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# Federal Register

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

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 23

**[Docket No. CE192, Special Condition 23–132–SC]**

## Special Conditions; Cessna Model 441 Airplane; Protection of Systems for High Intensity Radiated Fields (HIRF)

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued to S–TEC, One S–TEC Way Municipal Airport, Mineral Wells, TX 76007, for a Supplemental Type Certificate for Cessna Model 441 airplanes. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument systems (EFIS) display Model ''Meggitt Magic'' for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). This special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

**DATES:** The effective date of these special conditions is December 6, 2002. Comments must be received on or before January 17, 2003.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE192, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE192. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

### Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE192.'' The postcard will be date stamped and returned to the commenter.

### Background

On June 6, 2002, S–TEC Corporation, One S–TEC Way, Mineral Wells Airport, Mineral Wells, Texas 76067, made an application to the FAA for a new Supplemental Type Certificate for the Cessna Model 441 (Conquest) airplanes. The Conquest is currently approved under Type Certificate No. A28CE. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

### Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, S–TEC Corporation must show that the Cessna Model 441 airplanes meets the following provisions, or the applicable regulations in effect on the date of application for the modification to reference airplanes.

The Certification Basis that is incorporated by reference for the Cessna Model 441 airplane is listed under the Type Certificate Data Sheet No. A28CE with the exception of FAR Part 23.1301 as amended by Amendment 23–20; 23.1309, 23.1311, and 23.1321 as amended by Amendment 23–49; and the special conditions adopted by this rulemaking action. Noise requirements are not an issue because there is no change to the engine or aircraft fuselage.

### Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become a part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

**Novel or Unusual Design Features**

S–TEC Corporation plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

*Protection of Systems from HIRF:* Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

| Frequency | Field strength (volts per meter) | |
|---|---|---|
| | Peak | Average |
| 10 kHz–100 kHz ... | 50 | 50 |
| 100 kHz–500 kHz | 50 | 50 |
| 500 kHz–2 MHz .... | 50 | 50 |
| 2 MHz–30 MHz ..... | 100 | 100 |
| 30 MHz–70 MHz ... | 50 | 50 |
| 70 MHz–100 MHz | 50 | 50 |
| 100 MHz–200 MHz | 100 | 100 |
| 200 MHz–400 MHz | 100 | 100 |
| 400 MHz–700 MHz | 700 | 50 |
| 700 MHz–1 GHz ... | 700 | 100 |
| 1 GHz–2 GHz ..... | 2000 | 200 |
| 2 GHz–4 GHz ..... | 3000 | 200 |
| 4 GHz–6 GHz ..... | 3000 | 200 |
| 6 GHz–8 GHz ..... | 1000 | 200 |
| 8 GHz–12 GHz ..... | 3000 | 300 |
| 12 GHz–18 GHz ... | 2000 | 200 |
| 18 GHz–40 GHz ... | 600 | 200 |

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical field strength from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated either by tests, analysis, models, similarity with existing systems, or by any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

**Applicability**

As discussed above, these special conditions are applicable to the Cessna Model 441 airplanes. Should S–TEC Corporation apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

**Conclusion**

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

**List of Subjects in 14 CFR Part 23**

Aircraft, Aviation safety, Signs and symbols.

**Citation**

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.101; and 14 CFR part 11, §§ 11.38 and 11.19.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cessna Model 441 airplanes modified by S–TEC Corporation to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on December 6, 2002.

**Dorenda D. Baker,**

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

[FR Doc. 02–31882 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–SW–48–AD; Amendment 39–12982; AD 2002–21–51]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model AS355E, F, F1, F2, and N Helicopters

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

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

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2002–21–51, which was sent previously to all known U.S. owners and operators of Eurocopter France (ECF) helicopters by individual letters. This AD requires certain checks of the magnetic chip detector plug (chip detector) for any metal particles and the main gearbox (MGB) oil-sight glass for dark-colored oil. If any of these are present, the AD requires inspecting the lubrication pump (pump) and, if necessary, replacing the MGB and the pump with an airworthy MGB and pump. Also, this AD requires that a different MGB or pump with any time-in-service (TIS) must meet the requirements of this AD before being installed. This AD was prompted by four reports of malfunctions of the MGB pump. The actions specified by this AD are intended to prevent failure of the MGB pump, seizure of the MGB, loss of drive to an engine and main rotor, and subsequent loss of control of the helicopter.

**DATES:** Effective January 2, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–21–51, issued on October 17, 2002, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before February 18, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–48–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5355, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** On October 17, 2002, the FAA issued Emergency AD 2002–21–51 for the specified ECF helicopters, which requires checking the chip detector for metal particles and the MGB oil-sight glass for dark oil and taking an oil sample if dark oil is observed. If you find metal particles on the chip detector or if an oil sample confirms that the oil is dark or dark purple, the AD requires further inspection of the pump and, if necessary, replacing the MGB and the pump with an airworthy MGB and pump. Also, the AD requires that a different MGB or pump with any TIS must meet the requirements of this AD before being installed. The AD was prompted by four reports of malfunction of the MGB pump. The bearings of the driven pinion inside the pump can deteriorate resulting in pump failure and loss of oil pressure in the MGB. This condition, if not corrected, could result in seizure of the MGB, loss of drive to an engine and main rotor, and subsequent loss of control of the helicopter.

The FAA has reviewed ECF Alert Telex No. 05.00.40, dated June 6, 2002 (Telex), which describes procedures for inspecting the MGB magnetic plug for sludge and the MGB for very dark oil and inspecting the pump. The Telex specifies overhauling the MGB if you find any of the following in the pump: Bearing crank pin play, bronze bushing out-of-round, offset of the driven gear pinion, certain wear, or metal chips. Pending the results of various investigations and to prevent loss of the drive train of the main transmission linkage for one or both engines, ECF specifies these procedures for all pumps.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on these helicopter models. The DGAC advises of four reports of pump deterioration. The DGAC advises that, in time, the insufficiently lubricated power transmission assembly deteriorates resulting in loss of the drive train for one or both engines (deterioration of the combiner gearbox gears). The DGAC classified the Telex as mandatory and issued AD No. 2002–331–071(A) dated July 10, 2002, to ensure the continued airworthiness of these helicopters.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD requires the following:

- Before the first flight of the day and at intervals not to exceed 10 hours TIS, check the chip detector for metal particles and the MGB oil-sight glass for dark oil.
- If you find metal particles on the chip detector, before further flight, inspect the pump.
- If you observe dark oil through the MGB oil sight glass, before further flight, take an oil sample to confirm that the oil is dark or dark purple.
- If the oil sample is dark or dark purple, before further flight, inspect the pump, part number 355A32–0700–00, –01, or –01M.
- If you find crank pin play, out-of-round bronze bushing, offset of the driven gear pinion, metal chips, or certain wear, replace the MGB and the pump with an airworthy MGB and pump before further flight.
- A different MGB or pump with any TIS must meet the requirements of this AD before installation.

An owner/operator (pilot) may perform the visual checks for metal particles on the magnetic chip detector plug and for dark oil in the MGB oil-sight glass and must enter compliance with those requirements into the helicopter maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). A pilot may perform

these checks because they only involve visual checks for magnetic particles on the magnetic plug, which can be removed without the use of tools, and the MGB oil-sight glass for dark-colored oil and can be performed equally well by a pilot or a mechanic.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. The checks of the MGB and pump are required in a very short period of time, specifically, before the first flight of each day and at intervals not to exceed 10 hours TIS. Also, if necessary, the inspections and replacement of the pump and MGB are required before further flight. Therefore, this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 17, 2002, to all known U.S. owners and operators of the specified ECF helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that this AD will affect approximately 105 helicopters of U.S. registry. The FAA also estimates that it will take approximately 10 minutes to check the magnetic plug and the MGB oil sight glass, 4 work hours to remove the MGB and pump, 1 work hour to inspect the pump, and 4 work hours to install a serviceable MGB and pump. The average labor rate is $60 per work hour. Required parts will cost approximately $4000 for an overhauled pump and up to $60,000 for an overhauled MGB per helicopter. The manufacturer has represented to the FAA that the standard warranty applies if failure occurs within the first 2 years and operating time is less than 1000 hours. Based on these figures, the FAA estimates a total cost impact of the AD on U.S. operators to be $337,540 per year, assuming replacement of one MGB and pump on one helicopter per year and a daily check on all helicopters for 260 days per year.

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2002–SW–48–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2002–21–51 Eurocopter France:** Amendment 39–12982. Docket No. 2002–SW–48–AD.

*Applicability:* Model AS355E, F, F1, F2, and N helicopters, with a main gearbox (MGB) lubrication pump (pump), part number 355A32–0700–00, –01, –01M, installed, certificated in any category.

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

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

To prevent failure of the MGB pump, seizure of the MGB, loss of drive to an engine and main rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before the first flight of each day and at intervals not to exceed 10 hours time-in-service (TIS), check the MGB magnetic chip detector plug (chip detector) for any metal particles. Also, check for dark oil in the MGB oil-sight glass. An owner/operator (pilot) holding at least a private pilot certificate may perform this visual check and must enter compliance into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

**Note 2:** Eurocopter France Alert Telex No. 05.00.40, dated June 6, 2002, pertains to the subject of this AD.

(1) Before further flight, if any metal particles are found on the chip detector, inspect the pump.

(2) Before further flight, if dark oil is observed through the MGB oil-sight glass, take an oil sample to confirm that the oil is dark or dark purple. If the oil sample is dark or dark purple, before further flight, inspect the pump.

(3) While inspecting the pump, if you find any of the following, replace the MGB and the pump with an airworthy MGB and pump before further flight:

(i) Crank pin play,

(ii) Out of round bronze bushing (A of Figure 1),

(iii) Offset of the driven gear pinion,

(iv) Metal chips, or

(v) Wear (C of Figure 1).

*See* the following Figure 1:

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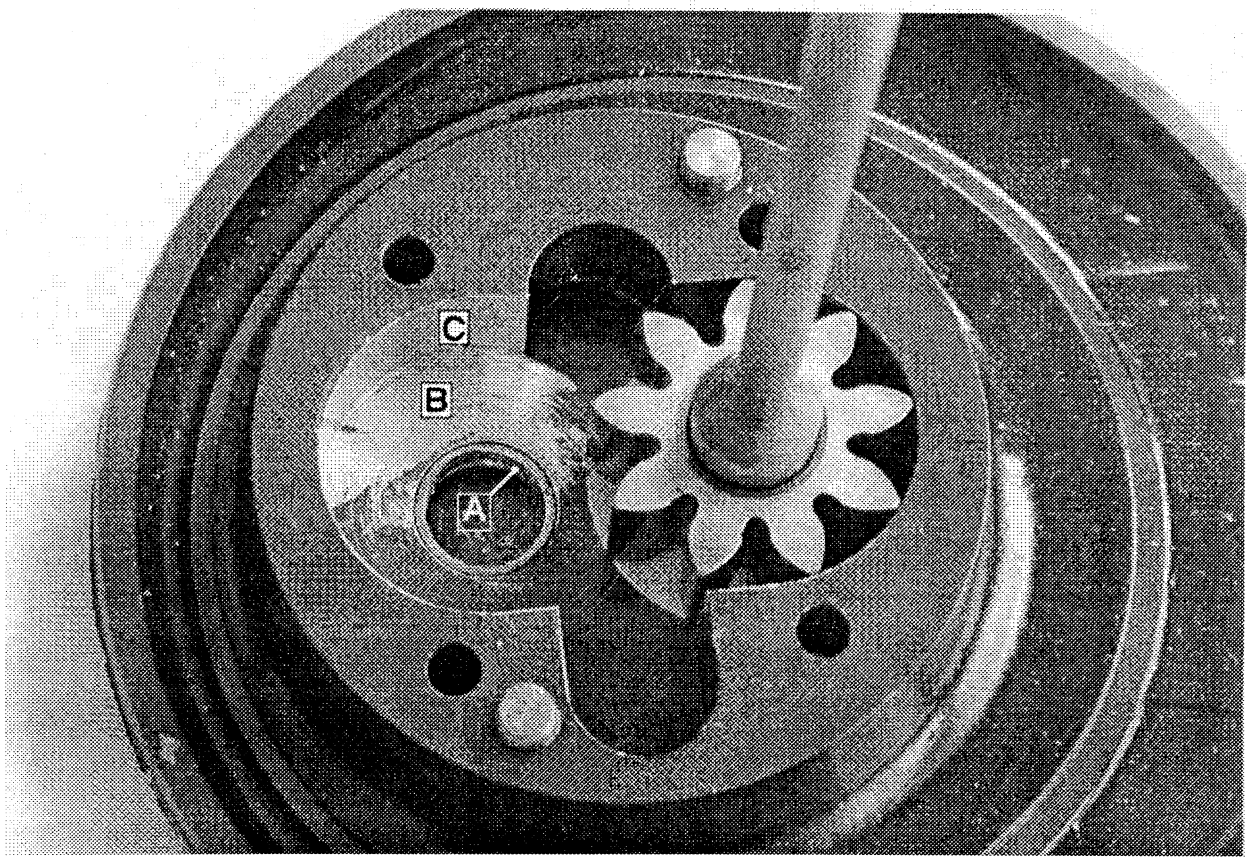


Figure 1

BILLING CODE 4910–13–C

**Note 3:** If wear occurs in B only in Figure 1, replacing the MGB and the pump is not necessary.

(b) Before installing a different MGB or a pump with any TIS, accomplish the requirements of paragraph (a) of this AD.

