under the Investment Company Act of 1940 (''closed-end funds'') into the *Amex Company Guide.* Currently, closed-end funds are evaluated for listing pursuant to the general listing standards contained in section 101 of the *Amex Company Guide,* as well as specialized internal procedures applicable to closed-end funds.

In order to provide greater clarity to listing applicants and investors, the Exchange is proposing to incorporate revised closed-end fund listing standards into section 101 of the *Amex Company Guide.* These standards would permit the initial listing of a closed-end fund with a market value of publicly held shares or net assets of at least $20,000,000, which also satisfies the distribution criteria specified in section 102(a) of the *Amex Company Guide.*[4] Because closed-end funds are subject to extensive federal regulation, the Exchange proposes not to require a review of a fund's investment objective and asset diversification, as had been included in the Exchange's internal procedures, as that could unnecessarily limit the listing of specialized funds. Similarly, the Exchange believes that registration of the fund under the Investment Company Act of 1940, as amended (''1940 Act''), which requires the fund adviser to be a registered investment adviser, obviates the need for the Exchange to subjectively evaluate the fund adviser.

In addition, the Exchange is proposing to permit the listing of a group of funds listed by a single ''fund family'' (*i.e.*, funds with a common investment adviser or investment advisers who are ''affiliated persons'' as defined in section 2(a)(3) of the 1940 Act)[5] subject to the following standards:

- The group has a total market value of publicly held shares or net assets of at least $75,000,000;
- The closed-end funds in the Group have an average market value of publicly held shares or net assets of at least $15,000,000; and
- Each closed-end fund in the group has a market value of publicly held shares or net assets of at least $10,000,000.[6]

The Exchange represents that the group standards would be applicable to any fund that is part of a ''fund family'' even if the fund is not listed concurrently with other funds in the family, as long as at the time of listing the individual fund, the entire ''fund family'' is in compliance with the group standards.[7] Each fund will also be individually subject to the distribution criteria specified in section 102(a) of the Amex Company Guide.[8]

The Exchange believes that the ''fund family'' standards will enable the Exchange to accommodate the needs of fund sponsors, which often prefer to offer, issue and list funds in groups. The Exchange believes that when a fund is part of a larger family, compliance with a $20 million market value of publicly held shares or net asset requirement is not necessary for the fund to be suitable for listing, since the size of the fund family indicates that there is sufficient investor interest in the sponsor's funds.[9]

The Exchange is also proposing to amend section 1003 of the *Amex Company Guide* to specify that each closed-end fund (regardless of whether it is part of a ''fund family'') will be subject to delisting if its market value of public held shares and net assets are each less than $5,000,000 for 60 consecutive trading days, or if it ceases to qualify as a closed-end fund (unless the resultant entity otherwise qualifies for listing).

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of section 6(b)(5),[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes that the proposed rule change will provide greater transparency with respect to the listing of closed-end funds, and potentially provide a larger number of such funds and their investors with the benefits inherent in an Amex listing of comprehensive regulation, transparent price discovery and trade reporting to facilitate best execution, and increased depth and liquidity resulting from the confluence of order flow found in an auction market environment.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received any written comments with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

[4] Section 102(a) of the Amex Company Guide requires a minimum public distribution of (i) 500,000 shares and 800 shareholders; or (ii) 1,000,000 shares and 400 shareholders; or (iii) 500,000 shares and 400 shareholders and average daily trading volume of approximately 2,000 shares.

[5] 15 U.S.C. 80a–2(a)(3); *See* amendment no. 1, *supra* note 3.

[6] *See* Amendment No. 1, *supra* note 3.

[7] The Exchange represents that all such funds will thus be evaluated in determining whether a fund applicant is eligible for listing. *See* amendment no. 1, *supra* note 3.

[8] *See supra* note 4.

[9] The Exchange represents that it will not have discretion to list a closed-end fund that does not satisfy the quantitative criteria set forth in section 101(e) of the Amex Company Guide, but will have discretion to exclude a closed-end fund that otherwise satisfies the criteria. *See* amendment no. 1, *supra* note 3.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Amex. All submissions should refer to File No. SR–Amex–2002–55 and should be submitted by December 9, 2002.

**V. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the proposed rule change, as amended, relating to the establishment of the pilot is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the requirements under section 6(b)(5) of the Act [12] that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public.[13] Specifically, the Commission believes that the proposed rule change will provide greater transparency to the Exchange's listing process for closed-end funds.

The Commission finds good cause for approving the pilot prior to the 30th day after publication in the **Federal Register**. The Amex has represented that it desires to promptly implement the proposed rule change and that accelerated approval will enable the Exchange to more quickly accommodate the listing of closed-end funds.[14] The Commission believes that accelerated approval on a five-month basis will permit the Exchange to continue listing funds and accommodate the desire of fund families to list groups of closed-end funds on one marketplace without undue delay.[15] Accordingly, the Commission finds it appropriate and consistent with sections 6(b)(5) and 19(b)(2) of the Act [16] to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] the proposed rule change, as amended, (File No. SR–Amex–2002–55) is approved on a pilot basis until April 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–29169 Filed 11–15–02; 8:45 am]

**BILLING CODE 8010–01–P**

[12] 15 U.S.C. 78f(b)(5).

[13] In approving this pilot, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See* amendment no. 1, *supra* note 3.

[15] Approval of the five-month pilot period should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

[16] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46803; File No. SR–PCX–2002–36]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Exchange's New Trading Platform for Options, PCX Plus

November 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2002, the Pacific Exchange, Inc. (''PCX'' 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 PCX. On November 6, 2002, the PCX filed amendment no. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the PCX's original rule 19b–4 filing in its entirety.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PCX proposes to adopt new rules for the implementation of its new trading platform for options, PCX Plus. The PCX's proposal includes new rules on priority and allocations of orders, rule changes to permit options Market Makers to conduct their trading activities from locations away from the trading floor, and proposed system changes to accommodate new order handling procedures and automated trade processing.

The text of the proposed rule change is available at the Office of the Secretary, PCX, at the Commission, and on the Commission's website.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

a. Introduction

The Exchange's new trading platform for options, PCX Plus, has been designed to enhance the PCX's current marketplace in several respects. The Exchange believes that this new hybrid model combines the best features of traditional floor-based markets and new electronic trading systems, while preserving a single marketplace with a single book. It allows PCX members to trade as Market Makers from locations away from the trading floor. It replaces the PCX's current priority rules with new ones that the Exchange believes would provide greater incentives for Market Makers to quote aggressively, with tighter markets and greater

liquidity. PCX Plus expands upon the Exchange's current trading rules by permitting the entry of eligible orders of all account types into the Exchange's Consolidated Book. The Exchange believes that the new trading platform would greatly enhance the PCX's options market by accommodating independent quotations from numerous market participants. Also, the Exchange represents that PCX Plus provides intermarket price protection and would operate in a manner consistent with the Options Intermarket Linkage Plan.[4]

The Exchange believes that the proposed new PCX Plus rules would foster aggressive quote competition and would reward market participants who improve PCX quotes with deep and liquid markets. Under the proposal, orders would be allocated to Market Makers on a ''size *pro rata*'' basis. The Exchange believes that this formula would reward larger-sized bids and offers with greater participation in trades. In addition, the Exchange believes that the proposal would grant significant trade participation rights to market participants who are first to improve the PCX quote. Under this proposed rule change, a member who improves the quote and stands alone at that price for three seconds would receive First Improved Quote (''FIQ'') status. Those with FIQ status would be guaranteed, at least, the greater of: (1) 40% of the next order(s) to buy or sell the same series (for a minimum of 20 contracts), or (2) the total size that it would receive pursuant to a size pro rata allocation. Market Makers must establish the best bid or offer (''BBO'') or quote at the BBO to participate in automated trades. As the Exchange phases in PCX Plus, the current Auto-Ex allocation methodology, involving Market Makers participating on a rotating ''wheel,'' would be phased out and replaced with a new model in which each PCX Market Maker's trading interest would be independently generated and continuously represented in the Consolidated Book.

Under the proposal, member firms would be able to effect crossing transactions on the Exchange in two different ways—either manually on the trading floor or electronically through PCX Plus. The Exchange represents that these proposed rules are designed to assure that no one market participant receives a disproportionate share of a transaction in relation to other market participants who are bidding or offering at the same price. The Exchange represents that the proposed rules are also designed to assure that market participants who display significant trading interest ''up front'' are rewarded with participation in the trade.

The proposed new structure would involve four types of Market Makers on the Exchange: [5]

(1) Lead Market Makers (''LMMs'') would continue to provide two-sided markets throughout the trading day, while conducting their trading activities on the trading floor of the Exchange; [6]

(2) The Exchange would permit Remote Market Makers (''RMMs'') to enter quotes and effect trades from off-site locations. RMMs would be permitted to select their appointed issues;

(3) Floor Market Makers (''FMMs''), who are registered Market Makers with basic obligations on the Options Floor, would continue to trade as they do today and would supply independently generated Quotes with Size; [7] and

(4) The Exchange would permit members to act as Supplemental Market Makers (''SMMs''), who would be provided with tools that allow them to add liquidity at the same price that is then being disseminated by the LMM.

The Exchange believes that the aggregation of quotes from Market Makers on and off the trading floor would result in greater liquidity and narrower bid-ask spreads for all market participants. The Exchange also notes that the proposed changes to its rules are non-discriminatory in that they would permit all Market Makers to submit their quotations via their own proprietary auto-quoting devices if they choose to do so.

The Exchange believes that the proposed new PCX Plus rules are designed to assure fair trade allocation among market participants. LMMs would be eligible to receive up to 40% in guaranteed participation on trades occurring at their disseminated markets. Members would also be entitled to receive up to 40% trade participation if they maintain FIQ status. Although members may receive more than 40% participation by virtue of a pro rata allocation, no member would be eligible to receive more than 40% participation as a guarantee by rule. The proposal is also designed to assure that firms interacting with their customers' orders would receive no more than a 40% share of such orders before the orders are exposed to further competition. Finally, no member would be allocated option contracts in excess of their expressed trading interest.

The Exchange represents that PCX Plus has been designed so that available trading interest on the Exchange can be aggregated by price and size, both of which would be displayed promptly. Currently, only orders for the accounts of Public Customers are eligible to be represented in the PCX order book. Under the proposal, orders for all account types '' including Public Customer, Firm, Market Maker and Non-Member Market Maker—may be represented in the Consolidated Book, along with Quotes with Size of PCX Market Makers (which would be entered for handling as if they were orders). Public Customer orders displayed at the best price would continue to receive first priority on the Exchange.[8]

Market and marketable limit orders routed electronically to PCX Plus would receive immediate executions against bids and offers in the Consolidated Book, unless a specified condition applies, in which case the order (or a portion of it) would be routed to a Floor Broker Hand Held Terminal for execution. The order execution rules and automated processes set forth in proposed PCX rule 6.76 are designed to place limitations on the internalization of order flow while providing added opportunities for competition. The Exchange believes that the proposed order execution rules and automated processes would enhance market efficiency and fairness by offering incentives to all market participants who provide liquidity on the Exchange.

The proposal also establishes new procedures for Market Makers' trading interest that interact electronically with orders in the Consolidated Book. In such situations, a Market Maker who initiates a transaction would be limited

[4] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving Options Intermarket Linkage Plan submitted by American Stock Exchange LLC, Chicago Board Options Exchange, Inc. and International Securities Exchange LLC); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000) (order approving the PCX as participant in Options Intermarket Linkage Plan); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Philadelphia Stock Exchange, Inc. as participant in Options Intermarket Linkage Plan).

[5] *See* proposed PCX rule 6.32(a) (definition of ''Market Maker'').

[6] LMMs will also be responsible for performing certain functions under the Options Intermarket Linkage Plan. *See supra* note 4.

[7] *See* proposed PCX rule 6.1(b)(33) (which defines ''Quote with Size'' as a quotation to buy or sell a specific number of option contracts at a specific price that a Market Maker has entered into PCX Plus through an electronic interface).

[8] Under the proposal, inbound orders are allocated based on the following priority sequence: Public Customer orders have first priority to trade against such orders; quotes with FIQ status have second priority (subject to a 40% cap); the portion of the order subject to LMM guaranteed participation will be allocated next; followed by any trading interest for the accounts of non-Public Customers. *See* proposed PCX rule 6.76(a).

to 40% of the available customer contracts at the execution price or the Market Maker's size pro rata share, whichever amount is greater. The Market Maker would then be eligible to trade the remaining option contracts at the execution price once other Crowd Participants [9] have had an opportunity to participate.

While the proposal is intended to further automate options trading on the Exchange, the Exchange represents that the proposed new system would continue to facilitate open outcry trading as currently practiced today, particularly for large transactions and executions of complex orders and contingency orders. When an order is entered by phone or re-routed to a Hand Held Terminal for execution, a Floor Broker would represent it at the appropriate trading post and would afford priority first to Public Customer interest in the Consolidated Book, then to bids or offers in the trading crowd, and finally to any Firm or Market Maker interest in the Consolidated Book.[10]

The Exchange proposes to phase in the use of PCX Plus in particular issues, while simultaneously phasing out the current Auto-Ex ''wheel'' functionality. During the phase-in period, the Exchange represents that it would have two sets of trading rules in operation, each applying to a different set of option issues traded on the Exchange.

The PCX believes that the proposed rule change would promote efficiency by reducing the costs associated with transactions on the Exchange, and would promote liquidity and competition on the Exchange by permitting Market Makers to independently make markets either on or off of the PCX's physical trading floor. By allowing PCX Market Makers to conduct their activities off the Options Floor, while retaining the availability of on-floor market making, the Exchange believes that the proposal would permit PCX Market Makers to choose the most efficient and cost-effective way to conduct their businesses. The Exchange believes that the proposal is also designed to assure that the Exchange would attract greater liquidity and improved pricing, thereby making the PCX a more competitive market for all investors.

[9] *See* proposed PCX rule 6.1(b)(38) (which defines ''Crowd Participants'' as the Market Makers appointed to an option issue under rule 6.35, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series.)

[10] *See* proposed PCX rule 6.76(d).

b. Summary of Proposed Change to PCX's Rules

i. PCX Rule 4. General Rules

The Exchange proposes to modify its general rules in PCX rule 4 as follows:

*Proposed PCX Rule 4.2*—RMMs trading from a location off the Options Floor are subject to the same prohibitions against trading prior to the official opening of the PCX for options trading.

*Proposed PCX Rule 4.2, Commentary .01*—This proposed rule change permits RMMs to effect transactions through the facilities of the Exchange until 1:02 p.m. (PST) for equity options and until 1:15 p.m. (PST) for index options on each business day.

ii. PCX Rule 6.1. Applicability, Definitions and References

In connection with the implementation of PCX Plus, the Exchange proposes to adopt the following definitions:

*Proposed PCX Rule 6.1(b)(33)*—The term ''Quote with Size'' means a quotation to buy or sell a specific number of option contracts at a specific price that a Market Maker has entered into PCX Plus through an electronic interface.

*Proposed PCX Rule 6.1(b)(35)*—The term ''Non-Member Market Maker'' includes, but is not limited to, specialists, designated primary market makers, lead market makers, market makers, registered options traders, primary market makers, and competitive market makers registered on an exchange other than the PCX.

*Proposed PCX Rule 6.1(b)(36)*—The term ''Firm'' means a broker-dealer that is not registered as a dealer-specialist or market maker on a registered national securities exchange or association.

*Proposed PCX Rule 6.1(b)(37)*—The term ''Consolidated Book'' means the Exchange's electronic book of limit orders for the accounts of Public Customers and broker-dealers, and Quotes with Size. The Exchange represents that all orders and Quotes with Size that are entered into the Consolidated Book would be ranked and maintained in accordance with the rules of priority as provided in proposed PCX rule 6.76.

*Proposed PCX Rule 6.1(b)(38)*—The term ''Crowd Participants,'' means the Market Makers appointed to an option issue under PCX Rule 6.35, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series.

*Proposed PCX Rule 6.1(c)(2)*—For purposes of the PCX rules, the term ''Market Maker'' includes LMMs, RMMs, SMMs, and FMMs, unless the context otherwise indicates.

iii. Fast Markets and Unusual Conditions

*Proposed PCX Rule 6.28(c)(6)*—This proposed rule change provides that the PCX Plus execution mechanism as set forth in proposed PCX rule 6.76(b) may be suspended for a period of time not to exceed 5 minutes because of an influx of orders or other unusual market conditions.

iv. Market Makers

*Proposed PCX Rule 6.32(a)*—The proposed rule change specifies that an RMM whose transactions are executed through the facilities of the Exchange would be deemed to be a ''Market Maker'' for all purposes under the Act and the rules and regulations thereunder.

PCX Market Makers would be one of the following types: LMM, RMM, SMM, or a FMM. Each type of Market Maker is defined in the following subsections:

*Proposed PCX Rule 6.32(a)(1)*—An LMM is a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange and who meets the qualification requirements of PCX rule 6.82(b).

*Proposed PCX Rule 6.32(a)(2)*—An RMM is an individual who is registered with the Exchange for the purpose of making transactions as dealer-specialist from a location off the Floor of the Exchange. An RMM may also execute transactions while on the Floor of the Exchange. Transactions of an RMM that are executed through the facilities of the Exchange are deemed to be Market Maker transactions for purposes of PCX rule 6.32.

*Proposed PCX Rule 6.32(a)(3)*—An SMM is a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange and who provides quotations:

(A) Manually, by public outcry; or

(B) Automatically, through an electronic interface device at the LMM's prevailing bid or offering price, with a size to be designated by the SMM.

*Proposed PCX Rule 6.32(a)(4)*—A FMM is a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange and provides quotations:

(A) Manually, by public outcry; or

(B) Automatically through a proprietary auto quoting device.

*Proposed PCX Rule 6.32(b)*—This proposed rule change provides that those transactions initiated by RMMs through the facilities of the Exchange, as well as those initiated on the Options Floor, would count as Market Maker

transactions and be entitled to special margin treatment, pursuant to the net capital requirements of rule 15c3–1 under the Act and Regulation T of the Board of Governors of the Federal Reserve system.[11]

*Proposed PCX Rule 6.32(c)*—RMMs may enter opening orders from off the Options Floor for execution by a Floor Broker and receive special margin treatment for them as long as the entry of such orders is consistent with the RMM's duty to maintain fair and orderly markets, and such orders are entered for the purpose of hedging, reducing the risk of, or rebalancing open positions of the RMM.

*Proposed PCX Rule 6.34,* Commentary .01—This proposed rule change clarifies that a Floor Broker, unless otherwise prohibited in this PCX rule or PCX rules 6.38 or 6.52(a),[12] may enter an order for its proprietary account in the Consolidated Book for the purpose of liquidating a position resulting from a bona fide error made in the course of its floor brokerage business.

v. Appointment of Market Makers

*Proposed PCX Rule 6.35(g)(1)—Each RMM must select a primary appointment comprising a maximum number of option issues per seat.* RMMs may select from among any option issues traded on the Exchange for inclusion in their primary appointments, which must be approved by the Options Allocation Committee (''OAC''). In considering the approval of the appointment of an RMM in each security, the OAC would consider:

(A) The financial resources available to the RMM;

(B) The RMM's experience, expertise and past performance in making markets, including the RMM's performance in other securities;

(C) The RMM's operational capability; and

(D) The maintenance and enhancement of competition among Market Makers in each security in which they are appointed.

*Proposed PCX Rule 6.35(g)(2)*—Except as provided in proposed PCX rule 6.35(h), the following rules apply to the primary appointments of RMMs:

(A) RMMs with a single seat may have up to eight option issues within their primary appointments.

(B) RMMs with two seats may have up to 18 option issues within their primary appointments.

(C) RMMs with three seats may have up to 30 option issues within their primary appointments.

(D) RMMs with four seats may have up to 44 option issues within their primary appointments.

(E) RMMs with five seats may have up to 60 option issues within their primary appointments.

(F) RMMs with six seats may have up to 78 option issues within their primary appointments.

(G) RMMs with seven seats may have up to 98 option issues within their primary appointment zones.

(H) RMMs with eight seats may have up to 120 option issues within their primary appointments.

The Options Floor Trading Committee would determine uniform limits on the number of issues applicable to RMMs with more than eight seats.

*Proposed PCX Rule 6.35(g)(3)*—RMMs may change the option issues that are included in their primary appointments, subject to the approval of the OAC. Such requests must be made in a form and manner prescribed by the Exchange. In considering whether to approve an RMM's request to change their primary appointments, the OAC would consider the factors set forth in proposed PCX rule 6.35(g)(1).

*Proposed PCX Rule 6.35(g)(4)*—RMMs may withdraw from trading an option issue that is within their primary appointments by providing the Exchange with a three-business day written notice of such withdrawal. RMMs who fail to give advance written notice of withdrawal to the Exchange may be subject to formal disciplinary action pursuant to PCX rule 10. Subsequent to withdrawal, the RMM may not be re-appointed as an RMM in that option issue for a period of one full calendar quarter.

*Proposed PCX Rule 6.35(g)(5)*—This proposed rule change provides that the Exchange may suspend or terminate any appointment of an RMM in one or more option issues whenever, in the Exchange's judgment, the interests of maintaining a fair and orderly market are best served by such action.

*Proposed PCX Rule 6.35(g)(6)*—An RMM may seek review of any action taken by the Exchange pursuant to subsection (g), including the denial of the appointment for, or the termination or suspension of, an RMM's appointment in an option issue or issues, in accordance with PCX rule 10 or 11, as applicable.

*Proposed PCX Rule 6.35(h)*—This proposed rule change provides that a Member Firm acting as an LMM firm may trade up to four issues as an RMM. These four issues are not required to be located at posts that are contiguous with the existing primary appointments of the Member Firm's individual Members. The LMM may enter quotations electronically in such issues from a location away from the trading post.

vi. Letters of Guarantee

*Proposed PCX Rule 6.36(a)*—This proposed rule change provides that RMMs must have a Letter of Guarantee that has been issued for such members by a Clearing Member and approved by the Options Clearing Corporation and the Exchange in order to effect transactions through the facilities of the Exchange. This requirement is the same for all other types of Market Makers effecting transactions on the Options Floor.

vii. Quoting Obligations of Market Makers

*Proposed PCX Rule 6.37, Commentary .07*—Former PCX rule 6.37, Commentary .07 is being renumbered as new proposed PCX rule 6.37(d).

*Proposed PCX Rule 6.37(g)(1)*—This proposed rule change sets forth the quoting obligations of LMMs. Specifically, LMMs must provide continuous two-sided quotations that meet the legal quote width requirements of PCX rule 6.37(b) throughout the trading day in each of their appointed issues. LMMs must also specify a size for each of their quotations applicable to:

(A) Orders for Public Customers; and

(B) Orders and Quotes with Size for broker-dealers.

LMMs must enter their quotations through an electronic interface with the Exchange, but may also provide quotations by public outcry.

*Proposed PCX Rule 6.37(g)(2)*—This proposed rule change sets forth a requirement that RMMs must provide continuous two-sided quotations in each issue in which they are appointed during 60% of all times during which the Exchange is open for options trading. Such quotations must meet the legal width requirements of PCX rule 6.37(b). In addition, RMMs must specify a size for each of their quotations applicable to:

(A) Orders for Public Customers; and

(B) Orders and Quotes with Size for broker-dealers.

These obligations would apply to all of the RMM's appointed issues

[11] This proposed rule change also provides that transactions entered from off the Options Floor, except those executed for the account of an RMM and those that are permissible under proposed PCX rule 6.32(c), must be placed in the Market Maker's investment account and be subject to applicable customer margin.

[12] Pursuant to PCX rule 6.52(a), the Exchange will determine, on an issue-by-issue basis, the account types of orders that will be placed in the Consolidated Book. Such orders may include limit orders for the accounts of Public Customers, broker-dealers or Market Makers.

collectively, rather than on an issue-by-issue basis. Compliance with these obligations would be determined on a per-calendar-quarter basis. RMMs must enter all of their quotations through an electronic interface with the Exchange. Finally, the public outcry requirements of PCX rule 6.73 do not apply to RMMs.

*Proposed PCX Rule 6.37(g)(3)*—SMMs must provide the sizes of their quotations through an electronic interface with the Exchange, but may also provide quotations by public outcry.

*Proposed PCX Rule 6.37(g)(4)*—This proposed rule change provides that FMMs must provide quotations in accordance with PCX rule 6.37 (which sets forth basic obligations of Market Makers) and may enter such quotations by public outcry or through an electronic interface with the Exchange.

viii. Obligations of RMMs

*Proposed PCX Rule 6.37(h)(1)*—This proposed rule change indicates that all PCX rules applicable to Market Makers would also apply to RMMs unless otherwise provided or unless the context clearly indicates otherwise. The following PCX rules do not apply to RMMs who are not present on the Options Floor: PCX rule 6.2(b)–(f) and (h) (Admission to and Conduct on the Options Trading Floor); PCX rule 6.35(a) (Appointment of Market Makers); PCX rule 6.37(d) and Commentaries .03 and .05 (Obligations of Market Makers); PCX rule 6.53, Commentary .01 (Issuing a Call for Market Makers); PCX rule 6.66 (Order Identification); PCX rule 6.73 (Manner of Bidding and Offering); PCX rule 6.74 (Bid and Offers in Relation to Units of Trading); and PCX rule 6.100 (Evaluation of Options Trading Crowd Performance).

*Proposed PCX Rule 6.37(h)(2)*—This proposed rule change provides that, for the purposes of the following rules, RMMs are deemed not to be members of the trading crowd: PCX rule 6.8, Commentary .08(c)(2) (the firm facilitation exemption procedures relating to position limits); PCX rule 6.47(a)–(f) (Crossing Orders and Stock/Option Orders); and PCX rule 6.66 (trading crowd participants to whom order identification information must be provided).

*Proposed PCX Rule 6.37(h)(3)*—Under this proposed rule change, each RMM must meet its quoting obligations as set forth in proposed PCX rule 6.37(g). Failure to comply with the 60% quoting requirement may result in a fine pursuant to PCX rule 10.13; however, if aggravating circumstances are present, formal disciplinary action may be taken pursuant to PCX rule 10.4. The Exchange may consider exceptions to this quoting requirement based on demonstrated legal or regulatory requirements or other mitigating circumstances (*e.g.*, excused leaves of absence, personal emergencies, or equipment problems).

*Proposed PCX Rule 6.37(h)(4)*—This proposed new rule provides that an RMM may be called upon by an Exchange official designated by the Board of Governors to submit a single quote or maintain continuous quotes in one or more series of an option issue to which the RMM is appointed whenever, in the judgment of such official, it is necessary to do so in the interest of maintaining fair and orderly markets.

*Proposed PCX Rule 6.37(h)(5)*—Under this proposed rule change, RMMs must trade at least 75% of their average daily trading volume per quarter in issues included in their primary appointments pursuant to proposed PCX rule 6.35(g). RMMs may trade up to 25% of their quarterly contract volume in option issues that are not included within their primary appointments.

*Proposed PCX Rule 6.37(h)(6)*—If the Exchange finds any failure by an RMM to engage in a course of dealings as specified in subsections (3)–(5) of this PCX rule, such RMM would be subject to disciplinary action or suspension or revocation of registration by the Exchange in one or more of the option issues in which the RMM holds a primary appointment. Nothing in this proposed rule change would limit any other power of the Board of Governors under the Constitution, rules, or procedures of the Exchange with respect to the registration of an RMM or with respect to any violation by an RMM of the provisions of this PCX rule.

*Proposed PCX Rule 6.37(h)(7)*—This proposed rule change establishes procedures for evaluating the performance of RMMs. Under the proposal, the OAC would periodically conduct an evaluation of RMMs to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, competition among Market Makers, observance of ethical standards, and administrative factors. The OAC would consider any relevant information including, but not limited to, the results of an RMM evaluation, trading data, an RMM's regulatory history and such other factors and data as may be pertinent in the circumstances.

If the OAC finds any failure by an RMM to meet minimum performance standards, the OAC would be permitted to take the following actions, after written notice and after opportunity for hearing pursuant to PCX rule 11: (i) Restriction of appointments to additional option issues in the RMM's primary appointment; (ii) suspension, termination, or restriction of an appointment in one or more option issues; or (iii) suspension, termination, or restriction of the RMM's registration in general.

Pursuant to the proposal, if an RMM's appointment in an option issue or issues has been terminated pursuant to this subsection (7) of this PCX rule, the RMM may not be re-appointed as an RMM in that option issue or issues for a period not to exceed six months.

*Proposed PCX Rule 6.37, Commentary .03*—This proposed rule change clarifies that the obligations set forth in PCX rule 6.37 (regarding the removal of bids and offers) do not apply to RMMs. Under the proposed rule change, when a Market Maker, other than an RMM, displays a market on the screen that is the best market in that crowd, the Market Maker is obligated to ensure that the Market Maker's market is removed from the screen when the Market Maker leaves the crowd.

P*roposed PCX Rule 6.37, Commentary .07(a)*—An RMM would be permitted to request a leave of absence when he or she seeks to withdraw temporarily from entering quotations into the PCX Plus system for periods in excess of two weeks.

*Proposed PCX Rule 6.37, Commentary .07(c)*—This proposed rule change provides that RMMs, while on leave, may not enter opening transactions in Exchange listed options, in their Market Maker accounts, through the use of Floor Brokers, except as provided in proposed PCX rule 6.32(c).

viii. Restrictions on Acting as Market Maker and Floor Broker

*Proposed PCX Rule 6.38(a)(1)*—This proposed rule change clarifies that the restrictions set forth in subsection (b) of PCX rule 6.38 (relating to members acting as both Market Maker and Floor Broker) do not apply to LMMs who are performing the functions of Floor Brokers pursuant to PCX rule 6.82(h)(3).

*Proposed PCX Rule 6.38(a)(2)*—This proposed rule change provides that RMMs, trading from a location off the Floor of the Exchange, are not eligible to perform the functions of the Floor Brokers.

ix. Consolidated Book

The Exchange represents that, in PCX Plus, the Consolidated Book would be opened up to accept not only customer orders, but also broker-dealer orders, Market Maker orders and Market Maker Quotes with Size. All orders and Quotes with Size at the best price would be

aggregated and disseminated via the Options Price Reporting Authority (''OPRA'').

*Proposed PCX Rule 6.52(a)*—This proposed rule change states that the Exchange would determine, on an issue-by-issue basis, the account types of orders that would be placed in the Consolidated Book. Such orders may include limit orders for the accounts of Public Customers, broker-dealers or Market Makers. In addition, Quotes with Size of Market Makers would be permitted to be included in the Consolidated Book. There would be no limit to the size of orders or quotes that may be entered into the Consolidated Book. The Exchange would determine whether any or all types of contingency orders (as defined in PCX rule 6.62(c)) would be eligible to be included in the Consolidated Book.[13] The Exchange, with the approval of the Options Floor Trading Committee, would determine the types of contingency orders that would be eligible for entry into the Consolidated Book and would periodically issue bulletins to notify its Members which contingency orders would be permitted.

*Proposed PCX Rule 6.52(c)*—Members submitting orders or Quotes with Size to the Order Book Official for execution or for entry into the Consolidated Book would be required to comply with such procedures and format requirements as may be prescribed by the Exchange.[14]

*Proposed PCX Rule 6.57*—The Exchange proposes to renumber current PCX rule 6.57 as PCX rule 6.57(b), and to apply it to option issues not traded under PCX Plus during the phase-in period (proposed PCX rule 6.57(a) is an explanatory preface). During the phase-in period, proposed new PCX rule 6.57(c) would apply to those issues traded on PCX Plus, and would require that all Crowd Participants be able to access at the same time the same information in regard to orders and Quotes with Size placed through PCX Plus.

x. Automated Opening Rotations

The Exchange currently conducts Automated Opening Rotations (''AORs'') pursuant to PCX Rule 6.64(c). Under this PCX rule, only Public Customer orders are eligible to participate in AORs. If a broker-dealer order is eligible to trade at the opening, the applicable series is opened manually, pursuant to PCX rule 6.64(b). The Exchange now proposes to expand the account types of orders eligible for participation in an AOR to include orders for the accounts of broker-dealers and Quotes with Size.[15] Accordingly, the Exchange proposes to phase in its new proposed PCX rule 6.64(d) on Enhanced Automated Opening Rotations (which would accommodate broker-dealer orders) while simultaneously phasing out the existing AOR process pursuant to PCX rule 6.64(c).

*Proposed PCX Rule 6.64(c)*—This proposed rule change states that the Exchange would designate option issues that are eligible for automated opening rotations pursuant to this PCX rule and proposed PCX rule 6.64(d) (''Enhanced Automated Opening Rotations''). If an option series has not been designated as eligible for AOR pursuant to proposed PCX rule 6.64(d), and if that series is not opened automatically pursuant to PCX rule 6.64(c), then that series would be opened manually pursuant to PCX rule 6.64(b).

*Proposed PCX Rule 6.64(d)*—This proposed rule change sets forth the manner in which AOR would operate in those options issues designated for trading in PCX Plus.

*Proposed PCX Rule 6.64(d)(1)*—''Establishing a Market for the Opening Rotation.'' This proposed rule change sets forth the method for establishing a market for the opening rotation. Prior to the opening rotation in a particular option series, the Order Book Official would determine whether there are any manual orders being represented in the trading crowd to be executed during the opening rotation and would designate the option series in which there are such orders for manual opening. In doing so, the Order Book Official would call for bids and offers from the trading crowd once the underlying security has opened. The trading crowd may determine that the bids and offers then being displayed on the overhead screens are accurate, or alternatively, may modify those bids and offers by public outcry.

*Proposed PCX Rule 6.64(d)(2)*—''Designating Series that are Not Eligible for the Automated Opening Rotation.'' Under this proposed rule change, the Order Book Official must identify, prior to the opening, all option series that are not eligible for the AOR and that would be opened manually. The Exchange would provide Crowd Participants with notice of those options series that would be opened manually. The series that are not eligible for the AOR include:

(A) Series for which there are no market or marketable limit orders in PCX Plus.

(B) Series for which there are one or more manual orders being represented in the trading crowd that are likely to be executed during the opening rotation, as determined by an Order Book Official.

(C) Series for which one or more members of the trading crowd has reasonably requested that a manual opening rotation be conducted. Two Floor Officials may deny member requests for manual opening rotations in the absence of reasonable justification for doing so.

(D) Series in which the ''imbalance threshold'' has been exceeded. Prior to the opening, the Order Book Official, in conjunction with the LMM in the issue, would set for each option issue a number of contracts that constitutes an imbalance threshold, *i.e.*, a specific number of option contracts to buy in excess of the number of contracts to sell or a specific number of contracts to sell in excess of the number of contracts to buy. The Exchange represents that PCX Plus would not automatically open any series with an imbalance exceeding the threshold for that issue.

*Proposed PCX Rule 6.64(d)(3)*—This proposed rule change states that series eligible for AOR would be opened automatically based on the following principles and procedures. First, PCX Plus would verify that a Quote with Size has been received from the LMM before a series is eligible for AOR. Second, PCX Plus would determine a single price at which a particular option series would be opened, as provided in Commentary .01 to this PCX rule. Third, orders in the PCX Plus system would maintain priority over Market Maker bids and offers that are not being represented in the Consolidated Book as Quotes with Size. Orders in the PCX Plus system would be matched up with one another, based on the priority rules as set forth in proposed PCX rule 6.76(a); provided, however, that: (i) Market Maker Quotes with Size would have priority over orders for Firms, Market Makers, and Non-Member Market Makers during the AOR, and (ii) orders for the accounts of Firms, Market Makers, and Non-Member Market Makers would be executed based on price/time priority. Finally, following the opening, any unexecuted

[13] The Exchange proposes to delete current PCX rule 6.52(a), which addresses the account types of orders eligible for acceptance and entry into the Order Book. Under the current PCX rule, only non-broker-dealer customer orders may be placed with an Order Book Official.

[14] The Exchange proposes to delete current PCX rule 6.52(c), which describes the circumstances and procedures to be followed by Floor Brokers for the entry, cancellation and changes of orders held by the Order Book Official.

[15] The Exchange represents that the Commission has previously expressed a view that the Exchange should modify AOR to accommodate broker-dealer orders in the automated opening process. *See* Securities Exchange Act Release No. 41970 (September 30, 1999), 64 FR 54713 (October 7, 1999). The Exchange believes this proposed rule change is responsive to the Commission's concern.

contracts would be represented as bids and offers on the Exchange.

*Proposed PCX Rule 6.64(d)(4)*—This proposed rule change states that contingency orders would not be entitled to participate in the AOR.

xi. Manner of Bidding and Offering

*Proposed PCX Rule 6.73*—This proposed rule change provides that to be effective, a bid or offer must either be represented electronically in the Consolidated Book or be made by public outcry at the trading post where the option is traded. This PCX rule previously stated that to be effective, a bid or offer must be made by public outcry at the trading post where the option is traded.

xii. Priority Rules

The Exchange's priority rules for options trading are currently set forth in PCX rule 6.75. Proposed rule 6.75(h) has been renumbered from former rule 6.76 and does not apply to PCX Plus Executions. Once PCX Plus has been completely phased-in, the PCX intends to submit a filing to delete this provision, along with the remainder of rule 6.75, as it would no longer be necessary.

*Proposed PCX Rule 6.75(d)*—This proposed rule change clarifies that PCX rules 6.75(a)–(c), relating to priority, would only apply in connection with manual opening rotations.

*Proposed PCX Rule 6.76*—This proposed rule change sets forth the priority and allocation procedures of orders and Quotes with Size for option issues designated to be traded in PCX Plus. The proposed rule change also provides that the maximum size of an inbound order that may be eligible for execution on PCX Plus (the ''Maximum Order Size'') pursuant to proposed PCX rule 6.76(b) below would be established by the LMM in the issue, subject to the approval of two Floor Officials,[16] whose approval must be further ratified by the Options Floor Trading Committee.

*Proposed PCX Rule 6.76(a)(1)*—This proposed rule change states that the highest bid has priority over all other bids; and the lowest offer has priority over all other offers.

*Proposed PCX Rule 6.76(a)(2)*—This proposed rule change states that multiple bids or offers at the same price are afforded priority based on account type and other principles, as set forth below:

(A) *Public Customer Orders.* First, bids and offers in the Consolidated Book for Public Customer accounts would have priority over other bids or offers at the same price.

If there is more than one highest bid for a Public Customer account or more than one lowest offer for a Public Customer account, then such bids or offers, respectively, would be ranked based on time priority.

(B) *FIQ Status.* Next, orders and Quotes with Size in the Consolidated Book with FIQ status, as provided in proposed PCX rule 6.76(a)(3), would have second priority over bids or offers at the same price, but only for up to 40% of the order against which the orders or Quotes with Size that have FIQ status would be executed.

(C) *LMM Guaranteed Participation.* Bids and offers in the Consolidated Book for the account of the LMM would have third priority if the LMM is eligible to receive guaranteed participation on such bid or offer pursuant to PCX rule 6.82. LMMs would not receive any portion of an inbound order if their bids or offers were not at the trade price. The LMM's guaranteed participation would be expressed as a percentage of the remaining quantity after all Public Customer orders and quotes with FIQ status (to the extent of their 40% participation), if any, have first been executed. The LMM would not be allocated a number of contracts greater than the size of the LMM's bid or offer. If the LMM receives guaranteed participation on a trade and there are contracts remaining to be executed, the remaining portion of the LMM's bid or offer would be permitted to participate in the ''size pro rata'' allocation, as provided in proposed PCX rule 6.76(a)(4).

(D) *Non-Customer Orders and Quotes with Size.* Orders and Quotes with Size in the Consolidated Book for the accounts of non-customers (including Firms and Market Makers) would have last priority. If there is more than one highest bid or more than one lowest offer in the Consolidated Book for the account of a non-customer, then such bids or offers would be afforded priority on a ''size pro rata'' basis, as provided in proposed PCX rule 6.76(a)(4).

xiii. FIQ Status

The Exchange believes that PCX Plus is designed to reward market participants for quoting at the best price with size. The Exchange further believes that PCX Plus encourages quote competition in the Exchange's marketplace at all times—not just upon the entry of an order into the PCX market. Accordingly, the Exchange proposes to adopt new PCX rule 6.76(a)(3), which directly rewards market participants for improving the PCX quote by allocating to them a significant portion of inbound orders.

*Proposed PCX Rule 6.76(a)(3)(A)*—This proposed rule change states that a non-customer order[17] or Quote with Size that improves the best bid or offer on the Exchange and that is disseminated via OPRA would have ''FIQ status'' with respect to other bids or offers at the same price, unless it has been matched or further improved within three seconds. If it were matched within three seconds, then no FIQ status would apply to that order or quote. If it is improved, then the order or Quote with Size that improved the previous price would have priority and would itself receive FIQ status. If a market participant increases the size of a quote with FIQ status, the additional quantity would not be afforded FIQ status. If a market participant decreases the size of a quote with FIQ status, that revised quote would retain FIQ status. For purposes of this PCX rule, orders and Quotes with Size may be matched or improved only through an electronic interface device.

*Proposed PCX Rule 6.76(a)(3)(B)*—This proposed rule change sets forth the order allocation process for participants with FIQ status, as follows.

(i) Once the available Public Customer interest in the Consolidated Book has been filled, an order or Quote with Size that has FIQ status would be entitled to trade against the greater of:

(a) 40% of the next inbound electronic order or orders to buy or sell the same series; or

(b) The total size to which the order or Quote with Size with FIQ status would receive pursuant to a size pro rata allocation.

The 40% allocation would be applied to the quantity remaining after all Public Customer orders have first been executed. In addition, an order or Quote with Size with FIQ status would not be allocated a number of contracts greater than the size of the bid or offer with FIQ status.

(ii) An order or Quote with Size would continue to maintain FIQ status until either:

(a) The entire commitment size has been filled by the execution of a single inbound order;

(b) A portion of the commitment size has been filled by the execution of a single inbound order and the number of contracts executed based on the

[16] *See* Securities Exchange Act Release No. 45930 (May 15, 2002), 67 FR 36281 (May 23, 2002) (order approving file no. SR–PCX–2001–13).

[17] The Exchange represents that, under the proposed priority rules, customer orders would always have priority and precedence over non-customer orders and Quotes with Size at the same price. The Exchange further represents that FIQ status would not apply to customer orders.

applicable allocation method as set forth in subsection (B)(i) of proposed PCX rule is at least 20 contracts (*e.g.*, FIQ status for 100 contracts would no longer apply once a Market Maker has been allocated 40 contracts based on an allocation of 40% of a single 100-contract order); or

(c) A portion of the commitment size has been filled by the execution of multiple inbound orders and the aggregate number of contracts allocated as a result of such executions equals or exceeds 20 contracts (*e.g.*, FIQ status for 100 contracts would no longer apply once a Market Maker has been allocated a total of 24 contracts based on three subsequent allocations of 8 contracts, each of which are based on allocations of 40% of 20 contracts).

*Proposed PCX Rule 6.76(a)(3)(C)*—An LMM's Quote with Size with FIQ status would be entitled to an allocation representing the greater of: (i) The number of contracts to which the LMM would be entitled as guaranteed participation pursuant to subsection (a)(2)(C) of proposed PCX rule 6.76; or (ii) the number of contracts to which the LMM would be entitled for having FIQ status.

*Proposed PCX Rule 6.76(a)(3)(D)*—This proposed rule change states that if a non-customer order or Quote with Size has FIQ status but a Public Customer order on the same side of the market is later entered with a price matching that non-customer's order or Quote with Size, the Public Customer order would gain priority over the non-customer's order or Quote with Size. In such circumstances, inbound orders would be allocated as follows: (i) The customer order would first be executed up to its designated size; and (ii) the non-customer order or Quote with Size with FIQ status would then be eligible to participate in the balance of the order.

xiv. Size Pro Rata Allocation

The Exchange believes that another incentive for market participants to show their best prices and deepest markets at all times is the ''size *pro rata*'' allocation method. Under this method, the greater the size of a member's market, the greater the share of an order that the member would be allocated. This proposed rule change explains the manner in which orders are allocated pursuant to this formula. This proposed rule change would apply to issues traded under PCX Plus. Issues not traded under PCX Plus and orders allocated manually in the trading crowd would be subject to PCX rule 6.75, which PCX intends to delete once PCX Plus is rolled out for all issues.

*Proposed PCX Rule 6.76(a)(4)(A)*—This proposed rule change sets forth the formula for orders that are subject to allocation on a ''size *pro rata*'' basis:

$$\frac{\text{(Size of Order to be Allocated)}}{\text{(Aggregated Quote Size)}} \times \text{(Participant's Quote Size)} = \text{Size } \textit{Pro Rata} \text{ Allocation}$$

Under this formula, a participant's size pro rata allocation would be calculated as follows: The size of the order to be allocated is divided by the aggregated quote size. That result is then multiplied by the participant's quote size and the resulting number is the size pro rata allocation.

For example, if there are 200 contracts to be allocated among three Market Makers quoting with the following sizes:

| | |
|---|---|
| MM1 | 100 |
| MM2 | 200 |
| MM3 | 500 |
| Aggregated Quote Size | 800 |

MM1 receives (200/800) × (100) = 25 contracts
MM2 receives (200/800) × (200) = 50 contracts
MM3 receives (200/800) × (500) = 125 contracts

*Proposed PCX Rule 6.76(a)(4)(B)*—This proposed rule change provides that the *pro rata* share allocated to each participant in the pool would be rounded down to a whole number, if applicable. If there are residual contracts to be filled after the *pro rata* calculation has been completed, such contracts would be allocated, with no more than one contract per participant, in the following sequence:

(i) The participant in the pool who has the largest fractional amount (based on the pro rata calculation) would receive the first contract, and each successive contract (if any) would be allocated to each subsequent participant who has the next largest fractional share.

(ii) If the last residual contracts are to be allocated between two or more participants having the same fractional amount, then the participant with the largest initial quote size in the *pro rata* pool would be allocated the next contract. Each successive contract (if any) would be allocated in the same manner.

(iii) If the last residual contracts are to be allocated between two or more participants with the same fractional amount and initial quote size, then the participant with the first time priority in the *pro rata* pool would be allocated the next contract. Each successive contract (if any) would be allocated in the same manner.

xv. PCX Plus Executions

The PCX's POETS system currently executes incoming orders automatically in two ways. First, if an inbound order is a market or marketable limit order and there is an order in the PCX order book to trade at the same price, the two orders would execute against each other. Second, if there were no order with priority in the PCX order book at the appropriate price (or there is an insufficient number of contracts at that price), then the incoming order (or a portion of it) would execute against the accounts of Market Makers who are logged onto the Auto-Ex ''wheel.'' [18] Under the proposal, the Auto-Ex ''wheel'' would be phased out so that under PCX Plus, an incoming order would be instantaneously matched against trading interest in the Consolidated Book.

*Proposed PCX Rule 6.76(b)*—This proposed rule change addresses situations in which orders or Quotes with Size are executed through PCX Plus.

*Proposed PCX Rule 6.76(b)(1)*—This proposed rule change states that an inbound order that is marketable would be immediately executed against bids and offers in the Consolidated Book unless one of the following conditions applies:

(A) The size of the inbound order exceeds the Maximum Order Size established pursuant to rule 6.76; or

(B) The inbound order is for the account of a Firm or Non-Member Market Maker and more than 50% of the aggregate trading interest in the Consolidated Book at the execution price is for the account (or accounts) of Public Customers.

If the conditions specified in subsections (A) or (B) apply, the order

[18] *See* Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (January 24, 2002) (order approving POETS system); *see also* Securities Exchange Act Release No. 44847 (September 24, 2001), 66 FR 50237 (October 2, 2001) (order granting accelerated approval to PCX's Auto-Ex Incentive Program).

would be represented in the trading crowd pursuant to proposed PCX rule 6.76(d).

*Proposed PCX Rule 6.76(b)(2)*—The Exchange proposes to eliminate some of the Exchange's current system limitations regarding the automatic execution of incoming customer orders. Currently, if an incoming customer order cannot be filled in its entirety because of the maximum automatic execution size threshold, then the entire inbound order is routed to a Floor Broker Hand Held Terminal for representation in the trading crowd. The proposed rule change provides for partial electronic execution of an order before routing to a Floor Broker Hand Held Terminal or to the new Consolidated Book, as applicable. This proposed rule change provides that an inbound order would be either fully or partially executed based on the following procedures:

(A) If more than 40% of the size in the Consolidated Book is comprised of a single Firm or Non-Member Market Maker order at the price at which the inbound order would trade, and such Firm or Non-Member Market Maker order was entered less than one minute before the inbound order the inbound order would be processed as follows:

(i) The inbound order would first be matched against all available Public Customer interest in the Consolidated Book;

(ii) The inbound order, if not entirely filled, would then satisfy any available interest based on FIQ status and LMM guaranteed participation pursuant to proposed PCX rule 6.76(a);

(iii) The inbound order, if not entirely filled, would then match, on a size *pro rata* basis, with the interest of the Market Makers, Firms and Non-Member Market Makers in the Consolidated Book; provided that the size *pro rata* share interest of each individual Firm and each Non-Member Market Maker would be limited to 40% of the size of the remaining inbound order; and

(iv) The balance of the order, if any, would then be routed to a Floor Broker Hand Held Terminal.

(B) If the same conditions set forth in subsection (b)(2)(A) apply but the Firm or Non-Member Market Maker order was entered more than one minute before the inbound order, then:

(i) The inbound order would first be matched against all available Public Customer interest in the Consolidated Book;

(ii) The inbound order, if not entirely filled, would then satisfy any available interest based on FIQ status and LMM guaranteed participation pursuant to proposed PCX rule 6.76(a);

(iii) The inbound order, if not entirely filled, would then match, on a size *pro rata* basis, with the interest of the Market Makers, Firms and Non-Member Market Makers in the Consolidated Book; provided that the size *pro rata* share interest of each individual Firm and each Non-Member Market Maker would be limited to 40% of the size of the remaining inbound order;

(iv) The inbound order, if not entirely filled, would then match, on a size *pro rata* basis, with all other remaining volume in the Consolidated Book of Firms and Non-Member Market Makers who were previously limited to 40%; and

(v) The balance of the order, if any, would then be either:

(a) Routed to a Floor Broker Hand Held Terminal in the case where the order locks or crosses the national best bid or offer (''NBBO''); or

(b) Executed at the next available price level based on split-price execution.

If neither of the conditions specified in subsection (a) or (b) apply, and the order is no longer marketable, then such order would be represented in the Consolidated Book.

xvi. Split-Price Executions

*Proposed PCX Rule 6.76(b)(3)*—This proposed rule change governs the manner in which inbound electronic orders would be subject to split-price executions. An inbound electronic order would receive an execution at multiple prices if there were some, but insufficient, trading interest at a price and the remainder of the order can be filled at one (or more) other prices based on available trading interest in the Consolidated Book. Orders would not be executed at a price that trades through another market. The balance of the order, if any, would be represented in the Consolidated Book, provided that if such order locks or crosses the NBBO, then the order would be routed to a Floor Broker Hand Held Terminal. Proposed subsection (b)(3) of PCX rule 6.76 would not apply to orders that are executed pursuant to proposed PCX rule 6.769(b)(2)(A) or Quotes with Size that are executed pursuant to proposed PCX rule 6.76(b)(4).[19]

xvii. Electronic Book Execution

Currently, a Member on the Options Floor may trade against orders in the Consolidated Book by vocalizing a bid or offer and consummating a transaction with the Order Book Official.[20] Under the proposal, Members would be permitted to execute trades electronically with orders in the Consolidated Book as provided in proposed PCX rule 6.76(b)(4).

*Proposed PCX Rule 6.76(b)(4)*—This proposed rule change addresses situations in which Market Makers interact electronically with orders in the Consolidated Book. When a Quote with Size initiates a trade with the Consolidated Book (the ''initiating Quote with Size''), an Electronic Book Execution would occur as follows:

(A) The initiating Quote with Size would immediately execute against the Consolidated Book if the percentage of the transaction involving Public Customer interest (as represented in the Consolidated Book) would comprise no more than 40% of the transaction (*e.g.*, if the initiating Quote with Size is for 20 contracts and the size in the Consolidated Book at the execution price is 50 contracts, six contracts of which are the Public Customer interest ($6 \div 20 = 30\%$), then the initiating Quote with Size for 20 contracts would be executed in full)).

(B) If the initiating Quote with Size would effect a transaction against the Consolidated Book and the percentage of the transaction involving Public Customer interest would comprise more than 40% of the transaction, then the initiating Quote with Size would be processed as follows:

(i) The Market Maker's initiating Quote with Size would receive an execution comprising the greater of:

(a) 40% of the Public Customer interest in the Consolidated Book at that price; or

(b) The total size to which the inbound initiating Quote with Size would receive pursuant to a size *pro rata* allocation.

(ii) The balance of the Consolidated Book at that price would be displayed for three seconds (via a System Alert Message—SAM) to all Crowd Participants.

(iii) The balance of the Public Customer interest in the Consolidated Book would then be allocated on size *pro rata* basis to all Crowd Participants, if any, who have entered bids or offers to trade at the execution price within the three seconds provided.

(iv) After the Public Customer interest has been allocated, the initiating Quote with Size would match against all remaining interest in the Consolidated Book. If the initiating Quote with Size

[19] Proposed PCX rule 6.76(b)(3) is applicable to order execution and describes how individual orders will interact with the Consolidated Book at multiple price levels. Proposed PCX rule 6.76(b)(4) describes how Quotes with Size interact at different price levels based on a size *pro rata* allocation after trading at the initial price.

[20] *See generally* PCX rules 6.51—6.58.

does not fill the Consolidated Book, then all Crowd Participants would be matched on a size *pro rata* basis with the remaining interest in the Consolidated Book at that price.

(v) If the remaining Quotes with Size are executable at the next price level, they would be matched against the Consolidated Book on a size *pro rata* basis.

xviii. NBBO Step-Up

The Exchange currently uses NBBO Step-Up functionality in designated option issues pursuant to PCX rule 6.87(i). PCX rule 6.87(i) permits members on the Auto-Ex system who are quoting at a price inferior to the NBBO, to step-up to the NBBO price in executing incoming orders. This proposal would modify this feature as set forth below. PCX rule 6.87(i) would continue to apply to orders in issues not designated for PCX Plus (during the phase-in period).

*Proposed PCX Rule 6.76(b)(5)(A)*—This proposed rule change states that the LMM in an issue may Step-Up and execute inbound orders at the NBBO price when the NBBO is better than the PCX's disseminated quote. Subject to the approval of two Floor Officials,[21] the LMM would have sole discretion to determine whether the NBBO Step-Up feature:

(i) Would be engaged or disengaged;

(ii) Would be set to execute inbound orders when the NBBO is crossed or locked; and

(iii) Would be set to execute inbound orders at prices that are one or more trading increments better than the LMM's best bid or offer.

*Proposed PCX Rule 6.76(b)(5)(B)*—Under this proposed rule change, LMMs using the NBBO Step-Up feature may, at their discretion, disseminate Quotes with Size at the NBBO price when the NBBO price is better than the LMM's own disseminated price. If the LMM chooses to do so, then quotes at the NBBO would be disseminated via OPRA on the LMM's behalf. Such quotes would include the aggregate quotation size of the LMM and any SMMs who choose to participate in the NBBO Step-Up feature. LMMs may not use the NBBO Step-Up feature to match quotations of other PCX participants who are quoting at the NBBO. Accordingly, if another PCX participant enters an order or Quote with Size at the NBBO, then the LMM's original quote would prevail and the LMM's NBBO Step-Up quote would be removed from the PCX Plus system. The Exchange proposes to surveil for quoting abuses by its Members.

*Proposed PCX Rule 6.76(b)(5)(C)*—This proposed rule change states that inbound orders executed based on NBBO Step-Up would be allocated to SMMs who choose to participate in the NBBO Step-Up feature and the LMM on a size pro rata basis.

xviv. Crossing Orders

Under proposed PCX rule 6.76(c), PCX Plus would permit the execution of a ''Cross Order'', which is defined as two orders with instructions to match the identified buy-side with the identified sell-side at a specified price (''Cross Price''). The proposed rule establishes a crossing mechanism that automates the process that occurs on the Options Floor currently by which a Floor Broker may facilitate orders or cross two orders, regardless of size, via public outcry. The Exchange believes that this new mechanism, in conjunction with the order execution algorithm as described earlier, would foster competition and enhance market efficiency and fairness by offering incentives to all market participants that provide liquidity. The Exchange believes that the proposed crossing mechanism strikes a balance between allowing members to interact with their customer orders that they bring to the market, and providing Market Makers and other market participants with a fair opportunity and incentive to compete on an equal basis with such orders brought to the Exchange. The process in which a Cross Order is matched for execution is described below.

*Proposed PCX Rule 6.76(c)(1)*—For purposes of proposed PCX rule 6.76(c), the following terms would have the meanings specified below:

(A) ''Cross Order'' means two orders with instructions to match the identified buy-side with the identified sell-side at the Cross Price.

(B) ''Facilitation Order'' means an order as defined in PCX rule 6.47(b).

(C) ''PCX Broker'' means a Member, Member Organization or Associated Person who enters orders as agent for accounts other than for Market Makers.

(D) ''Exposed Order'' means the buy or sell side of a Cross Order that has been designated by a PCX Broker as the side to be exposed to the market and that is eligible for execution against all trading interest. Public Customer orders would always be deemed to be the Exposed Order in a Cross Order. In the case of a Cross Order involving a non-customer on both the buy side and sell side, the PCX Broker must designate one side of the Cross Order as the Exposed Order.

(E) ''Shadow Order'' means an order that is submitted by a PCX Broker to buy or sell a stated number of contracts at a specified price and that is to be executed in whole or in part against an Exposed Order. Any unexecuted portion of a Shadow Order would be canceled.

*Proposed PCX Rule 6.76(c)(2)*—This proposed rule change sets forth the steps involved in the Crossing Mechanism, as follows:

(A) A PCX Broker would be required to enter into PCX Plus the terms of each Cross Order to be executed electronically on the Exchange. The required terms include the terms of the order for a Public Customer or a broker-dealer and the proposed Facilitation Order (or two orders to be crossed neither one of which is a Facilitation Order (''non-facilitation cross'')), the proposed crossing price, the quantity of the order that the PCX Broker is willing to facilitate (in case of a facilitation cross), and an indication of which order is the Exposed Order. If the proposed Cross Price were outside the BBO at the time of order entry, PCX Plus would reject the Cross Order.

(B) After accepting the Cross Order, PCX Plus would execute the Cross Order in the following sequence.

(i) If the Cross Price is between the BBO:

(a) PCX Plus would immediately display the Exposed Order's price and quantity for 30 seconds. During the 30-second exposure period, there would be no indication that the order is part of an impending cross. PCX Plus places the Shadow Order on hold and such order is not visible except to the PCX Broker that entered the Cross Order.

(b) As long as the Exposed Order is the highest priority order at the best price, other Members and Member Organizations may trade against the Exposed Order during the exposure period. If at any time during the exposure period, the Exposed Order were entirely filled, PCX Plus would cancel the remaining quantity of the Shadow Order and send the PCX Broker a message that the crossing transaction has been completed.

(c) At the end of the exposure period, if the Exposed Order has not been entirely filled, but it is at the best price and has the highest priority, then PCX Plus would execute the remainder of the order against the Shadow Order. PCX Plus would then cancel the remainder of the Shadow Order and send the crossing firm a message that the crossing transaction has been completed.

[21] A proposed rule change to current PCX rule 6.87(i) to grant two Floor Officials, rather than the Options Floor Trading Committee, the supervisory authority over the NBBO Step-Up feature is pending Commission approval. *See* file no. SR–PCX–2002–09.

(d) At the end of the exposure period, if the Exposed Order has quantity remaining and it is not the highest priority order at the market, then PCX Plus would automatically cancel the remainder of the Exposed Order and the Shadow Order and would send the PCX Broker a message that the crossing transaction has been completed.

(ii) If the Cross Price is at the BBO:

(a) The Exposed Order would be matched at the displayed price against all pre-existing trading interest in the Consolidated Book with priority in accordance with proposed rule 6.76(a).

(b) The remainder of the Exposed Order, if any, would be exposed at the limit price for 30 seconds. As long as the Exposed Order has the highest priority at the best price, other Members and Member Organization may trade against the Exposed Order during the 30-second exposure period. If at any time during the exposure period, the Exposed Order were entirely filled, PCX Plus would cancel the remaining quantity of the Shadow Order and send the PCX Broker a message that the crossing transaction has been completed.

(c) At the end of the exposure period, if the Exposed Order has not been entirely filled, but it is at the best price and has the highest priority, then PCX Plus would execute the remainder of the order against the Shadow Order. PCX Plus would then cancel the remainder of the Shadow Order and send the crossing firm a message that the crossing transaction has been completed.

(d) At the end of the exposure period, if the Exposed Order has quantity remaining and it is not the highest priority order at the market, then PCX Plus would automatically cancel the remainder of the Exposed Order and the Shadow Order and would send the PCX Broker a message that the crossing transaction has been completed.

*Proposed PCX Rule 6.76(c)(3)*—This proposed rule change sets forth certain prohibited conduct related to Crossing Orders. The proposed rule change, as described below, is designed to place limitations on the internalization of order flow and to provide added opportunities for competition. Under the proposed rule change, it would be a violation of proposed PCX rule 6.76(c) for a PCX Broker to be a party to any arrangement designed to circumvent this PCX rule by providing an opportunity for a customer or a broker-dealer to execute against agency orders handled by the PCX Broker immediately upon their entry into PCX Plus.

In addition, PCX Brokers would not be permitted to execute as principal orders they represent as agent unless: (i) Agency orders are first exposed on the Exchange for at least 30 seconds; (ii) the PCX Broker utilizes the Crossing Mechanism pursuant to proposed PCX rule 6.76(c)(2); or (iii) the PCX Broker executes the orders pursuant to PCX rule 6.47.

xx. Orders Executed Manually

The Exchange represents that, to effectively combine the benefits of open outcry trading with those of PCX Plus, it has defined specific priority rules for handling manual executions in the trading crowd.

*Proposed PCX Rule 6.76(d)(1)*—This proposed rule change provides that Floor Brokers manually representing orders in the trading crowd must comply with the order execution and priority principles set forth in PCX rule 6.75 and, in addition, with the following provisions establishing priority for bids and offers by account type:

(A) Public Customer orders in the Consolidated Book have first priority. Multiple customer orders at the same price are ranked based on time priority.

(B) Bids and offers of the members of the trading crowd have second priority. These bids and offers include those made by Market Makers and Floor Brokers (on behalf of customer and broker-dealer orders they are representing).

(C) Bids and Offers of broker-dealers (including Quotes with Size and orders of Market Makers) in the Consolidated Book have last priority. Multiple bids and offers of broker-dealers would be executed on a size pro rata basis pursuant to proposed PCX rule 6.76(a).

*Proposed PCX Rule 6.76(d)(1), Commentary .01*—This proposed commentary states that the provisions of proposed PCX rule 6.90 would apply to transactions automatically executed pursuant to proposed PCX rule 6.76(b).

xxi. Cabinet Trades

The Exchange's rules for cabinet trading are currently set forth in PCX rule 6.80. The Exchange proposes to retain this PCX rule (renumbered as proposed PCX rule 6.80(b)) and to apply it to issues not traded under PCX Plus during the phase-in period. During that time, proposed PCX rule 6.80(c) would govern cabinet trading applicable to all issues traded on PCX Plus.

*Proposed PCX Rule 6.80(a)*—This proposed rule change states that the Exchange would designate option issues that are eligible for cabinet trading pursuant to this PCX rule. If an option issue has not been designated as eligible for cabinet trading on PCX Plus, the provisions of proposed PCX rule 6.80(b) would apply. If an option issue has been designated as eligible for cabinet trading on PCX Plus, then the provisions of subsection (c) would apply.

*Proposed PCX Rule 6.80(b)*—This proposed rule change sets forth the manner in which cabinet trading would be conducted in option issues not traded on PCX Plus during the phase-in period. Except for minor changes in terminology and references, the proposed rule is substantially the same as the existing rule.

*Proposed PCX Rule 6.80(c)*—The following provisions of proposed subsection (c) would apply to option issues designated for cabinet trading on PCX Plus:

(1) Cabinet trading under the following terms and conditions would be available in each series of option contracts open for trading on the Exchange.

(2) Trading shall be conducted in accordance with other Exchange Rules except as otherwise provided herein.

(3) Limit orders at a price of $1 per option contract must be placed on the Exchange in such form and manner as may be prescribed by the Exchange.

(4) Orders for cabinet trading may be placed for the accounts of Public Customers, Firms, and Market Makers, with priority based upon the sequence in which such orders are placed on the Exchange.

(5) Market Makers shall not be subject to the requirements of rule 6.37 for orders placed pursuant to this PCX Rule.

(6) Members submitting opening orders priced at $1 per option contract must comply with the order entry procedures and format requirements as may be prescribed by the Exchange. Opening orders priced at $1 per option contract may be placed on the Exchange for execution only to the extent that the order book in cabinet trades contains unexecuted contract closing orders with which the opening orders immediately may be matched.

xxii. Clarification of LMM Definition

*Proposed PCX Rule 6.82(a)(1)*—This proposed rule change defines LMM and provides that RMMs are not eligible to act as LMMs from a location off the trading floor.

xxiii. Firm Quote Rule

*Proposed PCX Rule 6.86(a)(2)*—This proposed rule change clarifies the application of the Exchange's Firm Quote rule for option issues traded on PCX Plus. Specifically, LMMs and any registered Market Makers who are quoting at the disseminated bid or offering price and who are constituting the trading crowd in such option series

would collectively be the Responsible Broker or Dealer to the extent of the sizes of their respective bids and offers. For option issues not designated for trading on PCX Plus, the LMM and any registered Market Makers constituting the trading crowd in a particular option series would collectively be the Responsible Broker or Dealer to the extent of the aggregate quotation size specified.

xxiv. PCX Plus

The Exchange represents that proposed new PCX Rule 6.90, which describes the operational requirements of PCX Plus,[22] is substantially similar to current PCX rule 6.87 relating to the Exchange's Auto-Ex system, except for:

(1) Stylistic and minor conforming word changes made to reflect the new market structure; and

(2) The omission of rules relating to Eligible Orders, Order Entry Firm Registration, Market Maker Requirements and Eligibility, Market Maker Restrictions on Redirecting Auto-Ex Trades, Price Adjustments, the Auto-Ex Incentive Program, the Auto-Ex Book functions, and the Auto-Ex Between-the Quotes (current PCX rules 6.87(a), 6.87(c)(1), 6.87(e), 6.87(f), 6.87(g), 6.87(k), 6.87(l), and 6.87(m), respectively) [23] because these provisions are not applicable to PCX Plus.

As stated earlier, during the phase-in period, the Exchange would designate option issues that are eligible for trading on PCX Plus. If an option issue has not been designated as eligible for execution on PCX Plus pursuant to this PCX rule, the provisions of PCX rule 6.87 would continue to apply.

The following provisions of PCX rule 6.87 are being incorporated into proposed PCX rule 6.90:

*Proposed PCX Rule 6.90(c)*—PCX proposes to adopt the following definitions from current PCX rule 6.87(a).

(1) The term ''User'' means any person or broker-dealer that obtains electronic access to PCX Plus through an Order Entry Firm.

(2) The term ''Order Entry Firm'' means a member organization of the Exchange that is able to route orders to the Exchange.

*Proposed PCX Rule 6.90(d)*—This proposed rule change, which sets forth the obligations of Order Entry Firms regarding the proper use of PCX Plus, has been adapted from current PCX rule 6.87(c). Order Entry Firms would be required to: comply with all applicable PCX options trading rules and procedures; provide written notice to all Users regarding the proper use of PCX Plus; and maintain adequate procedures and controls that would permit the Order Entry Firm to effectively monitor and supervise the entry of electronic orders by all Users.

*Proposed PCX Rule 6.90(e)*—This proposed rule change has been adapted from current PCX rule 6.87(d) and codifies what practices are prohibited on PCX Plus. Except for minor changes in terminology, the proposed rule is substantially similar to the existing rule.

*Proposed PCX Rule 6.90(g)*—Proposed PCX rule 6.90(g) includes provisions regarding the suspension of the PCX Plus system in the event of any disruption or malfunction in the use or operation of system, as well as any other unusual market conditions not involving a system malfunction. This proposed rule change has been adapted from current PCX rule 6.87(h). Under this proposed rule change, if a PCX Plus system disruption or malfunction occurs but the Exchange is able to process and disseminate quotes accurately, then any orders received by the Exchange would be routed to Floor Broker Hand Held Terminals for representation in the trading crowd. Regular trading procedures would be resumed by the Exchange when two Floor Officials determine that the disruption or malfunction is corrected. If there are other unusual market conditions not involving a PCX Plus system disruption or malfunction, two Floor Officials may suspend the PCX Plus system in accordance with PCX rule 6.28. Whenever such action is taken, any orders received by the Exchange would be routed to Floor Broker Hand Held Terminals for representation in the trading crowd.

*Proposed PCX Rule 6.90(h)*—Under this proposed rule change, the Options Floor Trading Committee may designate, for an option issue, that an order would default for manual representation in the trading crowd if the NBBO is crossed or locked. Proposed PCX rule 6.90(h) has been adapted from current PCX rule 6.87(j).

xv. PCX Rule 10—Minor Rule Plan

The Exchange proposes to amend PCX rule 10.13 to include violations of proposed PCX rule 6.37(g)(2) in the Minor Rule Plan. Proposed new PCX rule 6.37(g)(2) requires that each RMM provide continuous two-sided quotations in each issue in which they are appointed during 60% of all times during which the Exchange is open for options trading. This obligation would apply to all of the RMM's appointed issues collectively, rather than on an issue-by-issue basis. Compliance with this obligation would be determined on a per-calendar-quarter basis. The Exchange believes that the proposed fine schedule is consistent with the fines established for violations by a Market Maker involving the 75% primary appointment zone requirement and the 60% in-person trading requirement.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[24] in general, and furthers the objectives of section 6(b)(5) of the Act,[25] in particular, in that it is designed to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

[22] PCX Plus is defined in proposed PCX rule 6.90(a) as the Exchange's electronic order delivery, execution and reporting system for designated option issues through which orders and Quotes with Size of members are consolidated for execution and/or display. This trading system includes the electronic communications network that enables registered Market Makers to enter orders/Quotes with Size and execute transactions from remote locations or the Trading Floor.

[23] The manner in which orders will be subject to split-price executions in PCX Plus are set forth in proposed PCX rule 6.76(b)(3), which have been adapted from current PCX rule 6.87(p).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PCX consents, the Commission will:

(A) By order approve such proposed rule change, or

(A) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–36 and should be submitted by December 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–29170 Filed 11–15–02; 8:45 am]

**BILLING CODE 8010–01–P**

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital SBIC VII, L.P. (''ZSCVII''), 101 Main Street, 17th Floor, Cambridge, Massachusetts 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2002)). ZSCVII proposes to provide equity financing to NetKey, Inc. (''NetKey''), 32 Park Drive East, Branford, Connecticut 06405. The financing is contemplated for product development, sales and marketing, and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Zero Stage Capital VI, L.P., an Associate of ZSCVII, currently owns greater than 10 percent of NetKey, and therefore NetKey is considered an Associate of ZSCVII as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: November 12, 2002.

**Jeffrey D. Pierson,**

*Associate Administrator for Investment.*

[FR Doc. 02–29164 Filed 11–15–02; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital SBIC VII, L.P. (''ZSCVII''), 101 Main Street, 17th Floor, Cambridge, Massachusetts 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2002)). ZSCVII proposes to provide equity financing to First Service Networks, Inc. (''FSN''), 849 International Drive, Linthicum, Maryland 21090. The financing is contemplated for product development and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Zero Stage Capital VI, L.P., an Associate of ZSCVII, currently owns greater than 10 percent of FSN, and therefore FSN is considered an Associate of ZSCVII as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: November 12, 2002.

**Jeffrey D. Pierson,**

*Associate Administrator for Investment.*

[FR Doc. 02–29165 Filed 11–15–02; 8:45 am]

**BILLING CODE 8025–01–U**

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3459]**

### State of Texas (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, dated November 8, 2002, the above numbered declaration is hereby amended to include Aransas, Hardin, Harris, Jefferson, Orange and San Patricio Counties in the State of Texas as disaster areas due to damages caused by severe storms, tornadoes, and flooding occurring on October 24, 2002, and continuing.

In addition, applications for economic injury loans from small businesses located in Bee, Brazoria, Calhoun, Chambers, Fort Bend, Galveston, Jasper, Liberty, Live Oak, Montgomery, Newton, Polk, Refugio, Tyler and Waller Counties in Texas; and Calcasieu and Cameron Parishes in Louisiana may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

The economic injury number assigned to Louisiana is 9S5100.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 6, 2003, and for economic injury the deadline is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 12, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02–29167 Filed 11–15–02; 8:45 am]

**BILLING CODE 8025–01–U**

## SMALL BUSINESS ADMINISTRATION

### Small Business Investment Companies; Increase in Maximum Leverage Ceiling

13 CFR 107.1150(a) sets forth the maximum amount of Leverage (as defined in 13 CFR 107.50) that a Small Business Investment Company may have outstanding at any time. The maximum Leverage amounts are

[26] 17 CFR 200.30–3(a)(12).

adjusted annually based on the increase in the Consumer Price Index published by the Bureau of Labor Statistics. The cited regulation states that SBA will publish the indexed maximum Leverage amounts each year in a Notice in the **Federal Register**.

Accordingly, effective the date of publication of this Notice, and until further notice, the maximum Leverage amounts under 13 CFR 107.1150(a) are as stated in the following table:

| If your leverage capital is: | Then your maximum leverage is: |
|---|---|
| (1) Not over $18,900,000 | 300 percent of Leverageable Capital. |
| (2) Over $18,900,000 but not over $37,800,000 | $56,700,000 + [2 × (Leverageable Capital − $18,900,000)]. |
| (3) Over $37,800,000 but not over $56,700,000 | $94,500,000 + (Leverageable Capital − $37,800,000). |
| (4) Over $56,700,000 | $113,400,000. |

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: November 4, 2002.

**Jeffrey D. Pierson,**

*Associate Administrator for Investment.*

[FR Doc. 02–29166 Filed 11–15–02; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Multiple Counties

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project that will traverse the southeastern section of the State of Alabama.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117–2018, Telephone (334) 223–7370.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the State of Alabama Department of Transportation, will prepare an Environmental Impact Statement (EIS) for Project JPP–1602(507). The proposal is to construct a multi-lane, limited-access roadway from the Alabama/Florida State line at US–231 to the City of Dothan and connecting to US–231 north of the City, a distance of approximately 40 miles.

Alternatives under consideration include: (1) Alternate route locations; and, (2) a no-action or no-build alternative.

The Alabama Department of Transportation and the Alabama Division Office of the Federal Highway Administration had begun the corridor study as an environmental assessment. Letter describing the proposed action and soliciting comments were sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who previously expressed or were known to have interest in this proposal. A series of public meetings have been held. Based upon objections raised through this early coordination, the determination was made that an environmental impact statement is the appropriate level of documentation.

In addition to the early coordination already accomplished, additional meetings will be held as appropriate, and formal public hearings will be held. Public notice will be given of the time and place for the meetings and hearings. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Joe D. Wilkerson,**

*Division Administrator, Montgomery, Alabama.*

[FR Doc. 02–29126 Filed 11–15–02; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF THE TREASURY

### Office of the Assistant Secretary for International Affairs; Treasury International Capital (TIC) Forms BC/BC(SA), BL–1/BL–1(SA), BL–2/BL–2(SA), BQ–1, BQ–2, and BQ–3

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice of reporting requirements.

**SUMMARY:** By this Notice, the Department of the Treasury is informing the public that it has revised the mandatory data collections conducted through reporting on the Treasury International Capital (TIC) B-forms. The revisions are effective for all reports beginning with reporting periods ending February 28, 2003 and thereafter; until that time, the current mandatory TIC B-forms and instructions remain in force. The revisions include one new form, BQ–3, revised instructions, and five revised forms: BC/BC(SA), BL–1/BL–1(SA), BL–2/BL–2(SA), BQ–1, and BQ–2. This Notice constitutes legal notification to all United States persons, as defined below, who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, these data collections. United States persons who meet the reporting requirements but who do not receive a set of the revised B-forms and instructions should contact the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, to obtain copies. Additional copies of the reporting forms and instructions may be printed from the Internet at: *http://www.treas.gov/tic/forms.html*.

*Definition:* A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any state), and any government (including a foreign government, the United States Government, a state, provincial, or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

*Who must Report:* U.S. persons who are (a) depository institutions, bank holding companies, financial holding companies, or securities brokers and dealers; and (b) whose reportable

amounts exceed established exemption levels must: Report on Form BC/BC(SA) if the total of reporter's own dollar claims on all foreigners is $50 million or more, or if the total of such claims is $25 million or more for any individual country; report on Form BL–1/BL–1(SA) if the total of reporter's own dollar liabilities to all foreigners is $50 million or more, or if the total of such liabilities is $25 million or more for any individual country; report on Form BL–2/BL–2(SA) if the total of reporter's domestic customers' dollar liabilities to all foreigners is $50 million or more, or if the total of such liabilities is $25 million or more for any individual country; report on Form BQ–1 if the total of reporter's domestic customers' dollar claims on all foreigners is $50 million or more, or if the total of such claims is $25 million or more for any individual country; report on Form BQ–2, Part 1 if the total of foreign currency-denominated liabilities and claims of reporter and its domestic customers vis-á-vis all foreigners is $50 million or more, or the total of such liabilities and claims is $25 million or more for any individual country; report on Form BQ–2, Part 2 if the total of reporter's domestic customers' foreign currency-denominated liabilities to all foreigners is $50 million or more; and report on Form BQ–3 if the total of the maturities of selected own dollar and foreign currency-denominated liabilities of the reporter vis-á-vis all foreigners is $4,000 million or more.