(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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

(e) This amendment becomes effective on January 2, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–21–51, issued October 17, 2002, which contained the requirements of this amendment.

**Note 5:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile, France, AD No. 2002–331–071(A), dated July 10, 2002.

Issued in Fort Worth, Texas, on December 10, 2002.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 02–31751 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2001–SW–35–AD; Amendment 39–12976; AD 2002–25–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model AS332C, AS332L, AS332L1, SA330F, SA330G, and SA330J Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters that requires inspecting the tail rotor pitch change rod (change rod) bearing (bearing) and, after inspecting the control rod, replacing the bearing if it does not meet the specified tolerance. This AD requires inspecting the bearing for spalling, friction, and grinding and inspecting the control rod and bearing housing for wear marks and scoring. This amendment is prompted by the seizure of a bearing on an ECF Model SA330 helicopter. The actions specified by this AD are intended to prevent bearing wear, seizure of the bearing, loss of tail rotor effectiveness, and subsequent loss of control of the helicopter.

**DATES:** Effective January 22, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

**SUPPLEMENTARY INFORMATION:** A proposal to amend 14 CFR part 39 to include an AD for ECF Model AS332C, AS332L, AS332L1, SA330F, SA330G, and SA330J helicopters, was published in the **Federal Register** on July 19, 2002 (67 FR 47488). That action proposed to require the following inspections initially, repetitively, and before installing any tail rotor gearbox that has been previously installed on another helicopter and has not been inspected:

- Inspect the tail rotor spider for end play. Remove the change rod bearing if the tail rotor spider is not within allowable tolerances.
- Inspect each bearing for spalling, friction, grinding, damaged bearing sealing flanges, overheating at the bearing inner and outer races and the flanges, deposits of corrosion, and shearing or wear marks on the lockwasher, and remove any unairworthy bearing.
- If a bearing is removed, before replacing the bearing, inspect the change rod for visible wear marks or scoring on the bearing journal circumference. If wear marks or circular scoring is found, repair or replace the bearing housing.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS332C, AS332C1, AS332L, AS332L1, SA330F, SA330G, and SA330J helicopters. The DGAC advises that the pitch change rod bearing seized on a Model SA330 helicopter.

ECF has issued Eurocopter France Alert Service Bulletin (ASB) Nos. 05.81, Revision 2, and 05.00.29, Revision 3, both dated January 18, 2001, which specify modifying the operational and bearing check procedure for the change rod equipped with bearing, part number (P/N) 330A33–9903–20. The DGAC classified ASB No. 05.00.29, Revision 3, dated January 18, 2001, as mandatory and issued AD No. 1990–230–041(A) R4, dated February 21, 2001, to ensure the continued airworthiness of the ECF Model AS332 helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 3 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to inspect and replace a bearing, and that the average labor rate is $60 per work hour. Required parts will cost approximately $120 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,080, assuming one bearing is replaced on each helicopter.

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2002–25–01 Eurocopter France:** Amendment 39–12976. Docket No. 2001–SW–35–AD.

*Applicability:* Model AS332C, AS332L, AS332L1, SA330F, SA330G, and SA330J helicopters with a tail rotor pitch change rod (rod) and a bearing, part number 330A33–9903–20, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified,

altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Within 20 hours time-in-service (TIS) or 1 month, whichever occurs first, or before installing any tail rotor gearbox previously installed on another helicopter and not inspected within the previous 250 hours TIS, unless accomplished previously, and thereafter at intervals not to exceed 250 hours TIS or 18 months, whichever occurs first.

To prevent bearing wear, bearing seizure of the change rod, loss of tail rotor effectiveness, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the axial end play of the tail rotor pitch change spider assembly in accordance with the Accomplishment Instructions, paragraph 2.B.1. of Eurocopter France (ECF) Alert Service Bulletin No. 05.81, Revision 2, dated January 18, 2001 (ASB 330) for the ECF Model 330 helicopters or Eurocopter France Alert Service Bulletin No. 05.00.29, Revision 3, dated January 18, 2001, (ASB 332) for the Model 332 helicopters. If the axial end play is not within allowable tolerances, remove the rod bearing from service.

(b) Inspect each bearing for spalling, friction, grinding, damaged bearing sealing flanges, overheating at the bearing inner and outer races and the flanges, deposits of corrosion, and shearing or wear marks on the lockwasher in accordance with the Accomplishment Instructions, paragraph 2.B.2., of ASB 330 or ASB332, as applicable. Remove from service any unairworthy bearing.

(c) If a bearing is removed from service, before replacing the bearing with an airworthy bearing:

(1) Inspect the change rod for visible wear marks or scoring on the bearing journal circumference. If marks or scoring is found, remove the change rod from service.

(2) Inspect the bearing housing for visible wear marks or circular scoring. If wear marks or circular scoring is found, repair or replace the bearing housing in accordance with the Accomplishment Instructions, paragraph 2.B.3., of ASB 330 or ASB 332, as applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

(e) Special flight permits will not be issued.

(f) The inspections required by this AD shall be done in accordance with the Accomplishment Instructions in Eurocopter France Alert Service Bulletin No. 05.81, Revision 2, dated January 18, 2001, for Model 330 helicopters, or Eurocopter France Alert Service Bulletin No. 05.00.29, Revision 3, dated January 18, 2001, for Model 332 helicopters. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 22, 2003.

**Note 3:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 1990–230–041(A) R4, dated February 21, 2001.

Issued in Fort Worth, Texas, on November 25, 2002.

**Eric D. Bries,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 02–31177 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NE–30–AD; Amendment 39–12981; AD 2002–25–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. Olympus 593 Mk. 610–14–28 Turbojet Engines

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. (RR) Olympus 593 Mk. 610–14–28 turbojet engines, installed in BAe/SNIAS Concorde Type 1 airplanes that have been modified in accordance with Airbus Concorde service bulletins No.'s SST 57–078, SST 57–079, SST 57–080, and SST 57–082. This action requires initial and repetitive engine fuel filter inspections and fuel sample analysis. This amendment is prompted by a report of fuel tank liner materials found in and partially through an engine fuel filter. The actions specified in this AD are intended to prevent contamination of any or all of the four airplane engine fuel control units, causing power loss or one or more engines to shutdown.

**DATES:** Effective January 2, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 2, 2003.

Comments for inclusion in the Rules Docket must be received on or before February 18, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–30–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England, telephone 011 7979 6060; fax 011 7979 7234. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), notified the FAA that an unsafe condition may exist on BAe/SNIAS Concorde Type 1 airplanes with Olympus 593 Mk. 610–14–28 turbojet engines installed. The CAA advises that BAe/SNIAS Concorde Type 1 airplanes that have been modified in accordance with Airbus Concorde service bulletins No.'s SST 57–078, SST 57–079, SST 57–080, and SST 57–082, have undergone mandatory modification to install Viton and Kevlar liner materials to the fuel tanks. This mandatory modification action resulted from an airplane crash.

The modification is necessary, and will minimize a fuel leak from the airframe in case of puncture of the airframe skin. After one of the airplanes re-entered service, a Kevlar fiber was found in one of the engine fuel systems during fuel filter inspection. This fiber came from one of the modified fuel tanks, and was positioned partially through the fuel filter mesh. The CAA and RR advise that additional kevlar fibers could wash away from tank liners into all four engine fuel systems on the airplane. That condition, if not corrected, could cause contamination of any or all of the four airplane engine fuel control units, causing power loss or one or more engines to shutdown.

**Manufacturer's Service Information**

RR has issued Olympus 593 Mandatory Service Bulletin (MSB) No. OL.593–73–9093–109, Revision 1, dated November 23, 2001, that specifies instructions for initial and repetitive engine fuel filter inspections and fuel sample analysis. The CAA classified this service bulletin as mandatory and issued AD 004–11–2001 in order to ensure the airworthiness of these RR engines in the UK.

**Bilateral Airworthiness Agreement**

This engine model is manufactured in the UK 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 CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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.

**FAA's Determination of an Unsafe Condition and Required Actions**

Although none of these affected engines are used on any airplanes that are registered in the United States, the possibility exists that these engines could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other RR Olympus 593 Mk. 610–14–28 turbojet engines of the same type design, this AD is being issued to prevent contamination of any or all of the four airplane engine fuel control units, causing power loss or one or more engines to shutdown. This AD requires initial and repetitive engine fuel filter inspections and fuel sample analysis. The actions must be done in accordance with the service bulletin described previously.

**Immediate Adoption of This AD**

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–30–AD.'' The postcard will be date stamped and returned to the commenter.

**Regulatory Analysis**

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2002–25–06 Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A.:** Amendment 39–12981. Docket No. 2002–NE–30–AD.

**Applicability**

This airworthiness directive (AD) is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. (RR) Olympus 593 Mk. 610–14–28 turbojet engines, installed in BAe/SNIAS Concorde Type 1 airplanes that have been modified in accordance with Airbus Concorde service bulletins No.'s SST 57–078, SST 57–079, SST 57–080, and SST 57–082. These engines are installed on, but not limited to, BAe/SNIAS Concorde Type 1 airplanes.

**Note 1:** This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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**

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

To prevent contamination of any or all of the four airplane engine fuel control units, causing power loss or one or more engines to shutdown, do the following after the effective date of this AD:

(a) Perform initial and repetitive engine fuel filter inspections in accordance with 2.A. of Accomplishment Instructions of RR Olympus 593 Mandatory Service Bulletin (MSB) OL.593–73–9093–109, Revision 1, dated November 23, 2001.

(b) Perform initial and repetitive fuel sample analysis in accordance with 2.B. of Accomplishment Instructions of RR Olympus 593 MSB OL.593–73–9093–109, Revision 1, dated November 23, 2001.

**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, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

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

**Special Flight Permits**

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

**Documents That Have Been Incorporated By Reference**

(e) The fuel filter inspections and fuel sample analysis must be done in accordance with Rolls Royce Olympus 593 MSB OL.593–73–9093–109, Revision 1, dated November 23, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England, telephone 011 7979 6060; fax 011 7979 7234. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in CAA airworthiness directive 004–11–2001, dated November 2001.

**Effective Date**

(f) This amendment becomes effective on January 2, 2003.

Issued in Burlington, Massachusetts, on December 6, 2002.

**Jay J. Pardee,**

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

[FR Doc. 02–31473 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

## DEPARTMENT OF THE INTERIOR

## Office of Insular Affairs

## 15 CFR Part 303

**[Docket No. 991228350–2301–04]**

**RIN 0625–AA57**

## Changes in the Insular Possessions Watch, Watch Movement and Jewelry Program

**AGENCIES:** Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

**ACTION:** Final rule.

**SUMMARY:** The Departments amend their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The rule amends ITA regulations by clarifying the meaning of ''permanent resident,'' which is a term used in Public Law 97–446 and the current regulations.

**EFFECTIVE DATE:** January 17, 2003

**FOR FURTHER INFORMATION CONTACT:** Faye Robinson, (202) 482–3526.

**SUPPLEMENTARY INFORMATION:** We published proposed regulatory revisions on August 29, 2002 (67 FR 55375). We received a letter from one commenter. The commenter stated that a definition for ''permanent resident'' is probably unnecessary but that, if there must be a definition, it should afford greater flexibility, particularly with respect to the 183 day per year residency requirement.

The commenter also pointed out that management employees at program companies who are responsible for administrative, sales and marketing activities are frequently required to travel outside the insular possessions and, therefore, may not be able to meet the 183 day residency requirement even though they permanently reside in the insular possessions. The Departments find this argument unpersuasive. It has been the Departments' experience in administering the program over the years that most program companies have related companies based in the United States which handle almost all of their sales and marketing functions. Indeed, we are aware that most managers in the insular possessions do not go to the United States even once a year. When they do come to the United States, we understand that few, if any, spend more than two weeks a year away from the insular possessions because of their primary responsibility to oversee day-to-day manufacturing operations, do related paperwork and make shipments. We are also aware that people who handle sales and marketing of the watches and jewelry have appropriately been from related companies located in the United States, because that is where the sales activity takes place.