*What to Report:* These reports collect timely information on international portfolio capital movements vis-á-vis foreign countries and international and regional organizations as follows: Form BC/BC(SA) collects information on reporter's own U.S. dollar claims on foreigners; Form BL–1/BL–1(SA) collects information on reporter's own U.S. dollar liabilities to foreigners; Form BL–2/BL–2(SA) collects information on U.S. dollar liabilities of reporter's domestic customers to foreigners; Form BQ–1 collects information on U.S. dollar claims of reporter's domestic customers on foreigners; Form BQ–2, Part 1 collects information on liabilities and claims of reporter and on claims of reporter's domestic customers vis-á-vis foreigners, that are denominated in foreign currencies; Form BQ–2, Part 2 collects information on foreign currency-denominated liabilities of reporter's domestic customers to foreigners; and Form BQ–3 collects information on maturities of selected U.S. dollar and foreign currency-denominated liabilities of reporter vis-á-vis foreigners.

*How to Report:* Copies of the reporting forms and instructions, which contain complete information on reporting procedures and definitions, can be obtained by contacting the statistics unit of the Federal Reserve Bank of New York at (212) 720–8037, email: *Patrica.Selvaggi@ny.frb.org.* The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001.

*When to Report:* Data on the revised TIC B-forms should be submitted to the reporter's District Federal Reserve Bank, acting as fiscal agent for the Department of the Treasury, beginning with reporting periods as of February 28, 2003 and thereafter.

*Paperwork Reduction Act Notice:* These data collections have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control numbers: 1505–0016 for BQ–1; 1505–0017 for BC/BC(SA); 1505–0018 for BL–2/BL–2(SA), 1505–0019 for BL–1/BL–1(SA); 1505–0020 for BQ–2; and 1505–0189 for BQ–3. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

**Dwight Wolkow,**

*Administrator, International Portfolio Investment Data Reporting Systems.*

[FR Doc. 02–29121 Filed 11–15–02; 8:45 am]

**BILLING CODE 4810–25–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–105606–99]**

### Proposed Collection; Comment Request for Regulation Project

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

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, Credit for Increasing Research Activities (§ 41(f)).

**DATES:** Written comments should be received on or before January 17, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:** *Title:* Credit for Increasing Research Activities.

*OMB Number:* 1545–1670.

*Regulation Project Numbers:* REG–105606–99.

*Abstract:* The regulation addresses the computation of the credit for increasing research activities for members of a controlled group and the allocation of the credit under section 41(f) of the Internal Revenue Code.

*Current Actions:* There is no change to this existing regulation.

*Type of review:* Extension of OMB approval.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 10.

*Estimated Time Per Respondent:* 20 hours.

*Estimated Total Annual Burden Hours:* 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2002.

**Carol Savage,**

*Program Analyst.*

[FR Doc. 02–29205 Filed 11–15–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–113572–99]**

### Proposed Collection; Comment Request for Regulation Project

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

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–113572–99 (TD 8933), Qualified Transportation Fringe Benefits (§ 1.132–9(b)).

**DATES:** Written comments should be received on or before January 17, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Qualified Transportation Fringe Benefits.

*OMB Number:* 1545–1676.

*Regulation Project Number:* REG–113572–99.

*Abstract:* These regulations provide guidance to employers that provide qualified transportation fringe benefits under section 132(f), including guidance to employers that provide cash reimbursement for qualified transportation fringes and employers that offer qualified transportation fringes in lieu of compensation. Employers that provide cash reimbursement are required to keep records of documentation received from employees who receive reimbursement. Employers that offer qualified transportation fringes in lieu of compensation are required to keep records of employee compensation reduction elections.

*Current Actions:* There is no change to this existing final regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individual or households, and not-for-profit institutions.

The burden is reflected in the burden for Form W–2.

*Estimated total annual recordkeeping burden:* 7,020,000.

*Estimated average annual recordkeeping burden per recordkeeper:* The average annual recordkeeping burden will vary depending on the size of the employer. The estimated average annual recordkeeping burden per recordkeeper is 26.5 hours.

*Estimated number of recordkeepers:* 265,343.

*Estimated total annual reporting burden:* 5,948,728 hours.

*Estimated average annual reporting burden per respondent:* .8 hours.

*Estimated number of respondents:* 7,264,970.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2002.

**Carol Savage,**

*Program Analyst.*

[FR Doc. 02–29206 Filed 11–15–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–105606–99; REG–107184–00 REG–161424–01]**

### Proposed Collection; Comment Request for Regulation Project

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

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–105316–98, Credit for Increasing Research Activities; REG–105316–98; REG–161424–01; and final regulation, REG–107184–00 (TD 8992), Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns (§§ 1.6050S–1, and 1.6050S–3).

**DATES:** Written comments should be received on or before January 17, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:** *Title:* REG–105316–98, Credit for Increasing Research Activities; REG–105316–98; REG–161424–01; and REG–107184–00 (TD 8992), Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns.

*OMB Number:* 1545–1678.

*Regulation Project Numbers:* REG–105316–98; REG–161424–01; and REG–107184–00.

*Abstract:* These regulations relate to the information reporting requirements in section 6050S of the Internal Revenue Code for payments of qualified tuition and related expenses and interest on qualified education loans. These regulations provide guidance to eligible education institutions, insurers, and payees required to file information returns and to furnish information statements under section 6050S.

*Current Actions:* There is no change to this existing regulation.

*Type of review:* Extension of OMB approval.

*Affected Public:* Business or other for-profit organizations, and not-for-profit institutions.

The burden is reflected in the burdens for Form 1098–T and Form 1098E.

*Estimated total annual reporting burden for 2002 for Form 1098–T:* 4,848,090 hours.

*Estimated average annual burden hours per response for Form 1098–T:* 13 minutes.

*Estimated number of responses for 2002 for Form 1098–T:* 21,078,651.

*Estimated total annual reporting burden for 2002 for Form 1098–E:* 1,051,357 hours.

*Estimated average annual burden hours per response for Form 1098–E:* 7 minutes.

*Estimated number of responses for 2002 for Form 1098–E:* 8,761,303.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2002.

**Carol Savage,**

*Program Analyst.*

[FR Doc. 02–29207 Filed 11–15–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Tip Rate Determination Agreement (Gaming Industry)

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

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Tip Rate Determination Agreement (Gaming Industry).

**DATES:** Written comments should be received on or before January 17, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the Tip Rate determination Agreement (Gaming Industry) should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:** *Title:* Tip Rate Determination Agreement (Gaming Industry).

*OMB Number:* 1545–1530.

*Abstract:* Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

*Current Actions:* There is no change to this existing information collection.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 100.

*Estimated Average Time Per Respondent:* 43 hr., 40 min.

*Estimated Total Annual Burden Hours:* 4,367.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of

information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2002.

**Carol Savage,**

*Program Analyst.*

[FR Doc. 02–29208 Filed 11–15–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**[AC–9: OTS Nos. H–3917 and 01680]**

### Sound Federal Bancorp, Inc., Mamaroneck, New York; Approval of Conversion Application

Notice is hereby given that on November 12, 2002, the Director, Supervision, Office of Thrift Supervision (''OTS''), or her designee, acting pursuant to delegated authority, approved the application of Sound Federal Savings and Loan Association, Mamaroneck, New York, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 13, 2002.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 02–29191 Filed 11–15–02; 8:45 am]

**BILLING CODE 6720–01–M**

## UNITED STATES INSTITUTE OF PEACE

### Announcement of the Spring 2003 Solicited Grant Competition Grant Program

**AGENCY:** United States Institute of Peace.

**ACTION:** Notice.

**SUMMARY:** The Agency announces its Upcoming Spring 2003 Solicited Grant Competition. The solicited grant competition is restricted to projects that fit specific themes and topics identified in advance by the Institute of Peace.

The themes and topics for the Spring 2003 solicited competition are:

- *Solicitation A:* Democracy and governance in Muslim countries.
- *Solicitation B:* Education, conflict, and peacebuilding in ethnically divided societies and regions.

*Deadline (Receipt of Application Material):* March 1, 2003.

*Notification of Awards:* September 30, 2003.

*Applications Material:* Available upon request.

**ADDRESSES:** For more information and an application package: United States Institute of Peace, Grant Program, Solicited Grants, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 833–1018 (fax), (202) 457–1719 (TTY), E-mail: *grant_program@usip.org.*

Application material available on-line now at: *http://www.usip.org/grants.html.*

**FOR FURTHER INFORMATION CONTACT:** The Grant Program, phone (202) 429–3842.

Dated: November 12, 2002.

**Bernice J. Carney,**

*Director, Office of Administration.*

[FR Doc. 02–29111 Filed 11–15–02; 8:45 am]

**BILLING CODE 6820–AR–M**

## UNITED STATES INSTITUTE OF PEACE

### Announcement of the Spring Unsolicited Grant Competition Grant Program

**AGENCY:** United States Institute of Peace.

**ACTION:** Notice.

**SUMMARY:** The Agency announces its Upcoming Unsolicited Grant Program, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution. The unsolicited competition is open to any project that falls within the Institute's broad mandate of international conflict resolution.

*Deadline (Receipt of Application Material):* March 1, 2003.

*Notification of Awards:* September 30, 2003.

*Applications Material:* Available upon request.

**ADDRESSES:** For more information and an application package: United States Institute of Peace, Grant Program, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011. (202) 429–3842 (phone). (202) 833–1018 (fax). (202) 457–1719 (TTY). Email: *grant_program@usip.org.*

Application material available on-line now at *http://www.usip.org/grants.html.*

**FOR FURTHER INFORMATION CONTACT:** The Grant Program, phone (202) 429–3842. E-mail: grant_program@usip,org.

Dated: November 12, 2002.

**Bernice J. Carney,**

*Director, Office of Adminsitration.*

[FR Doc. 02–29112 Filed 11–15–02; 8:45 am]

**BILLING CODE 6820–AR–M**

# Corrections

**Federal Register**

Vol. 67, No. 222

Monday, November 18, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 4

### Commodity Pool Operators and Commodity Trading Advisors; Exemption From Requirement To Register for CPOs of Certain Pools and CTAs Advising Such Pools

*Correction*

In proposed rule document 02–28820 beginning on page 68785 in the issue of Wednesday November 13, 2002, make the following correction:

On page 68785, in the third column, in the **DATES** section, in the second line, '' January 13, 2002'' should read ''January 13, 2003''.

[FR Doc. C2–28820 Filed 11–15–02; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 02–ACE–8]**

### Proposed Establishment of Class E2 and Class E4 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE; Correction

*Correction*

In proposed rule document 02–28832 appearing on page 68785 in the issue of Wednesday, November 13, 2002, make the following correction:

On page 68785, in the first column, under the **DATES** heading, in the third line, ''December 5, 2002'' should read ''December 15, 2002''.

[FR Doc. C2–28832 Filed 11–15–02; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent to Rule on Application 02–01–C–00–JLN To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Joplin Regional Airport, Joplin, MO

*Correction*

In notice document 02–27729 beginning on page 66450 in the issue of Thursday, October 31, 2002 make the following correction:

On page 66451, in the first column, in the ninth line from the bottom, ''$.50 '' should read ''$4.50 ''.

[FR Doc. C2–27729 Filed 11–15–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

**Monday,**
**November 18, 2002**

## Part II

# Department of Transportation

**National Highway Traffic Safety Administration**

**49 CFR Parts 567, 571, 574, 575, and 597**
**Tire Safety Information; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Parts 567, 571, 574, 575, and 597**

**[Docket No. NHTSA–02–13678]**

**RIN 2127–AI32**

## Tire Safety Information

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** In response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000, this document establishes a new Federal Motor Vehicle Safety Standard to improve the information readily available to consumers about tires. The new information will assist consumers in identifying tires that may be the subject of a safety recall. It will also increase public awareness of the importance and methods of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. This rule applies to all new and retreaded tires for use on vehicles manufactured after 1975 with a gross vehicle weight rating of 10,000 pounds or less and to all new vehicles with a gross vehicle weight rating of 10,000 pounds or less, except for motorcycles and low speed vehicles.

**DATES:** This final rule is effective September 1, 2003. Voluntary compliance is permitted before that time. If you wish to submit a petition for reconsideration of this rule, your petition must be received by January 2, 2003.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For technical and policy issues: Mr. Roger Kurrus, Office of Planning and Consumer Programs. Telephone: (202) 366–2750. Fax: (202) 493–2290. Mr. Joseph Scott, Office of Crash Avoidance Standards, Telephone: (202) 366–2720. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

All of these persons may be reached at the following address: National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

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## I. Executive Summary

### *A. Highlights of the Notice of Proposed Rulemaking*

In the Notice of Proposed Rulemaking (NPRM) (66 FR 65536, Docket No. NHTSA–01–11157) published on December 19, 2001, the agency proposed to establish a new standard that would revise the agency's existing tire labeling requirements, as well as its current regulations to improve tire information for light vehicles (vehicles other than motorcycles and low speed vehicles (LSVs) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less) and light vehicle tires and its availability and understandability to consumers. The proposal was substantially based on NHTSA's activities undertaken in response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000, including publication of an ANPRM, consideration of comments in response to the ANPRM, data gathering and analysis, and NHTSA sponsored focus groups. The highlights of the proposal were as follows:

(1) *Tire Markings*—the TIN, size designation, maximum permissible inflation pressure, and maximum load rating would have been placed on both sides of light vehicle tires;

(2) *Tire Identification Number (TIN)*—(a) information in the TIN would have been reordered so that the first six characters would have contained the information required for determining whether a particular tire is subject to a recall and, (b) each TIN character would have been at least 6 mm (¼″) high;

(3) *Vehicle Placard Content and Format*—(a) the tire inflation pressure information would have been visually separated by a red colored border on the vehicle placard or, alternatively, would have been placed on a separate tire

inflation pressure label, (b) the tire inflation pressure information on the placards would have been in color (red, yellow, and black on a white background), (c) a black and white tire symbol icon (13 millimeters (.51 inches) wide and 14 millimeters (.55 inches) high) would have been in the upper left corner of the placard and label, (d) the placard and label would have both included the phrases ''Tire Information'' and ''See Owner's Manual For Additional Information'' in yellow text on a black background, (e) the statement of ''vehicle capacity weight'' on the vehicle placard would have been replaced with the following sentence: ''[t]he combined weight of occupants and cargo should never exceed XXX pounds,'' and, (f) the vehicle's recommended tire size designation would have been replaced with the tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer;

(4) *Placard Location*—the placard or placard and label containing tire inflation pressure by tire size and other required information specified in S4.3 of FMVSS No. 110 would have been located on the driver's side B-pillar. If a vehicle did not have a B-pillar, then the placard or placard and label would have been placed on the edge of the driver's door; and

(5) *Owner's Manual Information*—owner's manuals for light vehicles would have discussed the following five subject areas: (a) Tire labeling, (b) recommended tire inflation pressure, (c) glossary of tire terminology, (d) tire care, and (e) vehicle load limits.

Also, the agency proposed revising FMVSS No. 110, *Tire selection and rims,* for passenger cars, 49 CFR 571.110, and FMVSS No. 120 *Tire selection and rims for motor vehicles other than passenger cars,* 49 CFR 571.120, to reflect the applicability of the proposed light vehicle tire standard to vehicles with a GVWR of 10,000 pounds or less, and revising FMVSS No. 117, *Retreaded pneumatic tires,* 49 CFR 571.117, and FMVSS No. 129, *New non-pneumatic tires for passenger cars,* 49 CFR 571.129, to replace the labeling requirements contained therein with those specified in the proposed new light vehicle tire standard.

The agency proposed compliance dates for tires according to the following schedule: all passenger car (''P-metric'') tires manufactured on or after September 1, 2003, and all light truck (''LT'') tires manufactured on or after September 1, 2004, would have had to meet the new requirements. Additionally, all light vehicles manufactured on or after September 1, 2003, would have had to comply with the final rule. The agency proposed that lead-time to be consistent with the lead-time proposed for the tire performance upgrade. The aforementioned proposals are summarized more fully in section IV. of this document.

*B. Highlights of the Final Rule*

The final rule establishes a single standard for light vehicle tires, FMVSS No. 139, *New Pneumatic Tires for Light Vehicles.* It also contains provisions for labeling requirements that address the following aspects of tire and vehicle labeling: tire markings, the Tire Identification Number (TIN), vehicle placard content and format, placard location, and owner's manual information. The rule applies to all new and retreaded tires for passenger cars, multipurpose passenger vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less, manufactured after 1975, and to all passenger cars, multipurpose passenger vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less.[1] The requirements are fully summarized in section VII.A of this document.

In response to the NPRM, NHTSA received comments from tire and vehicle manufacturers and associations, consumer advocacy groups, and the general public. After considering the public comments and other available information, the agency is modifying certain aspects of its proposal.

In particular, the agency is persuaded, for the reasons explained in section VII.C.1.d. of this document, that there are worker safety and costs issues associated with placement of the full TIN on both sidewalls of the tire. Additionally, there are technical difficulties associated with the reordering of the TIN. These amendments were proposed to aid consumers in determining whether their tires were subject to a recall. Instead, the agency is addressing the visibility of the TIN by requiring that the full TIN, as currently ordered, appear on the ''intended outboard sidewall,'' if there is one, and that either the full TIN or a partial TIN, *i.e.*, a TIN from which the date code has been deleted, appear on the opposite side of the tire. ''Intended outboard sidewall'' is defined in FMVSS No. 139 as the sidewall that contains a whitewall, bears white lettering, or bears a manufacturer or model name molding which is higher or deeper than on the other sidewall of the tire. If a tire does not have an intended outboard sidewall, the tire must be labeled with the full TIN on one sidewall and with either the full TIN or a partial TIN on the other sidewall.

The major changes to the standard (or deviations from the proposal) are as follows:

(1) The agency is not reordering the contents of the TIN.

(2) The agency is requiring the full TIN on the ''intended outboard sidewall'' of the tire and either the full TIN or a partial TIN, containing all aspects of the TIN except for the date code, on the opposite sidewall.

(3) The agency is eliminating size and format requirements for the vehicle placard and label, except for those specifying certain headings, use of the tire icon, and a limited use of color.

(4) If the vehicle does not have a driver's side-B-pillar and the driver's door edge is too narrow or does not exist, the agency is requiring that the placard or placard and label be affixed to the inward facing surface of the vehicle next to the driver's seating position.

(5) For tires, the agency is providing additional time for compliance with the new requirements as follows: 40% of all covered tires between September 1, 2004, and August 31, 2005, 70% of all covered tires between September 1, 2005, and August 31, 2006, and 100% of all covered tires beginning on September 1, 2006.

NHTSA has decided to adopt the effective date of September 1, 2003, for vehicle labeling. The effective date reflects NHTSA's desire for expedited action on this issue. In view of the urgent need to alert the public to tire and loading information and because the labeling revisions to light vehicles constitute format changes, not performance or vehicle design changes, NHTSA finds that an effective date of September 1, 2003, is reasonable and is in the public interest. The extension of the effective date for tires and the phase-in reflect the reality that the tire manufacturers will need to rework, retool, and replace the tire molds currently utilized. NHTSA believes that this phase-in will permit tire manufacturers to continue to use existing molds while they acquire new ones that reflect the new tire information requirements. Also, by only requiring that 40% of tires comply with the requirements during the first stage of the phase-in, the agency is providing the industry and its mold shops with an achievable task of reworking molds that would not exceed their capacity for such work. By not requiring full

[1] Therefore, this standard is applicable to LT tires up to load range E. This load range is typically used on large SUVs, vans, and trucks.

compliance until September 1, 2006, NHTSA is providing the tire industry with ample time to accomplish the task.

The agency estimates that one-time costs of up to $23.4 million will occur for the tire industry during the phase-in period. These costs will add up to $0.08 per tire during this period. The recurring annual costs are believed to be very minor.

Retread tires are a small part of the market for light vehicles. Because the cost to change the mold to add a second TIN or partial TIN is spread over a smaller market, the cost increase per retread tires will be higher by an unknown amount.

The agency estimates that vehicle costs will increase about $0.15 per vehicle, based on $0.04 per label and $0.11 for adding about 8 pages of information to the owner's manual. With approximately 17 million light vehicles and light trailers being sold annually, the vehicle costs will be about $2.6 million per year on a recurring annual basis.

Thus, total overall costs will be up to $26 million initially, with $2.6 million estimated to occur on a recurring annual basis.

NHTSA believes that this rule will be effective in increasing public awareness of tire safety, particularly, the understanding and maintenance of proper tire inflation and load limits. This rule will also enable consumers to identify the TIN and other tire information more easily for recalls and other notifications. The rule will standardize the location and content of important information relating to proper inflation and load limits and other tire safety concerns. By increasing consumer knowledge and awareness, this rule will lead to reduced tire failures and tire related crashes, and therefore fewer deaths and injuries.

## II. Background

### *A. The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act*

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000, Pub. L. 106–414, requires the agency to address numerous matters through rulemaking. One of these matters, set forth in section 11 of the Act, is the improvement of the labeling of tires required by section 30123 of title 49, United States Code, to assist consumers in identifying tires that may be the subject of a recall. Section 11 provides that the agency must initiate a rulemaking proceeding for that purpose within 30 days after the enactment of the Act and must complete it not later than June 1, 2002.

Additionally, that section provides that the agency may take whatever additional action it deems appropriate to ensure that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. Section 11 states that such additional action may, for example, include a requirement that the manufacturer of motor vehicles provide the purchasers of the motor vehicles information on appropriate tire inflation levels and load limits if the agency determines that requiring such manufacturers to provide that information is the most appropriate way the information can be provided.

### *B. Safety Problem*

#### 1. Difficulty Locating the Tire Identification Number (TIN)

The Firestone tire recalls in 2000 highlighted the difficulty that consumers experience when attempting to determine whether a tire is subject to a recall if the tire is mounted so that the sidewall bearing the TIN and size designation faces inward, *i.e.*, underneath the vehicle.

The side of a tire bearing the TIN is often mounted so that it faces inward. In the case of whitewall tires, this occurs because the TIN is almost always molded on the blackwall (*i.e.*, inside sidewall) of the tire. Whitewall tires account for a small and declining percentage (currently about 5 percent or less) of original equipment tire sales in this country, but about 40 percent of replacement tires. There are about three times as many replacement tires as original equipment tires sold each year. Blackwall tires, which have the TIN on one sidewall, are as likely to be mounted with the number side facing in as out. Based on this information, we estimate that approximately 65 percent of all tires are mounted with their TINs not readily visible.

When tires are mounted so that the TINs appear on the inward facing sidewalls, motorists have three inconvenient options for finding and recording the TINs. They must either: (1) Slide under the vehicle with a flashlight, pencil and paper and search the inside sidewalls for the TINs; (2) remove each tire, find and record the TIN, and then replace the tire; or (3) enlist the aid of a garage or service station that can perform option 1 or place the vehicle on a vehicle lift so that the TINs can be found and recorded.

As a result of the difficulty and inconvenience of checking the TINs, the percentage of people who respond to a tire recall campaign is reduced and motorists unknowingly continue to drive their vehicles with potentially unsafe tires.

#### 2. Misunderstanding and Dangers Associated With Inflation Pressure

As discussed in the NPRM, surveys indicate that consumers often do not realize that the recommended inflation pressure, which provides the cold tire inflation pressure for the maximum loaded vehicle weight based upon vehicle specification and operation as determined by the vehicle manufacturer, is labeled on the vehicle on a placard or the vehicle certification label by the vehicle manufacturer. Surveys also indicate that a significant number of vehicles are being operated with underinflated, overloaded and/or damaged tires and that the public needs to be reminded to inspect and properly maintain their tires.

The sidewalls of a tire used while significantly under-inflated flex more and the air temperature inside it increases, making the tire more prone to failure. In addition, a significantly under-inflated tire loses lateral traction, making handling and stopping more difficult. Under-inflated tires can contribute to various types of crashes in addition to those resulting from blow outs or tire failure, including crashes which result from: An increase in stopping distance; skidding and/or a loss of control of the vehicle in a curve or in a lane change maneuver; or hydroplaning on a wet surface.

Additionally, under-inflation contributes to tire overloading. Tire overloading describes a condition in which the vehicle is carrying more weight than the tire is rated to carry at a specified inflation pressure. For instance, for every 1-pound per square inch (psi) reduction in inflation pressure, a vehicle's tires suffer a 1.6% reduction in vehicle capacity weight (passenger plus cargo capacity). Overloading can result in handling or steering problems, brake failure, and tire failure.

As discussed in the NPRM, several crash files contain information on ''general'' tire related problems that precipitate crashes. The more recent of these files are The National Automotive Sampling System—Crashworthiness Data System (NASS–CDS) and the Fatality Analysis Reporting System (FARS). For instance, the NASS–CDS data demonstrate that about one half of one percent of all crashes are caused by these tire problems. The rate of blowout-caused crashes for light trucks (0.99 percent) is more than three times the

rate of those crashes for passenger cars (0.31 percent). Blowouts cause a much higher proportion of rollover crashes (4.81) than non-rollover crashes (0.28); and again more than three times the rate in light trucks (6.88 percent) than in passenger cars (1.87 percent). FARS data for 1995 through 1998 show that 1.10 percent of all light vehicles in fatal crashes were coded with tire problems. Light trucks had slightly higher rates of tire problems (1.20 percent) than passenger cars (1.04 percent). The annual average number of vehicles with tire problems in FARS was 535 (313 passenger cars and 222 light trucks).

*C. Existing Labeling Requirements*

1. Tire Sidewall Labeling

NHTSA's existing labeling requirements for new passenger car tires are set forth in Federal Motor Vehicle Safety Standard (FMVSS) No. 109, *New Pneumatic Tires—Passenger Cars* (49 CFR 571.109). Specifically, section S4.3 of FMVSS No. 109 sets forth information labeling requirements for tires, including requirements regarding the positioning of the information on the sidewall to ensure that it is readily visible and to minimize the possibility that it will be scuffed off if the sidewall hits a curb or similar object. It provides that the information listed in paragraphs S4.3 (a) through (e) (*e.g.*, number of plies and maximum permissible inflation pressure) must appear, on at least one sidewall, in an area between the maximum section width and the bead of the tire, unless the maximum section width of the tire falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire.

NHTSA's labeling requirement for retreaded passenger car tires is set forth in FMVSS No. 117, *Pneumatic Retreaded Tires* (49 CFR 571.117). FMVSS No. 117 requires that each newly retreaded passenger car tire have molded into its sidewalls information similar to that required in FMVSS No. 109, plus the words ''bias,'' or ''bias belted,'' or ''radial,'' as applicable. FMVSS No. 117 does not, though, require that the name of the manufacturer or brand name and number assigned to the manufacturer be placed on retreaded tires as is required on new passenger vehicle tires by FMVSS No. 109.

NHTSA's labeling requirements for new tires for vehicles other than passenger cars are set forth in FMVSS No. 119, *New Pneumatic Tires for Vehicles other than Passenger Cars* (49 CFR 571.119). Paragraph S6.5 of FMVSS No. 119 specifies that all tires for vehicles other than passenger cars must have certain markings on the sidewalls. Among other things, these tires must show the actual number of plies in the tire, the composition of the ply cord material (S6.5(f)), and a letter designating the load range (S6.5(j)). S6.5 also provides that the designated information must appear, on at least one sidewall, in an area between the maximum section width and bead of the tire, unless the maximum section width of the tire falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire. For tires for which the maximum section width falls in that area, all required labeling must be located between the bead and a point one-half the distance from the bead to the shoulder of the tire. Additionally, section S6.5(b) requires that each tire be marked with the tire identification required by part 574 of this chapter and that this number may be marked on only one sidewall.

NHTSA's labeling requirements for new temporary spare non-pneumatic tires for passenger cars are set forth in FMVSS No. 129, *New non-pneumatic tires for passenger cars* (49 CFR 571.129). The FMVSS No. 129 labeling requirements are similar to those set forth in section S4.3 in FMVSS No. 109 for size designation, load, rating, rim size and type designation, manufacturer or brand name, certification, and tire identification number. Paragraph S.4 of FMVSS No. 129 specifies that each non-pneumatic tire must have certain markings on the sidewalls including the non-pneumatic tire identification code (NPTIC), the load rating, and the tire identification number required in Part 574. These labeling requirements also specify that the labeling information must appear on both sides of the tire, except, in the case of a tire that has a particular side that must always face outward where the information must appear on the outward facing side.

2. Tire Identification Number (TIN)

Section 574.5 of Title 49, CFR, *Tire Identification Requirements,* sets forth the methods by which new tire manufacturers and new tire brand name owners must identify tires for use on motor vehicles. The section also sets forth the methods by which tire retreaders and retreaded tire brand name owners must identify tires for use on motor vehicles. The purpose of these requirements is to facilitate efforts by tire manufacturers to notify purchasers of defective or nonconforming tires and by such purchasers to identify those tires so that purchasers can take appropriate action in the interest of motor vehicle safety.

Specifically, § 574.5 requires each new tire manufacturer and each tire retreader to mold a TIN into or onto the sidewall of each tire produced, in the manner and location specified in the section and as depicted in Figures 1 and 2 of that section. The TIN is composed of four groups:

1. The first group represents the manufacturer's identification mark assigned to such manufacturer by this agency in accordance with § 574.6;

2. The second group represents the tire size for new tires; for retreaded tires, the second group represents the retread matrix in which the tire was processed or, if no matrix was used, a tire size code;

3. The third group may, at the option of the manufacturer, be used as a descriptive code for identifying significant characteristics of the tire. If the tire is produced for a brand name owner, the third grouping must identify such brand name owner; and

4. The fourth group identifies the week and year of manufacture. The first two figures identify the week, starting with ''01'' to represent the first full week of the calendar year; the second two figures represent the year. For example, ''2198'' represents the 21st week of 1998.

3. Vehicle Labeling

Labeling requirements are also contained in 49 CFR part 567, *Certification,* 49 CFR part 575, *Consumer Information Regulations,* FMVSS No. 110, *Tire Selection and Rims,* applicable to passenger cars and to non-pneumatic spare tire assemblies for use on passenger cars, and FMVSS No. 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars.*

Section 567.4 requires vehicle manufacturers to affix to each vehicle a label bearing, among other things, the Gross Vehicle Weight Rating (GVWR), which must not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the vehicles rated seating capacity; and the Gross Axle Weight Rating (GAWR), which is the value specified by the manufacturer as the load carrying capacity of a single axle system.

Paragraph S4.3 of FMVSS No. 110 requires manufacturers to affix a placard to each passenger car's glove compartment door or an equally accessible location showing the vehicle's capacity weight, designated seating capacity, the manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, the manufacturer's recommended tire size designation, and,

for a vehicle equipped with a non-pneumatic spare tire assembly, the non-pneumatic identification code required by FMVSS No. 129, *New Non-Pneumatic Tires for Passenger Cars.* The required information is intended to promote the vehicle's safe performance by preventing the overloading of the tires or the vehicle itself.

FMVSS No. 120 requires that each vehicle show, on the label required by 567.4, or on a tire information label (S5.3.2(b)), the recommended tire size designation appropriate for the GAWR, the size and type designation of rims appropriate for those tires, and the recommended cold inflation pressure for those tires such that the sum of the load ratings of the tires on each axle (when the tires load carrying capacity at the specified pressure is reduced by dividing 1.10, in the case of a tire subject to FMVSS No. 109, *i.e.,* a passenger car tire) is appropriate for the GAWR.

## III. December 2000 Advance Notice of Proposed Rulemaking (ANPRM)

On December 1, 2000, this agency initiated rulemaking, as required by the TREAD Act, by publishing an Advance Notice of Proposed Rulemaking (ANPRM) (65 FR 75222, Docket No. NHTSA–00–8296), which announced our plans to (1) improve the labeling of tires, (2) assist consumers in identifying tires that may be the subject of a recall, and (3) ensure that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle.

The ANPRM discussed NHTSA's existing tire information labeling and marking requirements, tire identification number requirements, and other labeling requirements such as those contained within its Consumer Information Regulations, *e.g.,* Uniform Tire Quality Grading System (''UTQGS''). Also discussed in the ANPRM were prior rulemaking actions and petitions pertinent to the tire labeling issues addressed by the TREAD Act, particularly those relevant to the location of the TIN, and underinflation and overloading concerns.

NHTSA solicited comments in areas such as general consumer knowledge and behavior, availability of information to consumers, TIN information, and other tire labeling information. The agency also asked many specific questions related to such matters such as TIN content, readability and location, worker safety and costs issues associated with labeling the TIN on both sidewalls of the tire, loading, plies and cord material, tread wear indicators, UTQGS, speed rating, run-flat and extended mobility tires, tire inflation pressure, and the dissemination of tire safety information.

## IV. December 2001 Notice of Proposed Rulemaking

On December 19, 2001, the agency published an NPRM proposing to establish a new standard that would revise the agency's existing tire labeling requirements, as well as revise its current regulations to improve tire information for light vehicles (vehicles other than motorcycles and low speed vehicles (LSVs) with a GVWR of 10,000 pounds or less) and light vehicle tires and its availability and understandability to consumers.

The NPRM's proposed amendments addressed the following aspects of tire and vehicle labeling: tire markings, the Tire Identification Number (TIN), vehicle placard content and format, placard location, and owner's manual information. The proposal would have extended all passenger car labeling requirements, including those requiring the labeling of combined occupant and cargo weight capacity and designated seating positions, to light trucks and multipurpose passenger vehicles (MPVs) with a GVWR or 10,000 pounds or less. The proposed revisions were based on consideration of comments in response to the ANPRM, data gathering and analysis, and NHTSA sponsored focus groups.

NHTSA proposed that the TIN, size designation, maximum permissible inflation pressure, and maximum load rating be placed on both sides of light vehicle tires. Requiring the TIN and size designation to be on both sides would have ensured that that information would be on the sidewall facing outward, regardless of how the tire is mounted. We also proposed requiring that the TIN appear on both sides of the tire because dual-side labeling was suggested during the congressional hearings concerning the Firestone recall. Also, based on responses to the ANPRM by the tire industry claiming a general ''safety hazard'' due to unspecified ''changes in the manufacturing process,'' and reasons provided in the NPRM, we were not then persuaded that there were significant worker safety concerns associated with this proposal. Requiring that the other items of information be on both sidewalls would have aided consumers in maintaining their tires and loading their vehicles.

NHTSA proposed two changes to the TIN. First, the agency proposed to require a re-ordering of information in the TIN so that the first six characters would have contained the information required for determining whether a particular tire is subject to a recall. The first two characters would have reflected the plant code, and the next four characters would have reflected the date code. Second, the agency proposed to require that each character be 6 mm (¼″) high. The agency believed that a requirement for a uniform TIN font size would have significantly improved the readability of the TIN.

The agency proposed four sets of revisions for the presentation of tire inflation pressure and load limit information on the vehicle placard currently required for passenger cars by S4.3 of § 571.110 and to be required for all light vehicles with a GVWR of 10,000 pounds or less.[2] The NPRM contained figures illustrating the proposed revisions to the placard. This placard, permanently affixed to the glove compartment door or an equally accessible location, currently displays the vehicle capacity weight, the designated seating capacity (expressed in terms of total number of occupants and in terms of occupants for each seat location), the vehicle manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, and the manufacturer's recommended tire size designation.

First, the agency proposed that tire inflation pressure information would have been visually separated by a red colored border on the vehicle placard or, alternatively, been placed on a separate tire inflation pressure label. The vehicle placard would have contained only the information that would have been required in the proposed version of S4.3 (paragraphs (a)–(e)).[3] This information would not have been combined with other labeling or certification requirements. The

[2] FMVSS No. 120 currently requires that each motor vehicle other than a passenger car show, on the label required by § 567.4, or on a tire information label (S5.3.2(b)), the recommended tire size designation appropriate for the GAWR, the tire size and type designation of rims appropriate for those tires, and the recommended cold inflation pressure for those tires such that the sum of the load ratings on the tires on each axle (when the tire's load carrying capacity at the specified pressure is reduced by dividing 1.10, in the case of a tire subject to FMVSS No. 109, *i.e.,* a passenger car tire) is appropriate for the GAWR.

[3] (a) Vehicle capacity weight expressed as ''THE COMBINED WEIGHT OF OCCUPANTS AND CARGO SHOULD NEVER EXCEED XXX POUNDS';

(b) Designated seating capacity (expressed in terms of total number of occupants and in terms of occupant for each seat location);

(c) Vehicle manufacturer's recommended cold tire inflation pressure;

(d) Tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer; and

(e) ''SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION''.

vehicle placard also would have had to meet the proposed color and content requirements as discussed below.

Second, the agency also proposed that the tire inflation pressure label and vehicle placard would have had to meet the following three requirements: (1) The tire inflation pressure information on the placards would have been in color—red, yellow, and black on a white background, (2) contained a black and white tire symbol icon in the upper left corner of the placards, 13 millimeters (.51 inches) wide and 14 millimeters (.55 inches), and (3) the placard and label would have both include the phrases ''Tire Information'' and ''See Owner's Manual For Additional Information'' in yellow text on a black background.

Third, the agency proposed to replace the vehicle capacity weight statement on the vehicle placard with the following sentence: ''[t]he combined weight of occupants and cargo should never exceed XXX pounds.'' The ''XXX'' amount would equal the ''vehicle capacity weight'' of the vehicle as defined in FMVSS No. 110. The information was the same as that currently required to be placed on the vehicle placard by manufacturers. However, the agency believed that the statement ''the combined weight of occupants and cargo should never exceed * * *'' would have been easier for consumers to comprehend than a technical phrase such as ''vehicle capacity weight.'' ''Vehicle capacity weight'' is not intuitive to consumers and would have required a vehicle operator to look to the owner's manual or standard to understand which factors are included in the calculation of the sum/amount on the placard.

Fourth, the agency proposed to replace the vehicle's recommended tire size designation with the tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer. While in most instances these two numbers would have been identical, this minor revision would have insured that the consumer is provided with the correct tire inflation pressure information for the tire size actually installed on his vehicle as original equipment by the manufacturer.

We proposed these placard changes in response to survey and focus group data which indicated that consumers needed assistance in locating recommended tire pressures for their vehicle's tires and understanding load limits. The use of colors and a visual cue, such as a tire symbol icon, would have aided drivers in noticing and locating this imperative information. By expressing the vehicle's load limit in easily recognizable terms such as ''passenger and cargo weight'', as opposed to ''vehicle capacity weight'' the proposed placard revisions would have also aided consumers in understanding and adhering to load limit guidelines.

The agency proposed that the placard or placard and label containing tire inflation pressure by tire size and other required information specified in S4.3 of FMVSS No. 110 would have been located on the driver's side B-pillar. If a vehicle did not have a B-pillar, then the placard or placard and label would have been placed on the edge of the driver's door. Currently, S4.3 of 571.110 specifies that the vehicle placard be affixed to the glove compartment door or an equally accessible location. A standardized location for tire information placards and labels would have contributed to consumer awareness of recommended tire inflation pressures and load limits.

The agency proposed that owner's manuals for light vehicles contain discussion of the following five subject areas: (1) Tire labeling, (2) recommended tire inflation pressure, (3) glossary of tire terminology, (4) tire care, and (5) vehicle load limits. A single, reliable source containing the proposed required information for the tires and tire safety information listed above would have aided consumers by providing to them, in one centralized location, the information that they needed to properly maintain their tires and adhere to recommended load limits.

Finally, the agency proposed revising FMVSS Nos. 110, *Tire selection and rims,* for passenger cars, 49 CFR 571.110, and 120 *Tire selection and rims for motor vehicles other than passenger cars,* 49 CFR 571.120, which would have reflected the applicability of the proposed light vehicle tire standard to vehicles with a GVWR of 10,000 pounds or less, and revising FMVSS Nos. 117, *Retreaded pneumatic tires,* 49 CFR 571.117, and 129, *New non-pneumatic tires for passenger cars,* 49 CFR 571.129, which would have replaced the labeling requirements contained therein with those specified in the proposed new light vehicle tire standard.

The agency proposed compliance dates for tires according to the following schedule: all P-metric tires manufactured on or after September 1, 2003, and all LT tires manufactured on or after September 1, 2004 would have had to meet the new requirements. Additionally, all light vehicles manufactured on or after September 1, 2003 would have had to comply with the final rule.

NHTSA believed that this proposal would have resulted in minimal costs for tire and manufacturers. NHTSA estimated that the added cost for labeling tires under this proposal would have equaled $0.01 per tire or less and a minimal cost for vehicle labeling (one-time costs to change production for the new vehicle placard and/or tire inflation pressure label, the application of the vehicle placard and/or tire inflation pressure label to all light vehicles, not only passenger cars, and the new owner's manual pages). NHTSA estimated that, adding the total tire and vehicle manufacturing costs together, the total annual costs would have equaled approximately $5.5 million.

## V. Summary of Public Comments on NPRM

NHTSA received over 30 comments on the December 2001 NPRM. The comments were submitted by: vehicle and tire manufacturers and associations, consumer advocacy organizations and individual members of the public. The comments are summarized below.

### *A. Tire Sidewall Labeling*

1. Maximum Permissible Inflation Pressure

- Consumers Union (''CU''), General Motors North America (''GM''), DaimlerChrysler (''DC''), International Tire & Rubber Association (''ITRA'') and Tire Association of North America (''TANA'') support maintaining the maximum inflation pressure on the tire sidewalls to prevent overinflation, to provide a level of inflation that is not a durability concern. CU and DC also suggest adding additional wording to the sidewall to direct one to the vehicle placard or owner's manual to the recommended inflation pressure.
- Rubber Manufacturers Association (''RMA''), Japan Automobile Tyre Manufacturers Association, Inc. (''JATMA''), Ford Motor Company (''Ford''), and UN/ECE Group for Global Technical Regulations for Vehicle Tyres (''GRRF'') support removing the maximum inflation pressure from the sidewall. JATMA and Ford state that different inflation pressures indicated by tire and vehicle manufacturers would cause confusion. Ford recommends that the maximum inflation pressure information be replaced with ''See Vehicle Placard for Recommended Tire Pressure.'' RMA and GRRF believe that the revised vehicle placard and owner's manual information is a better way of communicating correct inflation pressure and removal would encourage users to seek out the correct inflation pressure.

• RMA states that the NHTSA proposal would require establishment of new maximum permissible inflation pressures for light truck tires that are higher than the current marked pressure and are the minimum pressures required for the maximum load rating, not maximum pressures that are increased for operation at specific service conditions (Tire and Rim Association 2001 Yearbook, page 2–04). Also, RMA states that the requirement to stamp ''Maximum permissible inflation pressure'' on the sidewall of all light truck tires would require the reworking of all existing light truck tire molds. RMA suggests that, for LT tires, ''the terminology and definition of ''maximum permissible inflation pressure'' be replaced by ''reference inflation pressure''. RMA recommends that NHTSA adopt the following definition of this term: ''*Reference inflation pressure* means the pressure marked on the tire sidewall associated with the tire load range.''

2. Maximum Load Rating

• RMA, GRRF, JATMA, and European Tyre and Rim Technical Organisation (''ETRTO'') suggest that the maximum load rating is of no use to consumers and that it be replaced by a load index as the best way to present information to aid the consumer in choosing a suitable replacement tire for the vehicle. RMA says that the proposed maximum combined weight limit statement to be added to the vehicle placard would help consumers safely manage their vehicle/tire load capabilities.

3. Cord Material and Number of Plies

• RMA, JATMA and ETRTO suggest that information about cord material and number of plies should not be required because they are of no safety benefit to consumers. RMA also says that elimination of these labeling requirements for light vehicle tires would simplify sidewall imagery and provide for better communication of essential information and that this information is not critical to the repair, retread or recycling of passenger car tires which are rarely retreaded today. RMA comments that type and number of plies may be useful for retreading purposes for LT tires and JATMA comments that this information is relevant for consumers purchasing rayon carcass tires.

• ITRA and TANA believe it is important to leave that information on both sidewalls of the tire for the retread, repair and recycling industries. They say that this information enables the retreader or repair technician to select the proper repair materials or procedures for retreading or repairing the tires. Also, if information regarding the number of plies and cord material is removed from the sidewall, technicians cannot determine if the tire has a steel cord sidewall. This information is critical when determining if the tire is a candidate for a zipper rupture and very important in normal handling by a tire technician.

4. Speed Rating and Load Index (Service Description)

• The Alliance of Automobile Manufacturers (''Alliance'') suggests that tire sidewall labeling for tire speed rating and load index be allowed.

• RMA and Volkswagen state that the agency should require the service description to become part of the tire size information to be placed on the tire sidewall for consumer reference when ordering replacement tires. RMA states that tires are universally labeled with the service description, as illustrated on the agency's proposed tire information placard and label, and that it is very easy for consumers to match the recommended service description on their original equipment tires with the service description on replacement tires. RMA also states that for individuals who might want to see the correlation of load index numbers to pounds and kilograms, simple charts could be included in owner's manuals or made available through tire dealerships and web sites.

5. Placement of TIN

• CU, Charles West, Ford, and CIMS agree with the agency that improved access to the TIN would enhance customers' ability to determine whether their tires are covered by a recall or customer satisfaction campaign. CIMS says that the only realistic way to determine if tires are recalled is to locate a dealer who is willing to inspect the tires by putting the vehicle on an overhead lift and rotating all four tires to read the TIN. According to CIMS, this process costs conservatively $100.00 per inspection and could cost consumers hundreds of millions of dollars.

• RMA, JATMA, ITRA, TANA, Rubber Association of Canada (''RAC''), and GRRF oppose the agency's mandating that the TIN be required on both sidewalls of a tire for the following reasons: (1) The current practice in the tire industry is to locate the TIN in the bottom half of the mold and the front portion of the press to enable workers to change the weekly date code with reasonable safety without having to climb into a 350 degree upper press. If the TIN were located in a mold in the upper press as well, then to change the date code in that mold, a manufacturer would require the physical removal of the mold from the press in order to comply with OSHA's lockout/tagout regulation, 29 CFR 1910.147. This process would cause up to eight hours of downtime per press/per week. (2) The initial costs to modify all 101,148 molds for the addition of the second DOT code would be $113.5 million. The ongoing cost of changing the DOT code in the top mold would be an estimated $224.1 million per year. Further, there is insufficient global mold shop capacity to accomplish such a modification in the specified time. (3) The addition of the second TIN is a matter of very occasional convenience, not directly affecting tire safety. There are no other auto products/parts on which a part/serial number must be placed on both sides or in more than one location. (4) Marking the TIN on one sidewall could be accompanied by a requirement to identify which way the tire is to be fitted on vehicles. (5) The TIN is only necessary once the user has established whether a particular manufacturer's tire and size designation are subject to recall.

• RMA suggests three alternatives to the agency's proposal. (1) Require a partial TIN (manufacturer's identification, tire size, and optional information, but not weekly date code) on the opposite sidewall from the regular TIN. (2) Require the TIN on only one side of the tire and also show the TIN for the original equipment tires in an appropriate section of the vehicle owner's manual by means of an adhesive label. (3) Require placement of the TIN on the intended outboard side of P-metric and LT tires as indicated by the tire manufacturers.

• Specialty Tires of America and Coker Tire (''Coker'') request that specialty tires, *e.g.*, bias-ply and tires for classic and antique cars, be excluded from the requirement to mark the TIN on both sides of the tire. Coker notes that the process of producing a tire that contains a wide whitewall involves grinding a large section of the sidewall, which would result in removal of the TIN.

6. Reordering of TIN

• All commenters, except for CU, object to the rearrangement of the TIN.

• The Alliance, American Honda Motor Co., Inc. (''Honda''), RMA, ITRA, TANA, CIMS, ETRTO, RAC, and GRRF request that NHTSA maintain the current TIN groupings, format, and order for the following reasons: (1) A reordering of the TIN would confuse consumers and would require NHTSA to launch a new tire information

campaign, (2) a reordering of the TIN would confuse consumers because tires would be in circulation, for up to 12 years, with two different TIN code sequences, (3) high costs (RMA members—$83.9 million) due to need to rework tire molds, retrain dealership personnel, revise printed materials, and revise databases, (4) the agency's proposed requirements for owner's manual information would necessarily improve consumer knowledge about TIN groupings, (5) the three-digit plant code (instead of two characters for a new tire) for retreaders could not be accommodated in the newly ordered TIN, (6) the proposed positioning of the date code would not conform to foreign regulations and would be contrary to the spirit of international harmonization.

7. Height of TIN

• Advocates for Highway & Auto Safety (''Advocates'') does not support the agency's proposal to require each character of the TIN to be 6 mm or ¼″ high because they state it is a capricious choice and because the agency has not gathered information on the readability of this height of low characters. Additionally, they repeat their concern with this character size for individuals with Contrast Sensitivity Function (CFS).

• CU, RMA, ITRA and TANA support the proposed TIN height of 6mm.

• GRRF also stated that the proposed TIN height is not consistent with the draft GTR proposed height requirements.

*B. Vehicle Placard and Label*

1. Content

• ITRA and TANA commend NHTSA for its proposal and believe that all of these changes would help the consumer better understand their tire pressure requirements and load limits.

• RMA supports the proposed content, layout, and placement of placard, including both options. RMA also states that the agency should require a service description (load index and speed rating) as part of the tire size information shown on the vehicle placard and tire inflation pressure label because the information is important to consumers and provides the agency an opportunity for global harmonization of tire regulations.

• CU believes that tire pressure should be listed in ''psi'' first and ''kpa'' second. Additionally, CU states that the placard should (1) make clear that the combined weight of occupants and cargo or vehicle capacity weight does not include the vehicle's towing capacity and (2) should define ''cold tire pressure.''

• The Alliance, Mitsubishi Motors Corporation (''MMC''), GM, Volkswagen, and Subaru of America, Inc. (''Subaru'') state that vehicle manufacturers should be allowed to provide tire information in addition to the required fields to accommodate different speed and loading conditions, sales practices, tire/rim optional equipment, and more than one set of recommended tire pressures. The Alliance states that it is common practice to exchange tires and wheels between vehicles in a dealership's inventory and distribution of labels with original tire sizes listed would be difficult to distribute so different tire sizes should be listed on the placard. Subaru suggests permitting an additional optional tire size label or notation on the placard to indicate to see the owner's manual for optional tire size tire information.

• MMC requests that additional manufacturer production information be acceptable at the bottom part of the placard.

• The Alliance suggests that manufacturers should be permitted to provide a multi-lingual label if space permits.

• The Alliance and GM suggest that the agency use the ISO approved symbol for ''owner's manual'' in place of the phrase ''See Owner's Manual for Additional Information.'' Volkswagen recommends that the tire icon not be required on the vehicle label that shows only seating capacity and vehicle capacity weight because of space limitations and because they believe this information is not tire related.

• Subaru suggests that the placard use the heading ''original tire size'' instead of just ''tire size'' and that the text is more legible with upper and lower case lettering and that abbreviations for pounds and kilograms be permitted.

• GRRF states that only the inflation pressure at the maximum loading condition is quoted and that consumers would be better informed by recommended pressures at both a normal loading condition, *e.g.*, driver or driver and front seat passenger only, and maximum loading condition. The group, however, supports using the maximum loading condition if only one condition is chosen by the agency.

2. Format

• The Alliance supports the option to provide a single placard with all required information. It recommends that, based upon the limited space available for the location requirements, a manufacturer opting to provide tire pressure on a stand-alone label should be permitted to place the remaining information (seating capacity and loading) on the certification label. In support of this recommends, the Alliance says that the label already contains maximum loading capacity information for the vehicle and is required to be located in the driver's door area.

• MMC and GM request that NHTSA not regulate placard design, direction, and dimensions.

• ETRTO suggests that a font size equivalent to Times New Roman 20 be required in the format requirements for the placard since recommended tire inflation pressure information is vital for safety and would, it is hoped, be consulted monthly by consumers.

3. Location

• The Alliance, GM, Honda suggest that the agency adopt the same location requirement that exists in Part 567.4(c) because flexibility is needed to accommodate vehicles that do not have a conventional B-pillar or do not have enough room on the B-pillar nor sufficient room on the driver's door edge or vehicles which are right-hand drive for postal and special use.

• The Alliance also suggests that the agency include a provision that permits the manufacturer to place the Part 567 certification label on the passenger side if both the required placard and certification label cannot be accommodated on the driver's side.

• Subaru agrees with the agency that the placard should be on the B-pillar, preferably on the driver's side, and suggests that this be specified in the regulatory text.

• GRRF supports the agency's proposed location of the placard and label on the vehicle and the location of the placard/label in relation to each other.

4. Color

• The Alliance and GM oppose a multi-color requirement, arguing that it presents a significant cost burden, offers no apparent benefits, and is not a caution or warning label. They argue further that the addition of color would not aid the consumer in locating information on the placard/label or the placard/label itself.

• Volkswagen states that it would need to institute separate production and processing of the placard and tire information label because its vehicle information labels are printed on sheets of material with a uniform background color and black print.

5. Multistage Manufacturer

• The Alliance and the National Truck Equipment Association (''NTEA'')

suggest that the agency address issues related to vehicles that are manufactured in two or more stages and vehicles that are modified after primary manufacture. They state that the primary manufacturer in many cases would not have sufficient information regarding final configuration and vehicle equipment to designate seating capacity and weight limitations for occupants and cargo. NTEA further requests that actual and individual weighing not be required in order to certify the vehicle properly. NTEA also suggests that, in the event that NHTSA determines that multistage manufacturers should label each truck with information concerning seating capacity and combined occupant and cargo weight rating, there be provisions to allow for the updating of such information, through removing or covering original information with a new label, to ensure that consumers are receiving current information.

*C. Owner's Manual*

- CU supports the agency's proposals and rationale and suggests that it would be useful to consumers for manufacturers to provide recommended optional tire size designations in the manual.
- The Alliance urges the agency to develop tire and tire safety information with standardized language that is to be provided with a vehicle as a brochure or in an owner's manual.
- GM recommends that the agency not require actual recommended inflation pressures in the owner's manual.
- Honda comments that the glossary of tire terminology is unclear as to what terms are non-technical in S3 of Nos. 110 and 139 and suggests that NHTSA not require verbatim text in the owner's manual or that it improve the regulatory text to reflect manufacturers communications with consumers.
- Honda and the Alliance recommend that vehicle manufacturers provide an explanation of the TIN in the owner's manual to achieve improved owner understanding.
- Volkswagen suggests that owner's manual not be required to identify a specific tire size for the vehicle because owner's manuals are printed at the beginning of the production year and available tire sizes can change during the production cycle. Volkswagen also notes that manufacturers should not be restricted from adding additional information to the owner's manual.
- RMA supports the owner's manual requirements and, along with ITRA and TANA, support the requirement that the statements made in Figure 5 for ''Steps for Determining Correct Load Limit'' of the preamble appear verbatim in the owner's manual. RMA, however, along with GRRF, express concern with the statement suggesting that a pressure higher than the recommended pressure may be needed to support certain loads incorrectly indicates that tires can be loaded above their maximum capacity by increasing pressure and suggest the deletion of this statement.
- RMA recommends that the owner's manual contain instructions on the proper use of the spare tire and that it explain that correct tire inflation is vehicle specific and not contained on the sidewall. RMA also recommends that the owner's manual should define ''tire service description'' and provides a suggested definition.

*D. Applicability of FMVSS Nos. 110 and 120*

- The Alliance suggests that NHTSA drop the proposal to amend the applicability of FMVSS No. 110 and 120 from this rulemaking and instead incorporate them into the NPRM to be published on tire performance requirements.
- RMA and RAC state that the agency, in applying FMVSS No. 110 to light vehicles other than passenger cars, should not relax the current standards for tire selection and that load service factor of 1.10, applicable to passenger car tires for use on light trucks, vans, SUVs, and trailers, contained in S5.1.2 of FMVSS No. 120 be maintained in the new rule.

*E. Costs*

1. Placard and Label

- NTEA disagrees with NHTSA's estimate that there are only 4 small passenger car and light truck vehicle manufacturers in the U.S. It states that its members include close to 1,000 final stage manufacturers. NTEA also states that NHTSA's cost estimates for production and installation of the new placards and labels are not accurate for multi-stage produced vehicles and it estimates that the proposed placard would cost at least $0.25 in addition to scales and other equipment needed to determine the correct vehicle weight.
- GM states that the proposed placard/label would cost 20 cents more per label in addition to an acquisition cost of special color printers at $300,000.

2. Tires

- CU agrees with NHTSA's cost assessments of this rulemaking.
- The Alliance states that NHTSA has not accounted for the costs for computer programming code and software revisions necessary to implement changes to the TIN, including tracking dual formats, lost time, labor and resources due to errors and complexities associated with dual TIN orderings.
- RMA, GRRF, ITRA, TANA, and ETRTO believe that NHTSA substantially underestimated the costs to the tire industry. They say that these costs include loss of production, costs of modifications, and time and production costs to take molds out of production weekly to add second date code.
- RMA estimates the global cost to reorder the TIN on existing molds would be $83.9 million. The cost to add a second TIN to approximately 100,000 relevant molds (not including truck and motorcycle molds) is estimated at $113.5 million. GRRF estimates costs to U.S. tire industry at $100 million annually.
- ETRTO estimates that the costs of reworking up to 250,000 molds at $150 million and the total costs at $220 million, taking into account loss of production associated with adding a second TIN.
- ITRA and TANA note that the economic impact of this proposal, which they estimate would cost retreaders a minimum of $250 per mold, would be especially detrimental to retreaders as small business and would leave only the largest retreaders in business.

*F. Effective Dates*

- The Alliance recommends that NHTSA establish a uniform September 1, 2004 effective date for all vehicle requirements to permit individual vehicle manufacturers to phase-in the labeling and owner's manual information changes on a practicable and cost effective timetable. The Alliance and other vehicle industry members note that the agency should allow optional early compliance.
- GM states that an appropriate phase-in schedule cannot be determined for the changes in applicability of FMVSS Nos. 110 and 120 until they have been given an opportunity to assess the impact of the tire performance NPRM.
- RMA, RAC, ITRA, TANA and GRRF suggest that a phase-in of more than five years would be necessary to implement the changes proposed in the NPRM because the mold life expectancy is up to five years and there is not enough mold shop capacity in the world to rework the existing molds to comply with the proposed labeling. GRRF specifically requests that the effective dates be revised to apply to new tire designs, but not to existing designs,

until, at the latest, September 1, 2007 for P-metric and September 1, 2008 for LT tires.

*G. Defining ''Reasonable Amount of Luggage''*

• The Alliance and GM state that providing such a definition would serve no safety need and would interfere with what is a competitive matter among manufacturers. Further, they state that the agency's efforts to specify load limits on the vehicle placard and discussing load limits in the owner's manual adequately address the safety aspects of vehicle loading and obviate any need for agency to define ''reasonable amount of luggage.

• ERTRO suggests that the agency consider specifying ''maximum luggage capacity'' instead of a ''reasonable amount of luggage'' to avoid possibility of overloading.

• GRRF opposes the agency's deferring to vehicle manufacturers the responsibility for ensuring that a vehicle is equipped with tires which have a load capacity that are suitable for the declared maximum permissible mass of the vehicle or each axle of the vehicle.

*H. Foreign/International Standards*

• CU states that it supports NHTSA's decision to forego harmonizing or adopting foreign or international provisions because of the overriding need for providing safety information in a timely manner.

• The Alliance requests that NHTSA allow the inclusion of load indexes and speed ratings on tires.

• RMA states that the only labeling requirement in foreign standards to be including for consideration is the service description that is required by many governments around the world.

• GRRF asks NHTSA to reconsider the content of the draft harmonized regulation for tires. GRRF states that the draft is based on a global industry review of existing standards and regulations in many countries, including USA, most of Europe, Japan, China, Brazil, and Saudi Arabia and that it does not reflect the lowest common denominator in terms of performance requirements but instead seeks to move forward in the area of harmonization of tire markings in order to inform and aid the consumer.

• ETRTO suggests that complete harmonization of labeling requirements with those of ECE 30 and 54 are essential and that the safety aspects of these regulations are self-explaining since they supply a complete description of the performance characteristics of the tire and therefore allow all information necessary for an informed choice of replacement tires.

*I. Prohibition on Non-Required Information*

• The Alliance, GM, RMA, ITRA, TANA, GRRF and ETRTO oppose a prohibition on non-required information being placed on tires because of the global nature of the industry, because manufacturers use unique markings for marketing and production purposes, and because this action would possibly incur retaliation from other countries or constitute a technical barrier to trade.

## VI. Summary of Post-Comment Period Firestone Plant Visits by NHTSA Officials

On March 13 and April 11, 2002, NHTSA personnel visited the Bridgestone-Firestone (BFS) tire manufacturing plant in Aiken, SC. This plant is the newest and most technologically advanced BFS plant and is said to be representative of the future in tire manufacturing technology. NHTSA's visit included hearing an overview of plant operations and an explanation of the tire manufacturing process, and being taken on a plant tour. During the discussion and tour, the NHTSA personnel were shown and heard descriptions of all of the key steps in the manufacturing processes, as well as quality control and safety measures. Of particular interest to the NHTSA personnel was the process of changing the TIN in the tire molds.

The presses used by BFS at this plant are the segmented hydraulic vertical lift machines. Prior to this visit, NHTSA personnel had only witnessed clam-shell presses first-hand in operation at older tire plants. These segmented presses, along with the older clam-shell presses, are the most widely used in the industry. According to RMA, the segmented machines represent an increasing percentage of presses used in the U.S. and are today considered the industry standard. Additionally, the segmented machines are more versatile than other types of presses since they can be used for molding all tires, including the higher speed rated tires requiring nylon caps that the older types of presses, including the clam-shell, cannot accommodate.

The segmented machines seen by NHTSA during the tour have a lower press and an upper press. The lower press is fixed in place directly below the upper press that is raised and lowered on a hydraulic lift. The height of the upper press at the full open position is approximately 6–7 feet above from the ground. The presses are hydraulic so they must either be in the closed or open position, they cannot be positioned in between these two extremes.

BFS provided NHTSA with a demonstration of the changing of the TIN date code in the lower mold. Workers change the TIN date by quickly leaning over the lower press and, using a hand tool, replace the old plug and/or plate with a new plate or plug. The process is not automated, according to BFS, due to the fragility of the mold.

On this type of machine, it appeared to NHTSA that any changes to the upper molds would need to be done with the molds removed from the upper press because the heat and inaccessibility of the upper mold would make it too dangerous or simply impossible, to change upper mold TINs in the upper press. This is because changing the TIN in the upper molds while the machine is in use would entail the technician's standing on the lower press while placing his head and arms directly up into the upper press. This could not be done while the machine is in use because the molds heat to approximately 350 F degrees and operate under up to 185,000 pounds of pressure. Further, the molds weigh up to 5,000 pounds each. To remove the upper mold from the machine, the upper press must be placed in the lowered position and the mold must be lifted from above using a small forklift. According to BFS, the down time necessary to enable workers to replace the date code is estimated at 4 to 6 hours. This covers allowing the mold to cool, removing the mold from the press, replacing the mold in the press, and reheating the mold. In this particular plant, there are 153 presses. This large number would, in BFS's view, make the replacement of the full TIN on a weekly basis, to accommodate the weekly changing of date code, logistically impossible. According to BFS, molds are currently removed from the upper press approximately every 20 to 30 days for cleaning.

## VII. Agency Decision Regarding Final Rule

*A. Summary of Final Rule and Rationale*

The final rule establishes a single standard for light vehicle tires, FMVSS No. 139, *New PneumaticRadial Tires for Light Vehicles.* The final rule contains labeling requirements that address the following aspects of tire and vehicle labeling: tire markings, the Tire Identification Number (TIN), vehicle placard content and format, placard location, and owner's manual information. NHTSA will also be

establishing upgraded safety performance requirements for tires in a forthcoming final rule, which would also be included in the new standard.

The rule applies to all new and retreaded tires for passenger cars, multipurpose passenger vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less, manufactured after 1975, and to all passenger cars, multipurpose passenger vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less.[4] The requirements are summarized below.

NHTSA has decided that the size designation, maximum permissible inflation pressure, and maximum load rating must be placed on both sides of light vehicle tires. The full TIN will be required on the ''intended outboard side'' of the tire and either the full TIN or a partial TIN, containing all aspects of the TIN except for the date code, will be required on the opposite side.'' ''Intended outboard sidewall'' is defined in FMVSS No. 139 as the sidewall that contains a whitewall, bears white lettering, or bears manufacturer or model name molding that is higher or deeper than that on the other sidewall of the tire. If a tire does not have an intended outboard sidewall, the tire must be labeled with the full TIN on one sidewall and with either the full TIN or a partial TIN on the other sidewall. Requiring that a form of the TIN, whether the full or partial TIN, be on both sides will ensure that important consumer information will be on the outward facing sidewall, regardless of how the tire is mounted. Requiring that the other items of information be on both sidewalls will aid consumers in properly maintaining their tires and loading their vehicles.

NHTSA is making another change to the TIN. The rule requires that each character in the TIN be 6 mm (¼″) high. The agency believes that a requirement for a uniform TIN font size will significantly improve the readability of the TIN.

The agency is making four sets of revisions to the presentation of tire inflation pressure and load limit information on the vehicle placard required for passenger cars by S4.3 of § 571.110 and to be required for all light vehicles with a GVWR of 10,000 pounds or less under this proposal.[5] This placard, permanently affixed to the glove compartment door or an equally accessible location, currently displays the vehicle capacity weight, the designated seating capacity (expressed in terms of total number of occupants and in terms of occupants for each seat location), the vehicle manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, and the manufacturer's recommended tire size designation.

First, the agency is requiring that tire inflation pressure information be visually separated by a red colored border from the other information on the existing vehicle placard or, alternatively, be placed on a separate tire inflation pressure label. The vehicle placard will contain only the information specified in the proposed version of S4.3 (paragraphs (a)–(e)).[6] This information will not be combined with other labeling or certification requirements. The vehicle placard will also have to meet the proposed color and content requirements as discussed below.

Second, the agency is requiring that the tire inflation pressure label and vehicle placard meet the following three requirements: (1) The tire inflation pressure information is in color—red, yellow, and black on a white background, (2) contain a black and white tire symbol icon in the upper left corner, 13 millimeters (.51 inches) wide and 14 millimeters (.55 inches) tall/high, and (3) include the phrases ''Tire and Loading Information'' and ''Tire Information'' and ''See Owner's Manual For Additional Information'' in yellow text on a black background.

Third, the agency is replacing the vehicle capacity weight statement on the vehicle placard with the following sentence: ''[t]he combined weight of occupants and cargo should never exceed XXX kg or XXX pounds.'' The ''XXX'' amount equals the ''vehicle capacity weight'' of the vehicle as defined in FMVSS No. 110. The information is the same as that currently required to be placed on the vehicle placard by manufacturers.

Fourth, the agency is replacing the vehicle's recommended tire size designation with the tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer. While in most instances these two numbers would be identical, this minor revision ensures that the consumer is provided with the correct tire inflation pressure information for the tire size actually installed on his vehicle as original equipment by the vehicle manufacturer. The original tire size designation and accompanying recommended inflation pressure will be indicated by the headings ''original tire size'' or ''original size'' on the placard or label

This rule requires that the placard or placard and label be located on the driver's side B-pillar. If a vehicle does not have a B-pillar, then the placard and label will be placed on the edge of the driver's door. If the vehicle does not have a driver's side B-pillar and the driver's side door edge is too narrow or does not exist, the placard or placard and label are required to be affixed to the inward facing surface of the vehicle next to the driver's seating position. Standardizing the location for tire information placards and labels will contribute to consumer awareness of recommended tire inflation pressures and load limits.

The agency is requiring that owner's manuals for light vehicles discuss the following five subject areas: (1) Tire labeling, (2) recommended tire inflation pressure, (3) glossary of tire terminology, (4) tire care, and (5) vehicle load limits. A single, reliable source containing the information listed above will aid consumers by providing the information that they need to properly maintain their tires and adhere to recommended load limits.

NHTSA believes that this rule will be effective in increasing public awareness of tire information and the understanding and maintenance of proper tire inflation and load limits. This rule will also enable consumers to more easily identify the TIN and other tire information for recalls and other notifications. The rule standardizes the location and content of important information relating to proper inflation and load limits and other tire safety concerns. These measures, by increasing consumer knowledge and awareness, will result in reduced tire failures and

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[4] Therefore, this standard is applicable to LT tires up to load range E. This load range is typically used on large SUVs, vans, and trucks.

[5] FMVSS No. 120 currently requires that each motor vehicle other than a passenger car show, on the label required by § 567.4, or on a tire information label (S5.3.2(b)), the recommended tire size designation appropriate for the GAWR, the tire size and type designation of rims appropriate for those tires, and the recommended cold inflation pressure for those tires such that the sum of the load ratings on the tires on each axle (when the tire's load carrying capacity at the specified pressure is reduced by dividing 1.10, in the case of a tire subject to FMVSS No. 109, *i.e.*, a passenger car tire) is appropriate for the GAWR.

[6] (a) Vehicle capacity weight expressed as ''THE COMBINED WEIGHT OF OCCUPANTS AND CARGO SHOULD NEVER EXCEED XXX POUNDS'';

(b) Designated seating capacity (expressed in terms of total number of occupants and in terms of occupant for each seat location);

(c) Vehicle manufacturer's recommended cold tire inflation pressure;

(d) Tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer; and

(e) ''SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION''.

tire related crashes, and therefore fewer deaths and injuries.

*B. Summary of Key Differences Between NPRM and Final Rule*

In response to the comments, the agency is modifying aspects of its proposal. Most important, the agency was persuaded, for the reasons explained below, that there are technical difficulties and safety concerns associated with placement of the full TIN on both sidewalls of the tire and the reordering of the TIN which were proposed to aid consumers in determining whether their tires are subject to a recall. Instead the agency is addressing the readability of the TIN by requiring only that the full TIN, as currently ordered, appear on the ''intended outboard sidewall,'' and either the full TIN or a partial TIN, same as full TIN currently ordered without date code, appear on the opposite side of the tire. If a tire does not have an intended outboard sidewall, the tire must be labeled with the full TIN on one sidewall and with either the full TIN or a partial TIN on the other sidewall.

The major changes to the standard (or deviations from the proposal) are summarized below.

(1) The agency is not reordering the contents of the TIN.

(2) Except as noted above, the agency is requiring the full TIN on the ''intended outboard sidewall'' of the tire and either the full TIN or a partial TIN, containing all aspects of the TIN except for the date code, on the opposite sidewall.

(3) The agency is eliminating size and format requirements for the vehicle placard and label, except for those specifying use of the tire icon and a limited use of color.

(4) If the vehicle does not have a driver's side B-pillar and the driver's side door edge is too narrow or does not exist, the agency is requiring that the placard or placard and label to be affixed to the inward facing surface of the vehicle next to the driver's seating position.

(5) For tires, the agency is extending the lead time and instituting a phase-in compliance according to the following schedule: 40% of all covered tires between September 1, 2004 and August 31, 2005, 70% of all covered tires between September 1, 2005 and August 31, 2006, and 100% of all covered tires beginning on September 1, 2006.

(6) The agency is delineating requirements for placarding and labeling of multistage manufactured and altered vehicles.

*C. Labeling Requirements*

1. Tire Sidewall Labeling

a. *Maximum Permissible Inflation Pressure.* Commenters on the ANPRM and NPRM and survey data conveyed that misunderstanding concerning the meaning of maximum permissible inflation pressure exists among consumers. Nevertheless, most commenters supported retaining this requirement. The commenters and focus group participants also expressed that the maximum inflation pressure provides a failsafe guideline for tire inflation. The agency concurs that the greatest likelihood of tire failure results from underinflation, therefore, the agency is not deleting or revising the requirement for the maximum permissible inflation pressure marking on the tire, except to extend this requirement to tires for use on all light vehicles with a GVWR of 10,000 pounds or less, except LSVs and motorcycles.[7]

Several commenters to the docket suggested adding information to the tire to distinguish the maximum permissible inflation pressure from the recommended inflation pressure. The agency believes that adding additional language to the sidewall to clarify the distinction between maximum inflation pressure and recommended inflation pressure is not feasible. Sidewalls are becoming progressively smaller with the advent of low profile tires and requiring additional information in this already crowded space will cause clutter and greater consumer confusion. The agency anticipates that improvements in the tire placard, standardization of the placard location, and an expanded consumer information program will reduce the number of consumers who mistake the maximum inflation pressure for the recommended inflation pressure.

RMA commented that NHTSA's proposal would require establishment of new maximum permissible inflation pressures for LT tires that are higher than the current marked pressures because LT tires are now marked with a maximum load rating and corresponding inflation pressure per 571.119. NHTSA has considered these comments. While the agency agrees that the requirement might necessitate manufacturers' determining and labeling a new maximum permissible inflation pressure on LT tires, NHTSA has concluded that the establishment of maximum permissible inflation pressures for LT tires should not be more complicated than the process by which manufacturers currently label LT tires with inflation pressures that correspond with the maximum load of the tire.

Currently, LT tires are labeled with an inflation pressure that corresponds to the maximum load to be carried by the tire. These values are included in industry yearbooks, such as the ''Tire and Rim Association'' (''T&RA'') Year Book, but are considered minimum cold pressures for the maximum loads listed. The yearbooks provide guidelines for using higher inflation pressures, which are based on speed and loading conditions. Under certain conditions, the inflation pressure could be increased by as much as 10 psi (69 kPa), although the maximum load that can be carried by the tire under normal operating conditions would not increase.

Although the agency acknowledges that the inflation pressures corresponding to the maximum loads in publications such as the TRA Yearbook are not absolute maximum inflation pressure values, we believe that it is appropriate to label these pressures on the tire as the maximum permissible inflation pressure for the maximum load specified. This information would then correspond with the information labeled on passenger car tires and would ensure that the consumer is provided with an upper threshold failsafe value that would ensure safe operation of the vehicle in a maximum loading condition or in the absence of the consumer's using recommended inflation pressure information from the vehicle placard or owner's manual. The agency will allow manufacturers, at their discretion, to label maximum permissible inflation pressures above those listed, up to 10 psi higher, on their LT tires to accommodate design prerogatives and anticipated operational usages.

*b. Maximum Load Rating.* Several tire industry commenters suggested that the maximum load rating is of no use to consumers, especially in light of the load information proposed to be placed on the vehicle placard, and that it should be replaced by the load index requirement contained in GTS–2000 and ECE Regulation Nos. 30 and 54. The agency disagrees that the maximum load rating is of no use for consumers. The maximum load rating provides information that enables consumers to make informed decisions about towing capacity and loading conditions under certain vehicle applications. In contrast, the load index recommended by industry commenters provides a code number, not provide an actual weight

[7] FMVSS No. 119 does not contain a requirement that the maximum permissible inflation pressure be labeled on new pneumatic tires for vehicles other than passenger cars.

value, to consumers. This code number does not provide readily apparent or available information to consumers and would make it necessary for a vehicle operator to look to an index in the owner's manual or a tire industry publication to determine the actual tire maximum load. The agency does not dispute that a load index value may aid consumers when purchasing replacement tires, but it believes that a maximum load rating is more informative and necessary for consumer reference when attempting to safely load their vehicles. Further, manufacturers are welcome to add, in addition to the maximum load rating, the load index to the tire sidewall and most already do so.

*c. Cord Material and Number of Plies.* With regard to the number of plies and generic name of cord material used in the plies, most respondents believed that information to be of limited safety value to consumers and suggested its removal from the sidewall. The ITRA and TANA, however, expressed the view that the cord and ply material is very important to the tire retread, repair and recycling industries because this information enables consumers and industry professionals to determine the level of risk when inflating, repairing, retreading or servicing a specific tire.

NHTSA believes that it is sufficient to require that this information appear on one sidewall. Requiring that ply, cord, and tube type information only be present on one sidewall would reduce the stringency required of tires currently subject to FMVSS No. 119 (which currently requires that light truck and MPV tires display the information on both sidewalls) and would result in cost savings to manufacturers that would offset some of the increased costs resulting from changes to the TIN and the labeling of LT tires. Further, there is no known advantage that would arise from requiring this information on both sides of the tire. Therefore, cord and material and number of plies labeling will be required to be labeled on only one sidewall of the tire.

*d. Placement of TIN.* The agency's proposal to require the TIN to be placed on both sidewalls of the tire elicited a range of different viewpoints. Consumer commenters, CIMS and Ford stated that requiring the TIN to be placed on the outside wall of the tire was desirable since it was the only realistic way for ensuring that consumers could determine if a tire were subject to a recall without having to take the vehicle to a dealer for examination. However, all tire industry respondents object to requiring the full TIN on both sides of the tire because of the manufacturing costs and safety issues discussed above.

The agency has decided to adopt a combination of two suggestions put forth by the tire industry. The agency has decided to require that the full TIN be labeled on the ''intended outboard sidewall'' of the tire and that either the full TIN or a partial TIN, without the date code, is to be labeled on the opposite sidewall. In this rulemaking, ''intended outboard sidewall'' is defined in FMVSS No. 139 as a tire sidewall that contains a whitewall, white lettering, or manufacturer or model name molding which is higher, deeper, or than on the other side of the tire. If a tire does not have an ''intended outboard sidewall,'' the manufacturer is required to mark the full TIN on any sidewall of the tire and either the full TIN or the partial TIN on the other sidewall. In consideration of the existence of tires that do not have an ''intended outboard sidewall,'' the agency may, in a future rulemaking, consider requiring tire manufacturers to indicate, through permanent or temporary labeling of those tires, that the side of the tire containing the full TIN is to be mounted facing outward.

After reviewing comments submitted to this rulemaking and after visiting the Firestone plant, the agency concludes that it now has a factual basis for concurring with the tire industry commenters that requiring a second full TIN be molded on tires presents both significant safety and cost concerns. Today, based on the advent of the seven day-a-week operation of tire manufacturing combined with the increasingly widespread use of the segmented press, the complexion of worker safety and costs issues is different than the one that existed in 1980 during our previous rulemaking on this issue.

The agency noted in the NPRM that responses to a special order in 1980 indicated that neither costs nor worker safety were major issues because presses were non-operational 1 or 2 days a week at which time the molds could be safety worked on and, even for presses that were operational seven days a week, workers could access the upper molds by placing insulated blankets over the bottom molds. When the NPRM was issued, the agency did not have any specific factual information from the tire industry that delineated its concerns regarding worker safety or explained why worker safety would currently be an issue, as compared to in 1980.