The commenter also stated that the 183 day residency requirement could result in denial of program benefits if an employee moved permanently to the insular possessions with less than six months left in the calendar year; if the employee has been a lifelong resident and leaves or retires or dies prior to July; or if the employee quits or is fired and moves away from the insular possession after less than six months in the insular possession. Although the commenter's hypothetical scenarios could occur, we believe they reflect rare and exceptional circumstances. It is our opinion that rules having general applicability are most firmly grounded in, and should reflect an awareness of, the usual and unexceptional, not the exceptional. Were such hypothetical exceptions to occur, watch and jewelry companies may avail themselves of the Departments' appeal procedures which are provided for in 19 CFR 303.13 and 303.21. These appeal procedures are specifically designed to accommodate such unusual circumstances. As in the past, we will continue to give due consideration to any such appeals for relief in an expeditious manner in order to avoid inequitable outcomes.

In summary, we would like to point out that the vast majority of employees in the insular possessions watch and jewelry program have only one residence and work in the insular possessions for over 183 days a year.

This rule merely clarifies the eligibility requirements for the few who have one residence in the insular possessions and one or more residences outside the insular possessions. The regulation is nothing more than a codification of the Departments' longstanding practice. The codification is necessary because of several recent inquiries and challenges regarding the Departments' practice in administering the ''permanent resident'' requirement. The six months (183 day) residency requirement has been a matter of administrative practice since the beginning of the program in 1967 and was more formally included in the Annual Application (Form ITA–334P) in 1982. This regulation is intended to clarify the term ''permanent resident'' in order to make the Departments'' practice more predictable and less open to ambiguous interpretation.

Accordingly, we are adopting the proposed new definition in final form. The insular possessions watch industry provision in Sec. 110 of Pub. L. No. 97–446 (96 Stat. 2331) (1983), as amended by Sec. 602 of Pub. L. No. 103–465 (108 Stat. 4991) (1994); additional U.S. Note 5 to chapter 91 of the Harmonized Tariff Schedule of the United States (''HTSUS''), as amended by Pub. L. 94–241 (90 Stat. 263)(1976) requires the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands (''CNMI''). After the Departments have verified the data submitted on the annual application (Form ITA–334P), the producers' duty-exemption allocations are calculated from the territorial share in accordance with 15 CFR 303.14 and each producer is issued a duty-exemption license. The law further requires the Secretaries to issue duty-refund certificates to each territorial watch and watch movement producer based on the company's duty-free shipments and creditable wages paid during the previous calendar year.

Pub. L. 106–36 (113 Stat. 127) (1999) authorizes the issuance of a duty-refund certificate to each territorial jewelry producer for any article of jewelry provided for in heading 7113 of the HTSUS which is the product of any such territory. The value of the certificate is based on creditable wages paid and duty-free units shipped into the United States during the previous calendar year. Although the law specifically mentions the U.S. Virgin Islands, Guam and American Samoa, the issuance of the duty-refund certificate would also apply to the CNMI due to the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. 94–241), which states that goods from the CNMI are entitled to the same tariff treatment as imports from Guam. *See also* 19 CFR 7.2(a). In order to be considered a product of such territories, the jewelry must meet the U.S. Customs Service substantial transformation requirements (the jewelry must become a new and different article of commerce as a result of production or manufacture performed in the territory). To receive duty-free treatment, the jewelry must also satisfy the requirements of General Note 3(a)(iv) of the HTSUS and applicable Customs Regulations (19 CFR 7.3).

**Amendments**

We amend Subpart A § 303.2(a) by adding paragraph (a)(16) and Subpart B § 303.16(a) by adding paragraph (a)(11) to provide a definition for ''permanent resident'' in order to clarify the meaning of the term solely for purposes of the insular possessions watch and jewelry program. The program was designed to spur local employment by giving producers benefits based on creditable wages paid to local people who were permanently domiciled in the insular possessions. Therefore, the Annual Application (Form ITA–334P) has always required each applicant to state the wages paid to employees who did not reside and work in the territory for at least six months during the calendar year so that the wages paid to non-residents could be deducted from the total wages before the creditable wages benefits were calculated. The program was not designed to give benefits based on creditable wages paid to program owners, shareholders or employees who are not domiciled in the insular possessions. The definition continues to provide producers with benefits based on creditable wages including the creditable wages paid to program workers who meet the permanent resident criteria which require a person with one or more residences outside the insular possessions to maintain his or her domicile in the insular possessions, to reside (*i.e.*, be physically present for at least 183 days per year) and work in the territory at a program company, and to maintain his or her principal office for day-to-day work in the insular possessions. It is the responsibility of the party to provide documentation for the 183 day claim, if it is requested by the Departments. There will continue to be no benefits based on wages paid to persons who do not meet these permanent resident criteria.

**Administrative Law Requirements**

*Regulatory Flexibility Act.* In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule. No comments were received regarding the economic impact of this final rule. As a result, no final regulatory flexibility analysis was prepared.

*Paperwork Reduction Act.* This rulemaking does not involve new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Collection activities are currently approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

*E.O. 12866.* It has been determined that this rulemaking is not significant for purposes of Executive Order 12866.

**List of Subjects in 15 CFR Part 303**

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, the Departments amend 15 CFR Part 303 as follows:

## PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAM

1. The authority citation for 15 CFR Part 303 continues to read as follows:

**Authority:** Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat. 127, 167.

2. Section 303.2 is amended by adding paragraph (a)(16) as follows:

**§ 303.2 Definitions and forms.**

(a) * * *

(16) *Permanent resident* means a person with one residence which is in the insular possessions or a person with one or more residences outside the insular possessions who meets criteria that include maintaining his or her domicile in the insular possessions, residing (*i.e.*, be physically present for at least 183 days per year) and working in the territory at a program company, and maintaining his or her primary office for day-to-day work in the insular possessions.

* * * * *

3. Section 303.16 is amended by adding paragraph (a)(11) as follows:

**§ 303.16 Definitions and forms.**

(a) * * *

(11) *Permanent resident* means a person with one residence which is in the insular possessions or a person with one or more residences outside the insular possessions who meets criteria that include maintaining his or her domicile in the insular possessions, residing (*i.e.*, be physically present for at least 183 days per year) and working in the territory at a program company, and maintaining his or her primary office for day-to-day work in the insular possessions.

* * * * *

**Faryar Shirzad,**

*Assistant Secretary for Import Administration, Department of Commerce.*

**David B. Cohen,**

*Deputy Assistant Secretary for Insular Affairs, Department of the Interior.*

[FR Doc. 02–31892 Filed 12–17–02; 8:45 am]

**BILLING CODE 3510–DS–P; 4310–93–P**

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 4

## Commodity Pool Operators and Commodity Trading Advisors

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') has adopted amendments which govern Commodity Pool Operators (''CPOs'') and Commodity Trading Advisors (''CTAs''). These amendments make clear that certain Disclosure Documents, annual financial reports, notices of eligibility, claims of exemption, and requests for extensions of time to file annual financial reports, need only be filed with the National Futures Association (''NFA'') and need not also be filed with the Commission. The Commission, in separate Notices and Orders published elsewhere in the **Federal Register,** has authorized NFA to receive and review these documents.

**DATES:** Effectice January 1, 2003. Amendments to Commission Rules 4.7(b)(3)(i) and 4.22 shall be applicable with regard to commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter.

**FOR FURTHER INFORMATION CONTACT:** Kevin P. Walek, Assistant Director, Eileen R. Chotiner, Futures Trading Specialist, Audit and Financial Review Section, or Michael A. Piracci, Attorney Advisor, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In a Notice and Order issued in 1997 (the ''1997 Order''), the Commission, among other things, authorized NFA to process: (1) Notices of eligibility for exclusion for certain otherwise regulated persons from the definition of CPO, pursuant to Commission Rule 4.5;[1] (2) notices of claim for exemption from certain part 4 requirements with respect to commodity pools and CTAs whose participants or clients are qualified eligible persons, pursuant to Commission Rule 4.7; (3) claims of exemption from certain part 4 requirements for CPOs with respect to pools that principally trade securities, pursuant to Commission Rule 4.12(b); (4) statements of exemption from registration as a CPO, pursuant to Commission Rule 4.13; and (5) notices of exemption from registration as a CTA for certain persons registered as an investment adviser, pursuant to Rule 4.14(a)(8).[2] As part of the 1997 Order, the Commission also authorized NFA to receive and review Disclosure Documents required to be filed with the Commission by CPOs, pursuant to Commission Rule 4.26(d), with regard to ''privately offered'' [3] commodity pools, and CTAs, pursuant to Commission Rule 4.36(d).[4]

In a separate notice published elsewhere today in the **Federal Register**, the Commission is authorizing NFA, with regard to commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter, to, among other things: (1) Rceive and review annual financial reports required to be filed by CPOs pursuant to Commission Rules 4.7(b)(3) and 4.22(c); (2) receive and grant or deny applications filed pursuant to Commission Rule 4.22(f)(1) for extensions of time to distribute annual financial reports; and (3) process notices of claims of extension of time to distribute and file annual financial reports filed pursuant to Commission Rule 4.22(f)(2).

### II. Rule Amendments

In the 1997 notice and order and the notice and order published elsewhere in the **Federal Register** today, the Commission noted that NFA Compliance Rule 2–13 [5] requires NFA members to file with NFA copies of any documents required to be filed with the Commission pursuant to part 4 of the Commission's Rules. Moreover, certain of the Commission rules that are the subject of the orders explicitly require that the document be filed with both NFA and the Commission.[6] As a result of the Commission authorizations, it is no longer necessary for the Commission to receive copies of these documents. As discussed more fully in the notice published elsewhere today in the **Federal Register**, the Commission will have immediate electronic access to all required pertinent information contained in these documents. Moreover, if the Commission or Commission staff requires a hard copy of any of the subject documents, NFA will make such copies available within 24 hours. Accordingly, it is not necessary for the Commission to impose upon the persons filing these documents the burden and cost of having to file the documents with both NFA and the Commission. The Commission is, therefore, amending the subject rules to make clear that the required documents

[1] Commission rules referred to herein may be found at 17 CFR ch. I (2002).

[2] *See* 62 FR 52088 (Oct. 6, 1997).

[3] *See* note 2, *supra.* Pursuant to Commission Rule 4.24(d)(3)(i), ''privately offered'' commodity pools are those offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*).

[4] Pursuant to Commission Rule 4.24(d)(3)(i), privately offered commodity pools are those that are offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*).

[5] NFA Rules may be found on NFA's Web site at: *http://www.nfa.futures.org.*

[6] *See,* e.g., Commission Rule 4.14(a)(8)(v).

need only be filed with NFA and need not also be filed with the Commission.[7]

Generally, the amendments being adopted herein are simply removing the phrase ''the Commission'' and, where appropriate, adding in its place ''the National Futures Association.'' [8] In the 1997 Order, the Commission authorized NFA to review Disclosure Documents that CPOs are required to file, pursuant to Commission Rule 4.26(d), with regard to only those Disclosure Documents filed for ''privately offered'' pools. The Commission, therefore, continues to receive and review Disclosure Documents for pools that are not ''privately offered.'' Accordingly, Rule 4.26(d) is being amended by adding paragraph (d)(3) to make clear that Disclosure Documents for pools that are not ''privately offered'' must be filed with the Commission, as well as any subsequent amendments to such Disclosure Documents.

## III. Effective Date

The amendments adopted by the Commission herein shall be effective January 1, 2003, except for the amendments to Commission Rules 4.7(b)(3) and 4.22, which involve the annual financial reports of commodity pools and extensions of time for filing such reports. As discussed in the notice published elsewhere today in the **Federal Register**, in order to avoid disruption of outstanding reviews of annual financial reports, this authorization is effective only with regard to commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter. Accordingly, the amendments to Rules 4.7(b)(3) and 4.22 are similarly effective only with regard to commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter. CPOs, therefore, must continue to file annual financial reports and extensions of time for such reports with both the Commission and NFA regarding any commodity pool annual financial reports for fiscal years ending prior to December 31, 2002.

## IV. Related Matters

### *A. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (''PRA'') [9] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The rule amendments do not require a new collection of information on the part of any entities subject to the proposed rule amendments. Accordingly, for purposes of the PRA, the Commission certifies that these rule amendments will not impose any new reporting or recordkeeping requirements.

### *B. Cost-Benefit Analysis*

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, sction 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

These amendments are intended to minimize the filing burdens imposed upon CPOs and CTAs by making clear that the subject documents need only be filed with NFA and not also the Commission. The Commission is considering the costs and benefits of these rules in light of the specific provisions of section 15(a) of the Act:

1. *Protection of market participants and the public.* While the amendments are expected to lessen the filing burdens imposed upon CPOS and CTAs, they do not reduce the type of information and documents that must be provided to customers of CPOs and CTAs. Moreover, these documents will continue to be reviewed for compliance with the Act and Commission Rules. Accordingly, the amendments being adopted herein should have no effect on the Commission's ability to protect market participants and the public.

2. *Efficiency and competition.* The amendments, by requiring that the subject documents need only be filed with NFA and not also the Commission, should increase the efficiency with which CPOs and CTAs comply with the applicable regulations.

3. *Financial integrity of futures markets and price discovery.* The amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. *Sound risk management practices.* The amendments being adopted herein should have no effect on the risk management practices of the futures and options industry.