Based on tire industry and association responses to the NPRM, and the visit to the tire plant, it now appears that, since 1980, however, plant practices have changed such that virtually all plants and their presses operate 7 days a week. Because there is no ''down time'' for the presses workers must change the TIN in the hot press or remove the mold from the presses.

Additionally, there has been technological change in the types of presses used at the plants. In 1980, the industry standard was the clam-shell press. This press opens so that the upper press opens vertically at a hinge and can be accessed relatively easily by technicians. Today, the more technologically advanced type of press is the segmented press. This press is the most common type of press used by tire manufacturers today and it has become the industry standard. As discussed above, NHTSA witnessed first-hand the serious safety concerns presented for technicians who would be changing a TIN in a hot upper mold. Because of the danger to the worker, a significant amount of down time would be needed to change the date code of the TIN on the upper mold by removing, cooling, reinstalling, and reheating the mold.

The agency, after reviewing other options than requiring the full TIN on both sidewalls, including those suggested by RMA, has decided that a partial TIN on the ''intended inboard sidewall'' of the tire would address industry safety and cost concerns and, acting as a failsafe, aid consumers in determining whether their tires are subject to a recall. According to NHTSA's records of recent recalls, 80% of tires potentially subject to a ''typical'' recall could be eliminated from the recall based on the plant code and information other than the date code contained within the TIN. NHTSA notes that a partial TIN would not have been able to eliminate a large percentage of tires from the Firestone recall because several BSFS plants were involved in that recall. NHTSA is aware of the possibility that a partial TIN code may confuse consumers (''where are the rest of the numbers?'') or that the residual 20% of consumers whose tires may be subject to a recall based on the date code may decide to ''take their chances'' with regard to taking the car into a service station to locate the date code. NHTSA, however, believes that its increased efforts to educate consumers about tire information will help remedy these potential situations and in the unlikely event that consumers needed the date code to determine whether their tires were subject to the recall and could readily view the partial TIN only, it would be in the interest of consumers to have their tires checked by a service technician if the partial TIN code matched the recall information.

The agency stated in the NPRM that most tires are symmetrical or reversible, meaning that they can be mounted

facing either direction. In practice, a majority of tires have certain aesthetic features, *e.g.*, whitewall lettering, name brand molding, that denote an ''intended outboard sidewall.'' Thus, ''intended outboard sidewall'' is defined in FMVSS No. 139 as the sidewall that contains a whitewall, bears white lettering, or bears a manufacturer or model name molding which is higher or deeper than on the other sidewall of the tire.

As discussed above, the agency learned during its visit to Firestone and subsequent information gathering that changing the TIN number plates in the tire molds would not present insurmountable safety problems if workers did not have to change the date code in the upper mold of the press on a weekly basis. NHTSA believes that advances in tire manufacturing technology, such as removable stencil plates, will allow for a significant reduction in the costs and time associated with revising the molds to contain a partial TIN on molds that do not currently accommodate a TIN plate or plug. Further, the costs associated with changing molds to implement this requirement are not considered to be onerous because technicians will be able to change partial TIN labeling information on the molds outside of the tire press during the routine cleaning and reworking of the molds that occurs every 20–30 days.

*e. Reordering of TIN.* All commenters who addressed this issue, except for CU, opposed a reordering of the TIN. This opposition was based mostly on concerns about the confusion for consumers and tire dealership personnel that would result from having tires in circulation, for up to 12 years from now, with two different TIN code sequences. Opponents also cited the costs of revising printed materials and databases and reeducate consumers and technicians. Commenters on the NPRM argued that the agency had provided no proven benefits for reordering of the TIN.

The agency had based its proposal on the comments on the ANPRM and the results of the focus groups that showed consistent support for making the TIN more user-friendly and readable. To that end, the agency believed that proposed revisions to the sequence of information in the TIN would have made the TIN easier for consumers to read and understand for recall and other purposes.

The arguments of the tire industry commenters, however, have merit. The agency agrees that the suggested revisions to the TIN have no proven benefit to consumers and may, in fact, prove counterproductive to its efforts to improve consumer information. NHTSA has therefore decided not to reorder the TIN. Instead, it will work to make the TIN more understandable to consumers through its consumer education efforts.

*f. Height of TIN.* The agency has decided to require a 6 mm (1/4'') uniform height font size to enhance the readability of the TIN. Tire manufacturer commenters and consumer commenters, except for Advocates, support the 6 mm TIN height. Advocates continues to express concern for individuals with CFS. Advocates, however, does not suggest an alternative font size.

The agency disagrees with Advocates' assertions and notes that Advocates did not provide data supporting their assertions or alternatives to the agency's proposal. The agency's proposal for a 6 mm uniform TIN height was based on previous rulemakings and comments to the ANPRM, which indicated that 4 mm was not a sufficient font size for the TIN, particularly for individuals with visual impairment. Comments on the ANPRM and NPRM and results from the focus groups concerning the readability of the TIN did not specify a particular font size and commenters, except for Advocates, did not disagree with the agency's suggestion that a uniform 6 mm TIN font height will make the TIN easier to read and would not impose a significant burden on tire manufacturers. Therefore, 6mm will be the minimum required font size and there will be no restriction that will prevent tire manufacturers from using a larger font size for the TIN characters.

*g. Other.* Several commenters suggested adding additional information to the tire sidewall, *e.g.*, specifying what the digits of the TIN represent, a marking requirement directing the vehicle operator to use the information contained on the vehicle placard or in the owner's manual, defining maximum permissible inflation pressure.

As stated in the NPRM, NHTSA does not believe that these suggestions are feasible. As low-profile tires are developed and become more common, there is a consequential decrease in sidewall heights. The ever-decreasing space on tire sidewalls for displaying necessary and required information will become even more important in the future and will need to be reserved for essential information. NHTSA believes the decision to add the additional items, explanations, and warnings suggested by the commenters is better left to the discretion of the tire and vehicle manufacturers and are more effectively addressed through consumer information campaigns rather than through requirements for additional on-tire information.

2. Vehicle Placard and Label

*a. Revision and Upgrade of Placard and Optional Label.* NHTSA has decided to amend the existing 571.110 vehicle placard requirement, including providing vehicle manufacturers two options for presenting the required placard information on their vehicles. Manufacturers will either choose to affix vehicles with the vehicle placard proposed in the NPRM or a vehicle placard and tire information label combination as proposed in the NPRM. The agency believes the modifications made by this final rule will make the tire and load information contained on vehicles more noticeable and understandable to consumers and, therefore, increase the chance that this labeling requirement can affect driver behavior to reduce tire failure and thus fatalities and injuries.

NHTSA's proposal would have required labels to conform in content, format, size, and color to the proposed placard and label. Vehicle manufacturers agreed that NHTSA should specify the label content, however, they asked for more flexibility in the areas of format and size. Vehicle manufacturers also asked to be allowed to present the text not only in English, but also in other languages.

The purpose of the improved placard and label is to make them more noticeable and more explicit. NHTSA believes that arrangement and shape of the labels is irrelevant to these purposes, and therefore, is amending the regulatory language to allow such changes. NHTSA has also re-examined the placard and label and has decided to adopt the suggestion to specify only limited format requirements with minor modifications to the proposal based on comments. These modifications and the agency's rationale for its decisions regarding the placard and the label are discussed below. The following are examples of the vehicle placard and tire inflation pressure label:

BILLING CODE 4910–59–P

# Vehicle Placard

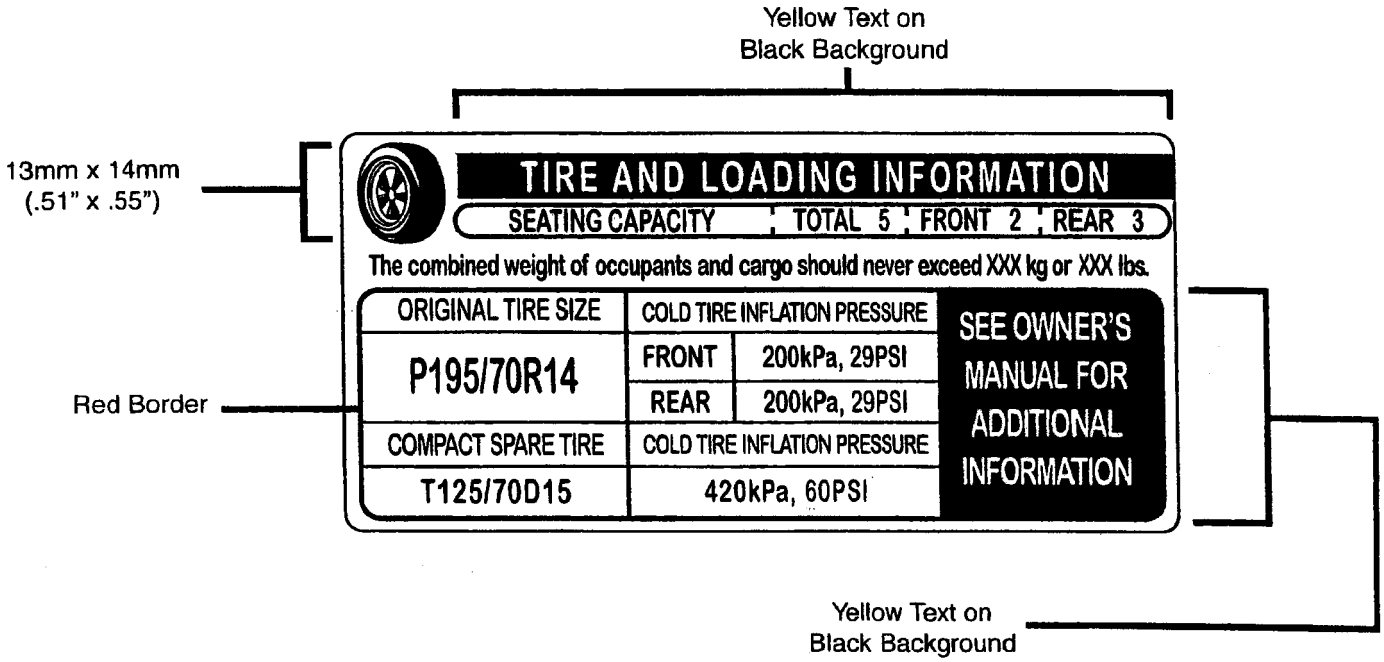


**FIGURE 1**

# Tire Inflation Pressure Label

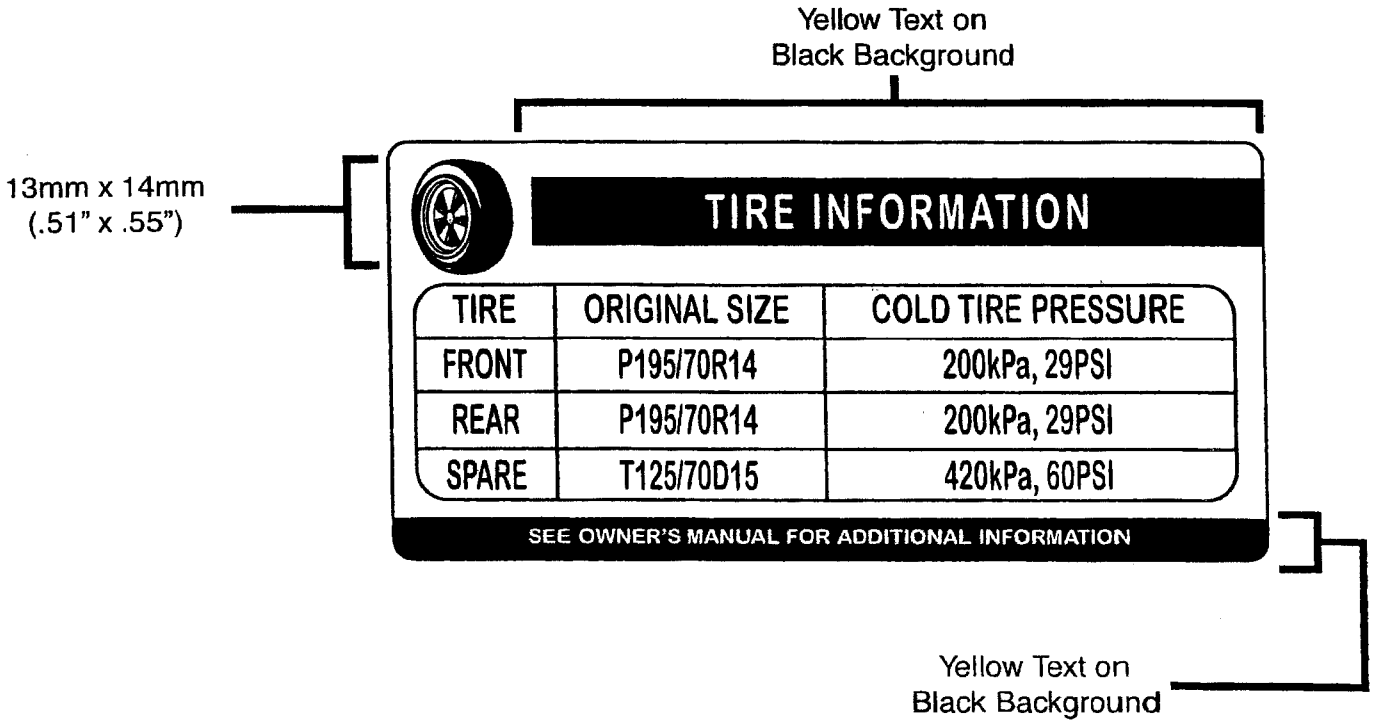


FIGURE 2

BILLING CODE 4910–59–C

The proposed placard and label contained a black and white tire symbol icon that was in the upper left hand corner of the placard and label and was 13 millimeters (.51 inches) wide and 14 millimeters (.55 inches) high. Vehicle manufacturer commenters did not state a general objection to the icon although Volkswagen commented that the icon should not be required on a placard if it only shows seating capacity and vehicle capacity weight.

Focus group participants strongly believed that a visual cue, such as a tire symbol icon, would aid drivers in identifying and locating tire information. NHTSA agrees with the participants' judgment that the icon will attract the driver's attention and will aid the driver in recognizing that the placard and label contain tire safety information. Because tire information contained on the placard and label is so critical to the safe operation of motor vehicles, NHTSA has decided to retain the tire icon requirement as specified in the proposal. NHTSA believes that consistency in graphics will prevent any confusion about the meaning of the placard and label.

With regard to Volkswagen's suggestion that the icon only appear on the label if that option is chosen, NHTSA believes the loading information remaining on the placard, which pertains to the load that can be carried at the recommended inflation pressure of the tires, is tire related and should be identified by the icon on the placard. Retaining the icon on the placard will assist participants in understanding the overall meaning/purpose of the placard even if the recommended inflation pressure is located on the label rather than on the placard. Therefore, the rule requires that the black and white tire icon symbol, as represented in Figures 1 and 2, appear on both the placard and label.

Several vehicle manufacturers opposed the use of color on the placard and label claiming high costs and lack of benefits, and that the placard and label are not caution or warning labels and therefore do not follow ANSI protocol. The agency, however, has decided to specify limited color requirements on both the placard and the label to highlight certain information. Yellow on a black background is required for the headings of the placard and label and for the phrase ''see owner's manual for additional information.'' On the vehicle placard, a red border must differentiate the tire inflation pressure information. Notwithstanding the border shown in Figures 1 and 2, manufacturers are not required to place a border around the entire placard and label.

In response to start-up and production costs for colored placards and labels asserted by certain vehicle manufacturers, the agency notes that vehicle manufacturers are already required to provide colored labels for air bag warnings and for rollover warnings for utility vehicles. Further cost issues regarding colorization of the labels will be addressed in the Costs section of this document.

With regard to the assertion that the agency's use of colors on the placard and label does not follow the American National Standards Institute (''ANSI'') protocol,[8] the agency believes the use of colors on the placard and label will draw attention to the safety information contained on the labels. This belief is supported by survey results and focus group recommendations to add color to the placard.

Survey data indicate that most individuals are unaware of the existence and/or location of the tire inflation pressure and load limit information placards. Surveys also confirm that maximum tire pressure is often confused with recommended inflation pressure. Surveys have not addressed load limit issues, but the results from NHTSA's focus groups and comments received in response to the ANPRM indicate that consumers are unaware that these limits exist, where they are located, and how to use them.

NHTSA's focus groups tested different versions of existing and proposed tire placards to help determine the most effective way of attracting the attention of consumers to this information and making it more understandable to them. In response to the testing, focus group participants overwhelmingly preferred color formats with contrasting colors, *e.g.*, yellow on black, instead of black and white formats because the color attracted their attention and aided in their comprehension of the material. Participants also strongly believed that a visual cue, such as a tire symbol icon, would aid drivers in identifying and locating this imperative information.

NTHSA recognizes that ANSI's mission in developing and issuing its standard for communicating information about a comprehensive hierarchy of hazards differs somewhat from that of the agency's in designing an effective label to convey specific information and that their conclusions about the manner of communication may differ. Given that agency's labeling decisions are highly dependent on the facts regarding the specific information being addressed, the agency will make case by case determinations of the extent to which NHTSA should follow voluntary standards versus information from other sources. As it has in this rulemaking, NHTSA will rely on its own expertise and judgment in making its determinations under statutory provisions regarding vehicle safety standards.

Vehicle manufacturer commenters suggested that the label should include the International Organization for Standardization (''ISO'')[9] symbol for owner's manual in place of a statement urging the driver to look in the vehicle owner's manual for further information. NHTSA disagrees. The statement directing consumers to the owner's manual is a very important aspect of the agency's safety message to consumers. Instead of requiring a symbol that a driver may or may not recognize, the agency believes that it is both important and appropriate to have a statement on the label reminding the driver to read the information in the owner's manual and is requiring that it be included. The agency considered allowing the ISO symbol to be included on the placard or the placard and label in addition to the statement but decided against this option because of the space constraints on the placard and the label and the need to express the required information and statements as clearly as possible.

The agency has decided to adopt the statement ''the combined weight of occupants and cargo should never exceed XXX kg or XXX pounds'' to replace the phrase ''vehicle capacity weight.'' The ''XXX'' amount will equal the vehicle capacity weight of the vehicle as defined in FMVSS No. 110. Commenters stated that the new phrase will aid consumers recognizing what factors comprise the vehicle capacity weight and what significance that weight has for the operation of a vehicle. As discussed in the NPRM, the information is the same as that currently required to be placed on the vehicle placard by manufacturers.

Today's rule requires manufacturers to label the placard and label with the tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer. In response to a suggestion by Subaru, the placard or label will specify that the tire size designation and accompanying

[8] ANSI is a private, non-profit organization (501(c)3) that administers and coordinates the U.S. voluntary standardization and conformity assessment system.

[9] The ISO is a worldwide federation of national standards bodies from some 140 countries, one from each country.

recommended inflation pressure be indicated by the heading ''original tire size'' or ''original size.'' This new requirement replaces that which specifies that the placard and label contain the vehicle's recommended tire size designation. While in most instances these two numbers would be identical, this minor revision insures that the consumer is provided with the correct tire inflation pressure information for the tire size actually installed on his vehicle as original equipment by the vehicle manufacturer.

As discussed in the NPRM, the agency considered adding a requirement for the vehicle manufacturer to label all recommended optional tire size designations on the vehicle placard and/or tire inflation pressure label. Additionally, some commenters, in response to the proposal, requested that the agency allow additional/optional tire sizes be listed on the placard and label.

The agency continues to believe that that allowing the addition of optional tire sizes, as well as other non-required information, to the placard and label is not appropriate, primarily because listing more than one tire size designation and the corresponding recommended inflation pressure or any additional information would require more information to be added to the already crowded vehicle placard. The agency believes that overcrowding the vehicle placard and/or tire inflation pressure label with information would discourage use of tire inflation pressure information on the placard and/or the label. Additionally, vehicle manufacturers may label this additional information on the certification label. Therefore, this rule will specify a prohibition about ''other information'' being added to the vehicle placard and label.

Manufacturers also asked to be allowed to present the label text not only in English, but also in other languages. NHTSA's current policy is to allow a required message to be stated in additional languages once the required English language message was provided. In a March 10, 1994 notice, NHTSA stated:

> NHTSA interprets the labeling requirements * * * as requiring manufacturers to supply the information in English. Once this requirement is met, manufacturers may supply the same information in other languages, so long as it does not confuse consumers. As long as the non-English language label is a translation of the required information, NHTSA does not interpret it to be ''other information.'' (59 FR 11200, at 11201–202).

As stated above, the placard and label requirements will include a prohibition against ''other information.'' NHTSA will not consider translations of the required placard and label message to be ''other information.'' However, all the requirements for the English label message must be met, including the requirement, as discussed below, that the content must be ''legible, visible, and prominent.''

The agency also concurs with this commenter's suggestion to allow abbreviations for measurements, *e.g.*, ''lbs.'' and ''kg.'' and will permit manufacturers to provide abbreviations for measurements at their discretion.

*b. Location and Size.* NHTSA, continues to believe that an important and overriding consumer information element of the placard and label is that they are located in an accessible and predictable location in motor vehicles. This belief was strongly supported by a focus group consensus and by comments to the NPRM.

NHTSA, in viewing a uniform location of the placard and label as a preeminent concern, has re-examined the labels, and the proposed vehicle locations for the labels, and agrees that there would be issues at some locations about the sufficiency of the space for the placement of the labels of the proposed specifications. In response to comments from manufacturers that some unspecified vehicles do not contain B-pillars or door edges, NHTSA has added a second alternative requirement to the requirement that the vehicle placard and tire inflation pressure label be located on the driver's side B-pillar. As proposed in the NPRM, the rule requires that if a vehicle does not have a B-pillar, then the placard or placard and label would be placed on the edge of the driver's door. Also with this rule, if a vehicle does not have a driver's side B-pillar and the driver's side door edge is too narrow or does not exist, the placard or placard and label are required to be affixed to the inward facing surface of the vehicle next to the driver's seating position. The agency believes that this will allow manufacturers two alternatives if it is not possible to place the placard or placard and label on the B-pillar. Allowing manufacturers to place the placard or placard and label on the inward facing surface next to the driver accommodates vehicles that do not have a driver's side B-pillar or driver's side door edge or have a driver's side door edge that is too narrow and is similar to one of the alternative placement specifications for Certification Labels in § 567.8.

In response to manufacturer concerns that it will not be feasible to fit the placard or placard and label on the B-pillar or door edge, NTHSA is not specifying a particular size, dimension or shape for the label. Despite the absence of any current requirement about placard or label size, no commenter provided an example of a vehicle placard that the commenter regarded as too small.

With respect to the size of the text on the placard and label, NHTSA learned from focus groups that the public generally prefers larger fonts in label text because it is easier to read. This helps ensure the placard and label will effectively convey the message to the reader. NHTSA, in its proposal, considered mandating a minimum font size for the text, but has not done so for two reasons. First, it is hard to specify a single font size that would assure ease of reading with all possible typefaces. Second, NHTSA does not think it necessary to specify a regulatory requirement for font size to assure that manufacturers will make the message large enough to be easily read. Additionally, NHTSA has not required any particular font face, size, or case for the vehicle placard. Manufacturers who choose the option to use both the placard and label may wish to use the same font face, size, and case in both labels. Today's rule allows them the flexibility to do so. NHTSA has, therefore, decided not to specify either a particular font face or font size or case for the placard and label. As other label sizes (*e.g.*, rollover, air bag) have not been a problem for the agency in the past, the final rule will similarly specify that the text on the placard and label be ''legible, visible, and prominent'' to the driver. If the agency becomes aware of cases in which the size of the placard's and label's text is too small, we will revise the rule to specify label and font size.

This rule also recognizes that the tire inflation pressure label will be placed proximate to the vehicle placard. A standardized location for placard and label will contribute to consumer awareness of recommended tire inflation pressure and load limits by providing a consistent and predictable place for this information. Vehicle manufacturers provided a number of alternative locations for the placard and label citing difficulties in fitting the placard or label on the B-pillar or door edge. The agency, however, notes that it has provided manufacturers with great flexibility concerning the size, shape and dimension of the placard and label. This flexibility provides manufacturers great latitude to design the placard and

label in a manner that can be configured to virtually every vehicle design. Furthermore, there would be no prohibition on placing additional tire inflation pressure labels on the vehicle in locations other than the B-pillar, except as precluded by other safety standards.

*c. Multistage Manufacturer/Alterer Issues.* NTEA and the Alliance commented that the proposed requirement for all light vehicles to be labeled with the vehicle capacity weight (expressed as ''the combined weight of occupants and cargo should never exceed * * *'') would create problems for manufacturers, both primary, secondary, and final, of multistage vehicles. More specifically, these commenters expressed concern that the vehicle capacity weight labeled on the placard by the primary manufacturer would be rendered invalid by subsequent modifications and, additionally, that there would be excessive costs associated with the secondary manufacturers being required to physically weigh the finished vehicle to determine the vehicle capacity weight. Additionally, NTEA suggested that alterers be permitted to replace or cover over original placards with those containing updated and accurate information for the altered vehicle.

NHTSA notes that final stage manufacturers are already required to know, before certifying the vehicle, the GVWR, the unloaded vehicle weight, and the passenger weight for the vehicle. With this information, final-stage manufacturers should be able to calculate easily the vehicle capacity weight of the vehicle. NHTSA, however, agrees with commenters that the issues regarding the placarding responsibility for multi-stage manufactured and altered vehicles need to be addressed. The agency has decided that (1) incomplete and intermediate manufacturers need not affix a placard to an incomplete vehicle, (2) alterers must affix a new placard, containing accurate information for the altered vehicle, over the placard installed by the vehicle manufacturer, so as to obscure the original placard and (3) final stage manufacturers must label vehicles with vehicle capacity weight and seating designations ''as finally manufactured,'' utilizing information contained in the document (''IVD'') required by § 568.4 to be provided by incomplete and intermediate vehicle manufacturers and the information particular to their role in the manufacture of the vehicle.

3. Owner's Manual

All commenters concurred that the owner's manual, as a single, reliable source containing the proposed required information for the tires and tire safety information listed above would aid consumers in properly maintaining their tires and adhering to load limits.

Today's rule requires owner's manuals to include the following statements and information:

1. Tire labeling, including a description and explanation of—

(a) Each marking on the tire,

(b) Locating information that will aid consumers in identifying tires subject to a recall campaign, and

(c) The TIN;

2. Recommended tire inflation pressure, including a description and explanation of—

(a) Recommended cold tire inflation pressure,

(b) The vehicle placard and tire inflation pressure label required in Federal Motor Vehicle Safety Standard No. 110 and their location in the vehicle,

(c) The adverse safety consequences of underinflation (including tire failure), and

(d) Measuring and adjusting air pressure to achieve proper inflation;

3. Glossary of tire terminology, including ''cold tire pressure,'' ''maximum inflation pressure,'' and ''recommended inflation pressure,'' and all non-technical terms defined in S3 of FMVSS Nos. 110 & 139;

4. Tire care, including maintenance and safety practices; and

5. Vehicle load limits, including a description and explanation of—

(a) Locating and understanding load limit information, total load capacity, seating capacity, towing capacity, and cargo capacity,

(b) Calculating total and cargo load capacities with varying seating configurations including quantitative examples showing/illustrating how the vehicle's cargo and luggage capacity decreases as the combined number and/or size of occupants increases,

(c) Determining compatibility of tire and vehicle load capabilities,

(d) The adverse safety consequences of overloading on handling and stopping and on tires, and

(e) ''Steps for Determining Correct Load Limit—

(1) Locate the statement ''The combined weight of occupants and cargo should never exceed XXX kg or XXX pounds'' on your vehicle's placard.

(2) Determine the combined weight of the driver and passengers that will be riding in your vehicle.

(3) Subtract the combined weight of the driver and passengers from XXX kilograms or XXX pounds.

(4) The resulting figure equals the available amount of cargo and luggage load capacity. For example, if the ''XXX'' amount equals 1400 lbs. and there will be five—150 lb passengers in your vehicle, the amount of available cargo and luggage load capacity is 650 lbs. (1400—750 (5 x 150) = 650 lbs.)

(5) Determine the combined weight of luggage and cargo being loaded on the vehicle. That weight may not safely exceed the available cargo and luggage load capacity calculated in Step 4.

(6) If your vehicle will be towing a trailer, load from your trailer will be transferred to your vehicle. Consult this manual to determine how this may reduce the available cargo and luggage load capacity of your vehicle.''

The agency believes that the general nature of the requirements about discussions of tire labeling, tire care, and load limit information will allow manufacturers to tailor language to their specific vehicles. At the same time, the requirements are specific enough to ensure that critical topics are included.

These statements and information are the same as those proposed in the NPRM with minor modification. NHTSA believes that the need for uniformity in 5(e) requires verbatim ''Steps for Determining Correct Load Limit'' in order to underscore that the message contained in determining the correct load limit is important for safe operation of vehicle. Number 7 in the list of steps has been deleted. RMA and GRRF expressed concern that this statement, which suggests that a pressure higher than the recommended pressure may be needed to support certain loads, incorrectly indicates that tires can be loaded above their maximum loading capacity as specified in FMVSS No. 110. The agency agrees with RMA and GRRF's concern and has deleted the statement.

Some vehicle manufacturers suggested that the agency more specifically delineate or define aspects of the information to be included in the owner's manual. The agency, however, believes that uniformity is not needed with respect to the discussion of tire safety issues other than ''Steps for Determining Correct Load Limit.'' The agency believes that manufacturers are in a better position to provide drivers with adequate explanations of tire labeling, recommended tire inflation pressure, a glossary of tire terminology, and tire care.

*D. Vehicle Applicability and Effective Dates*

Section 11 of the TREAD Act requires the agency to issue a final rule on this tire labeling proposal by June 1, 2002. This rule establishes that its labeling revisions apply, except where noted, to new pneumatic tires for use on motor vehicles with a GVWR of 10,000 pounds or less, manufactured after 1975, except for motorcycles and LSVs, and for new motor vehicles with a GVWR of 10,000 pounds or less.

Given the increasing consumer preference for using light trucks for passenger purposes, the agency is requiring that the tire information requirements for passenger car tires also apply to LT tires (load C, D, E) used on light trucks. No commenters dissented with the agency's statement in the NPRM that LT tires are increasingly used in the same type of on-road service as P-metric tires on light vehicles or with the agency's statement that the use of these tires on passenger vehicles will continue to increase in the near future.

As proposed in the NPRM and in response to comments suggesting technical difficulties applying labeling revisions to motorcycle tires and specialty tires produced for antique vehicles, NHTSA is not requiring that FMVSS No. 139 apply to motorcycle tires and tires for vehicles produced before 1975. The agency is currently not aware of any consumer information concerns or problems associated with motorcycle tires or tires used on antique motor vehicles.

To maintain consistent labeling requirements for all tires for use on light vehicles, the labeling requirements are also applicable to retreaded pneumatic passenger car tires and new non-pneumatic tires for passenger cars. No comments were received on the applicability of this rule to these tires.

Most vehicle manufacturer commenters requested longer lead time, until September 1, 2004. NHTSA has decided to adopt the effective date of September 1, 2003 for vehicle labeling. The proposed effective date reflected NHTSA's desire for expedited action on this issue. In view of the immediate need to alert the public to tire and loading information and because the labeling revisions to light vehicles constitute format changes, not performance or vehicle design changes, NHTSA finds that an effective date of September 1, 2003 is reasonable and is in the public interest.

All tire manufacturers requested longer lead time, up to five years, to account for reworking molds and replacing current molds, which last up to five years, with new molds reflecting the new labeling requirements. The agency agrees that providing some level of compliance flexibility improves the chances that ways can be found to improve safety as well as reduce costs. Accordingly, we have structured a phase-in to facilitate those efforts. For tires, the agency has decided to extend the lead time and institute a phase-in compliance according to the following schedule: 40% of all applicable tires between September 1, 2004 and August 31, 2005, 70% of all applicable tires between September 1, 2005 and August 31, 2006, and 100% of all applicable tires beginning on September 1, 2006. This extension of the effective date for tires and the phase-in reflects the reality that the tire manufacturers will need to rework, retool, and replace the tire molds currently being utilized. NHTSA believes that this phase-in will permit tire manufacturers to continue to use existing molds while they acquire new ones that reflect the new tire information requirements. Also, by requiring that only 40% of tires comply with the requirements during the first stage of the phase-in, the agency is providing the industry and its mold shops with an achievable task of reworking a number of molds that would not exceed their capacity for such work. By not requiring full compliance until September 1, 2006, NHTSA is providing the tire industry with ample time to accomplish the task at hand.

Finally, to encourage the earliest possible application of the new tire information requirements, NHTSA is allowing manufacturers to institute the new requirements before the required dates.

*E. Other Issues and Concerns*

1. Permission To Change Labeling

Today's rule does not permit manufacturers to make changes to the labeling upon seeking and receiving special permission from the Administrator. NHTSA believes that it is important that people see the same message on all covered tires and vehicles and that this message appears, where specified, in a standardized format and location. The agency believes that inconsistency with regard to the content, format, and placement of the labeling mandated in this rule could cause confusion and undermine the effectiveness of the improved tire information.

2. Modification to FMVSS Nos. 110 and 120

The purpose of FMVSS Nos. 110 and 120 is to provide safe operational performance by ensuring that vehicles to which they apply are equipped with tires of adequate load rating and rims of appropriate size and type designation. FMVSS No. 110 currently applies to passenger cars and FMVSS No. 120 currently applies to vehicles other than passenger cars including motorcycles and trailers.

This rule specifies that the applicability of FMVSS Nos. 110 and 120 will correspond with the applicability of the new light vehicle tire. FMVSS No. 110 will include passenger cars and other light vehicles with a GVWR of 10,000 pounds or less. Therefore, most SUVs, vans, trailers, and pickup trucks will be required to comply with the same tire selection and rim requirements as passenger cars. FMVSS No. 120 will continue to apply to vehicles over 10,000 pounds GVWR and motorcycles.

With regard to the revised applicability of FMVSS No. 110 and 120, the Alliance suggested that NHTSA drop the proposal to amend the applicability from this docket and instead incorporate them into the NPRM to be published on tire performance requirements. RMA and RAC urged the agency in applying FMVSS No. 110 to light vehicles other than passenger cars it should not relax the current standards for tire selection and the load service factor of 1.10 contained in S5.1.2 of FMVSS No. 120. No commenters, however, objected to the revised applicability of FMVSS No. 110 and 120.

The agency empathizes with the Alliance's wanting to comment on the applicability of performance-oriented aspects in conjunction with the NPRM on tire performance requirements. NHTSA has incorporated a discussion regarding the revised applicability of FMVSS Nos. 110 and 120 and the ensuing performance-oriented issues, including the 1.10 service factor, into the NPRM on tire performance requirements, and has provided an opportunity to comment on these issues. NHTSA will make its final decision with regard to these performance aspects of the FMVSS No. 110 and 120 applicability in the tire performance upgrade final rule.

The proposal discussed that certain performance-oriented requirements of FMVSS No. 110 would have been retained, including S4.2.2, which establishes a linkage between the

vehicle normal load [10] and the load specified for the high-speed test in FMVSS No. 109.[11] S4.2.2 would have been extended to cover SUVs, vans, trailers, and pickup trucks for the first time, which means that P-metric and LT tires used on these vehicles would have a load reserve similar to P-metric tires used on passenger cars. The proposal also noted that it would have extended S4.4.1(b) of FMVSS No. 110, which requires that each rim shall retain a deflated tire in the event of a rapid loss of inflation pressure from a vehicle speed of 97 km/h until the vehicle is stopped with a controlled braking operation, to light trucks and vans for the first time. The agency is not issuing a decision on these performance aspects in this final rule. Vehicle and tire manufacturers may comment on this issue after having an opportunity to consider the tire performance upgrade proposal.

3. Certification Label

Vehicle certification label requirements, contained in Part 567, will not be revised by this rule except to reference FMVSS No. 110, as well as FMVSS No. 120, in § 567.4 concerning tire rim combinations for light trucks and MPVs, and to require that the label contain the tire-rim combination installed as original equipment on the vehicle by the vehicle manufacturer.[12] Rim information will not, however, appear on the proposed vehicle placard or tire inflation pressure label.

4. Analysis of Responses to Agency Questions in NPRM

*Should NHTSA define or specify what a ''reasonable amount of luggage is for a vehicle with an occupant in every designated seating position''?*

Currently, our statute requires that a motor vehicle be equipped with tires that meet maximum load standards when the vehicle is loaded with a reasonable amount of luggage and the total number of passengers the vehicle is designed to carry.

The Alliance and GM opposed providing a definition for ''reasonable amount of luggage'' stating that it serves no safety need and would interfere with what they characterize as a ''competitive matter among manufacturers.'' ETRTO states that the agency should consider specifying ''maximum luggage capacity'' rather than a ''reasonable amount of luggage'' to avoid overloading. GRRF opposes the agency deferring to vehicle manufacturers the responsibility for ensuring that a vehicle is equipped with tires that have a load capacity suitable for the declared maximum permissible load of the vehicle or its axes.

NHTSA has decided, at this point, to rely upon its efforts in this rule and in its consumer education program to address the safety aspects of vehicle loading. In addition, consistent with their comments, the agency expects the industry to undertake educational efforts to inform the public properly with regard to particular vehicles. Whether or not these efforts will obviate the need for the agency to define ''reasonable amount of luggage'' may be evaluated by the agency at some future time.

*NHTSA requests comments on which, if any, labeling requirements in any foreign or international standard should be considered by NHTSA and why.*

NHTSA generally supports international harmonization in cases where such harmonization is consistent with its statutory mandate to ensure motor vehicle safety. Several vehicle industry and tire industry commenters suggested adding the service description to tires and vehicles as a labeling requirement, stating that this information aids consumers when purchasing replacement tires. The agency continues to believe the two labeling requirements contained in the service description, speed-category symbol and load index[13], have not been shown to communicate everyday tire maintenance and safety information effectively to the U.S. public. Both provide a value that is not intuitive to consumers and would require a vehicle operator to look to the owner's manual or standard to determine the actual tire maximum load and maximum rated speed of the tire. Manufacturers may continue labeling tires with this optional information but the agency will not make the service description a tire labeling requirement. Additionally, the agency will prohibit this information from being placed on the vehicle placard and label and has deleted the service description from the examples of the placard and label.

*Should the agency consider prohibiting some or all non-required information from being labeled on the tire sidewalls?*

All tire and vehicle industry commenters oppose a prohibition on non-required information being placed on tires. They argue that this action would generally conflict with harmonization efforts, would incur retaliation from other countries, would restrict manufacturers use of unique markings for marketing and production purposes, would restrict global marketing and therefore raise costs, and could constitute a technical barrier to trade. The agency agrees that such a prohibition would precipitate unintended consequences due to the global nature of the tire industry and give rise to greater costs for the industry and consumers. Therefore, with this rule, the agency will not prohibit non-required information on applicable tires.

## VIII. Benefits

For a fuller discussion of the benefits, see the agency's Final Regulatory Evaluation (FRE). A copy of the FRE has been placed in the docket.