5. *Other public interest considerations.* The amendments should make compliance with the applicable Commission rules more efficient without imposing any costs to the regulatory oversight of commodity registrants.

After considering these factors, the Commission has determined to adopt the amendments discussed above.

### *C. Administrative Procedure Act*

The Commission has determined that the amendments discussed herein relate solely to agency organization, procedure, and practice. Accordingly, the provisions of the Administrative Procedure Act that generally require notice of proposed rulemaking and that provide other opportunities for public participation are not applicable.[10] The Commission further finds that, because the amendments relieve a restriction as to the required filing of documents and the amendments have no adverse effect upon a member of the public, there is good cause to make them effective less than thirty days after publication in the **Federal Register.**[11]

## List of Subjects in 17 CFR Part 4

Reporting and recordkeeping requirements.

For the reasons discussed in the foregoing, the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

## PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 6b, 6c, 6(c), 6l, 6m, 6n, 6o, 12a, and 23.

2. Section 4.5 is amended as follows:

a. By amending the introductory text of paragraph (c) by removing

[7] The Commission rules being amended herein are rule: (1) 4.5; (2) 4.7; (3) 4.12; (4) 4.13; (5) 4.14; (6) 4.22; (7) 4.26; and (8) 4.36.

[8] *See* the amendments to Commission Rule 4.5 being adopted herein.

[9] 44 U.S.C. 3501 *et seq.*

[10] 5 U.S.C. 553(b)(3)(A) (1994).

[11] *See* 5 U.S.C. 553(d) (1994).

''Commission'' and by adding in its place ''National Futures Association'';

b. By amending paragraph (c)(3) by removing ''Commission'' and adding in its place ''National Futures Association'';

c. By amending paragraph (d)(1) by removing ''Commission'' and adding in its place ''National Futures Association'';

d. By removing paragraph (f)(3); and

e. Redesignating paragraph (f)(4) as (f)(3).

3. Section 4.7 is amended as follows:

a. By amending paragraph (b)(3)(i) by removing ''the Commission and'';

b. By amending paragraph (d)(1)(viii) by removing ''in duplicate with the Commission at the address specified in § 4.2 and'';

c. By amending paragraph (d)(1)(ix) by removing every instance of ''Commission'' and adding in its place ''National Futures Association'';

d. By revising paragraph (d)(2); and

e. By amending paragraph (d)(3) by removing ''Commission'' and adding in its place ''National Futures Association''.

The revisions read as follows:

**§ 4.7 Exemption from certain Part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.**

* * * * *

(d) * * *

(2) The notice will be effective upon receipt by the National Futures Association with respect to each pool for which it was made where the claimant is a commodity pool operator and otherwise generally where the claimant is a commodity trading advisor; *Provided,* That any notice which does not include all the required information shall not be effective, and that if at the time the National Futures Association receives the notice an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the pool operator or trading advisor or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the National Futures Association and that in such case an exemption may be denied by the Commission or the National Futures Association or made subject to such conditions as the Commission or the National Futures Association may impose.

* * * * *

**§ 4.12 [Amended]**

4. Section 4.12 is amended as follows:

a. By amending the introductory text of paragraph (b)(3) by removing ''Commission'' and adding in its place ''National Futures Association'';

b. By removing paragraph (b)(3)(vii);

c. By redesignating paragraph (b)(3)(viii) as (b)(3)(vii) and by amending paragraph (b)(3)(vii) as redesignated by removing ''A copy also must be'' and adding in its place ''Be''; and

d. By amending paragraph (b)(5)(ii) by removing ''Commission'' and adding in its place ''National Futures Association''.

**§ 4.13 [Amended]**

5. Section 4.13 is amended as follows:

a. By removing paragraph (b)(1)(iv)(A); and

b. By redesignating paragraph (b)(1)(iv)(B) as (b)(1)(iv)(A).

6. Section 4.14 is amended as follows:

a. By amending paragraph (a)(8)(iii) by removing ''Commission'' and adding in its place ''National Futures Association'';

b. By removing paragraph (a)(8)(v)(C); and

c. By redesignating paragraph (a)(8)(v)(D) as (a)(8)(v)(C) and by amending paragraph (a)(8)(v)(C) as redesignated by removing ''A copy also must be filed'' and adding in its place ''Filed''.

**§ 4.22 [Amended]**

7. Section 4.22 is amended as follows:

a. By amending the introductory text of paragraph (c) by removing ''two copies of the Report with the Commission'' and adding in its place ''a copy of the Report with the National Futures Association'' and by removing ''Commission'' and adding in its place ''National Futures Association'';

b. By amending paragraph (f)(1) by removing every instance of ''Commission' and adding in its place ''National Futures Association''; and

c. By amending paragraph (f)(2)(i) by removing ''and the Commission''.

8. Section 4.26 is amended by revising paragraph (d) to read as follows:

**§ 4.26 Use, amendment and filing of Disclosure Document.**

* * * * *

(d) Except as provided by § 4.8 and paragraph (d)(3) of this section:

(1) The commodity pool operator must file with the National Futures Association one copy of the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver such Document or documents to a prospective participant in the pool; and

(2) The commodity pool operator must file with the National Futures Association one copy of the subsequent amendments to the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

(3) With respect to pools that are not offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*), a commodity pool operator must:

(i) File with the Commission one copy of the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver such Document or documents to a prospective participant in the pool; and

(ii) File with the Commission one copy of the subsequent amendments to the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

**§ 4.36 [Amended]**

9. Section 4.36(d) is amended by removing every instance of ''Commission'' and adding in its place ''National Futures Association''.

Issued in Washington, DC, on December 11, 2002, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02–31685 Filed 12–17–02; 8:45 am]

BILLING CODE 6351–01–P

## DEPARTMENT OF THE TREASURY

## 17 CFR Part 420

**RIN 1505–AA88**

## Government Securities Act Regulations: Large Position Rules

**AGENCY:** Office of the Assistant Secretary for Financial Markets, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury (''Treasury,'' ''We,'' or ''Us'') is

issuing in final form an amendment to the reporting requirements pertaining to very large positions in certain Treasury securities. The regulations are issued under the Government Securities Act Amendments of 1993 (''GSAA''). The purpose of the rules is to provide Treasury with information to better understand the causes of market shortages in certain Treasury securities. With the exception of one minor clarification, we are adopting the changes as proposed. We believe the changes made to the rules by this amendment will improve the information available to Treasury. Specifically, the amendment modifies the report to require separate reporting of certain components of the ''net trading position'' and the ''gross financing position.'' The amendment revises the current ''memorandum'' item to require that the par amount of securities delivered through repurchase agreements be separated by maturity classification. In addition, it adds a new memorandum item to the large position report to require that the gross par amount of ''fails to deliver'' be reported. Finally, the amendment also modifies the definition of ''gross financing position'' to eliminate the optional exclusion in the calculation of the amount of securities received through certain financing transactions.

**EFFECTIVE DATE:** This amendment is effective January 17, 2003.

**ADDRESSES:** You may download this final rule from the Bureau of the Public Debt's Web site at *www.publicdebt.treas.gov.* It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Lori Santamorena (Executive Director), Lee Grandy (Associate Director), or Kevin Hawkins (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632 or e-mail us at *govsecreg@bpd.treas.gov.*

**SUPPLEMENTARY INFORMATION:** We re-examined the ''large position rules'' [1] and on July 31, 2002, published proposed amendments to the rules that would improve the information available to Treasury to better understand the causes of market shortages in certain Treasury securities. [2] In this notice, we first provide background on the rules and why we are changing them. Next we discuss the public comments we received in response to the proposed rulemaking, and then we describe the final amendments. As explained below, we are adopting the proposed changes with one minor clarification.

## I. Background

### *A. Statutory Authority*

In response to short squeezes in two-year Treasury notes that occurred in the government securities market in 1990–1991, Congress included in the GSAA [3] a provision granting Treasury new authority to prescribe rules requiring any person or entity holding, maintaining, or controlling large positions in to-be-issued or recently-issued Treasury securities to keep records and, when requested by Treasury, to file reports of such large positions. The provision was intended to improve the information available to Treasury, the Federal Reserve Bank of New York (as Treasury's agent), and the Securities and Exchange Commission (referred to as ''regulators'' in this document) regarding very large positions in Treasury securities held by market participants and to ensure that regulators have the tools necessary to understand unusual conditions in the Treasury securities market.

### *B. Reporting and Recordkeeping Requirements*

The rules provide for an ''on-demand'' reporting system rather than a regular, ongoing system of reporting.[4] Large position reports must be filed with the Federal Reserve Bank of New York (''FRBNY'') in response to a notice from us requesting large position information on a specific issue of a Treasury security by entities with positions that equal or exceed the reporting threshold specified in the notice (currently not less than $2 billion). The notice is in the form of a press release we issue and subsequently publish in the **Federal Register**. We also provide the press release to major news and financial publications and wire services for dissemination. An electronic mailing list for notification of calls for large position reports that was implemented in 1998 is also available at Public Debt's website at the address provided earlier in this rule. This provides market participants with information about calls for large position reports in the most timely and efficient manner. The reports must be received by the FRBNY before noon Eastern time on the fourth business day after the issuance of the Treasury press release calling for large position information.

A ''reportable position'' is the sum of the net trading position, the gross financing position and the net fails position in a specified issue of a Treasury security collectively controlled by a reporting entity.[5] All positions are required to be reported at par value on a trade date basis.

The recordkeeping requirements provide that any person or entity controlling at least a $2 billion position in a specific Treasury security must maintain and preserve certain records that enable the entity to compile, aggregate and report large position information.[6]

### *C. Who Is Subject to the Rules*

Treasury's large position recordkeeping and reporting rules apply to all persons and entities, foreign and domestic, that control a reportable position in a Treasury security, such as: government securities brokers and dealers; registered investment companies; registered investment advisers; custodians, including depository institutions, that exercise investment discretion; hedge funds; pension funds; insurance companies; and foreign affiliates of U.S. entities.[7] The broad application of the rule to include both foreign and domestic entities is consistent with the statutory purpose of the GSAA.[8]

We reiterate that large positions are not inherently harmful, and that there is no presumption of manipulative or illegal intent on the part of the controlling entity merely because its position is large enough to be subject to Treasury's rules.

### *D. Proposed Rulemaking*

Since the rules became effective in 1997, we have conducted annual calls for reports to test the accuracy and reliability of large position reporting systems. These tests have given us

[1] The rules were issued on September 12, 1996 (61 FR 48338) and were effective on March 31, 1997. They established a new part 420 of the regulations issued by Treasury in 17 CFR, Chapter IV, Subchapter A, providing recordkeeping and reporting requirements related to very large positions in certain Treasury securities.

[2] 67 FR 49630 (July 31, 2002).

[3] Pub. L. No. 103–202, 107 Stat. 2344 (15 U.S.C. 78o–5(f))(1993).

[4] See *supra* note 1.

[5] 17 CFR 420.2(h).

[6] 17 CFR 420.4

[7] The rules provide a total exemption for foreign central banks, foreign governments and international monetary authorities (*e.g.,* the World Bank) (collectively, foreign official organizations). Federal Reserve Banks are also exempt for the portion of any reportable position they control for their own account.

[8] H.R. Rep. No. 103–255 (September 23, 1993).

valuable experience and insight as we consider how to improve the information provided to regulators. This experience, in addition to our ongoing need to take into account the liquidity and efficiency of the Treasury securities market, caused us to re-examine the rules and issue a proposed rulemaking on July 31, 2002.[9] The modifications that were proposed reflected our continuing need for the ability to obtain useful information, while minimizing the costs and burdens on market participants.

The proposed rulemaking requested public comment on changes to the large position rules that would require:

- Separate reporting of the par amount of each of the five components of the ''net trading position;''
- Separate reporting of the total par amount of securities received through reverse repurchase agreements by maturity classification in the ''gross financing position'' (*i.e.*, either ''overnight and open'' or ''term'');
- Separate reporting in the current memorandum item of the total par amount of securities delivered through repurchase agreements by maturity classification (*i.e.*, either ''overnight and open'' or ''term'');
- Reporting of the amount of ''fails to deliver'' in a new memorandum item; and
- Elimination of the optional exclusion in the calculation of the ''gross financing position'' for the amount of securities received through certain financing transactions.[10]

## II. Comments Received in Response to the Proposed Rulemaking

We received one comment letter in response to the proposed rulemaking, from The Bond Market Association (TBMA).[11] Overall, TBMA was supportive of the proposed rule. The commenter noted that more detailed reporting of the net trading and gross financing positions would require many reporting entities to reconfigure their internal systems used to generate large position reports, thus increasing compliance costs. However, TBMA deemed the modifications appropriate because they should improve the depth of information available to Treasury and other regulators thereby enhancing transparency and enabling regulatory authorities to better understand the causes of market shortages of Treasury securities.''

TBMA suggested that we extend the current three and a half day reporting deadline to a full four business days. The commenter asserted that the broader reporting obligations could be ''unduly burdensome'' for entities that must consolidate information from global affiliates into a single report. The commenter also suggested that Treasury move the release time for the announcement of calls for large position reports to 8:00 a.m. (EST).

As noted above, TBMA was supportive of requiring more detailed reporting of the gross financing position. However, TBMA urged ''Treasury to clarify in the final rule that the specific maturity date for a term repo transaction does not need to be reported.''

TBMA was fully supportive of eliminating the optional exclusion in the calculation of the gross financing position for certain transactions, including where the counterparty retains the right to substitute securities. The commenter stated that, ''The proposed change would create a simpler and more unambiguous rule,'' that would ''reduce compliance costs'' and ''ensure consistent treatment of overnight reverse repurchase transactions and term repurchase transactions where the counterparty retains a technical right of substitution.''

## III. Amendment to the Rule

After considering the one comment letter received, we are adopting the amendment essentially as proposed with a clarification recommended by the commenter. As recommended, we are clarifying in the rule amendment our intention that specific maturity dates for term repurchase agreements and term reverse repurchase agreements not be reported. That means that only the total dollar amount of the outstanding contracts for term repurchase agreements and term reverse repurchase agreements, respectively, are to be reported.

Accordingly, § 420.3(c)(1) and (c)(3), and Appendix B are revised to require that each of the five components in § 420.2(f)(1)–(5) that, together, comprise the ''net trading position,'' to be reported separately. As we stated in the proposed rulemaking, since entities already are collecting this information to calculate their total net trading position, we believe that the separation of these components should not prove to be very burdensome.

Section 420.3(c)(1) and (c)(3), and Appendix B are revised to require entities to separate the reverse repurchase agreement components by maturity classification (*i.e.*, break out reverse repurchase agreements as either ''overnight and open'' or ''term'') in the reporting of the gross financing position. Similarly, the current memorandum item is revised to require that the total gross par amounts of securities delivered through repurchase agreements be reported by maturity classification. As previously discussed, a clarification has been added that only the total dollar amount of term reverse repurchase agreements and term repurchase agreements, respectively, is to be reported. We believe the separate reporting of these individual components in the large position formula, as well as the separation of reverse repurchase agreements and repurchase agreements by maturity classification, will help us to better understand the reporting entity's degree of control and economic interest in the particular security.

Section 420.3(c)(2) and Appendix B are revised to add a second memorandum item to the large position information for the gross par amount of ''fails to deliver.'' This will help us to better understand a reporting entity's fails situation without increasing the burden on reporting entities since fails to deliver are already factored into the ''net fails position'' component.

Finally, the definition of ''gross financing position'' is revised at § 420.2(c) to eliminate in its entirety the optional exclusion for certain securities received through financing transactions. A conforming change is also made to item #2 ''Gross Financing Position'' in appendix B to part 420 (Sample Large Position Report) to reflect the elimination of the optional exclusion. This means that a reporting entity may no longer elect to reduce its gross financing position by the par amount of the securities received in transactions: in which the counterparty retains the right to substitute securities; that are subject to third party custodial relationships; or that are hold-in-custody agreements. We believe this change will enhance the usefulness of the large position reports to regulators. We agree with the commenter that this change will result in a simpler and more unambiguous rule.

Regarding the commenter's request that Treasury extend the current three and one-half day reporting deadline to a full four days, and also that Treasury move the release time for the announcement of calls for large position reports to 8 a.m. EST, we have decided

[9] See *supra* note 2.

[10] Currently, § 420.2(c) provides that a reporting entity may elect to reduce its gross financing position by the par amount of the securities received in transactions: in which the counterparty retains the right to substitute securities; that are subject to third party custodial relationships; or that are hold-in-custody agreements.

[11] The proposed rule, and the comment letter, dated September 16, 2002, are available for downloading on the Internet, and for inspection and copying at the Treasury Department Library at the address provided earlier in this final rule.

not to change the current rule. We have given consideration to this comment and are sympathetic to market participants' concerns regarding the time needed for some reporting entities to coordinate with overseas affiliates, aggregate position totals and file a single consolidated large position report. However, to be balanced against these concerns is the need for reports to be filed quickly in order to accomplish the purpose of the rules. If unusual market conditions or a pricing anomaly exist, we believe three and one-half days is a significant amount of time for regulators to wait for the reports that will enable us to make better and more timely decisions to ensure the integrity, liquidity and efficiency of the Treasury market. Also, although we will attempt to release announcements of large position calls in the morning when possible, Treasury must retain the flexibility to announce a call at any time of the day due to market developments and our need to quickly obtain information on market shortages. Market participants with very large positions should be prepared for an announcement of a call for large position reports at any time.

We believe the notification of calls for large position reports e-mail list that has been available at Public Debt's Web site since 1998 has provided a valuable electronic service. Anyone signing up is promptly notified anytime Treasury announces a call for large position reports, with a link provided in the e-mail message to the actual Press Release announcing the call. We understand that market participants, including many affiliates, have found that this enhanced system for dissemination of call announcements has been very useful in providing them with the call information in a more timely and efficient manner.

To allow market participants sufficient time to make necessary preparations for compliance, we are providing for a 30-day delayed effective date from the date of publication in the **Federal Register** of the amendment to the rules.

## IV. Special Analysis

The regulations are not a ''significant regulatory action'' pursuant to Executive Order 12866.

We certify under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that these amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. We continue to believe that small entities will not control positions of $2 billion or greater in any particular Treasury security. The inapplicability of these amendments to small entities indicates there is no significant impact. As a result, a regulatory flexibility analysis is not required.

The collections of information contained in the final amendments have been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995.[12] Under the Act, 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 OMB control number.

The collection of information in the final amendments is contained in § 420.3. The rules at § 420.3 continue to require a reporting entity whose position equals or exceeds the announced large position threshold for a specific issue of a Treasury security to report the information to FRBNY. We believe few reporting entities would actually have to file reports because the minimum reporting threshold ($2 billion) remains high. Moreover, we expect that our requests for information will be infrequent. We plan to continue testing the reporting and recordkeeping systems of market participants by requesting large position reports at least annually. The threshold limit will be determined based on market conditions at the time of the call.

We do not believe that market participants would find the additional ''fails to deliver'' memorandum item burdensome since they already determine this figure when calculating their ''net fails position'' on line 3 of the existing large position report. The ''fails to deliver'' memorandum item is simply a place for reporting entities to record a previously derived number.

We also do not anticipate that the elimination of the voluntary optional exclusion within the ''gross financing position'' would be a significant inconvenience for market participants. It is unlikely that removing this exclusion from the large position calculation would increase the time burden that entities face when calculating their positions, although it may result in more entities filing large position reports.

We believe the separate reporting of the ''net trading position'' components would not be very burdensome for market participants since they must already collect this information to calculate their net trading position. We also believe market participants would not find it very burdensome to separate their reporting of reverse repurchase agreements and repurchase agreements by maturity classification. Since the changes taking effect require more detailed information to be provided by reporting entities that file reports in response to a call for reports by Treasury, we increased the annual reporting burden in our submission to OMB by 40 hours, representing an increase from four to eight hours per large position report submitter.

The collection of information is intended to enable the Treasury and other regulators to better understand the possible causes of market shortages in certain Treasury securities. This information would help ensure that the Treasury securities market remains liquid and efficient.

*Estimated total annual reporting burden:* 40 hours.

*Estimated annual number of respondents:* 10.

*Estimated annual frequency of response:* On occasion.

Comments on the accuracy of the estimate for this collection of information or suggestions to reduce the burden should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, DC, 20503; and to the Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street, NW., Room 315, Washington, DC 20239–0001.

**List of Subjects in 17 CFR Part 420**

Banks and banking, Government securities, Investments, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 17 CFR part 420 is amended as follows:

## PART 420—LARGE POSITION REPORTING

1. The authority citation for Part 420 continues to read as follows:

**Authority:** 15 U.S.C. 78o–5(f).

2. Section 420.2 is amended by revising paragraph (c) to read as follows:

### § 420.2 Definitions.

* * * * *

(c) ''Gross financing position'' is the sum of the gross par amounts of a security issue received from financing transactions, including reverse repurchase agreement transactions, bonds borrowed, and as collateral for financial derivatives and other securities transactions (*e.g.*, margin loans). In calculating the gross financing position, a reporting entity may not net its positions against repurchase agreement transactions, securities loaned, or securities pledged as

[12] 44 U.S.C. 3507(d).

collateral for financial derivatives and other securities transactions.

* * * * *

3. Section 420.3 is amended by revising paragraphs (c)(1), (c)(2) and (c)(3) to read as follows:

**§ 420.3 Reporting.**

* * * * *

(c)(1) In response to a notice issued under paragraph (a) of this section requesting large position information, a reporting entity with a reportable position that equals or exceeds the specified large position threshold stated in the notice shall compile and report the amounts of the reporting entity's reportable position in the order specified, as follows:

(i) Net trading position, and each of the following items that together comprise the net trading position:

(A) Cash/immediate net settled positions,

(B) Net when-issued positions for to-be-issued and reopened issues,

(C) Net forward settling positions, including next-day settling,

(D) Net positions in futures contracts requiring delivery of the specific security, and

(E) Net holdings of STRIPS principal components of the specific security;

(ii) Gross financing position and each of the following items that comprise the gross financing position:

(A) Securities received through reverse repurchase agreements by maturity classification:

(*1*) Overnight and open, and

(*2*) Term (report the total dollar amount of the outstanding contracts, summing across maturity dates), and

(B) Securities received through bonds borrowed, and as collateral for financial derivatives and other financial transactions.

(iii) Net fails position; and

(iv) Total reportable position.

(2) The large position report must include the following two additional memorandum items:

(i) The total gross par amounts of securities delivered through:

(A) Repurchase agreements by maturity classification:

(*1*) Overnight and open, and

(*2*) Term (report the total dollar amount of the outstanding contracts, summing across maturity dates), and

(B) Securities loaned, and as collateral for financial derivatives and other securities transactions.

(ii) The gross par amount of ''fails to deliver'' in the security. This total must also be included in Net Fails Position, Line 3.

(3) An illustration of a sample report is contained in Appendix B.

Each of the net trading position components shall be netted and reported as a positive number (long position), a negative number (short position), which should be shown in parenthesis, or zero (flat position). The total net trading position shall also be reported as the applicable positive or negative number (or zero). Each of the components of the gross financing position shall be reported. The total gross financing position, which is the sum of the gross financing position components, shall also be reported. The net fails position should be reported as a single entry. If the amount of the net fails position is zero or less, report zero. The total reportable position, which is the sum of the net trading position, gross financing position, and net fails position, must be reported. Each component of Memorandum 1 shall be reported. The total of Memorandum 1, which is the sum of its components, shall also be reported. Memorandum 2, which is the gross par amount of fails to deliver, shall also be reported. All of these positions should be reported in the order specified above. All position amounts should be reported on a trade date basis and at par in millions of dollars.

* * * * *

4. Appendix B to Part 420 Sample Large Position Report, ''Formula for Determining a Reportable Position,'' is revised to read as follows:

**Appendix B to Part 420—Sample Large Position Report**

FORMULA FOR DETERMINING A REPORTABLE POSITION

[$ Amounts in millions at par value as of trade date]

| | |
|---|---|
| Security Being Reported | $ |
| Date For Which Information is Being Reported | $ |
| 1. Net Trading Position: | |
| Cash/Immediate Net Settled Positions | $ |
| Net When-Issued Positions for To-Be-Issued and Reopened Issues | $ |
| Net Forward Settling Positions Including Next-Day Settling | $ |
| Net Positions in Futures Contracts Requiring Delivery of the Specific Security | $ |
| Net Holdings of STRIPS Principal Components of the Specific Security | $ |
| Total Net Trading Position | $ |
| 2. Gross Financing Position: | |
| Total of securities received through | |
| Reverse Repurchase Agreements | |
| Overnight and Open | $ |
| Term | $ |
| Bonds borrowed, and as collateral for financial derivatives and other financial transactions | $ |
| Total Gross Financing position | $ |
| 3. Net Fails Position | $ |
| (Fails to receive less fails to deliver. If equal to or less than zero, report 0.) | |
| 4. Total Reportable Position | = $ |
| Memorandum 1: | |
| Report the total gross par amounts of securities delivered through | |
| Repurchase Agreements | |
| Overnight and Open | $ |
| Term | $ |
| Securities loaned, and as collateral for financial derivatives and other securities transactions | $ |

FORMULA FOR DETERMINING A REPORTABLE POSITION—Continued

[$ Amounts in millions at par value as of trade date]

| | |
|---|---|
| Total Memorandum 1 | $ |
| Memorandum 2: | |
| Report the gross par amount of fails to deliver. Included in the calculation of line item 3 (Net Fails Position) | $ |

Dated: December 6, 2002.

**Brian C. Roseboro,**

*Assistant Secretary for Financial Markets.*

[FR Doc. 02–31837 Filed 12–17–02; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

**[TD 9027]**

**RIN 1545–AX89**

## Levy Restrictions During Installment Agreements

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to restrictions on levy during the period that an installment agreement is proposed or in effect. The regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998.