NHTSA believes that this final rule will be effective in increasing public awareness of tire safety, particularly the understanding and maintenance of proper tire inflation and load limits. This final rule will also enable consumers to more easily locate and identify the TIN and other tire information for recalls and other notifications. The rule will standardize the location and content of important information relating to proper inflation and load limits and other tire safety concerns. These measures, by increasing consumer knowledge and awareness, will result in reduced tire failures and tire related crashes, and therefore fewer deaths and injuries.

## IX. Costs

The following is a summary of the costs associated with the final rule. For a more detailed analysis, see the agency's FRE.

The agency estimates that one-time costs of up to $23.4 million will occur for the tire industry during the phase-in period. These costs will add up to $0.08 per tire during this period. The recurring annual costs are believed to be very minor.

Estimates for retread manufacturers are projected sales figures provided from ITRA and incorporated cost estimates from RMA. Since retread

[10] Vehicle normal load on the tire means that load on an individual tire that is determined by distributing to each axle its share of the curb weight, accessory weight, and normal occupant weight and dividing by 2.

[11] This, under the proposed high speed test, would ensure at least a 15 percent load reserve (high speed test load proposed is 85 percent) when the vehicle is operated at normal load.

[12] Currently, the rim size and type designation label information requirements for light trucks and multipurpose passenger vehicles (MPVs) (which include SUVs) are specified in S5.3.2 of FMVSS No. 120. Light trucks and MPVs, unlike passenger cars, may be outfitted with different sized rims which would require different size tires and recommended inflation pressures for those tires.

[13] Under these regulations, the speed-category symbol and the load index are to be placed together near the size designation. For example, the sidewall would contain the size designation ''P215/65R15 89H'' where ''H'' is the speed-category symbol and ''89'' is the load index.

manufacturers produce about 5.47 million retread tires that will be covered by this rule, only a percentage of the approximately $23.4 million will be applicable to retreaders. This percent is calculated to be 1.93% (5.47 million (number of tread tires produced)/283 million (number of tires produced by the tire industry) × 100%). Thus, the total one-time investment cost to retread manufacturers is $451,895 (1.93% × $23,379,600) or about $0.08 per tire ($451,895/5,470,000 tires). Given that there are about 750 retread manufacturers that produce retreads for passenger cars and light trucks, the cost per manufacturer is about $603 ($451,895/750 manufacturers). The $603 per manufacturer may be a substantial underestimation, since most retread manufacturers are small companies with fewer sales over which to allocate costs than the larger tire manufacturers. However, even if costs were ten times higher for retread manufacturers ($6,030) than for other manufacturers, this amount would still represent a minimal impact to retread manufacturers.

The agency estimates that vehicle costs will increase about $0.15 per vehicle, based on $0.04 per label and $0.11 for adding about 8 pages of information to the owner's manual. With approximately 17 million light vehicles and light trailers being sold annually, the vehicle costs are over $2.6 million per year on a recurring annual basis.

Thus, total overall costs are up to $26 million initially, with $2.6 million estimated to occur on a recurring annual basis.

## X. Effective Date

The Agency discusses the effective date and the phase-in requirements for this rule in section VII.D. of this document.

## XI. Rulemaking Notices and Analyses

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. At the time of the NPRM, this rulemaking was regarded as nonsignificant. However, due to concerns raised during a Congressional hearing in late February 2002 regarding the agency's proposals to require the full TIN on both sides of each tire and to reorder the TIN, this rulemaking was reclassified as significant. Accordingly, the Office of Management and Budget reviewed the final rule under Executive Order 12866, ''Regulatory Planning and Review.'' (As noted above, the final rule does not adopt either of those proposals, thus eliminating the sources of those concerns.) The rule is likely to result in expenditure by tire and automobile manufacturers of $26 million initially, with $2.6 million estimated to occur on a recurring annual basis. NHTSA is placing in the public docket a Final Regulatory Evaluation (FRE) describing the costs and benefits of this rulemaking action. The costs and benefits are summarized earlier in this document.

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small business, small organizations and small governmental jurisdictions. I hereby certify that the amendments would not have a significant economic impact on a substantial number of small entities.

The final rule affects motor vehicle manufacturers and tire manufacturers. The agency does not believe that any of the tire manufacturers are small businesses. However, there are about 1,000 retread manufacturers in the United States, of which about 750 deal with light vehicle tires that will in some small way be impacted by this rule. Most of these retreaders are small businesses. As discussed in Section IX. Costs, the agency estimates the cost burden imposed on retread manufacturers at approximately $600 per retread manufacturer if costs are similar to those for other tire manufacturers. Costs may be higher due to economies of scale but the agency believes that these impacts will not be economically significant. For instance, even if the costs to retread manufacturers were ten times higher than for the other manufacturers ($6,000), this figure would represent a minimal impact to retread manufacturers.

NHTSA estimates that there are only about four small passenger car and light truck vehicle manufacturers in the United States. These manufacturers serve a niche market. The agency believes that small manufacturers manufacture less than 0.1 percent of total U.S. passenger car and light truck production per year.

### *C. National Environmental Policy Act*

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action does not have any significant impact on the quality of the human environment.

### *D. Executive Order 13132 (Federalism)*

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

### *E. Unfunded Mandates Act*

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments, as it is here.

This final rule will not result in expenditures by State, local, or tribal

governments or tire suppliers of more than $109 million annually.

*F. Civil Justice Reform*

This final rule does not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

*G. Paperwork Reduction Act*

This final rule contains the following ''collections of information,'' as that term is defined in 5 CFR part 1320 *Controlling Paperwork Burdens on the Public:*

*Tire and Vehicle Placard Labeling Requirements*—The Department of Transportation is submitting the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

*Agency:* National Highway Traffic Safety Administration (NHTSA).

*Title:* Tires and Rims Labeling, and Vehicle Placard Requirements.

*Type of Request:* Additional collection of information for an existing collection.

*OMB Clearance Number:* 2127–0503.

*Affected Public:* The tire-labeling respondents are manufacturers and retreaders of tires.

The agency estimates that there are about 8 such new tire manufacturers and 1000 retread manufacturers. The placard labeling respondents are manufacturers of MPVs covered by FMVSS 571.120. The agency estimates that there are 935 vehicle manufacturers affected by this collection.

*Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information:* NHTSA estimates that the total annual hour burden is 111,539 hours for tire labeling and 25,184 for vehicle placard requirements.

*Estimated Costs:* NHTSA estimates the initial cost burden for tire labeling to be $23.4 million and the annual cost burden for tire labeling to be $0. The estimated total annual cost burden for vehicle placards is approximately $0.7 million. Manufacturers will not expend any additional resources to gather additional information because they already compile this data for their own uses.

*Summary of the Collection of Information:* The provisions of the final rule requiring manufacturers to provide certain information on both sidewalls of tires, *e.g.*, the TIN, and certain information on a placard or label for vehicles other than passenger cars, *e.g.*, vehicle capacity weight, seating capacity, for the benefit of consumers are considered to be third-party information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

Description of the Need for the Information and Proposed Use of the Information: The provisions of the final rule requiring manufacturers to provide certain information on both sidewalls of tires, *e.g.*, the TIN, and certain information on a placard or label for vehicles other than passenger cars, *e.g.*, vehicle capacity weight, seating capacity, are for the benefit of consumers. NHTSA requests comments on the agency's estimates of the total annual hour and cost burdens resulting from this collection of information. These comments must be received on or before January 17, 2003.

*Vehicle Owner's Manual Requirements*—The Department of Transportation is submitting the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

*Agency:* National Highway Traffic Safety Administration (NHTSA).

*Title:* Consolidated Vehicle Owner's Manual Requirements of Motor Vehicles and Motor Vehicle Equipment.

*Type of Request:* Additional collection of information for an existing collection.

*OMB Clearance Number:* 2127–0541.

*Affected Public:* The respondents are manufacturers of motor vehicles with a gross vehicle weight rating of 10,000 pounds or less, except for motorcycles and LSVs. The agency estimates that there are 50 model lines for which there are owner's manuals. It is estimated that about 25 vehicle manufacturers are affected by this collection.

*Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information:* NHTSA estimates that the total annual hour burden is 400 hours for this information collection.

*Estimated Costs:* NHTSA estimates the total cost annual burden for revising the owner's manuals to be approximately $1.9 million.

*Summary of the Collection of Information:* The provisions of the final rule herein requiring manufacturers to provide information in owners' manuals explaining tire and vehicle load limit information for the benefit of consumers are considered to be third-party information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

*Description of the Need for the Information and Proposed Use of the Information:* The provisions of the final rule requiring manufacturers to provide information in owners' manuals explaining tire and vehicle load limit information are for the benefit of consumers. NHTSA requests comments on the agency's estimates of the total annual hour and cost burdens resulting from this collection of information. These comments must be received on or before January 17, 2003.

*Tire Manufacturer Phase-In Reporting Requirements*—The Department of Transportation is submitting the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

*Agency:* National Highway Traffic Safety Administration (NHTSA).

*Title:* Phase-In Production Reporting Requirements for new pneumatic tires for use on vehicle with a gross vehicle weight rating of 10,000 pounds or less.

*Type of Request:* Routine.

*OMB Clearance Number:* 2127–[XXXX].

*Affected Public:* The respondents are manufacturers of tires. The agency estimates that there are slightly over 1,000 such manufacturers.

*Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information:* NHTSA estimates that the total annual hour burden is 6048 (6 man hours × 1008) hours.

*Estimated Costs:* NHTSA estimates that the total cost burden in dollars to be $0. Manufacturers will not expend any additional resources to gather annual production information because they already compile this data for their own uses.

*Summary of the Collection of Information:* This collection would require manufacturers of new pneumatic tire to provide tire production data yearly from September 1, 2004 through September 1, 2006.

*Description of the Need for the Information and Proposed Use of the Information:* The purpose of the reporting requirements would be to aid the National Highway Traffic safety

Administration in determining whether a manufacturer of tires has complied with the requirements of this rule during the phase-in of those requirements. NHTSA requests comments on the agency's estimates of the total annual hour and cost burdens resulting from this collection of information. The comments must be received on or before January 17, 2003.

*H. Plain Language*

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

**XII. Regulatory Text**

**List of Subjects in 49 CFR Parts 567, 571, 574, 575, and 597**

Imports, Certification, Consumer information, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, we amend 49 CFR parts 567, 571, 574, 575 and 597 as follows:

## PART 567—CERTIFICATION

1. The authority citation for part 567 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, 33108, and 33109; delegation of authority at 49 CFR 1.50.

2. Section 567.4 is amended by revising paragraph (h)(2) as follows:

**§ 567.4 Requirements for manufacturers of motor vehicles.**

* * * * *

(h) * * *

(2) (For multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles) The manufacturer may, at its option, list more than one GVWR–GAWR-tire-rim combination on the label as long as the listing contains the tire-rim combination installed as original equipment on the vehicle by the vehicle manufacturer and conforms in content and format to the requirements for the tire-rim-inflation information set forth in § 571.110, § 571.120, § 571.129 and § 571.139 of this chapter.

* * * * *

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

3. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 2011, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

4. Section 571.109 is amended by revising S2 to read as follows:

**§ 571.109 Standard No. 109; New pneumatic tires.**

* * * * *

S2. *Application.* This standard applies to new pneumatic tires for use on passenger cars manufactured after 1948. However, it does not apply to any tire that has been altered so as to render impossible its use, or its repair for use, as motor vehicle equipment. In addition, S4.3 does not apply to tires certified to comply with S5.5 of § 571.139 and S4.4. does not apply to tires certified to comply with S4 of § 571.139.

* * * * *

5. Section 571.110 is amended by revising its heading and S2, S4.3, S4.3.1, and S7.2(a), by adding S4.3.2, S4.3.3, and S4.3.4, and by adding Figure 1 and Figure 2 at the end of Section 571.110, to read as follows:

**§ 571.110 Standard No. 110; Tire selection and rims for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.**

* * * * *

S2 *Application.* This standard applies to motor vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, except for motorcycles, and to non-pneumatic spare tire assemblies for use on those vehicles.

* * * * *

S4.3 *Placard.* Each vehicle, except for an incomplete vehicle, shall show the information specified in S4.3 (a) through (g) on a placard permanently affixed to the driver's side B-pillar. If the vehicle lacks a B-pillar on the driver's side, the placard shall be permanently affixed to the edge of the driver's side door. If the vehicle lacks a driver's side B-pillar and either has a driver's side door whose edge is too narrow to permit the affixing of the placard or lacks a driver's side door, the placard shall be affixed to the inward facing surface of the vehicle next to the driver's seating position. This information shall be in the English language and conform in color and format, not including the border surrounding the entire placard, as specified in the example set forth in Figure 1 in this standard. At the manufacturer's option, the information specified in S4.3 (c) and (d) may be shown, alternatively, on a tire inflation pressure label, and conform in color and format, not including the border surrounding the entire label, as specified in the example set forth in Figure 2 in this standard. The label shall be permanently affixed and proximate to the placard required by this paragraph. The information specified in S4.3 (e) shall be shown on both the vehicle placard and on the tire inflation pressure label (if such a label is affixed to provide the information specified in S4.3 (c) and (d)) in the format and color scheme set forth in Figures 1 and 2.

(a) Vehicle capacity weight expressed as ''The combined weight of occupants and cargo should never exceed XXX kilograms or XXX pounds'';

(b) Designated seated capacity (expressed in terms of total number of occupants and number of occupants for each seat location);

(c) Vehicle manufacturer's recommended cold tire inflation pressure, subject to the limitations of 4.3.4;

(d) Tire size designation, indicated by the headings ''original tire size'' or ''original size,'' for the tire installed as original equipment on the vehicle by the vehicle manufacturer;

(e) On the vehicle placard, ''Tire and Loading Information'' and, on the tire inflation pressure label, ''Tire Information'';

(f) ''See Owner's Manual for Additional Information''; and

(g) For a vehicle equipped with a non-pneumatic assembly, the tire identification code with which that assembly is labeled pursuant to the requirements of S4.3(a) of 571.129, New Non-Pneumatic Tires for Passenger Cars.

S4.3.1 *Requirements for vehicles manufactured in two or more stages.* A placard or placard and label shall be affixed to the completed vehicle by the final-stage manufacturer in accordance with S4.3 and with the vehicle capacity weight and seating designations as finally manufactured.

S4.3.2 *Requirements for altered vehicles.* A new placard or placard and label shall be affixed, so as to obscure the original placard, to an altered vehicle that has previously been certified in accordance with § 567.4 or § 567.5, other than by the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies, or minor

finishing operations such as painting, or who alters the vehicle in such a manner that its stated weight ratings are not longer valid, before the first purchase of the vehicle in good faith for purposes other than resale, containing accurate information for the altered vehicle, in accordance with S4.3.

S4.3.3 *Additional labeling information for vehicles other than passenger cars.* Each vehicle shall show the size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for the tire appropriate for use on that vehicle, including the tire installed as original equipment on the vehicle by the vehicle manufacturer, after each GAWR listed on the certification label required by § 567.4 or § 567.5 of this chapter. This information shall be in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and in the following format:

Truck Example—Suitable Tire-Rim Choice

GVWR: 2,441 kilograms (5381 pounds).

GAWR: Front—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 × 8.0 rims at 240 kPa (36 psi) cold single.

GAWR: Rear—1,142 kilograms (2,864 pounds) with P265/70R16 tires, 16 × 8.00 rims, at 245 kPa (36 psi) cold single.

S4.3.4 No inflation pressure other than the maximum permissible inflation pressure may be shown on the placard and, if any, tire inflation pressure label unless—

(a) It is less than the maximum permissible inflation pressure;

(b) It is appropriate for the load limits as calculated in accordance with S4.2; and

(c) The tire load rating specified in a submission by an individual manufacturer, pursuant to S4.1.1(a) of § 571.139 or contained in one of the publications described in S4.1.1.(b) of § 571.139, for the tire size at that inflation pressure is not less than the vehicle maximum load and the vehicle normal load.

* * * * *

S7.2 * * *

(a) A statement indicating the information related to appropriate use for the non-pneumatic spare tire including at a minimum the information set forth in S6 (a) and (b) and either the information set forth in S4.3(g) or a statement that the information set forth in S4.3(g) is located on the vehicle placard and on the non-pneumatic tire;

* * * * *

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# Vehicle Placard

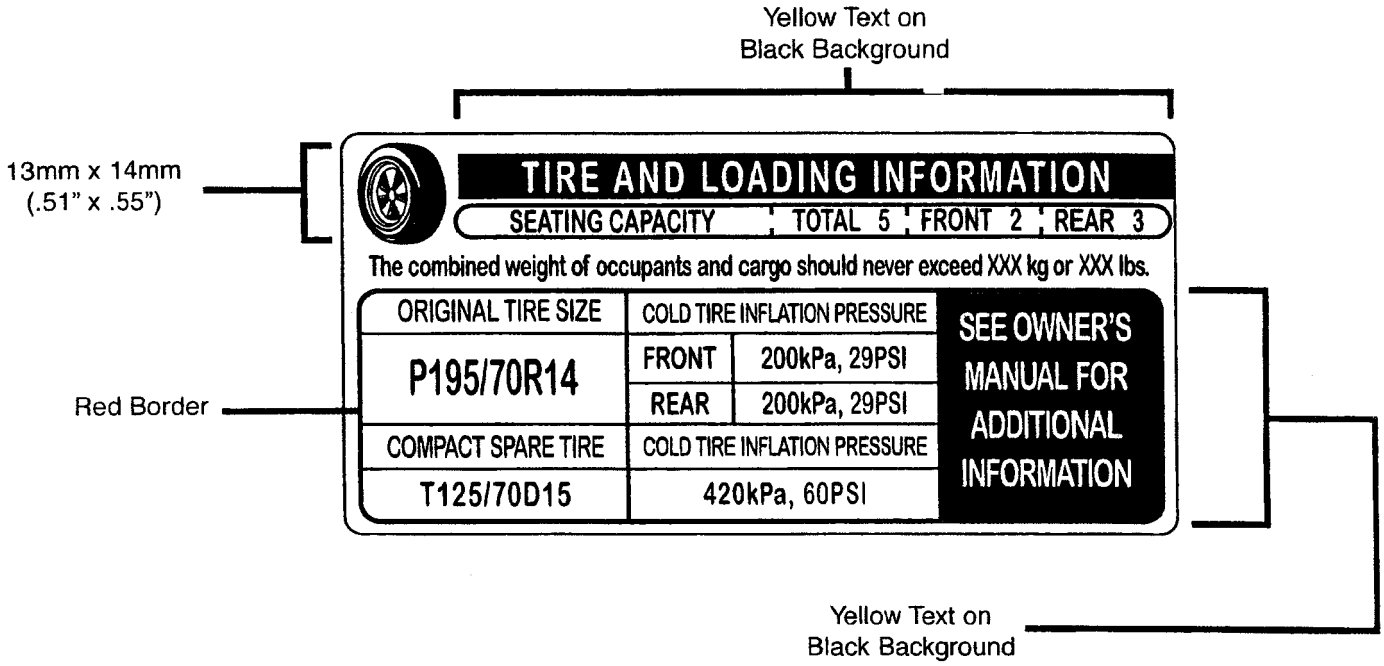


**FIGURE 1**

# Tire Inflation Pressure Label

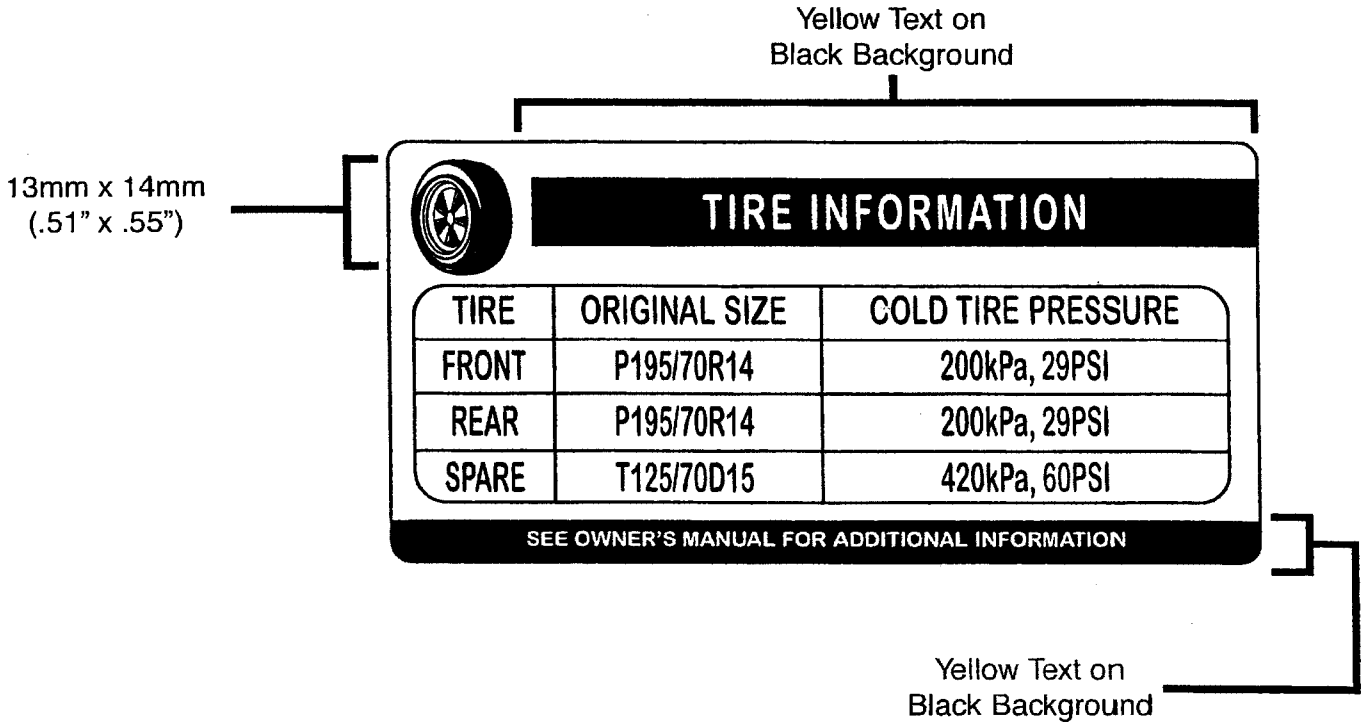


**FIGURE 2**

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6. Section 571.117 is amended by revising S6.3 (including removing Table 1 and the undesignated paragraph following S6.3(h)) and adding S7, S7.1, S7.2, and S7.3 to read as follows:

**§ 571.117 Standard No. 117; Retreaded pneumatic tires.**

* * * * *

S6.3 *Labeling.* Each retreaded tire shall comply, according to the phase-in schedule specified in S7 of this standard, with the requirements of S5.5. of § 571.139.

S7. *Phase-In Schedule for labeling*

S7.1 *Tires retreaded on or after September 1, 2004 and before September 1, 2005.* For tires manufactured on or after September 1, 2004 and before September 1, 2005, the number of tires complying with S6.3 of this standard must be equal to not less than 40% of the retreader's production during that period.

S7.2 *Tires retreaded on or after September 1, 2005 and before September 1, 2006.* For tires manufactured on or after September 1, 2005 and before September 1, 2006, the number of tires complying with S6.3 of this standard must be equal to not less than 70% of the retreader's production during that period.

S7.3 *Tires retreaded on or after September 1, 2006.* Each tire must comply with S6.3 of this standard.

7. Section 571.120 is amended by revising its heading, and S3 to read as follows:

**§ 571.120 Standard No. 120; Tire selection and rims for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds).**

* * * * *

S3. *Application.* This standard applies to motor vehicles with a gross vehicle weight rating (GVWR) of more than 10,000 pounds and motorcycles, to rims for use on those vehicles, and to non-pneumatic spare tire assemblies for use on those vehicles.

* * * * *

8. Section 571.129 is amended by revising S4.3 and adding S7, S7.1, S7.2, and S7.3 to read as follows:

**§ 571.129 Standard No. 129; New non-pneumatic tires for passenger cars.**

* * * * *

S4. * * *

S4.3. *Labeling Requirements.* Each new non-pneumatic tire shall comply, according to the phase-in schedule specified in S7 of this standard, with the requirements of S5.5 of § 571.139.

* * * * *

S7. *Phase-In Schedule for labeling requirements.*

S7.1 *Tires manufactured on or after September 1, 2004 and before September 1, 2005.* For tires manufactured on or after September 1, 2004 and before September 1, 2005, the number of tires complying with S4.3 of this standard must be equal to not less than 40% of the manufacturer's production during that period.

S7.2 *Tires manufactured on or after September 1, 2005 and before September 1, 2006.* For tires manufactured on or after September 1, 2005 and before September 1, 2006, the number of tires complying with S4.3 of this standard must be equal to not less than 70% of the manufacturer's production during that period.

S7.3 *Tires manufactured on or after September 1, 2006.* Each tire must comply with S6.3 of this standard.

* * * * *

9. Section 571.139 is added to read as follows:

**§ 571.139 Standard No. 139; New pneumatic tires for light vehicles.**

S1. *Scope and purpose.* This standard specifies tire dimensions, test requirements, labeling requirements, and defines tire load ratings.

S2. *Application.* This standard applies to new pneumatic tires for use on motor vehicles (other than motorcycles and low speed vehicles) that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less and that were manufactured after 1975.

S3. *Definitions.*

*Intended outboard sidewall* means:

(1) The sidewall that contains a whitewall, bears white lettering or bears manufacturer, brand, and/or model name molding that is higher or deeper than the same molding on the other sidewall of the tire, or

(2) The outward facing sidewall of an asymmetrical tire that has a particular side that must always face outward when mounted on a vehicle.

S4. *Tire and rim matching information.*

S4.1. Each manufacturer of tires must ensure that a listing of the rims that may be used with each tire that it produces is provided to the public in accordance with S4.1.1 and S4.1.2.

S4.1.1 Each rim listing for a tire must include dimensional specifications and a diagram of the rim and must be in one of the following forms:

(a) Listed by manufacturer name or brand name in a document furnished to dealers of the manufacturer's tires, to any person upon request, and in duplicate to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; or

(b) Contained in publications, current at the date of manufacture of the tire or any later date, of at least one of the following organizations:

(1) The Tire and Rim Association.

(2) The European Tyre and Rim Technical Organization.

(3) Japan Automobile Tire Manufacturers' Association, Inc.

(4) Tyre & Rim Association of Australia.

(5) Associacao Latino Americana de Pneus e Aros (Brazil).

(6) South African Bureau of Standards.

S4.1.2 A listing compiled in accordance with paragraph (a) of S4.1.1 need not include dimensional specifications or a diagram of a rim whose dimensional specifications and diagram are contained in a listing published in accordance with paragraph (b) of S4.1.1.

S4.2. Information contained in a publication specified in S4.1.1(b) that lists general categories of tires and rims by size designation, type of construction, and/or intended use, is considered to be manufacturer's information required by S4.1 for the listed tires, unless the publication itself or specific information provided according to S4.1(a) indicates otherwise.

S5. *General requirements.* [Reserved]

S5.5 *Tire Markings.* Except as specified in paragraphs (a) through (h) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5 (a) through (d) and on one sidewall with the information specified in S5.5 (e) through (h) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inch. The tire identification and DOT symbol labeling must comply with part 574 of this chapter.

(a) The symbol DOT, which constitutes a certification that the tire conforms to applicable Federal motor vehicle safety standards;

(b) The tire size designation as listed in the documents and publications specified in S4.1.1;

(c) The maximum permissible inflation pressure, subject to the limitations of S5.5.4 through S5.5.6;

(d) The maximum load rating;

(e) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;

(f) The actual number of plies in the sidewall, and the actual number of plies in the tread area, if different;

(g) The term ''tubeless'' or ''tube type,'' as applicable; and

(h) The word ''radial,'' if the tire is a radial ply tire.

S5.5.1 Each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire. Either the tire identification number or a partial tire identification number, containing all characters in the tire identification number, except for the date code, must be labeled on the other sidewall of the tire. If a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code, on the other sidewall.

S5.5.2 [Reserved]

S5.5.3 Each tire must be labeled with the name of the manufacturer, or brand name and number assigned to the manufacturer in the manner specified in 49 CFR part 574.

S5.5.4 If the maximum inflation pressure of a tire is 240, 280, 290, 300, 330, 340, 350 or 390 kPa, then:

(a) Each marking of that inflation pressure pursuant to S5.5(c) must be followed in parenthesis by the equivalent psi, rounded to the next higher whole number; and

(b) Each marking of the tire's maximum load rating pursuant to S5.5(d) in kilograms must be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number.

S5.5.5 If the maximum inflation pressure of a tire is 420 kPa (60 psi), the tire must have permanently molded into or onto both sidewalls, in letters and numerals not less than ½ inch high, the words ''Inflate to 60 psi'' or ''Inflate to 420 kPa (60 psi).'' On both sidewalls, the words must be positioned in an area between the tire shoulder and the bead of the tire. However, the words must be also positioned on the tire so that they are not obstructed by the flange of any rim designated for use with that tire in this standard or in Standard No. 110 (§ 571.110 of this part).

S5.5.6 For LT tires, the maximum permissible inflation pressure shown must be the inflation pressure that corresponds to the maximum load of the tire for the tire size as specified in one of the publications described in S4.1.1.(b) of § 571.139. At the manufacturer's option, the shown inflation pressure may be as much as 10 psi (69 kPa) greater than the inflation pressure corresponding to the specified maximum load.

S6. *Test procedures, conditions and performance requirements.* [Reserved]

S7. *Phase-in schedule for tire markings.*

S7.1 *Tires manufactured on or after September 1, 2004 and before September 1, 2005.* For tires manufactured on or after September 1, 2004 and before September 1, 2005, the number of tires complying with S4 and S5.5 of this standard must be equal to not less than 40% of the manufacturer's production during that period.

S7.2 *Tires manufactured on or after September 1, 2005 and before September 1, 2006.* For tires manufactured on or after September 1, 2005 and before September 1, 2006, the number of tires complying with S4 and S5.5 of this standard must be equal to not less than 70% of the manufacturer's production during that period.

S7.3 *Tires manufactured on or after September 1, 2006.* Each tire must comply with S6.3 of this standard.

## PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

10. The authority citation for 49 CFR part 574 continues to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407, 1411–1420, 1421; delegation of authority at CFR 1.50.

11. Section 574.5 is amended by revising paragraph (d), and Figures 1 and 2 to read as follows:

### § 574.5 Tire identification requirements.

* * * * *

(d) *Fourth grouping.* For tires produced or retreaded according to the phase-in schedules specified in S7 of §§ 571.117, 571.129, 571.139 of this chapter, the fourth grouping, consisting of four numerical symbols, must identify the week and year of manufacture. The first two symbols must identify the week of the year by using ''01'' for the first full calendar week in each year, ''02'' for the second full calendar week, and so on. The calendar week runs from Sunday through the following Saturday. The final week of each year may include not more than 6 days of the following year. The third and fourth symbols must identify the year. Example: 0101 means the 1st week of 2001, or the week beginning Sunday, January 7, 2001, and ending Saturday, January 13, 2001. The symbols signifying the date of manufacture shall immediately follow the optional descriptive code (paragraph (c) of this section). If no optional descriptive code is used, the symbols signifying the date of manufacture must be placed in the area shown in Figures 1 and 2 of this section for the optional descriptive code.

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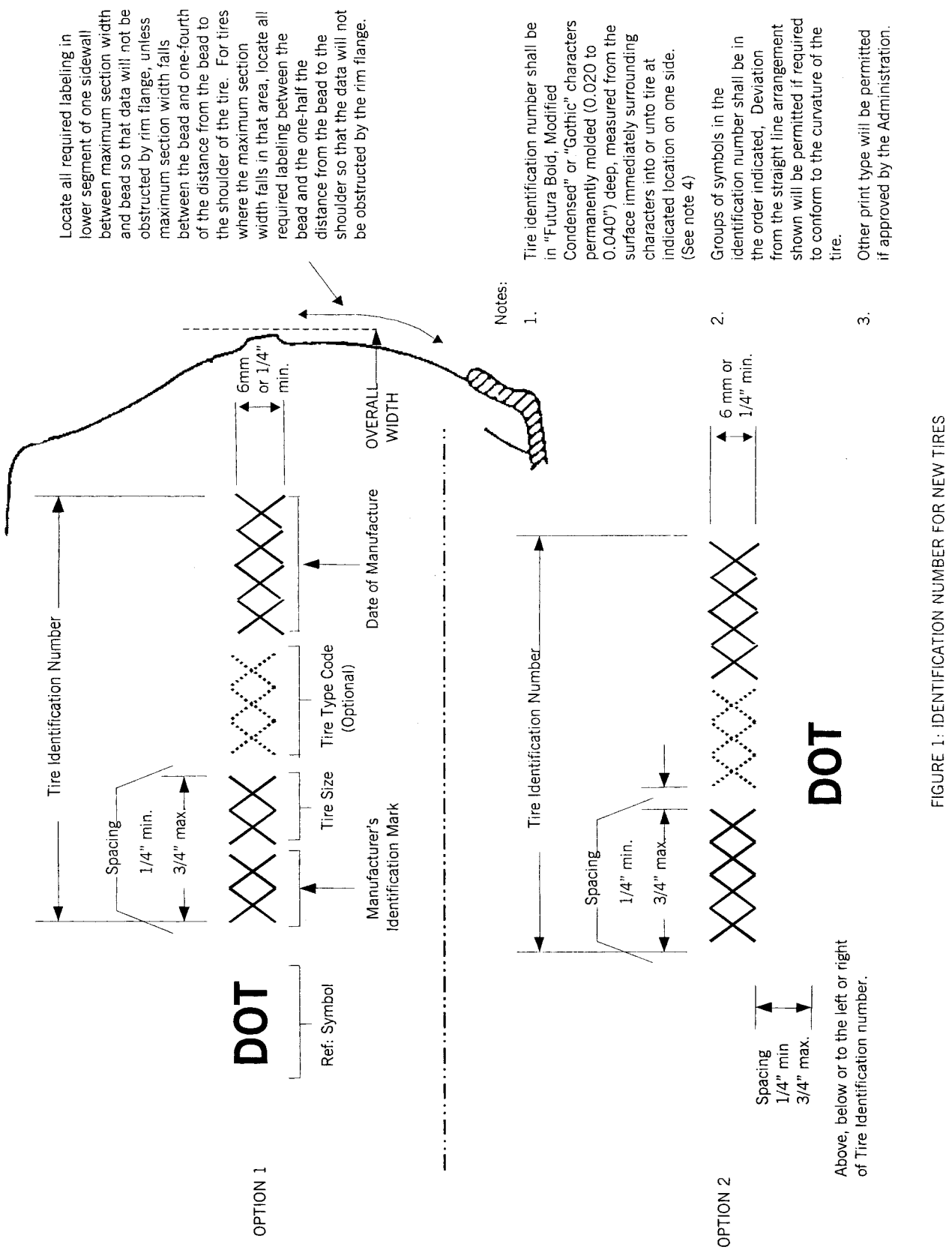


FIGURE 1: IDENTIFICATION NUMBER FOR NEW TIRES

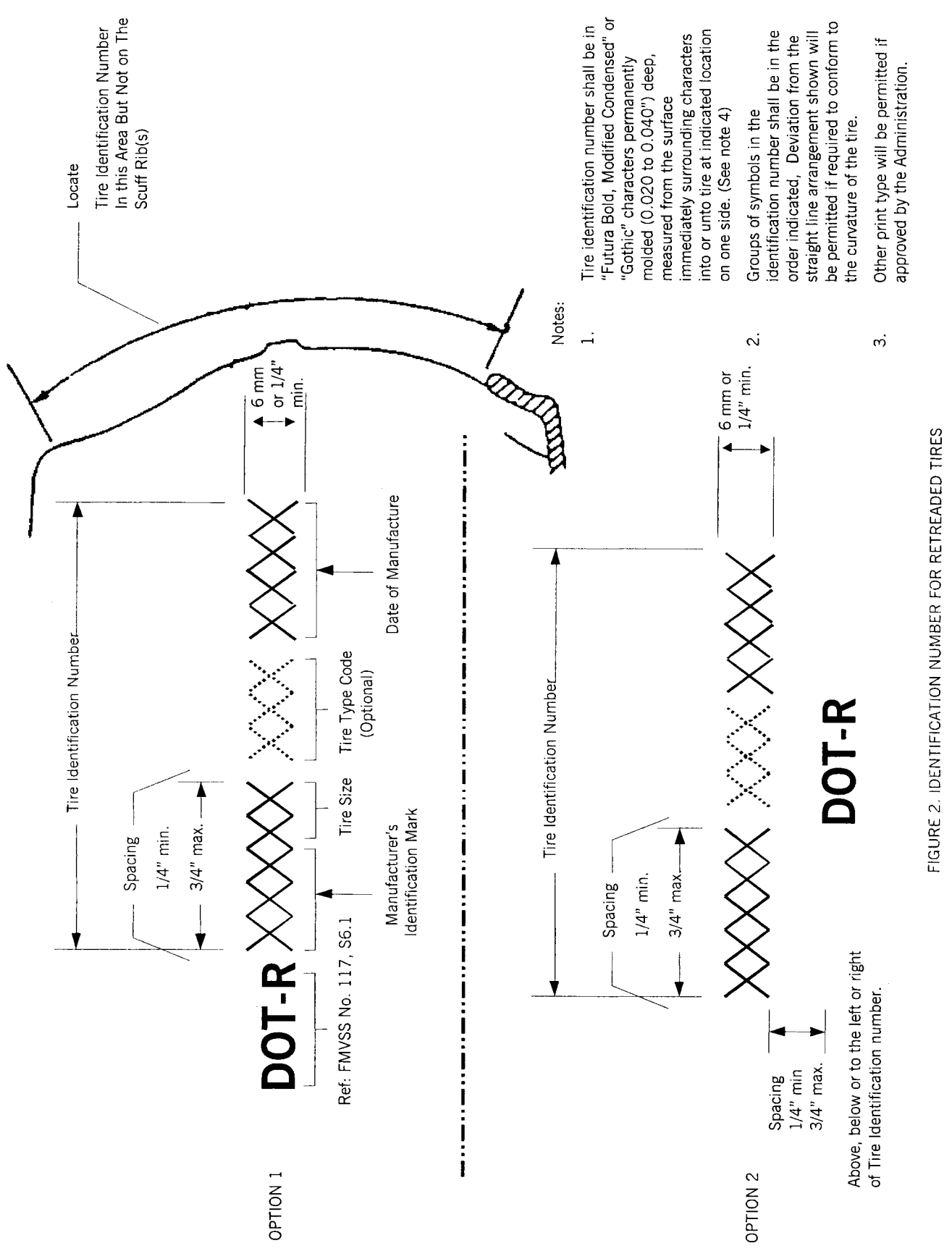


FIGURE 2. IDENTIFICATION NUMBER FOR RETREADED TIRES

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* * * * *

## PART 575—CONSUMER INFORMATION REGULATIONS

12. The authority citation for part 575 continues to read as follows:

**Authority:** 15 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at CFR 1.50.

13. Section 575.6 is amended by adding paragraphs (a)(4) and (a)(5) to read as follows:

### § 575.6 Requirements.

* * * * *

(a) * * *

(4) When a motor vehicle that has a GVWR of 10,000 pounds or less, except a motorcycle or low speed vehicle, and that is manufactured on or after September 1, 2003, is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide to the purchaser, in writing in the English language and not less than 10 point type, a discussion of the items specified in paragraphs (a)(4) (i) through (v) of this section in the owner's manual, or, if there is no owner's manual, in a document.