**EFFECTIVE DATE:** These regulations are effective December 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Frederick W. Schindler, (202) 622–3620 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6331 of the Internal Revenue Code (Code). The regulations reflect the amendment of section 6331 by section 3462 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685, 764). New section 6331(k) codifies the IRS practice of withholding collection during consideration of a taxpayer's offer to compromise and extends that practice to proposed installment agreements. These regulations deal principally with the effect of subsection 6331(k) when an installment agreement has been proposed and is pending, is in effect, or has been rejected or terminated. On April 17, 2002, a notice of proposed rulemaking (REG–104762–00; 67 FR 18839) reflecting these changes was published in the **Federal Register**. No written comments on the proposed regulations were received. No public hearing was scheduled or held.

### Explanation of Provisions

The regulations provide that, subject to certain exceptions, the IRS may not levy to collect a liability while a taxpayer's proposal to enter into an installment agreement for payment of that liability is pending, for 30 days after rejection of such a proposal, while an installment agreement is in effect, for 30 days after termination of an installment agreement by the IRS, and during a timely filed appeal of a rejection or termination by the IRS. A proposed installment agreement is considered pending when it is accepted for processing by the IRS and remains pending until the IRS accepts or rejects it or the taxpayer withdraws the proposal. The final regulations clarify that the IRS may not accept a proposed installment agreement for processing if jurisdiction over the tax liability at issue has been transferred to the Department of Justice for prosecution or defense. If a proposed installment agreement does not contain sufficient information for the IRS to determine whether the proposal should be accepted, the IRS will request the additional necessary information from the taxpayer and provide a reasonable time period for the taxpayer to respond. The IRS may reject the proposed installment agreement if the requested information is not provided.

Collection by levy is not prohibited if the taxpayer waives the restriction on levy in writing, if the IRS determines that collection of the tax liability is in jeopardy, or if the IRS determines that the proposed installment agreement was submitted solely to delay collection. The exception for proposals submitted solely to delay collection is based on the legislative history accompanying RRA 1998, which explained that Congress did not intend that levy would be prohibited if the IRS determined that an offer to compromise was submitted solely to delay collection. H.R. Conf. Rep. No. 509, 105th Cong., 2d Sess. 288 (1998). Because the legislative history indicates that Congress intended the same restrictions on levy with respect to offers in compromise be applicable to installment agreements, these regulations adopt the same rule with respect to proposed installment agreements.

The regulations provide that the IRS may take actions other than levy to protect the interests of the United States with respect to collection of the liability to which an installment agreement or proposed installment agreement relates. Those actions include, but are not limited to: crediting an overpayment against the liability pursuant to section 6402, filing or refiling notices of Federal tax lien, and taking action to collect from persons liable for the tax but not named in the installment agreement.

The proposed regulations provided that the IRS cannot institute a court proceeding against the taxpayer named in the installment agreement to collect the tax covered by the installment agreement. In the final regulations, this provision has been clarified. It now states that the IRS may not refer a case to the Department of Justice to collect an unpaid tax through a judicial proceeding while levy is prohibited by these regulations. The IRS may, however, authorize the Department of Justice to file a counterclaim in any refund proceeding commenced by a taxpayer, participate in bankruptcy or insolvency cases commenced by or against the taxpayer, or join a taxpayer in any other proceeding in which liability for the tax at issue may be established or disputed. Such proceedings may involve taxes for which more than one person may be jointly and severally liable for the same tax, or may involve persons liable for related liabilities, such as a trust fund recovery penalty under section 6672 or a personal liability for excise tax under section 4103.

While an installment agreement allows the IRS to accept the payment of tax in installments, the agreement does not conclusively establish the taxpayer's liability. A taxpayer therefore is not prohibited from seeking a refund of taxes paid pursuant to an installment agreement. Allowing the IRS to join the taxpayer in a proceeding where the liability for the tax may be established or disputed will protect the Government from having to litigate the same tax in

multiple forums only to face the argument in each separate case (including, potentially, from the taxpayer named in an installment agreement) that the person or persons not party to that suit were solely or principally liable for non-payment of the taxes at issue. The notice of proposed rulemaking stated that if a judgment was obtained against a taxpayer named in an installment agreement, collection would continue to occur pursuant to the terms of the installment agreement. The final regulations clarify that this statement applies only when the Department of Justice refers the case back to the IRS for collection after the judgment is obtained. Section 6331(k) does not limit the collection options of the Department of Justice once a case has been referred to the Department by the IRS.

The regulations provide that the statute of limitations for collection under section 6502 is suspended while a proposed installment agreement is pending, for 30 days after rejection or termination of an installment agreement, and during a timely filed appeal of the rejection or termination decision. The running of the collection statute resumes after an installment agreement takes effect. The statute of limitations for collection shall continue to run if an exception under this section applies and levy is not prohibited with respect to the taxpayer.

These regulations apply to installment agreements proposed or entered into on or after the date final regulations are published in the **Federal Register**. However, the rules set forth in these regulations mirror practices the IRS has been following administratively since the enactment of RRA 1998.

**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 also has 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 regulation does 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 Code, the preceding notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Frederick W. Schindler, Office of the Associate Chief Counsel (Procedure & Administration), Collection, Bankruptcy & Summonses Division.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

**Par. 2.** Sections 301.6331–3 and 301.6331–4 are added to read as follows:

### § 301.6331–3 Restrictions on levy while offers to compromise are pending.

*Cross-reference.* For provisions relating to the making of levies while an offer to compromise is pending, *see* § 301.7122–1.

### § 301.6331–4 Restrictions on levy while installment agreements are pending or in effect.

(a) *Prohibition on levy*—(1) *In general.* No levy may be made to collect a tax liability that is the subject of an installment agreement during the period that a proposed installment agreement is pending with the Internal Revenue Service (IRS), for 30 days immediately following the rejection of a proposed installment agreement, during the period that an installment agreement is in effect, and for 30 days immediately following the termination of an installment agreement. If, within the 30 days following the rejection or termination of an installment agreement, the taxpayer files an appeal with the IRS Office of Appeals, no levy may be made while the rejection or termination is being considered by Appeals. This section will not prohibit levy to collect the liability of any person other than the person or persons named in the installment agreement.

(2) *When a proposed installment agreement becomes pending.* A proposed installment agreement becomes pending when it is accepted for processing. The IRS may not accept a proposed installment agreement for processing following reference of a case involving the liability that is the subject of the proposed installment agreement to the Department of Justice for prosecution or defense. The proposed installment agreement remains pending until the IRS accepts the proposal, the IRS notifies the taxpayer that the proposal has been rejected, or the proposal is withdrawn by the taxpayer. If a proposed installment agreement that has been accepted for processing does not contain sufficient information to permit the IRS to evaluate whether the proposal should be accepted, the IRS will request the taxpayer to provide the needed additional information. If the taxpayer does not submit the additional information that the IRS has requested within a reasonable time period after such a request, the IRS may reject the proposed installment agreement.

(3) *Revised proposals of installment agreements submitted following rejection.* If, following the rejection of a proposed installment agreement, the taxpayer makes a good faith revision of the proposal and submits the revision within 30 days of the date of rejection, the provisions of this section shall apply to that revised proposal.

(4) *Exceptions.* Paragraph (a)(1) of this section shall not prohibit levy if the taxpayer files a written notice with the IRS that waives the restriction on levy imposed by this section, the IRS determines that the proposed installment agreement was submitted solely to delay collection, or the IRS determines that collection of the tax to which the installment agreement or proposed installment agreement relates is in jeopardy.

(b) *Other actions by the IRS while levy is prohibited*—(1) *In general.* The IRS may take actions other than levy to protect the interests of the Government with regard to the liability identified in an installment agreement or proposed installment agreement. Those actions include, for example—

(i) Crediting an overpayment against the liability pursuant to section 6402;

(ii) Filing or refiling notices of Federal tax lien; and

(iii) Taking action to collect from any person who is not named in the installment agreement or proposed installment agreement but who is liable for the tax to which the installment agreement relates.

(2) *Proceedings in court.* Except as otherwise provided in this paragraph (b)(2), the IRS will not refer a case to the Department of Justice for the commencement of a proceeding in court, against a person named in an installment agreement or proposed installment agreement, if levy to collect the liability is prohibited by paragraph

(a)(1) of this section. Without regard to whether a person is named in an installment agreement or proposed installment agreement, however, the IRS may authorize the Department of Justice to file a counterclaim or third-party complaint in a refund action or to join that person in any other proceeding in which liability for the tax that is the subject of the installment agreement or proposed installment agreement may be established or disputed, including a suit against the United States under 28 U.S.C. 2410. In addition, the United States may file a claim in any bankruptcy proceeding or insolvency action brought by or against such person. If a person named in an installment agreement is joined in a proceeding, the United States obtains a judgment against that person, and the case is referred back to the IRS for collection, collection will continue to occur pursuant to the terms of the installment agreement.

(c) *Statute of limitations*—(1) *Suspension of the statute of limitations on collection.* The statute of limitations under section 6502 for collection of any liability shall be suspended during the period that a proposed installment agreement relating to that liability is pending with the IRS, for 30 days immediately following the rejection of a proposed installment agreement, and for 30 days immediately following the termination of an installment agreement. If, within the 30 days following the rejection or termination of an installment agreement, the taxpayer files an appeal with the IRS Office of Appeals, the statute of limitations for collection shall be suspended while the rejection or termination is being considered by Appeals. The statute of limitations for collection shall continue to run if an exception under paragraph (a)(4) of this section applies and levy is not prohibited with respect to the taxpayer.

(2) *Waivers of the statute of limitations on collection.* The IRS may continue to request, to the extent permissible under section 6502 and § 301.6159–1, that the taxpayer agree to a reasonable extension of the statute of limitations for collection.

(d) *Effective date.* This section is applicable on December 18, 2002.

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

Approved: December 11, 2002.

**Pamela F. Olson,**

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

[FR Doc. 02–31856 Filed 12–17–02; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 301

**[TD 9026]**

**RIN–1545–BA95**

## Low-Income Taxpayer Clinics—Definition of Income Tax Return Preparer

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that exclude certain Low-Income Taxpayer Clinics (LITCs) that qualify for grants under section 7526 of the Internal Revenue Code from the definition of income tax return preparer under section 7701(a)(36). These final regulations also exclude certain persons who are employed by, or volunteer for, such clinics.

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

*Applicability Date:* These regulations apply to returns that are prepared on or after December 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Brinton T. Warren, at (202) 622–4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the definition of the term *income tax return preparer* under section 7701(a)(36) of the Internal Revenue Code (Code). On June 11, 2002, a notice of proposed rulemaking was published in the **Federal Register** (67 FR 39915). One comment was received in response to the notice of proposed rulemaking. No public hearing was requested or held. After consideration of the comment, the proposed regulations under section 7701(a)(36) are adopted.

These regulations have been promulgated in furtherance of the purposes of Section 3601(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685) (1998) (RRA 1998). Section 3601(a), which added section 7526 of the Code, provides grants to qualified LITCs. Qualified LITCs represent taxpayers in controversies with the IRS and operate programs to inform individuals for whom English is a second language (ESL taxpayers) about their rights and responsibilities as taxpayers (ESL outreach). Qualified LITCs are either clinical programs run by accredited educational institutions that allow students to represent low-income taxpayers, or tax-exempt organizations that provide representation to low-income taxpayers.

Section 7701(a)(36), defining the term income tax return preparer, was enacted by section 1203 of the Tax Reform Act of 1976, Public Law 94–455 (90 Stat. 1520) (1976) (TRA 1976). TRA 1976 also enacted many of the provisions of sections 6694 and 6695, which impose penalties for certain acts and omissions by income tax return preparers.

The preparer penalties enacted by TRA 1976 reflect the concern of Congress with improper practices within the commercial tax services industry. See H. Rep. No. 94–658, 94th Cong. 1st Sess. 274 (1976), 1976–3 (Vol. 2) C.B. 966. Consistent with the commercial focus of the legislative history, the definition of an income tax return preparer requires that the tax return or claim for refund be prepared ''for compensation.'' Persons who do not receive compensation are not income tax return preparers for purposes of section 7701(a)(36) regardless of the extent to which they are involved with the preparation of a return or claim for refund.

Under section 7526(b)(1)(A)(i), a qualified LITC may not charge more than a nominal fee for its authorized services (except for reimbursement of actual costs incurred). These final regulations, consistent with the notice of proposed rulemaking, specify the circumstances in which an LITC may receive a nominal fee that will not be considered compensation for purposes of section 7701(a)(36).

### Explanation of Revisions and Summary of Comment

These final regulations adopt the proposed amendments without substantive change. Under these final regulations, qualified LITCs, as defined by section 7526, and employees and volunteers of such LITCs, that provide assistance with a tax return or claim for refund will not be treated as income tax return preparers if two requirements are satisfied.

First, any such return preparation assistance must be (i) directly related to a controversy with the IRS for which the LITC is providing assistance or (ii) an ancillary part of an LITC's ESL outreach program. Second, the LITC cannot charge a separate fee or vary a fee based on whether the LITC provides assistance with a return of tax or claim for refund, or charge more than a nominal fee for its services. The regulations apply to

returns prepared on or after December 18, 2002.

The commentator focused on the scope of the direct relation requirement that applies to LITCs that represent taxpayers in controversies. The commentator observed that, for a nonfiler to obtain the benefits of an offer in compromise or installment agreement, it is sometimes necessary for an LITC to prepare a number of the nonfiler's returns for prior years. The commentator requested clarification as to whether preparation of the prior-year returns is directly related to the nonfiler's controversy with the IRS. As in the commentator's example, in cases where the preparation of a taxpayer's return is required to resolve a controversy for which an LITC is representing a taxpayer, such preparation would be treated under these final regulations as directly related to that controversy.

These regulations do not address the definition of a nominal fee. The Treasury Department and the IRS specifically requested comments on the need for a definition of a nominal fee and the factors that should be considered in defining a nominal fee. No comments were received on this topic. The Treasury Department and the IRS conclude that the definition of nominal fee should not be addressed in these regulations at this time. The final regulations do not specifically address the qualifications of an LITC under section 7526. The Treasury Department and IRS reiterate the view, originally stated in the preamble of the proposed regulations, that a qualified LITC may not provide return preparation assistance other than assistance directly related to a controversy with the IRS or assistance that is an ancillary part of an ESL outreach program.

### 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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose 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 Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

### Drafting Information

The principal author of the regulations is Brinton T. Warren of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

### List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

**Par. 2.** Section 301.7701–15 is amended by:

1. Removing the language ''and'' at the end of paragraph (a)(7)(iii).

2. Removing the period at the end of paragraph (a)(7)(iv) and adding a semicolon in its place.

3. Adding paragraphs (a)(7)(v) through (a)(7)(viii).

The additions read as follows:

**§ 301.7701–15 Income tax return preparer.**

* * * * *

(a) * * *

(7) * * *

(v) Any individual who provides tax assistance as part of a qualified Low-Income Taxpayer Clinic (LITC), as defined by section 7526, subject to the requirements of paragraphs (a)(7)(vii) and (viii) of this section; and

(vi) Any organization that is a qualified Low-Income Taxpayer Clinic (LITC), as defined by section 7526, subject to the requirements of paragraphs (a)(7)(vii) and (viii) of this section.

(vii) Paragraphs (a)(7)(v) and (vi) of this section apply only if any assistance with a return of tax or claim for refund under subtitle A is directly related to a controversy with the Internal Revenue Service for which the qualified LITC is providing assistance, or is an ancillary part of an LITC program to inform individuals for whom English is a second language about their rights and responsibilities under the Internal Revenue Code.

(viii) Notwithstanding paragraph (a)(7)(vii) of this section, paragraphs (a)(7)(v) and (vi) of this section do not apply if an LITC charges a separate fee or varies a fee based on whether the LITC provides assistance with a return of tax or claim for refund under subtitle A, or if the LITC charges more than a nominal fee for its services.

* * * * *

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

Approved: December 11, 2002.

**Pamela F. Olson,**

*Assistant Secretary for Tax Policy.*

[FR Doc. 02–31855 Filed 12–17–02; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 301

**[TD 9028]**

**RIN 1545–AX04**

## Third Party Contacts

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations providing guidance on third-party contacts made with respect to the determination or collection of tax liabilities. The regulations reflect changes to section 7602 of the Internal Revenue Code made by section 3417 of the Internal Revenue Service Restructuring and Reform Act of 1998. The regulations potentially affect all taxpayers whose Federal tax liabilities are being determined or collected by the IRS.

**DATES:** *Effective Dates:* These regulations are effective on December 18, 2002.

*Applicability Dates:* For the date of applicability, see section 301.7602–2(g).

**FOR FURTHER INFORMATION CONTACT:** Robert A. Miller, 202–622–3630 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 3417 of the IRS Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685), amended section 7602 by adding section 7602(c). This provision prohibits IRS officers and employees from contacting any person, other than the taxpayer, with respect to the determination or collection of the taxpayer's liability without giving the taxpayer reasonable advance notice that contacts with

persons other than the taxpayer may be made.

On January 2, 2001, the IRS published in the **Federal Register** a notice of proposed rulemaking (66 FR 32479) to interpret and implement section 7602(c). Two written comments were received but a public hearing was not held. The proposed regulations, as revised by this Treasury decision, are substantially adopted.

As described more fully in the preamble to the proposed regulations, the final regulations balance a taxpayer's business and reputational interests with third parties' privacy interests and the IRS' responsibility to administer the internal revenue laws effectively. By providing general pre-contact notice followed by post-contact identification, these final regulations enable a taxpayer to come forward with information required by the IRS before third parties are contacted. The taxpayer's business and reputational interests therefore can be addressed without impeding the IRS' ability to make those third-party contacts that are necessary to administer the internal revenue laws.

These final regulations do not finalize the provisions in the proposed regulations regarding periodic reports. Subsequent to the issuance of the proposed regulations, the IRS determined that the issuance of periodic reports may result in harm to third parties and, accordingly, has determined that periodic reports should not be issued. Taxpayers will continue to receive pre-contact notice and may specifically request from the IRS reports of persons contacted.

**Comments on the Proposed Regulations**

*§ 301.7602–2(e)(3)(ii)—Post Contact Reports*

The proposed regulations provided that for contacts with the employees, officers, or fiduciaries of any entity who are acting within the scope of their employment or relationship, it is sufficient to record the entity as the person contacted.

One commentator noted that there may be situations where the name of a specific employee of a business should be recorded and made available to the taxpayer. The commentator suggests adopting a ''safe harbor'' rule that requires that the name of the party contacted be recorded whenever there is any doubt about how the contact should be recorded. The commentator stated that whenever an employee of a business is contacted due to his or her personal knowledge or business relationship with the taxpayer, the name of the specific employee contacted should be recorded in the contact record rather than (or in addition to) the name of the business entity.

This comment has not been adopted in the final regulations. The final regulations do not prevent IRS employees from providing more than the name of the entity in the record of contact when an employee of a business is contacted. Because the information being sought typically is that of the entity, and not of any specific employee outside of their capacity as an employee, requiring the identification of the specific employees contacted is not required to provide notice to the taxpayer of the contact made and may impede the IRS' ability to obtain information from the entity.

*§ 301.7602–2(f)(3)—Reprisal Exception*

The proposed regulations provided that a statement by the person contacted that harm may occur is good cause for the IRS to believe that reprisal may occur. Such contacts are not reported by the IRS to the taxpayer.

One commentator asserted that the proposed regulations are inconsistent with the statute's origin and purpose because the proposed regulations (i) subordinate the rights given to taxpayers to the rights of third parties and the IRS; (ii) provide an insufficient threshold for determining whether good cause exists to conclude that reprisal may occur; (iii) permit a third party to express concerns that providing notice to the taxpayer may result in reprisal against another person; (iv) permit the IRS to make a reprisal determination based upon information obtained from any source; and (v) permit the IRS to make a reprisal determination without peer or supervisory review. In brief, the commentator argued that the scope of what would be considered reprisal is too broad and that the determination of when reprisal would be considered to exist is too lenient. The commentator claimed that the adoption of the proposed regulations would render the requirement in section 7602(c) to provide taxpayers with a record of persons contacted a nullity.

The Treasury Department and the IRS do not agree that the proposed regulations are either too broad with respect to what will be considered reprisal or too permissive with respect to the determination of whether the potential for reprisal exists. As a general matter, by including a reprisal exception to the notice requirements of section 7602(c), Congress recognized that the rights of taxpayers to receive notice of third-party contacts must be balanced with the rights of third parties to be free from adverse consequences that may result from the IRS providing such notice. The reprisal exception reflects Congress' determination that a taxpayer's right to know whom the IRS has contacted is outweighed by a third party's right to be free from any reprisal. Moreover, since the statute's effective date, the IRS has been operating under reprisal procedures consistent with the proposed regulations. Based upon the small number of reprisal concerns expressed to date, the Treasury Department and the IRS believe that the final regulations, which make no change to the proposed regulations with respect to this issue, appropriately balance the competing interests reflected in the statute and will not render section 7602(c)(2) a nullity.

More specifically, the Treasury Department and the IRS believe that a third party is in the best position to evaluate its relationship with a taxpayer and the potential for reprisal if a contact with that third party is reported by the IRS to the taxpayer. Requiring the IRS to investigate each claim of potential reprisal, including supervisory review of a reprisal determination, would place a heavy administrative burden on the IRS and, more importantly, would intrude into the third party's affairs and require IRS employees to make judgments that they are not well positioned to make. For these reasons, the final regulations do not adopt the ''probable cause'' standard suggested by the commentator. In addition, the rights provided to a taxpayer under section 7602(c) (*i.e.*, prior notice that contacts with third parties may be made and a record of persons contacted) cannot be equated with a person's Fourth Amendment right to be free from unreasonable searches and seizures.

In addition, the statute clearly contemplates that the reprisal exception is not limited to concerns of reprisal against the third party contacted. The reprisal exception applies when providing notice to the taxpayer ''may involve reprisal against *any person*.'' section 7602(c)(3)(B) (emphasis added). The statutory exception also does not restrict the source of information that can be used in making a reprisal determination. In certain cases, an IRS employee may be in possession of information that is unknown to the third party contacted but which suggests that reprisal may occur against another person if the contact with the third party is reported to the taxpayer.

Finally, limiting the reprisal exception to physical harm would be inconsistent with the statute and Congress' clear concern that third parties be free from adverse

consequences as a result of being contacted by the IRS regarding a taxpayer's liability. Congress did not define or limit the kind of reprisal situations with which it was concerned. Excluding economic, emotional, or other types of harm would significantly diminish the third-party protections provided by the reprisal exception.

**Modifications of Proposed Regulations**

*§ 301.7602–2(c)(1)(i)*

The proposed regulations stated that for purposes of section 7602(c), an IRS employee includes, inter alia, a person who, through a written agreement with the IRS, is subject to disclosure restrictions consistent with section 6103. The final regulations provide that an IRS employee includes a person described in section 6103(n), an officer or employee of such person, and a person who is subject to disclosure restrictions pursuant to a written agreement in connection with the solicitation of an agreement described in section 6103(n) and its implementing regulations. This change was made to provide a legally precise statement of the rule and to clarify that persons who provide tax administration services to the IRS and who enter into nondisclosure agreements with the IRS, as well as prospective bidders who enter into nondisclosure agreements, are treated as IRS employees for purposes of section 7602(c).

*§ 301.7602–2(c)(1)(ii) Example 3*

The regulations provide that returning unsolicited telephone calls or speaking with persons other than the taxpayer as part of an attempt to speak to the taxpayer are not initiations of third-party contacts. This provision is illustrated by *Example 3*, where a revenue agent trying to contact the taxpayer to discuss the taxpayer's pending examination twice calls the taxpayer's place of business. The first call is answered by a receptionist, and the second call is answered by the office answering machine. The example in the regulations states that in both situations the employee leaves a message ''stating only his name, telephone number, that he is with the IRS, and asks that the taxpayer call him.'' The phrase ''that he is with the IRS'' has been deleted from the example in the final regulations because there may be situations where it would be inappropriate for an IRS employee to identify his or her employer in a telephone conversation or message that can be seen or heard by persons other than the taxpayer. See section 6304(b)(4).

*§ 301.7602–2(c)(3)(ii)*

The final regulations add *Examples 6(a)* and *6(b)* to illustrate the application of the third-party contact rules to audits of TEFRA partnerships.

*§ 301.7602–2(d)(2)*

The regulations provide that the pre-contact notice need not be provided to a taxpayer for third-party contacts when advance notice has otherwise been provided to the taxpayer pursuant to another statute, regulation or administrative procedure. The proposed regulations provide that the Collection Due Process (CDP) notice furnished under section 6330 and its regulations is an example of a situation where the pre-contact notice requirement is fulfilled by another notice. The final regulations modify the proposed regulations to clarify that CDP notices sent to taxpayers pursuant to section 6330 and its regulations constitute reasonable advance notice that contacts with third parties may be made for purposes of effectuating a levy.

*§ 301.7602–2(f)(7)*

The final regulations add examples to illustrate the application of the nonadministrative contacts exception.

**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. Likewise, section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, 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, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Charles B. Christopher of the Office of Associate Chief Counsel, Procedure & Administration (Collection, Bankruptcy & Summonses Division).

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

## PART 301—PROCEDURES AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

**Par. 2.** Section 301.7602–2 is added to read as follows:

### § 301.7602–2 Third party contacts.

(a) *In general.* Subject to the exceptions in paragraph (f) of this section, no officer or employee of the Internal Revenue Service (IRS) may contact any person other than the taxpayer with respect to the determination or collection of such taxpayer's tax liability without giving the taxpayer reasonable notice in advance that such contacts may be made. A record of persons so contacted must be made and given to the taxpayer upon the taxpayer's request.