(i) Tire labeling, including a description and explanation of each marking on the tires provided with the vehicle, and information about the location of the Tire Identification Number (TIN);

(ii) Recommended tire inflation pressure, including a description and explanation of:

(A) Recommended cold tire inflation pressure,

(B) The vehicle placard and tire inflation pressure label specified in Federal Motor Vehicle Safety Standard No. 110 and their location in the vehicle,

(C) Adverse safety consequences of underinflation (including tire failure), and

(D) Measuring and adjusting air pressure to achieve proper inflation;

(iii) Glossary of tire terminology, including ''cold tire pressure,'' ''maximum inflation pressure,'' and ''recommended inflation pressure,'' and all non-technical terms defined in S3 of FMVSS Nos. 110 & 139;

(iv) Tire care, including maintenance and safety practices;

(v) Vehicle load limits, including a description and explanation of:

(A) Locating and understanding load limit information, total load capacity, seating capacity, towing capacity, and cargo capacity,

(B) Calculating total and cargo load capacities with varying seating configurations including quantitative examples showing/illustrating how the vehicle's cargo and luggage capacity decreases as the combined number and size of occupants increases,

(C) Determining compatibility of tire and vehicle load capabilities,

(D) Adverse safety consequences of overloading on handling and stopping and on tires.

(5) When a motor vehicle that has a GVWR of 10,000 pounds or less, except a motorcycle or low speed vehicle, and that is manufactured on or after September 1, 2003, is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide to the purchaser, in writing in the English language and not less than 10 point type, the following verbatim statement in the owner's manual, or, if there is no owner's manual, in a document:

Steps for Determining Correct Load Limit—

(*1*) Locate the statement ''The combined weight of occupants and cargo should never exceed XXX pounds'' on your vehicle's placard.

(*2*) Determine the combined weight of the driver and passengers that will be riding in your vehicle.

(*3*) Subtract the combined weight of the driver and passengers from XXX kilograms or XXX pounds.

(*4*) The resulting figure equals the available amount of cargo and luggage load capacity. For example, if the ''XXX'' amount equals 1400 lbs. and there will be five 150 lb. passengers in your vehicle, the amount of available cargo and luggage load capacity is 650 lbs. (1400 − 750 (5 × 150) = 650 lbs.)

(*5*) Determine the combined weight of luggage and cargo being loaded on the vehicle. That weight may not safely exceed the available cargo and luggage load capacity calculated in Step 4.

(*6*) If your vehicle will be towing a trailer, load from your trailer will be transferred to your vehicle. Consult this manual to determine how this reduces the available cargo and luggage load capacity of your vehicle.

14. Part 597 is added to read as follows:

## PART 597—TIRES FOR MOTOR VEHICLES WITH A GVWR OF 10,000 POUNDS OR LESS PHASE-IN REPORTING REQUIREMENTS

Sec.

597.1 Scope.
597.2 Purpose.
597.3 Applicability.
597.4 Definitions.
597.5 Response to inquiries.
597.6 Reporting requirements.
597.7 Records.
597.8 Petition to extend period to file report.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

### § 597.1 Scope.

This part establishes requirements for manufacturers of new pneumatic tires for motor vehicles with a gross vehicle weight rating of 10,000 pounds or less to submit reports, and maintain records related to the reports, concerning the number of such tires that meet the requirements of Standard No. 139, *New Pneumatic Tires for Light Vehicles* (49 CFR 571.139).

### § 597.2 Purpose.

The purpose of these reporting requirements in this part is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with Standard No. 139 (49 CFR 571.139).

### § 597.3 Applicability.

This part applies to manufacturers of tires for motor vehicles with a gross vehicle weight rating of 10,000 pounds or less.

### § 597.4 Definitions.

(a) All terms defined in 49 U.S.C. 30102 are used in their statutory meaning.

(b) ''Motor vehicle'' and ''gross vehicle weight rating'' are used as defined in 49 CFR 571.3.

(c) ''Production year'' means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

### § 597.5 Response to inquiries.

Each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the tires (by make, model, brand and tire identification number) that have been certified as complying with Standard No. 139 (49 CFR 571.139). The manufacturer's designation of a tire as a certified tire is irrevocable.

### § 597.6 Reporting requirements.

(a) *General reporting requirements.* Within 60 days after the end of the production years ending August 31, 2005 and August 31, 2006, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with Standard No. 139 (49 CFR 571.139) for its tires produced in that year for motor vehicles with a GVWR of 10,000 pounds or less. Each report shall—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the production year being reported on;

(4) Contain a statement regarding whether or not the manufacturer complied with Standard No. 139 (49 CFR 571.139) for the period covered by the report and the basis for that statement;

(5) Provide the information specified in paragraph (b) of this section;

(6) Be written in the English language; and

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) *Report Content*—(1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of tires for motor vehicles with a gross vehicle weight rating of 10,000 pounds or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the production year for which the report is filed. A new manufacturer that has not previously manufactured these tires for sale in the United States shall report the number of such tires manufactured during the current production year.

(2) *Production.* Each manufacturer shall report for the production year for which the report is filed: the number of new pneumatic tires for motor vehicles with a GVWR of 10,000 pounds or less that meet Standard No. 139 (49 CFR 571.139).

**§ 597.7 Records.**

Each manufacturer must maintain records of the tire identification number for each tire for which information is reported under 49 CFR 590.6(b)(2) until December 31, 2007.

**§ 597.8 Petition to extend period to file report.**

A manufacturer may petition for extension of time to submit a report under this part. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest. The petition must be received not later than 15 days before expiration of the time stated in § 597.6(a). The filing of a petition does not automatically extend the time for filing a report. The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Issued: November 6, 2002.

**Jeffrey W. Runge,**

*Administrator.*

[FR Doc. 02–28682 Filed 11–15–02; 8:45 am]

BILLING CODE 4910–59–P

Federal Register

**Monday,**

**November 18, 2002**

## Part III

# General Services Administration

**41 CFR Chapter 301**

**Federal Travel Regulation; Maximum Per Diem Rates for Indiana, Kansas, Minnesota, Missouri, and Pennsylvania; Final Rule**

**GENERAL SERVICES ADMINISTRATION**

**41 CFR Chapter 301**

**[FTR Amendment 110]**

**RIN 3090–AH73**

## Federal Travel Regulation; Maximum Per Diem Rates for Indiana, Kansas, Minnesota, Missouri, and Pennsylvania

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the Federal Travel Regulation (FTR) to improve the ability of the *per diem* rates to meet the lodging demands of Federal travelers to high cost travel locations. GSA has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the *per diem* rate-setting process. An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum *per diem* rate for the State of Indiana, city of Indianapolis, including Marion County and Fort Benjamin Harrison; State of Kansas, cities of Kansas City/Overland Park, including Wyandotte and Johnson Counties; State of Minnesota, cities of Minneapolis/St. Paul, including Hennepin County and Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), and Ramsey County; State of Missouri, city of Kansas City, including Jackson and Clay Counties and Kansas City International Airport, and city of Platte, including Platte County (except Kansas City International Airport); and State of Pennsylvania, cities of King of Prussia/Ft. Washington/Bala Cynwyd, including Montgomery County, and city of Philadelphia, including Philadelphia County, should be changed to provide for the reimbursement of Federal employees' lodging expenses covered by the *per diem*. This final rule amends the final rule published in the **Federal Register** on August 30, 2002, by changing the maximum lodging amounts in the prescribed areas. It also eliminates seasonal rates for the cities of King of Prussia/Ft. Washington/Bala Cynwyd, Pennsylvania.

**DATES:** This final rule is effective November 8, 2002, and applies to travel performed on or after that date.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Joddy P. Garner, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–4857. Please cite FTR Amendment 110.

**SUPPLEMENTARY INFORMATION:**

### A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed *per diem* rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable *per diem* rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to better meet its overall room night demand and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amounts published in the **Federal Register** on August 30, 2002 (67 FR 56160), are being changed in Indianapolis, Indiana; Kansas City/Overland Park, Kansas; Minneapolis/St. Paul, Minnesota; Kansas City and Platte, Missouri; and King of Prussia/Ft. Washington/Bala Cynwyd, and Philadelphia, Pennsylvania.

### B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

### List of Subjects in 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

Dated: October 31, 2002.

**Stephen A. Perry,**

*Administrator of General Services.*

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR chapter 301 as set forth below:

**CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES**

1. Amend the table in appendix A to chapter 301 as follows:

a. Under the State of Indiana, city of Indianapolis, including Marion County and Fort Benjamin Harrison, amend the maximum lodging amount by removing ''70'' and adding ''83'' in its place; and amend the maximum *per diem* rate by removing ''116'' and adding ''129'' in its place;

b. Under the State of Kansas, cities of Kansas City/Overland Park, including Wyandotte and Johnson Counties, amend the maximum lodging amount by removing ''85'' and adding ''84'' in its place; and amend the maximum *per diem* rate by removing ''127'' and adding ''126'' in its place;

c. Under the State of Minnesota, cities of Minneapolis/St. Paul, including Hennepin County and Ft. Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), and Ramsey County, amend the maximum lodging amount by removing ''95'' and adding ''110'' in its place; and amend the maximum *per diem* rate by removing ''145'' and adding ''160'' in its place;

d. Under the State of Missouri, city of Kansas City, including Jackson and Clay Counties and Kansas City International Airport, amend the maximum lodging amount by removing ''85'' and adding ''84'' in its place; and amend the maximum *per diem* rate by removing ''131'' and adding ''130'' in its place;

e. Under the State of Missouri, city of Platte, including Platte County (except Kansas City International Airport), amend the maximum lodging amount by removing ''61'' and adding ''84'' in its place; and amend the maximum *per diem* rate by removing ''99'' and adding ''122'' in its place;

f. Amend the entry under the State of Pennsylvania, cities of King of Prussia/Ft. Washington/Bala Cynwyd, including Montgomery County, by removing the two rows of season rates and adding ''124'' under maximum lodging amount; ''46'' under M&IE rate; and ''170'' under maximum *per diem* rate; and

g. Under the State of Pennsylvania, city of Philadelphia, including Philadelphia County, amend the maximum lodging amount by removing ''118'' and adding ''124'' in its place;

and amend the maximum *per diem* rate by removing ''168'' and adding ''174'' in its place.

The revised pages containing the amendments to the table set forth above read as follows:

**Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS**

* * * * *

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| Per diem locality: | | Maximum lodging amount **(room rate only—no taxes)** (a) | + | M&IE rate (b) | = | Maximum per diem rate [4] (c) |
|---|---|---|---|---|---|---|
| Key city[1] | County and/or other defined location [2, 3] | | | | | |
| (April 16-December 14)) | | 59 | | 34 | | 93 |
| | | | | | | |
| GEORGIA | | | | | | |
| Albany | Dougherty | 57 | | 38 | | 95 |
| Athens | Clarke | 69 | | 38 | | 107 |
| Atlanta | Fulton | 112 | | 42 | | 154 |
| Clayton County | Clayton | 89 | | 34 | | 123 |
| Cobb County | Cobb | 112 | | 42 | | 154 |
| Columbus | Muscogee | 63 | | 38 | | 101 |
| Conyers | Rockdale | 69 | | 38 | | 107 |
| DeKalb County | DeKalb | 112 | | 42 | | 154 |
| Dublin | Laurens | 57 | | 34 | | 91 |
| Gwinnett County | Gwinnett | 69 | | 42 | | 111 |
| Savannah | Chatham | 89 | | 42 | | 131 |
| | | | | | | |
| IDAHO | | | | | | |
| Boise | Ada | 61 | | 42 | | 103 |
| Coeur d'Alene | Kootenai | 56 | | 38 | | 94 |
| Ketchum | Blaine (except Sun Valley) | | | | | |
| (May 1-November 30) | | 84 | | 42 | | 126 |
| (December 1-April 30) | | 74 | | 42 | | 116 |
| McCall | Valley | 62 | | 42 | | 104 |
| Sun Valley | City limits of Sun Valley (see Blaine County) | 149 | | 42 | | 191 |
| | | | | | | |
| ILLINOIS | | | | | | |
| Aurora | Kane (except Elgin) | 66 | | 34 | | 100 |
| Chicago | Cook and Lake | 155 | | 50 | | 205 |
| Du Page County | Du Page | 89 | | 42 | | 131 |
| Elgin | City limits of Elgin (see Kane County) | 60 | | 34 | | 94 |
| Rockford | Winnebago | 60 | | 34 | | 94 |
| | | | | | | |
| INDIANA | | | | | | |
| Carmel | Hamilton | 65 | | 42 | | 107 |
| Ft. Wayne | Allen | 58 | | 34 | | 92 |
| Indianapolis | Marion County; Fort Benjamin Harrison | 83 | | 46 | | 129 |
| Lafayette | Tippecanoe | 59 | | 34 | | 93 |
| Michigan City | La Porte | 65 | | 38 | | 103 |
| Nashville | Brown | | | | | |
| (April 1-November 15) | | 75 | | 42 | | 117 |
| (November 16-March 31) | | 59 | | 42 | | 101 |
| South Bend | St. Joseph | 61 | | 38 | | 99 |
| Valparaiso/Burlington Beach | Porter | 89 | | 38 | | 127 |
| | | | | | | |
| IOWA | | | | | | |
| Cedar Rapids | Linn | 60 | | 30 | | 90 |
| Des Moines | Polk | 67 | | 34 | | 101 |
| | | | | | | |
| KANSAS | | | | | | |
| Kansas City/Overland Park | Wyandotte and Johnson | 84 | | 42 | | 126 |
| Wichita | Sedgwick | 59 | | 42 | | 101 |
| | | | | | | |

| Per diem locality: | | Maximum lodging amount (room rate only—no taxes) (a) | + | M&IE rate (b) | = | Maximum per diem rate [4] (c) |
|---|---|---|---|---|---|---|
| Key city[1] | County and/or other defined location [2, 3] | | | | | |
| Midland | Midland | 72 | | 38 | | 110 |
| Mount Pleasant | Isabella | 65 | | 38 | | 103 |
| Muskegon | Muskegon | | | | | |
| (May 1-August 31) | | 79 | | 34 | | 113 |
| (September 1-April 30) | | 59 | | 34 | | 93 |
| Ontonagon | Ontonagon | 65 | | 34 | | 99 |
| Petoskey | Emmet | | | | | |
| (June 1-October 31) | | 65 | | 42 | | 107 |
| (November 1- May 31) | | 55 | | 42 | | 97 |
| Pontiac/Troy/Auburn Hills | Oakland | 94 | | 42 | | 136 |
| Sault Ste Marie | Chippewa | | | | | |
| (May 15-October 15) | | 63 | | 38 | | 101 |
| (October 16-May 14) | | 55 | | 38 | | 93 |
| South Haven | Van Buren | 76 | | 38 | | 114 |
| Traverse City | Grand Traverse | 125 | | 46 | | 171 |
| Warren | Macomb | 79 | | 38 | | 117 |
| | | | | | | |
| MINNESOTA | | | | | | |
| Anoka County | Anoka | 65 | | 38 | | 103 |
| Dakota County | Dakota | 80 | | 38 | | 118 |
| Duluth | St. Louis | | | | | |
| (June 1-October 31) | | 85 | | 42 | | 127 |
| (November 1-May 31) | | 56 | | 42 | | 98 |
| Minneapolis/St. Paul | Hennepin County and Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), and Ramsey County | 110 | | 50 | | 160 |
| Rochester | Olmsted | 73 | | 38 | | 111 |
| | | | | | | |
| MISSISSIPPI | | | | | | |
| Bay St. Louis | Hancock | | | | | |
| (April 1-October 31) | | 69 | | 38 | | 107 |
| (November 1-March 31) | | 55 | | 38 | | 93 |
| Biloxi/Gulfport | Harrison | 61 | | 42 | | 103 |
| | | | | | | |
| Robinsonville | Tunica | 59 | | 34 | | 93 |
| | | | | | | |
| MISSOURI | | | | | | |
| Branson | Taney | | | | | |
| (April 1-December 31) | | 62 | | 38 | | 100 |
| (January 1-March 31) | | 55 | | 38 | | 93 |
| Hannibal | Marion | 57 | | 34 | | 91 |
| Jefferson City | Cole | 60 | | 34 | | 94 |
| Kansas City | Jackson, Clay and Kansas City International Airport | 84 | | 46 | | 130 |
| Osage Beach | Camden | 89 | | 34 | | 123 |
| Platte | Platte (except Kansas City International Airport) | 84 | | 38 | | 122 |
| Springfield | Greene | 63 | | 34 | | 97 |
| St. Louis | St. Louis and St. Charles | 90 | | 50 | | 140 |
| St. Robert/Ft. Leonardwood | Pulaski | 74 | | 34 | | 108 |
| | | | | | | |

| Per diem locality: | | Maximum lodging amount **(room rate only—no taxes)** (a) | + | M&IE rate (b) | = | Maximum per diem rate [4] (c) |
|---|---|---|---|---|---|---|
| Key city[1] | County and/or other defined location [2, 3] | | | | | |
| Geneva | Ashtabula | 59 | | 38 | | 97 |
| Hamilton | Butler | 59 | | 38 | | 97 |
| Lancaster | Fairfield | 66 | | 34 | | 100 |
| Port Clinton/Oak Harbor | Ottawa | | | | | |
| (June 1-September 5) | | 95 | | 38 | | 133 |
| (September 6-May 31) | | 69 | | 38 | | 107 |
| Sandusky | Erie | | | | | |
| (May 1-September 5) | | 85 | | 42 | | 127 |
| (September 6-April 30) | | 55 | | 42 | | 97 |
| Toledo | Lucas | 69 | | 34 | | 103 |
| | | | | | | |
| OKLAHOMA | | | | | | |
| Oklahoma City | Oklahoma | 65 | | 42 | | 107 |
| | | | | | | |
| OREGON | | | | | | |
| Ashland | Jackson | 59 | | 46 | | 105 |
| Beaverton | Washington | 59 | | 42 | | 101 |
| Bend | Deschutes | | | | | |
| (June 1-September 30) | | 69 | | 42 | | 111 |
| (October 1-May 31) | | 59 | | 42 | | 101 |
| Clackamas | Clackamas | 66 | | 38 | | 104 |
| Crater Lake | Klamath | 74 | | 34 | | 108 |
| Eugene | Lane (except Florence) | 62 | | 42 | | 104 |
| Florence | City limits of Florence (see Lane County) | 80 | | 38 | | 118 |
| Gold Beach | Curry | 58 | | 34 | | 92 |
| Lincoln City/Newport | Lincoln | 65 | | 38 | | 103 |
| Portland | Multnomah | 91 | | 42 | | 133 |
| Seaside | Clatsop | | | | | |
| (July 1-August 31) | | 79 | | 38 | | 117 |
| (September 1-June 30) | | 59 | | 38 | | 97 |
| | | | | | | |
| PENNSYLVANIA | | | | | | |
| Allentown | Lehigh | 62 | | 34 | | 96 |
| Chester/Radnor/Essington | Delaware (except Wayne) | 75 | | 38 | | 113 |
| Easton | Northampton | 69 | | 34 | | 103 |
| Erie | Erie | 65 | | 34 | | 99 |
| Gettysburg | Adams | | | | | |
| (May 1-October 31) | | 82 | | 38 | | 120 |
| (November 1-April 30) | | 55 | | 38 | | 93 |
| Harrisburg | Dauphin (except Hershey) | 79 | | 46 | | 125 |
| Hershey | City limits of Hershey (see Dauphin County) | | | | | |
| (June 1-September 15) | | 125 | | 42 | | 167 |
| (September 16-May 31) | | 55 | | 42 | | 97 |
| King of Prussia/Ft. Washington/Bala Cynwyd | Montgomery | 124 | | 46 | | 170 |
| | | | | | | |
| | | | | | | |
| Lancaster | Lancaster | | | | | |
| (May 1-October 31) | | 70 | | 42 | | 112 |
| (November 1-April 30) | | 60 | | 42 | | 102 |
| Malvern/Downington/Valley Forge | Chester | 83 | | 42 | | 125 |

| Per diem locality: | | Maximum lodging amount (room rate only—no taxes) (a) | + | M&IE rate (b) | = | Maximum per diem rate [4] (c) |
|---|---|---|---|---|---|---|
| Key city[1] | County and/or other defined location [2, 3] | | | | | |
| Mechanicsburg | Cumberland | 74 | | 34 | | 108 |
| Philadelphia | Philadelphia | 124 | | 50 | | 174 |
| Pittsburgh | Allegheny | 79 | | 46 | | 125 |
| Reading | Berks | 75 | | 42 | | 117 |
| Scranton | Lackawanna | 60 | | 34 | | 94 |
| Warminster | Bucks County; Naval Air Development Center | 75 | | 38 | | 113 |
| Wayne | City limits of Wayne (see Delaware County) | 100 | | 46 | | 146 |
| | | | | | | |
| RHODE ISLAND | | | | | | |
| East Greenwich | Kent County; Naval Construction Battalion Center, Davisville | 79 | | 42 | | 121 |
| Newport | Newport | | | | | |
| (April 1-December 31) | | 111 | | 46 | | 157 |
| (January 1-March 31) | | 79 | | 46 | | 125 |
| North Kingstown | Washington | 89 | | 30 | | 119 |
| Providence | Providence | 89 | | 46 | | 135 |
| | | | | | | |
| SOUTH CAROLINA | | | | | | |
| Aiken | Aiken | 65 | | 34 | | 99 |
| Charleston/Berkeley County | Charleston and Berkeley | 106 | | 42 | | 148 |
| Columbia | Richland | 65 | | 34 | | 99 |
| Greenville | Greenville | 65 | | 42 | | 107 |
| Hilton Head | Beaufort | | | | | |
| (March 15-September 30) | | 95 | | 46 | | 141 |
| (October 1-March 14) | | 75 | | 46 | | 121 |
| Myrtle Beach | Horry County; Myrtle Beach AFB | | | | | |
| (March 1-November 30) | | 99 | | 46 | | 145 |
| (December 1-February 28) | | 59 | | 46 | | 105 |
| | | | | | | |
| SOUTH DAKOTA | | | | | | |
| Custer | Custer | | | | | |
| (June 15-August 19) | | 70 | | 34 | | 104 |
| (August 20-June 14) | | 55 | | 34 | | 89 |
| Hot Springs | Fall River | | | | | |
| (June 15-October 15) | | 108 | | 34 | | 142 |
| (October 16-June 14) | | 79 | | 34 | | 113 |
| Rapid City | Pennington | | | | | |
| (May 15-September 30) | | 99 | | 34 | | 133 |
| (October 1-May 14) | | 55 | | 34 | | 89 |
| Sturgis | Meade | | | | | |
| (June 15-August 15) | | 79 | | 30 | | 109 |
| (August 16-June 14) | | 55 | | 30 | | 85 |
| | | | | | | |
| TENNESSEE | | | | | | |
| Alcoa/Townsend | Blount | 63 | | 34 | | 97 |
| Gatlinburg | Sevier | | | | | |
| (May 1-October 31) | | 78 | | 42 | | 120 |
| (November 1-April 30) | | 70 | | 42 | | 112 |
| Memphis | Shelby | 75 | | 42 | | 117 |
| Murfreesboro | Rutherford | 57 | | 34 | | 91 |

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[FR Doc. 02–28917 Filed 11–15–02; 8:45 am]

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Federal Register

**Monday,**
**November 18, 2002**

**Part IV**

# Department of Housing and Urban Development

**HUD Final Information Quality Guidelines; Notice**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4769–N–02]**

## HUD Final Information Quality Guidelines

**AGENCY:** Office of the Assistant Secretary for Administration/Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice announces HUD's final guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated to the public by HUD (''Information Quality Guidelines''). The notice follows publication of a May 30, 2002, **Federal Register** notice inviting public comment on HUD's draft Information Quality Guidelines, and takes into consideration the public comments received on the earlier notice.

**DATES:** *Effective Date:* November 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Linda Ciancio, Office of Departmental Grants Management and Oversight, Office of Administration, Department of Housing and Urban Development, Room 3156, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone: (202) 708–0667 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8399.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554) directed the Office of Management and Budget (OMB) to issue government-wide guidelines that ''provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies.'' Within one year after OMB issues its guidelines, agencies must issue their own guidelines that will describe internal mechanisms by which agencies will ensure that their information meets the standards of quality, objectivity, utility, and integrity. The mechanism also must allow affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines.

OMB issued its final guidelines on September 28, 2001 (66 FR 49718), but requested additional comment on one component of the OMB guidelines.The OMB guidelines addressing additional public comment were published on January 3, 2002 (67 FR 369), and republished on February 22, 2002 (67 FR 6452). In accordance with the statute, agencies must issue their final guidelines by October 1, 2002. The agencies' draft guidelines need not be published in the **Federal Register** but agencies should provide notification in the **Federal Register** that the draft guidelines are available on agencies' Web sites.

### II. HUD's Information Quality Guidelines

HUD announced the availability of its draft guidelines for review and comment on HUD's website through a **Federal Register** notice published on May 30, 2002 (67 FR 37851). The May 30, 2002, notice solicited public comments through July 1, 2002. HUD announced the extension of this public comment period by **Federal Register** notice published on June 17, 2002, (67 FR 41255). The June 17, 2002, notice solicited public comments through July 17, 2002. This notice makes HUD's final guidelines available to the public. This notice also notifies the public of the significant changes made as a result of internal HUD review, the public comments received on HUD's draft guidelines, and OMB comments received on HUD's proposed final guidelines.

### III. Discussion of Public Comments on HUD's Draft Information Quality Guidelines

In response to the draft guidelines, HUD received five public comments. The comments received involved a number of different sections of the draft guidelines. Comments were received from: A public interest group, a legal services organization, a coalition of organizations representing health, safety, civil rights, and environmental concerns, a mortgage company, and an association of home builders. A more detailed discussion of these comments follows:

*A. General Comments*

Several general comments were received urging HUD to use, or adhere more strictly to the statutory terms, language, and definitions contained in OMB's interagency guidelines, including the definition and treatment of the terms ''quality'' and ''affected persons.'' Various sections of the final guidelines were modified to address these comments.

Three comments were received generally urging HUD to avoid incorporating existing policies and procedures into new information quality requirements but rather to establish new, stand-alone policies and procedures to apply to the quality, objectivity, utility, and integrity of information HUD disseminates to the public. Another comment urged HUD to retain maximum flexibility in implementing OMB guidelines by incorporating the standards and procedures required by these guidelines into existing information resource management and administrative practices. In developing its final guidelines, HUD noted that OMB generally states in its guidelines to federal agencies that it designed its guidelines to be adaptable to a wide variety of government information dissemination activities, generic, and non-prescriptive, thus allowing agencies the flexibility to incorporate the requirements of the OMB guidelines into the agencies' own information resource management and administrative practices. HUD considered this when addressing the above comments by slight modifications that make it explicit that the Department's existing clearance and approval procedures for information disseminated to the public clearly address the requirements of section 515 and the OMB guidelines. Therefore, the guidelines do not replace existing HUD procedures but rather reaffirm HUD's existing procedures and the agency's adherence to them.

*B. Designated Official*

Four comments were received generally urging HUD to provide more detailed contact information for the designated official, to more clearly define the responsible parties and the procedures they will use to ensure quality, and to assign the General Counsel the responsibility for compliance with OMB's final guidelines. With the exception of the latter comment, numerous modifications were made throughout the guidelines to address these comments.

*C. Performance Measurement*

Three comments were received concerning adopting the guidelines as performance standards. In response to these comments, HUD revised the section of the guidelines titled ''Purpose,'' to state ''HUD reviews the standards defined in these guidelines as performance measures and will seek to attain the standards as defined. In implementing these guidelines, HUD

acknowledges that ensuring the quality of information is a management objective as important as any other for the Department, including the success of agency missions and observing budget and resources priorities and restraints. HUD will implement these guidelines so that they complement and support all other Departmental objectives.''

*D. Administrative Correction Mechanism*

Approximately fifteen comments were received from three respondents concerning the mechanism for requesting information dissemination corrections and the mechanism for processing information dissemination corrections requests. Seven of the comments received generally recommended that HUD's guidelines should provide more clarity and/or add more structure to the process by: (1) Designating an official through which complaints and responses to complaints could be submitted; (2) establishing a formal, independent board to review and act on appeals in an ''ombudsman'' capacity; (3) more clearly defining terms to ensure that affected persons consistently receive corrections in a timely manner; (4) defining an objective standard for HUD decision-makers to follow when determining the degree and manner in which the disseminated information will be corrected; (5) expressly stating that separate HUD offices and officials shall resolve initial decisions and disagreements on appeals for correcting information; (6) notifying the public or establishing a running public docket of correction requests and changes; and, (7) providing detailed descriptions about how correction requests will be reviewed, who will conduct the reviews, what standards will be used, and how such reviews will be supervised.

One respondent submitted the remaining eight comments on this topic and all eight comments strongly urged HUD to construct these mechanisms cautiously with adequate procedural safeguards to protect the agency from becoming mired down in minor data disputes, bad faith, frivolous, repetitive, or non-timely requests. Further, the respondent recommended limiting the mechanism to only what is required in the Data Quality Act so as to avoid any possibility of creating new rights under administrative law. The eight comments stated that HUD: (1) Should clearly state that the burden of proof lies squarely with the requestor to demonstrate both that they are an affected party and that the challenged information does not comply with OMB's guidelines; (2) limit the administrative mechanism to corrections of factual data and information, and explicitly state that administrative mechanisms will not consider interpretations of data and information, or requests for de-publishing; (3) should limit complaints to information that is not already subject to existing data quality programs and measures; (4) state that similar requests previously responded to may be rejected as frivolous or duplicative; (5) should establish a timeliness requirement for requests after which the agency has the option to reject a request; (6) should limit complaints for any data quality standard that presents a potential moving target (*i.e.*, best available evidence) to information available at the time of dissemination; (7) should specifically state that responses to correction requests will be proportional to the significance and importance of the information in question; and (8) should establish a fairly informal reconsideration process consistent with the fact that neither the initial consideration nor the agency's reconsideration is a legally enforceable process as the Data Quality Act does not address reconsideration of complaints and that such a requirement is far outside the scope of the statutory requirements.

In response to these 15 comments, the guidelines were modified under the section titled ''Designated Official'' to include specific language stating that HUD Assistant Secretaries are responsible for ensuring implementation of the guidelines within their respective areas of responsibility. The guidelines were further modified under the section titled ''Process for Requesting Correction to Disseminated Information'' by adding subsections titled ''Submitting Requests,'' ''Rejecting Requests,'' ''Processing Requests,'' and ''Appealing Corrective Decisions.'' These subsections set forth specific requirements for the information to be submitted in an information dissemination request, the criteria HUD will use for determining valid correction requests, the process HUD will follow for processing requests determined to be valid, the process for appealing corrective decisions, and the procedures HUD will use for processing requests appealing corrective decisions. Further, these subsections specifically designate the responsible HUD official(s) at each stage of the described process.

*E. Definition and Standard for ''Dissemination''*

Four commenters submitted comments on the definition and standard for ''dissemination.'' One comment stated that the exemptions were too broad and encompassing to be consistent with the new Information Quality Guidelines and that the guidelines should explain what is meant by ''statutorily mandated issuances.'' Two other comments generally stated that Congress intended the Data Quality Act standards to apply to all public information despite OMB's exemption of some types and categories of information in its interagency guidelines. Other comments stated that HUD should: (1) Make every effort to clearly assert the limits of these guidelines and preserve the agency's flexibility to accomplish core mandates unfettered; (2) clearly state that the agency does not consider the guidelines judicially reviewable, and that they do not provide any new adjudicatory authority, and (3) clearly state that the guidelines apply to information disseminated from the agency itself and not when the agency is merely acting as a conduit of information. Two commenters stated some uncertainty concerning the applicability of the guidelines to staff working papers made available to the public, including working papers posted on the HUD website. These comments argued that such papers are subject to the guidelines if made available to the public, unless an explicit disclaimer is included in the papers.

In response to these comments and further direction received from OMB on its interagency guidelines, the guidelines were modified under the section titled ''Definitions and Standards,'' subsection titled ''Dissemination'' by: (1) Adding specificity to the exemptions listed; (2) adding two exemptions for (a) information presented to Congress as part of the legislative or oversight processes (*e.g.*, testimony of HUD officials, information or drafting assistance provided to Congress in connection with pending proposed legislation) that is not simultaneously disseminated to the public, and (b) procedural, operational, policy, and internal manuals prepared for the management and operations of HUD that are not primarily intended for public dissemination; (3) providing an example of a statutorily mandated issuance; (4) adding language explicitly stating that the guidelines do not impose any additional requirements on HUD during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal; and (5) adding new requirements in the guidelines for working papers

disseminated or otherwise made available to the public to carry a clear legend indicating that the papers represent the opinions of the author and are not the agency's official views.

*F. Influential Information*

Several comments were received concerning ''influential information.'' One comment concerned the quality standards to be applied to information deemed ''influential.'' Another comment recommended that the guidelines set clear standards for ''influential'' information and explain how the requisite criteria for ''transparency'' and ''reproducibility'' would be achieved. Related to these comments were comments concerning the need for the guidelines to discuss how the agency will implement enhanced standards for influential information, including ''transparency'' and ''reproducibility'' or internal ''robustness checks'' if privacy, confidentiality, or proprietary concerns prevent disclosure of certain information, making transparency and reproducibility infeasible. Another comment suggested that the agency adopt procedures for identifying influential information. Finally, one comment urged HUD to avoid labeling information as ''influential.''

Several areas of the guidelines were modified to address these comments. The ''quality'' definition and standard was enhanced by including transparency and reproducibility under the ''objectivity'' aspect of this standard. Peer review was more thoroughly defined to include ensuring that such reviews meet the general criteria recommended by OMB to the President's Management Council on September 20, 2001. A definition and standard was added for robustness checks for disseminated influential information when transparency and reproducibility are infeasible. A definition and standard was added for influential information setting forth specific guidelines for determining whether scientific, financial, or statistical information is influential within the meaning of OMB's guidelines, thus determining the level of scrutiny and pre-dissemination review afforded such information. Finally, the guidelines were modified to reflect that each HUD Assistant Secretary is responsible for determining what constitutes influential information, for developing and documenting specific review and approval procedures for information deemed influential, and to state that these responsibilities and authorities may not be delegated.

*G. Risk Assessment Information Relating to Human Health, Safety, or the Environment*

Two comments from different respondents were received concerning inclusion of the quality principles of the Safe Drinking Water Act (SDWA) for risk assessment information relating to human health, safety, or the environment. One comment suggested that HUD either adopt or adapt the quality principles of the SDWA as required by the OMB guidelines, while the other comment urged HUD to ''adapt'' the SDWA standards, further stating that OMB exceeded the congressional mandate and inappropriately asked agencies to either adopt or adapt the SDWA principles. These comments were addressed in the guidelines under the ''reproducibility'' definition and standard by stating that HUD will use the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices, and data collected by the accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).

## IV. HUD's Final Information Quality Guidelines

HUD's final Information Quality Guidelines are as follows—

## U.S. Department of Housing and Urban Development Final Guidelines for Ensuring and Correcting the Quality of Information (Information Quality Guidelines)

*I. Purpose*

These guidelines fulfill the requirements of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554, H.R. 5658, hereafter referred to as section 515), requiring federal agencies to issue implementing guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information they disseminate.

The Department of Housing and Urban Development is committed to ensuring and maximizing the quality, utility, objectivity, and integrity of all information it disseminates to the public. To accomplish this objective, HUD is issuing these guidelines that the Department will follow for reviewing and substantiating the quality of information before it is disseminated to the public. In addition, these guidelines establish an administrative correction procedure by which an affected person may seek and obtain the correction of any information disseminated by HUD that does not comply with these guidelines or the existing clearance and approval procedures the guidelines reference.

HUD views the standards defined in these guidelines and those of the Office of Management and Budget as performance measures and will strive to meet these standards. In implementing these guidelines, HUD acknowledges that ensuring the quality of information is a management objective as important as any other for the Department including the success of agency missions and observing budget and resource priorities and restraints. HUD will implement these guidelines so that they complement and support all other Departmental objectives.

The Department's existing clearance and approval procedures for information disseminated to the public clearly address the requirements of section 515 and the OMB guidelines. Therefore, these guidelines do not replace existing HUD procedures. Rather, these guidelines simply reaffirm HUD's existing clearance and approval procedures for easy reference, to help ensure adherence to them, and thus ensure quality information products. Where HUD's existing clearance and approval procedures do not meet the intent of section 515, new pre-dissemination clearance and approval procedures are described. These new procedures are identified as such.

*II. Authority*

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; 114 Stat. 2763).

*III. Background*

Section 515 directs OMB to issue government-wide guidelines that ''provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies.'' Agencies are required to issue their own implementing guidelines within one year after OMB issues its guidelines. For the convenience of the reader, OMB's final guidelines can be found on: *http://www.whitehouse.gov/omb/ fedreg/final_information_quality_guidelines.html.*

Section 515 also requires that agency guidelines include ''administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency.'' OMB

required agencies to prepare a draft report including their implementing guidelines no later than May 1, 2002. HUD developed these guidelines to meet this requirement. The goal of these guidelines is to ensure that information disseminated by HUD will be:

- Useful to the intended users;
- Presented in an accurate, reliable, and unbiased manner as a matter of substance and presentation; and,
- Protected from unauthorized access or revision.

*IV. Designated Official*

HUD's Assistant Secretary for Administration/Chief Information Officer serves as the agency official charged with overseeing HUD's compliance with OMB guidelines for the quality of information disseminated. HUD Assistant Secretaries, individuals of equivalent rank, or Assistant Secretary designates (hereinafter ''HUD Assistant Secretaries''), are responsible for ensuring implementation of these guidelines within their respective areas of responsibility. With respect to Office of Inspector General (OIG) information, however, the Inspector General is ultimately responsible for ensuring OIG information is objective, useful, and has integrity, and for determining whether such information should be corrected.

*V. Effective Date*

As provided in OMB's guidelines, these guidelines apply only to information HUD disseminates on or after October 1, 2002, including the review of information to ensure quality before it is disseminated to the public. While previously released materials will continue to be used for decision-making and relied upon by the Department and the public as official, authoritative, government information, the materials are, in effect, constantly being re-disseminated and thus subject to these guidelines. Previously released information materials that do not meet these criteria are considered archived information and thus are not subject to these guidelines or to the request for correction process.

*VI. Policy*

HUD will ensure that the information it disseminates to the public is objective (accurate, clear, complete, and unbiased), useful, and has integrity. Additional levels of quality standards may be adopted, as appropriate, for specific categories of disseminated information.

*VII. Definitions and Standards*

A. Information

Any communication or representation of knowledge such as facts or data, conveyed in any form or medium, including textual, numerical, graphic, cartographic, narrative, or audiovisual, whether on paper, film, or electronic media, and whether disseminated via facsimile (fax), recording, machine-readable data, or website. This does not include hyperlinks provided to information originated by or in the custody of someone other than HUD. Information does not include opinion, unless that opinion is HUD's official point of view.

B. Dissemination

Affirmative distribution to the public initiated or sponsored by HUD acting as a publisher, rather than release of information in response to a request from the public. HUD ''sponsors'' distribution of information if HUD collects the information, causes another agency to collect the information, contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to someone else. HUD also sponsors information if HUD causes someone else to obtain, solicit, or require disclosure of information by or for HUD to third parties or to the public.

The standards of these guidelines apply not only to information that HUD generates, but also to information that other parties provide to HUD, if the other parties seek to have the Department rely upon or disseminate this information or the Department decides to do so. For example, in commenting on a proposed rule, a trade association supplies a scientific or technical analysis in support of its position on what the final rule should say. In order for HUD to rely upon this information in a subsequent HUD dissemination of information (*e.g.*, as part of the basis cited for decisions in the final rule), the quality of the trade association's information would have to be consistent with these guidelines. Likewise, if the Department disseminates information originally created by a non-HUD party (*e.g.*, contractor or consultant), this disseminated information would be subject to these guidelines.

Dissemination does NOT include the following types of information and hence this information is not subject to these guidelines:

- Release of information to government employees, agency contractors, or grantees, where such information is restricted or limited to these entities;
- Dissemination intended for intra- or interagency use or sharing of government information;
- Information released under the Freedom of Information Act (FOIA), the Privacy Act, the Federal Advisory Committee Act, or similar law;
- Dissemination limited to correspondence with individuals or persons (regardless of media, example electronic mail);
- Press releases and other information of an ephemeral nature, advising the public of an event or activity of a finite duration—regardless of medium;
- Archival records disseminated by federal agency libraries or similar federal data repositories (*e.g.*, inactive or historical materials in HUD libraries and other data collections—including bibliographies or responses to reference requests pertaining to such materials);
- Library holdings;
- Public filings;
- Distributions intended to be limited to subpoenas or adjudicative processes and decisions;
- Information presented to Congress as part of the legislative or oversight processes (*e.g.*, testimony of HUD officials, information or drafting assistance provided to Congress in connection with pending or proposed legislation) that is not simultaneously disseminated to the public;
- Statutorily mandated issuances (*e.g.*, HUD's Five Year Strategic Plan);
- HUD's release of third party information, views, or opinions, that are clearly identified as information that is not produced or sponsored by HUD; and,
- Procedural, operational, policy, and internal manuals prepared for the management and operations of HUD that are not primarily intended for public dissemination.

These guidelines do not impose any additional requirements on HUD during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal.

C. Quality

Encompasses three main aspects of information—utility, objectivity, and integrity, as described below.

1. *Utility.* Usefulness of the information to its intended users, including the public, measured by reference to established criteria, such as accessibility or timeliness.

2. *Objectivity.* Accuracy, completeness, reliability, clarity, and lack of bias in the collection, manipulation, contextual presentation

of information, and substance with appropriate levels of statistical or scientific objectivity for the type and importance of the information disseminated.

Objective presentation means that information is presented within a proper context to ensure an accurate, clear, complete, and unbiased presentation. Objective substance means the information, data, the analytical process, and the resulting reports are accurate, reliable, and unbiased.

HUD aims to provide objective information but it is important to note that HUD must sometimes rely on outside data that it is unable to duplicate or control due to certain circumstances (*e.g.*, cost). Nonetheless, HUD will seek to make publicly available the sources (to the extent possible, consistent with confidentiality protections), data, and methods/models used to develop the information so that the public can judge for itself whether there may be some reason to question the objectivity of the sources. This will ensure a high degree of transparency about the data and methods such that an independent reanalysis could be undertaken by a qualified member of the public. Making the data and methods publicly available will assist in determining whether analytic results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.

Scientific or statistical information should be presented with supporting data and models to allow intended users to assess the objectivity of the information sources without revealing trade secrets or violating confidentiality and privacy.

Disseminated analytical results that do, or may, have an important effect on development of governmental or private sector policies, or have important consequences for specific technologies, substances, products, or firms, must be capable of being substantially reproduced. This means that independent reanalysis of original or supporting data using the same methods would generate similar analytical results, within an acceptable range of error or imprecision.

In situations involving influential scientific, financial, or statistical information, where public access to data and methods will not occur due to other compelling interests, HUD Assistant Secretaries shall apply especially rigorous robustness checks to analytic results and document the checks that were undertaken.

Results already subjected to formal, independent peer review, before dissemination, are generally considered to be acceptably objective. Nonetheless, this presumption is rebuttable based on a persuasive showing by a petitioner in a particular instance. That is, the burden of proof is on the affected person petitioning HUD for a correction to disseminated information. If HUD uses a peer review, the review process used will meet the general criteria for competent and credible peer review recommended by OMB to the President's Management Council on September 20, 2001. Namely, that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner.

3. *Integrity.* Refers to protection of information from corruption or falsification by unauthorized access or revision.

D. Robustness Checks

Refers to influential scientific, financial, or statistical information where public access to data and methods will not occur due to other compelling interests. In these situations, HUD Assistant Secretaries shall ensure that the data and methods used to develop the information product are reviewed for: (1) Appropriateness of the methodology; (2) soundness of the analysis and specific analytic methods; (3) soundness of hypotheses and assumptions; (4) statistical procedures; (5) sources of bias or other error, and (6) programmatic and policy implications.

E. Influential Information

The following discussion is intended as guidance to HUD Assistant Secretaries and other interested persons in determining whether scientific, financial, or statistical information is influential within the meaning of OMB's guidelines. This definition is important because it determines the level of scrutiny and pre-dissemination review afforded to information. It is important to emphasize that this term applies only to scientific, financial, or statistical information. The definition does not address other types of information, no matter how important the information may seem to be. It should also be noted that the definition applies to ''information'' itself, not to HUD decisions that the information may support. That is, even if a decision or action by HUD is itself very important, a particular piece of information supporting it may or may not be ''influential.''

The OMB guidelines define ''influential'' information as information that the agency reasonably can determine ''will have or does have a clear and substantial impact on important public policies or important private sector decisions.'' The OMB guidelines assign to HUD the task of defining this term in ways appropriate to the agency and its various programs.

HUD emphasizes that, to be influential, information must have a clear and substantial impact. A clear and substantial impact, first of all, is one that has a high probability of occurring. If it is arguable that an impact will occur, or if it is a close judgment call, then the impact is probably not clear and substantial. The impact must be on ''important'' public policy or private sector decisions. Even if information has a clear and substantial impact, it is not influential if the impact is not on a public or private decision that is important to policy, economic, or other decisions.

Additionally, in determining if information has a clear and substantial impact, HUD will consider two factors—breadth and intensity—in determining whether information is influential.

Every decision that HUD makes based on disseminated information is important to someone. That does not mean that disseminated information used for each decision is influential, as the term is used in the guidelines.

In determining whether information is influential, HUD Assistant Secretaries shall consider whether information affects a broad range of parties. Information that affects a broad, rather than a narrow, range of parties (*e.g.*, an entire industry or a significant part of an industry) is more likely to be influential.

HUD Assistant Secretaries shall also consider whether information has an intense impact or high cost. Information that has a low cost or modest impact on affected parties is less likely to be influential than information that can have a very costly or crucial impact. In considering whether information has a high-intensity impact, HUD Assistant Secretaries shall use the definition of ''economic significance'' provided in Executive Order (E.O.) 12866, Section 2.f.1, thus using the $100 million figure, as well as other criteria sited in the E.O. definition, to determine the degree of impact. HUD Assistant Secretaries may, however, find this level of intensity in information materials that fall below the benchmark figure.

In most cases, information that has an intense impact on a broad range of parties is regarded as influential. Information that affects a broad range of parties with a low-intensity impact, or information that affects a narrow range of parties with a high-intensity impact, may or may not be influential.

HUD Assistant Secretaries may designate certain classes of information as ''influential'' or not, in the context of their specific programs. Absent such designations, HUD Assistant Secretaries will determine whether information is influential on a case-by-case basis, using the principles articulated in these guidelines.

The ''influential'' designation is intended to be applied to information where clearly appropriate. HUD Assistant Secretaries should not designate information products or types of information as influential on a regular or routine basis. Nor should an ''influential'' label be placed on the title page or text of an information product.

F. Reproducibility

The information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. With respect to analytic results, ''capable of being substantially reproduced'' means that an independent analysis of the original and supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error. For influential information regarding risks to human health, safety, and the environment, HUD will use the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices, and data collected by the accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).

G. Affected Persons

Any person or group who may benefit or be harmed by information disseminated by HUD. This includes persons who are seeking to address information about themselves as well as persons who use information. As defined by the Paperwork Reduction Act of 1995, affected persons include groups, organizations, and corporations.

*VIII. Guidelines*

A. Scope

HUD will review all information to be disseminated to the public for quality, objectivity, utility, and integrity before the information is disseminated to the public. These guidelines apply to information disseminated by HUD on or after October 1, 2002, regardless of when the agency first disseminated the information. Likewise, the agency's administrative mechanisms for correcting information shall apply to information the agency disseminates on or after October 1, 2002, regardless of when the agency first disseminated the information.

HUD will ensure that the quality of its disseminated information, and its pre-dissemination review process, can be substantiated through documentation or other means appropriate to the information.

These guidelines apply to HUD information dissemination products in all media and formats, including printed, electronic, and audio/visual. Information dissemination products include books, papers, CD–ROMs, electronic documents, or other documentary material disseminated to the public by HUD. The guidelines apply to information disseminated to the public by HUD from a web page, but they do not apply to hyperlinks from the HUD website to information that others disseminate. Nor do the guidelines apply to opinions if it is clear that what is being offered is someone's opinion, rather than fact or the agency's official views. For example, the guidelines do not apply to staff working papers that are preliminary in nature and do not represent the official views of the agency.

B. Process for Ensuring Quality of Information at the Basic Standard

The Section 515 guidelines issued by OMB focus primarily on the dissemination of substantive information (*i.e.*, reports, studies, summaries) rather than information pertaining to basic agency operations. HUD reviews all information dissemination products prior to dissemination and all products are expected to meet the basic OMB and HUD quality standards (see definitions and standards for objectivity, utility, and integrity). HUD currently has few information products that would require a standard of quality higher than the ''basic'' standard described by the OMB guidelines.

As stated in the ''Policy'' section of these guidelines, HUD's basic quality standard for information involves objectivity, utility, and integrity. Objectivity has two distinct elements—presentation and substance. First, the information must be presented in an accurate, clear, and unbiased manner. Second, as a matter of substance, the information must be accurate, reliable, and unbiased. To the extent possible, and consistent with confidentiality protections, HUD will identify the source of disseminated information so that the public can assess whether the information is objective. The utility of information refers to its usefulness to its intended users, including the public. Integrity refers to the security of information (*i.e.*, the protection of information from unauthorized access or revision). Security of information helps ensure that the information is not compromised through corruption or falsification.

HUD Assistant Secretaries shall ensure that all information they disseminate to the public meets the basic quality standard. In that regard, they are responsible for ensuring that the pre-dissemination review and clearance process is performed and documented at a level appropriate for the type of information disseminated and in accordance with existing HUD clearance and approval policies and procedures. They will consider the costs and benefits of using a higher quality standard or a more extensive review process in deciding the appropriate level of quality for a given type of information, and the resulting appropriate level of review and documentation. Additionally, when developing information, HUD offices will treat information quality as integral to every step of information development, including creation, collection, maintenance, and dissemination. This will enable the agency to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information.

With respect to draft information collection packages to be used to generate information products subject to these guidelines, HUD Assistant Secretaries shall ensure that such draft information collection packages submitted for OMB approval result in the information being collected, maintained, and used in a manner that is consistent with these and OMB's guidelines.

C. Disseminating Information That Establishes Program Procedures or Processing Requirements

1. *Existing procedures and processing requirements.* The policies and procedures outlined below are existing HUD policies and procedures and were designed to ensure the quality of information HUD disseminates to the public. To the extent they apply to disseminated information as defined previously in these guidelines, HUD will assure they meet the standards set forth in these and OMB guidelines.

HUD Directives Handbook, 000.2 REV–2, issued April 18, 2001, entitled ''HUD Directives System'' outlines the requirements for issuing information that establishes program procedures or processing requirements, whether binding on HUD staff or HUD program participants. It is HUD's policy that HUD Directives must go through Departmental clearance, whether issued as handbooks, direct notices, mortgagee letters, or memoranda, and whether issued in paper or electronic format or posted on HUD's website. HUD Directives advise staff and/or program participants about how to carry out their respective responsibilities under HUD programs or advise potential program participants how to participate in HUD programs. Directives supplement statutes, regulations, and other **Federal Register** documents. Consistent with HUD policies, HUD Directives will not be used to issue new or revised policy or binding requirements unless there is statutory or regulatory authority to do so. At a minimum, all handbooks, supplements, notices, special directives, and letters clarifying or elaborating on existing procedures or policy and used to issue guidance, are subject to the procedures in the Directives Handbook. HUD Assistant Secretaries are responsible for ensuring compliance with the Directives Handbook. In determining the applicability of, and the requirement for a pre-dissemination review, HUD Assistant Secretaries must ensure that, at a minimum, HUD Directives originating in their offices are cleared in accordance with HUD existing Directives policy. Changes to the Government National Mortgage Association (Ginnie Mae) mortgage-backed securities guide and the multiclass guides shall continue to be issued in accordance with its program procedures.

Furthermore, Chapter 7 of HUD Handbook 2400.1 (revision currently in Departmental clearance) establishes policy for the use of electronic mail (e-mail), limiting its use to (1) brief, informal communications (*e.g.*, an exchange of ideas related to government businesses); (2) coordination (*e.g.*, meetings); and, (3) in place of the telephone and interoffice mail. The General Counsel affirmed this policy in a memorandum dated May 20, 2002, noting that e-mail should not be used to clear a document(s) that evidences policies, decisions, procedures, operations, or other activities of the government. Assistant Secretaries must ensure compliance with this policy.

Questions about whether particular issuances constitute a HUD Directive should be referred to the Office of Administration, which oversees the Departmental clearance of HUD Directives.

The Office of Administration is responsible for ensuring that the pre-dissemination review and clearance process outlined above, and in HUD Handbook 000.2 REV–2, is conducted in accordance with the standards contained in the Handbook and adequately documented.

2. *New Procedures and Processing Requirements.* Dissemination of information, via automated systems and system user guides and manuals, that creates new procedures or processing requirements or expands upon existing procedures and requirements, is covered by existing HUD policy governing issuances that establish program procedures and processing requirements (see HUD Directives Handbook 000.2 REV 2). As such, these issuances must be approved through the existing clearance and approval processes noted in the guidelines in item ''1'' immediately above.

D. Disseminating Information That Establishes New HUD Policy or Revises HUD Policy

The policies and procedures outlined in the following paragraph are existing HUD policies and procedures and were designed to ensure the quality of information HUD disseminates to the public. To the extent they apply to disseminated information as defined previously in these guidelines, HUD will assure they meet the standards set forth in these and OMB guidelines. Changes to the Ginnie Mae mortgage-backed securities guide and the multiclass guides shall continue to be issued in accordance with its program procedures.

The Administrative Procedure Act and HUD's Regulations in 24 CFR part 10 require the Department to publish in the **Federal Register** substantive rules and statements of policy and interpretations of general applicability. The **Federal Register** is used to announce new or revised policy or binding and enforceable requirements. The Office of General Counsel has responsibility for Departmental pre-dissemination review and clearance procedures for **Federal Register** publications. **Federal Register** notices provide the necessary information and instructions to the public for providing comments.

E. Disseminating Information via Press Conferences, Press-Related Events, Editorials, Columns, Letters to the Editor, Speeches, Publications, Newsletters, Reports, Brochures, Videos, the Daily HUD Focus Message, Public Service Announcements and Advertisements, and News Media Contact

1. *Existing procedures and processing requirements.* The policies and procedures outlined in the following paragraph are existing HUD policies and procedures designed to ensure the quality of information HUD disseminates to the public. To the extent they apply to disseminated information as defined previously in this guidance, HUD will assure they meet the standards set forth in these and OMB guidelines.

All such information is approved by and/or coordinated with the Headquarters' Office of Public Affairs. The ''Public Affairs Protocol,'' as well as the Office's procedures (both are available on HUD's intranet at the Public Affairs Web page) provides information regarding clearance of the above-mentioned issuances.

With respect to OIG Audit Reports, the OIG has standards and review procedures in place that assure that information disseminated to the public is reviewed for objectivity, utility, integrity, the use of sound statistical methods, and transparency of methods, sources, assumptions, and outcomes. In that regard, the OIG adheres to the Government Auditing Standards, issued by the Comptroller General of the United States (the Yellow Book), and the OIG Audit Operations Manual (IG Manual). The Yellow Book prescribes generally accepted government auditing standards, including auditee review and comment on draft findings and recommendations. The IG Manual establishes the policies and procedures to be followed by the OIG, including the supervisory review of audit working papers and reports and the independent referencing of all audit reports prior to issuance. Headquarters staff also reviews audit reports prior to issuance. Further, the OIG undergoes both management and peer reviews on a recurring basis.

2. *New procedures and processing requirements.* All working papers disseminated or otherwise made available to the public (*e.g.*, posted on HUD's public web site) are to carry a clear legend indicating that the ''papers represent the opinions of the author only and are not the agency's official views.''

F. Disseminating Information via HUD's Public Web Site

As previously noted, these guidelines apply to information disseminated to the public by HUD from a web page, but they do not apply to hyperlinks from the HUD website to information that others disseminate.

1. *Existing procedures and processing requirements.* The policies and procedures outlined in the paragraph below are existing HUD policies and procedures designed to ensure the quality of information HUD disseminates to the public. To the extent that they apply to disseminated information as defined previously in this guidance, HUD will assure they meet the standards set forth in these and OMB guidelines.

HUD's existing web procedures dated April 30, 1998, and revised September 2, 2001, are available to the public at *http://www.hud.gov/library/bookshelf15/policies/wwwpol.cfm.* They establish clear responsibility at the Assistant Secretary and Regional Director level for developing and maintaining relevant program information, processes, and local office materials on HUD's Web sites. These policies also require web managers to ensure that materials are properly approved prior to posting, including program policies and procedures.

2. *New procedures and processing requirements.* HUD is currently formalizing its web posting procedures (including requirements on the types of information that may be posted, publication standards, design guidelines, and accessibility guidelines). These new procedures will be made available to the public.

Meanwhile, it is HUD's policy that the Office of Public Affairs review and provide pre-dissemination approval of all website content of a political or policy nature. It is the responsibility of the appropriate Assistant Secretary or Regional Director to ensure that this review and approval occurs. Additionally, all working papers posted on HUD's public website are to carry a clear legend indicating that the ''papers represent the opinions of the author only and are not the agency's official views.''

Text which establishes program procedures, processing requirements, new or revised policy, or binding and enforceable requirements will not be posted to the web without first being approved through the established clearance and approval processes (see ''Disseminating Information that Establishes Program Procedures or Processing Requirements'' and ''Disseminating Information that Establishes New HUD Policy or Revises HUD Policy''). The procedures for removing web postings that are not properly approved will be included in HUD's formal web posting procedures. HUD Assistant Secretaries may request that the responsible posting office remove any Web site content that has not been approved through established clearance and approval processes.

Each Assistant Secretary and Regional Director is responsible for ensuring adherence to these policies. Each must submit written certification that the content of HUD's public website and kiosks for which his/her organization is responsible is both current and accurate. These certifications must be made to the Deputy Secretary on a quarterly basis.

G. Protecting the Integrity of Information via HUD Automated Systems

The policies and procedures outlined in this section are existing HUD policies and procedures designed to ensure the quality of information HUD disseminates to the public. To the extent they apply to disseminated information as previously defined in these guidelines, HUD will assure they meet the standards set forth in these and OMB guidelines.

HUD's information integrity standards ensure that appropriate safeguards are in place to prevent unauthorized access or revision, thus helping to ensure that the information is not compromised through corruption or falsification. HUD's existing information integrity standards are set forth in the following issuances:

1. *National Security Information (HUD Handbook 1750.1 Rev–4, CHG–3) dated April 18, 1991.* This Handbook identifies methods for ensuring that information disseminated by or on behalf of HUD remains protected. It is available via HUD's Web site at *http://www.hudclips.org/subscriber/cgi/legis.cgi?legis.*

2. *Common Data Element Cleanup Method, A Guidebook Version 1.1* (currently being revised). This Guidebook provides the concepts, step-by-step processes, examples of application, and worksheet forms to guide and assist with a data element cleanup process. It also assists in the information quality management of internal HUD systems and data, including information utility, objectivity, and integrity.

3. *Enterprise Security Program Plan.* The Plan establishes the framework for developing and implementing a HUD-wide Enterprise Security Program. The Plan outlines the requirements for complying with federal guidelines to protect HUD's critical infrastructure and implementing the HUD Remediation Plan.

4. *The Information Systems Security Program Policy.* The Policy ensures that adequate security is provided for the information collected, processed, transmitted, stored, or disseminated in HUD's general support systems and major applications. It does this by requiring each HUD office and program area to implement policies, standards, and procedures consistent with government-wide policies, standards, and procedures issued by OMB, the Department of Commerce, the General Services Administration, and the Office of Personnel Management.

H. Process for Ensuring Quality of Information at a Level Higher Than the Basic Standard

The OMB guidelines for implementing Section 515 recognize that some government information may need to meet higher quality standards than the basic standard. The more important the information, the higher the quality standards to which it should be held. In particular, the OMB guidelines require ''influential scientific, financial, or statistical information'' to meet a high standard of quality. The OMB definition of ''influential'' is set forth in Section VII, Paragraph E of these guidelines.

HUD is committed to the standards stated in OMB's information quality guidelines, specifically with respect to applying especially rigorous robustness checks to analytic results and to document the checks that were undertaken. At this time, HUD is not prepared to identify the kinds of original and supporting data to be subject to the reproducibility standard. Nonetheless, HUD shall assure reproducibility for those kinds of original and supporting data according to commonly accepted scientific, financial, or statistical standards. Additionally, the standards of these and OMB guidelines apply not only to information that HUD generates, but also to information that other parties provide to HUD, if the other parties seek to have the Department rely upon or disseminate this information or the Department decides to do so.

1. *New Procedures and Processing Requirements for Influential Information.* The responsibility for determining what constitutes influential information to be disseminated, and hence the quality standards to which the information should be held rests with each HUD Assistant Secretary. Each HUD Assistant Secretary is

currently developing and documenting, and will make available upon written request, specific review and approval procedures for information he/she determines will have or does have a clear and substantial impact on important public policies or important private sector decisions. These procedures will include references to the types of issuances covered, as well as examples of such issuances. These procedures may include independent peer reviews (internal and/or external) of the information to ensure statistical and/or analytical integrity. Finally, each HUD Assistant Secretary is responsible for ensuring that this type of information is reviewed and approved, prior to dissemination, according to the written procedures he/she has established, and that the review and approval of each issuance is adequately documented. The above-mentioned responsibilities and authorities may not be delegated.

Any issuance of information that has not been subjected to the procedures identified in the previous paragraph, but which, in the view of the responsible HUD Assistant Secretary, requires a higher quality standard than outlined under the procedures for ensuring quality of information at the basic standard, must be cleared through Departmental clearance.

I. Administrative Correction Mechanisms

To facilitate review by affected persons, this section establishes administrative mechanisms allowing affected persons to seek and obtain, where appropriate, timely correction of information maintained and disseminated by HUD. These administrative mechanisms have been designed to be flexible, appropriate to the nature and timeliness of the disseminated information, and incorporated into HUD's existing information resources management and administrative practices.

An affected person (see Section VII, Paragraph G under ''Definitions and Standards'') may request the timely correction of information disseminated by HUD. This includes persons who are seeking to address information about themselves as well as persons who use information.

In determining whether to respond to a complaint, the Department will consider whether the information or the request for correction is ''stale.'' If HUD did not disseminate this information recently (*i.e.*, within one year of the information correction request), or it does not have a continuing impact on HUD projects or policy decisions or on important private sector decisions, the Department may regard the information as ''stale'' for purposes of responding to a correction request, unless the complainant demonstrates that the information has an impact on the affected person.

The correction process is designed to address the genuine and valid needs of HUD and its constituents without disrupting agency operations. HUD, in making a determination of whether or not to correct information, may reject claims made in bad faith or without justification. HUD will explain decisions to deny or limit corrective actions in annual reports to OMB on complaints regarding agency compliance with these guidelines.

Documents and information disseminated, but not sponsored, by HUD are not covered by these guidelines. In disseminating such materials, HUD assumes no responsibility for their accuracy and is simply ensuring that the public has quicker and easier access to such materials.

Rulemakings and Other Public Comment Procedures—HUD will consider requests for correction of a study, analysis or other information prior to the final agency action or information product if: (1) HUD determines that its response would not unduly delay final issuance of the HUD action or information product, and (2) the complainant shows a reasonable likelihood of suffering actual harm from HUD's dissemination if HUD does not resolve the complaint prior to the final agency action or information product.

With respect to the correction of OIG information, as used below: ''Office of the Assistant Secretary for Administration'' shall be understood to mean the Office of Inspector General, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8256, Washington, DC 20410; the ''Assistant Secretary of the office that originated the subject information,'' the ''responsible Assistant Secretary'' and/or the ''Assistant Secretary'' shall be understood to mean the Assistant Inspector General for Audit; and the ''Assistant Secretary for Administration'' shall be understood to mean the Deputy Inspector General.

J. Process for Requesting Correction to Disseminated Information

1. *Submitting Requests.* If an affected person believes that disseminated information does not comply with the standards set forth in these guidelines, he/she may submit a written request for correction to the Office of the Assistant Secretary for Administration which will assign the request to the Assistant Secretary of the office that disseminated the subject information. The request may be submitted by letter or by e-mail through HUD's website and should contain the following items:

a. A statement that a request for correction of information is submitted under HUD's Information Quality Guidelines;

b. The complainant's name, mailing address, e-mail address, telephone number, facsimile (fax) number, and organizational affiliation, if any. HUD will not respond to anonymous requests;

c. A clear identification of the information dissemination source (*e.g.*, report, data set, or other document) and the information asserted to be incorrect;

d. A description of how the information in question affects the complainant or the affected person(s) for whom the correction request is being submitted (*e.g.*, how an alleged error causes harm, and/or how the correction will be of benefit or use);

e. A description of the specific information that the complainant wants the Department to correct. Where possible, the request should include such identifying characteristics as the name of the HUD office that originated the data, title, date, etc.;

f. A description of why the complainant believes the information in question is inconsistent with the Department's or OMB's information quality guidelines (*i.e.*, how the information fails to meet standards of integrity, utility, and/or objectivity);

g. Specific recommendations for what corrections HUD should make to the information in question and reasons for believing that these recommended corrections would make the information consistent with the Department's information quality guidelines; and,

h. Documentary evidence believed to be relevant to the request (*e.g.*, comparable data or research results on the same topic).

Written requests sent via letter should be addressed to: U.S. Department of Housing and Urban Development, Assistant Secretary for Administration, Seventh Street, SW., Washington, DC 20410.

HUD currently is evaluating both new and existing e-mail response software to further facilitate implementing these final procedures for responding to information correction requests received via HUD's web mail system. HUD's internal operating procedures and associated responsibilities/authorities for appropriately responding to and tracking information correction requests will be included in HUD's formal web

posting procedures. These procedures will be available to the public.

2. *Rejecting Requests.* Once the responsible Assistant Secretary receives a request for correction of information, he/she will review the request to determine if it is valid using the following guidelines:

a. Did HUD (as opposed to some other person or organization) actually disseminate the information HUD is being asked to correct?

b. Is the complainant affected by the information in question or is the person(s) for whom the correction request is being submitted affected by the information in question?

c. Did HUD disseminate this information recently (*i.e.*, within one year of the request), or does the information have a continuing impact on HUD projects or policy decisions, on important private sector decisions, or on affected persons?

d. With respect to information in a final rule, final environmental impact statement, or other final document where there was an opportunity for public comment or participation, could interested persons have requested the correction of the information in question at the proposed stage and, if so, has the complainant shown a reasonable likelihood of an affected person suffering actual harm from HUD's dissemination if HUD does not resolve the complaint prior to the final agency action or information product?

e. Is the information in question exempt from these Guidelines?

f. Is the request frivolous or not germane to the substance of the information in question?

g. Has HUD responded previously to a request that is the same or substantively very similar?

If the responsible Assistant Secretary determines that the answer to Question a, b, c, or d is ''no'' or that the answer to Question e, f, or g is ''yes,'' then HUD will reject the request. If the request is rejected, the responsible Assistant Secretary will respond in writing within 60 calendar days of receiving the request. Written responses may be sent via letter, e-mail or facsimile (fax).

3. *Processing Requests.* If a request is not rejected, the responsible Assistant Secretary will review the request to determine if it contains sufficient information to address items ''a'' through ''h'' above under ''Submitting Request.'' If it does not, he/she will either advise the requester of the additional information required or otherwise state why the request is insufficient. The responsible Assistant Secretary will respond to a request within 60 calendar days from the date of receipt. However, if the request requires more than 60 calendar days to respond, the responsible Assistant Secretary will inform the complainant that more time is required, and indicate the reason why and an estimated decision date. All responses will be in writing and may be done via letter, e-mail or facsimile (fax). Circumstances warranting an extension may include, but are not limited to, a need to: review many records identified in a single request; consult with another federal agency having a substantial interest in the request; or, consult with two or more HUD offices having a substantial interest in the request.

The responsible Assistant Secretary will coordinate with HUD officials as appropriate to determine whether or not to correct information. HUD will correct information and disseminate the corrected information only to the degree and in the manner that the responsible Assistant Secretary, in consultation with HUD officials as he/she deems appropriate, concludes is appropriate for the nature and timeliness of the information involved. Each Assistant Secretary will maintain a record of all information dissemination correction requests and decisions for a period of at least five years. Each Assistant Secretary will aggregate the data for his/her area annually, and provide the aggregated data to the Assistant Secretary for Administration, who is responsible for preparing HUD's annual report to OMB regarding requests for correcting information (see ''Submitting Annual Reports to OMB''). The report prepared by the Assistant Secretary should differentiate between requests for correction to website information and corrections requested to other information disseminated under the jurisdiction of the Assistant Secretary.

4. *Appealing Corrective Decisions.* If the affected person requesting a correction does not agree with HUD's decision (including the corrective action, if any), the person may petition for reconsideration. The written request for reconsideration must be submitted within 60 calendar days of the date of the decision letter. Generally, the Assistant Secretary for Administration (or his/her designee), in consultation with such other HUD Assistant Secretaries as appropriate, and the office from which the information was disseminated, will review HUD's decision and basis thereof and respond to requests for appeal within 60 calendar days of the date of receiving the petition for reconsideration. Additionally, if the Assistant Secretary for Administration believes that another agency(ies) may have an interest in the resolution of an appeal, he/she should consult with those other agencies about their possible interest in the matter. If the request requires more than 60 calendar days to resolve, the Assistant Secretary for Administration will inform the complainant that more time is required, indicating the reason why and an estimated decision date. The Assistant Secretary for Administration will notify the Assistant Secretary and the complainant of the final decision and what corrective action, if any, the agency will take. Decisions on petitions for reconsideration are final and further petitions or appeals will be disregarded.

Appeals for reconsideration must be in writing. The envelope and the reconsideration request both should be clearly marked ''Information Correction Reconsideration Request'' and addressed to: U.S. Department of Housing and Urban Development, Assistant Secretary for Administration, 451 Seventh Street, SW., Washington, DC 20410.

K. Submitting Annual Reports to OMB

HUD will submit annual reports to the Director of OMB on the number and nature of complaints received concerning agency compliance with these guidelines beginning January 1, 2004. Reports, prepared by the Assistant Secretary for Administration, will contain complaint and correction information dealt with during each fiscal year and will be submitted no later than January 1 of the following year. The report is to contain both quantitative and qualitative information about the complaints received, the nature of the complaints, and the resolution of those complaints. The report is to include an explanation of agency decisions to deny or limit corrective action. HUD will develop a uniform process for tracking, collecting, and reporting on the disposition of information correction requests.

The first report will cover Fiscal Year 2003 and be submitted to OMB by January 1, 2004.

Dated: November 8, 2002.

**Alphonso Jackson,**

*Deputy Secretary.*

[FR Doc. 02–29195 Filed 11–13–02; 1:53 pm]

BILLING CODE 4210–01–P

Federal Register

**Monday,**
**November 18, 2002**

## Part V

# Department of Education

**34 CFR Parts 36 and 668**
**Adjustment of Civil Monetary Penalties for Inflation; Final Rule**

## DEPARTMENT OF EDUCATION

## 34 CFR Parts 36 and 668

## Adjustment of Civil Monetary Penalties for Inflation

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Department of Education (Department) issues these final regulations to adjust the Department's civil monetary penalties (CMPs) for inflation. These are the first such adjustments made by the Department, and all of the increases are limited to 10 percent.

**DATES:** These regulations are effective November 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Kenneth C. Depew, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E227, Washington, DC 20202–2241. Telephone: (202) 401–8300.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Adjustment Act of 1990 (Inflation Adjustment Act) (28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (DCIA) (31 U.S.C. 3701 note), provides for the regular evaluation of CMPs to ensure that they continue to maintain their deterrent value. As amended by the DCIA, the Inflation Adjustment Act requires that each agency issue regulations to adjust its CMPs beginning in 1996 and at least every 4 years thereafter. The first adjustment of any CMP is limited to 10 percent of the amount of the penalty.

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

The formula for the amount of a CMP inflation adjustment is prescribed by law and is not subject to the exercise of discretion by the Secretary of the Department of Education (Secretary). The adjustment reflects the percentage increase in the Consumer Price Index for all urban consumers (CPI–U) published by the Department of Labor from June of the calendar year in which the amount was last set or adjusted pursuant to law, to June of the calendar year preceding the adjustment.

The Department did not adjust its CMPs for inflation in 1996 and since then has not adjusted the CMPs that were in effect in 1996. By statute the Department's first adjustment of a CMP may not exceed 10 percent of such a penalty, and, therefore, we are adjusting those CMPs by no more than 10 percent. The Department is precluded from making subsequent adjustments to these CMPs until 2004, and even then, the Department may adjust these CMPs only for percentage increases in the CPI-U after June 2002.[1]

Two of the Department's CMPs were enacted as part of the Higher Education Amendments of 1998 (Pub. L. 105–244). These CMPs are 20 U.S.C. 1015(c)(5), which provides for a fine of up to $25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics, and 20 U.S.C. 1027(f)(3), which provides for a fine of up to $25,000 for failure by an IHE to provide information to the State and the public regarding its teacher preparation programs. Although 4 years have passed since enactment of these penalties, not enough inflation has occurred to require an adjustment under the Inflation Adjustment Act.

Two additional points regarding the Department's adjustments are worth noting. First, the Department is using the following CPI-U figures: 109.5 for June 1986; 124.1 for June 1989; 163 for June 1998; and 178 for June 2001. And second, the increases to the Department's CMPs due to these inflation adjustments apply only to violations that occur after the effective date of the adjustments.

### 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. However, these regulations merely implement the statutory mandate to adjust CMPs for inflation. The regulations reflect administrative computations performed by the Department as prescribed by the statute and do not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that public notice and comment are impracticable, unnecessary, and contrary to the public interest.

### Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The formula for the amount of the inflation adjustments is prescribed by statute and is not subject to the exercise of discretion by the Secretary. These CMPs are infrequently imposed by the Secretary, and the regulations do not involve any special considerations that might affect the imposition of CMPs on small entities.

### Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

### Assessment of Educational Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

### 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: *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.

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(Catalog of Federal Domestic Assistance Number does not apply)

### List of Subjects

*34 CFR Part 36*

Administrative practice and procedure, Claims, Fraud, Penalties.

[1] It will be 2004 before the Department can determine whether the percentage of the CPI-U for June of the calendar year preceding the adjustment exceeds that for June of 2002, which would be the June of the calendar year in which the CMPs' amount was last set or adjusted pursuant to law. Until 2004, any adjustment by the Department would be unable to compare the CPI-U for June of 2002 with that for a subsequent year.

*34 CFR Part 668*

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Student aid.

Dated: November 12, 2002.

**Rod Paige,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary establishes a new part 36 and amends part 668 in title 34 of the Code of Federal Regulations as follows:

1. A new part 36 is added to title 34 to read as follows:

## PART 36—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

Sec.
36.1 Purpose.
36.2 Penalty adjustment.

**Authority:** 28 U.S.C. 2461 note and 31 U.S.C. 3701 note, unless otherwise noted.

### § 36.1 Purpose.

The purpose of this part is to make inflation adjustments to the civil monetary penalties within the jurisdiction of the Department of Education. These penalties are subject to review and adjustment as necessary at least once every 4 years in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(Authority: 28 U.S.C. 2461 note and 31 U.S.C. 3701 note)

### § 36.2 Penalty adjustment.

The citations for the adjusted penalty provisions, a brief description of the penalty, and the adjusted maximum (and minimum, if applicable) penalty amounts are listed in Table I.

TABLE I, SECTION 36.2—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

| Statute | Description | New maximum (and minimum, if applicable) penalty amount |
|---|---|---|
| 20 U.S.C. 1082(g) | Provides for a civil penalty of up to $25,000 for violations by lenders and guaranty agencies of Title IV-B of the Higher Education Act of 1965, as amended (HEA), which authorizes the Federal Family Education Loan Program. | $27,500. |
| 20 U.S.C. 1094(c)(3)(B) | Provides for a civil penalty of up to $25,000 for an institution of higher education's violation of Title IV of the Higher Education Act of 1965, as amended, which authorizes various programs of student financial assistance. | $27,500. |
| 31 U.S.C. 1352(c)(1) and (c)(2)(A). | Provides for a civil penalty of $10,000 to $100,000 for recipients of Government grants, contracts, etc. that lobby Congress or the Executive Branch with respect to the award of Government grants and contracts. | $11,000 to $110,000. |
| 31 U.S.C. 3802(a)(1) and (a)(2) | Provides for a civil penalty of up to $5,000 for false claims and statements made to the Government. | $5,500. |

(Authority: 28 U.S.C. 2461 note and 31 U.S.C. 3701 note)

## PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

2. The authority citation for part 668 continues to read as follows:

**Authority:** 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

3. Section 668.84 is amended by removing ''$25,000'' in paragraph (a)(1) introductory text, and adding, in its place, ''$27,500 [1]'' and adding footnote 1 following the section to read as follows:

### § 668.84 Fine proceedings.

* * * * *

As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note).

[FR Doc. 02–29219 Filed 11–15–02; 8:45 am]

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# Reader Aids

**Federal Register**

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Monday, November 18, 2002

## CUSTOMER SERVICE AND INFORMATION

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**S. 1210/P.L. 107–292**

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**S. 2690/P.L. 107–293**

To reaffirm the reference to one Nation under God in the Pledge of Allegiance. (Nov. 13, 2002; 116 Stat. 2057)

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

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