(b) *Third-party contact defined.* Contacts subject to section 7602(c) and this regulation shall be called ''third-party contacts.'' A third-party contact is a communication which—

(1) Is initiated by an IRS employee;

(2) Is made to a person other than the taxpayer;

(3) Is made with respect to the determination or collection of the tax liability of such taxpayer;

(4) Discloses the identity of the taxpayer being investigated; and

(5) Discloses the association of the IRS employee with the IRS.

(c) *Elements of third-party contact explained*—(1) *Initiation by an IRS employee*— (i) *Explanation*—(A) *Initiation.* An IRS employee initiates a communication whenever it is the employee who first tries to communicate with a person other than the taxpayer. Returning unsolicited telephone calls or speaking with persons other than the taxpayer as part of an attempt to speak to the taxpayer are not initiations of third-party contacts.

(B) *IRS employee.* For purposes of this section, an IRS employee includes all officers and employees of the IRS, the Chief Counsel of the IRS and the National Taxpayer Advocate, as well as a person described in section 6103(n), an officer or employee of such person, or a person who is subject to disclosure restrictions pursuant to a written agreement in connection with the solicitation of an agreement described in section 6103(n) and its implementing

regulations. No inference about the employment or contractual relationship of such other persons with the IRS may be drawn from this regulation for any purpose other than the requirements of section 7602(c).

(ii) *Examples.* The following examples illustrate this paragraph (c)(1):

*Example 1.* An IRS employee receives a message to return an unsolicited call. The employee returns the call and speaks with a person who reports information about a taxpayer who is not meeting his tax responsibilities. Later, the employee makes a second call to the person and asks for more information. The first call is not a contact initiated by an IRS employee. Just because the employee must return the call does not change the fact that it is the other person, and not the employee, who initiated the contact. The second call, however, is initiated by the employee and so meets the first element.

*Example 2.* An IRS employee wants to hire an appraiser to help determine the value of a taxpayer's oil and gas business. At the initial interview, the appraiser signs an agreement that prohibits him from disclosing return information of the taxpayer except as allowed by the agreement. Once hired, the appraiser initiates a contact by calling an industry expert in Houston and discusses the taxpayer's business. The IRS employee's contact with the appraiser does not meet the first element of a third-party contact because the appraiser is treated, for section 7602(c) purposes only, as an employee of the IRS. For the same reason, however, the appraiser's call to the industry expert does meet the first element of a third-party contact.

*Example 3.* A revenue agent trying to contact the taxpayer to discuss the taxpayer's pending examination twice calls the taxpayer's place of business. The first call is answered by a receptionist who states that the taxpayer is not available. The IRS employee leaves a message with the receptionist stating only his name and telephone number, and asks that the taxpayer call him. The second call is answered by the office answering machine, on which the IRS employee leaves the same message. Neither of these phone calls meets the first element of a third-party contact because the IRS employee is trying to initiate a communication with the taxpayer and not a person other than the taxpayer. The fact that the IRS employee must either speak with a third party (the receptionist) or leave a message on the answering machine, which may be heard by a third party, does not mean that the employee is initiating a communication with a person other than the taxpayer. Both the receptionist and the answering machine are only intermediaries in the process of reaching the taxpayer.

(2) *Person other than the taxpayer*—(i) *Explanation.* The phrases ''person other than the taxpayer'' and ''third party'' are used interchangeably in this section, and do not include—

(A) An officer or employee of the IRS, as defined in paragraph (c)(1)(i)(B) of this section, acting within the scope of his or her employment;

(B) Any computer database or website regardless of where located and by whom maintained, including databases or web sites maintained on the Internet or in county courthouses, libraries, or any other real or virtual site; or

(C) A current employee, officer, or fiduciary of a taxpayer when acting within the scope of his or her employment or relationship with the taxpayer. Such employee, officer, or fiduciary shall be conclusively presumed to be acting within the scope of his or her employment or relationship during business hours on business premises.

(ii) *Examples:* The following examples illustrate this paragraph (c)(2):

*Example 1.* A revenue agent examining a taxpayer's return speaks with another revenue agent who has previously examined the same taxpayer about a recurring issue. The revenue agent has not contacted a ''person other than the taxpayer'' within the meaning of section 7602(c).

*Example 2.* A revenue agent examining a taxpayer's return speaks with one of the taxpayer's employees on business premises during business hours. The employee is conclusively presumed to be acting within the scope of his employment and is therefore not a ''person other than the taxpayer'' for section 7602(c) purposes.

*Example 3.* A revenue agent examining a corporate taxpayer's return uses a commercial online research service to research the corporate structure of the taxpayer. The revenue agent uses an IRS account, logs on with her IRS user name and password, and uses the name of the corporate taxpayer in her search terms. The revenue agent later explores several Internet web sites that may have information relevant to the examination. The searches on the commercial online research service and Internet websites are not contacts with ''persons other than the taxpayer.''

(3) *With respect to the determination or collection of the tax liability of such taxpayer*—(i) *Explanation*—(A) *With respect to.* A contact is ''with respect to'' the determination or collection of the tax liability of such taxpayer when made for the purpose of either determining or collecting a particular tax liability and when directly connected to that purpose. While a contact made for the purpose of determining a particular taxpayer's tax liability may also affect the tax liability of one or more other taxpayers, such contact is not for that reason alone a contact ''with respect to'' the determination or collection of those other taxpayers' tax liabilities. Contacts to determine the tax status of a pension plan under chapter 1, subchapter D (Deferred Compensation) of the Internal Revenue Code, are not ''with respect to'' the determination of plan participants'' tax liabilities. Contacts to determine the tax status of a bond issue under chapter 1, subchapter B, Part IV (Tax Exemption Requirements for State and Local Bonds) of the Internal Revenue Code, are not ''with respect to'' the determination of the bondholders' tax liabilities. Contacts to determine the tax status of an organization under chapter 1, subchapter F (Exempt Organizations) of the Internal Revenue Code, are not ''with respect to'' the determination of the contributors' liabilities, nor are any similar determinations ''with respect to'' any persons with similar relationships to the taxpayer whose tax liability is being determined or collected.

(B) *Determination or collection.* A contact is with respect to the ''determination or collection'' of the tax liability of such taxpayer when made during the administrative determination or collection process. For purposes of this paragraph (c) only, the administrative determination or collection process may include any administrative action to ascertain the correctness of a return, make a return when none has been filed, or determine or collect the tax liability of any person as a transferee or fiduciary under chapter 71 of Title 26.

(C) *Tax liability.* A *tax liability* means the liability for any tax imposed by Title 26 of the United States Code (including any interest, additional amount, addition to the tax, or penalty) and does not include the liability for any tax imposed by any other jurisdiction nor any liability imposed by other Federal statutes.

(D) *Such taxpayer.* A contact is with respect to the determination or collection of the tax liability of ''such taxpayer'' when made while determining or collecting the tax liability of a particular, identified taxpayer. Contacts made during an investigation of a particular, identified taxpayer are third-party contacts only as to the particular, identified taxpayer under investigation and not as to any other taxpayer whose tax liabilities might be affected by such contacts.

(ii) *Examples.* The following examples illustrate the operation of this paragraph (c)(3):

*Example 1.* As part of a compliance check on a return preparer, an IRS employee visits the preparer's office and reviews the preparer's client files to ensure that the proper forms and records have been created and maintained. This contact is not a third-party contact ''with respect to'' the preparer's clients because it is not for the purpose of determining the tax liability of the preparer's clients, even though the agent might discover information that would lead the agent to recommend an examination of one or more of the preparer's clients.

*Example 2.* A revenue agent is assigned to examine a taxpayer's return, which was prepared by a return preparer. As in all such examinations, the revenue agent asks the taxpayer routine questions about what information the taxpayer gave the preparer and what advice the preparer gave the taxpayer. As a result of the examination, the revenue agent recommends that the preparer be investigated for penalties under section 6694 or 6695. Neither the examination of the taxpayer's return nor the questions asked of the taxpayer are ''with respect to'' the determination of the preparer's tax liabilities within the meaning of section 7602(c) because the purpose of the contacts was to determine the taxpayer's tax liability, even though the agent discovered information that may result in a later investigation of the preparer.

*Example 3.* To help identify taxpayers in the florist industry who may not have filed proper returns, an IRS employee contacts a company that supplies equipment to florists and asks for a list of its customers in the past year in order to cross-check the list against filed returns. The employee later contacts the supplier for more information about one particular florist who the employee believes did not file a proper return. The first contact is not a contact with respect to the determination of the tax liability of ''such taxpayer'' because no particular taxpayer has been identified for investigation at the time the contact is made. The later contact, however, is with respect to the determination of the tax liability of ''such taxpayer'' because a particular taxpayer has been identified. The later contact is also ''with respect to'' the determination of that taxpayer's liability because, even though no examination has been opened on the taxpayer, the information sought could lead to an examination.

*Example 4.* A revenue officer, trying to collect the trust fund portion of unpaid employment taxes of a corporation, begins to investigate the liability of two corporate officers for the section 6672 Trust Fund Recovery Penalty (TFRP). The revenue officer obtains the signature cards for the corporation's bank accounts from the corporation's bank. The contact with the bank to obtain the signature cards is a contact with respect to the determination of the two identified corporate officers' tax liabilities because it is directly connected to the purpose of determining a tax liability of two identified taxpayers. It is not, however, a contact with respect to any other person not already under investigation for TFRP liability, even though the signature cards might identify other potentially liable persons.

*Example 5.* The IRS is asked to rule on whether a certain pension plan qualifies under section 401 so that contributions to the pension plan are excludable from the employees' incomes under section 402 and are also deductible from the employer's income under section 404. Contacts made with the plan sponsor (and with persons other than the plan sponsor) are not contacts ''with respect to'' the determination of the tax liabilities of the pension plan participants because the purpose of the contacts is to determine the status of the plan, even though that determination may affect the participants' tax liabilities.

*Example 6(a).* The IRS audits a TEFRA partnership at the partnership (entity) level pursuant to sections 6221 through 6233. The tax treatment of partnership items is at issue, but the respective tax liabilities of the partners may be affected by the results of the TEFRA partnership audit. With respect to the TEFRA partnership, contacts made with employees of the partnership acting within the scope of their duties or any partner are not section 7602(c) contacts because they are considered the equivalent of contacting the partnership. Contacts relating to the tax treatment of partnership items made with persons other than the employees of the partnership who are acting within the scope of their duties or the partners are section 7602(c) contacts with respect to the TEFRA partnership, and reasonable advance notice should be provided by sending the appropriate Letter 3164 to the partnership's tax matters partner (TMP). Individual partners who are merely affected by the partnership audit but who are not identified as subject to examination with respect to their individual tax liabilities need not be sent Letters 3164.

*Example 6(b).* In the course of an audit of a TEFRA partnership at the partnership (entity) level, the IRS intends to contact third parties regarding transactions between the TEFRA partnership and specific, identified partners. In addition to the partnership's TMP, the specific, identified partners should also be provided advance notice of any third-party contacts relating to such transactions.

(4) *Discloses the identity of the taxpayer being investigated*—(i) *Explanation.* An IRS employee discloses the taxpayer's identity whenever the employee knows or should know that the person being contacted can readily ascertain the taxpayer's identity from the information given by the employee.

(ii) *Examples.* The following examples illustrate this paragraph (c)(4):

*Example 1.* A revenue agent seeking to value the taxpayer's condominium calls a real estate agent and asks for a market analysis of the taxpayer's condominium, giving the unit number of the taxpayer's condominium. The revenue agent has revealed the identity of the taxpayer, regardless of whether the revenue agent discloses the name of the taxpayer, because the real estate agent can readily ascertain the taxpayer's identity from the address given.

*Example 2.* A revenue officer seeking to value the taxpayer's condominium calls a real estate agent and, without identifying the taxpayer's unit, asks for the sales prices of similar units recently sold and listing prices of similar units currently on the market. The revenue officer has not revealed the identity of the taxpayer because the revenue officer has not given any information from which the real estate agent can readily ascertain the taxpayer's identity.

(5) *Discloses the association of the IRS employee with the IRS.* An IRS employee discloses his association with the IRS whenever the employee knows or should know that the person being contacted can readily ascertain the association from the information given by the employee.

(d) *Pre-contact notice*—(1) *In general.* An officer or employee of the IRS may not make third-party contacts without providing reasonable notice in advance to the taxpayer that contacts may be made. The pre-contact notice may be given either orally or in writing. If written notice is given, it may be given in any manner that the IRS employee responsible for giving the notice reasonably believes will be received by the taxpayer in advance of the third-party contact. Written notice is deemed reasonable if it is—

(i) Mailed to the taxpayer's last known address;

(ii) Given in person;

(iii) Left at the taxpayer's dwelling or usual place of business; or

(iv) Actually received by the taxpayer.

(2) *Pre-contact notice not required.* Pre-contact notice under this section need not be provided to a taxpayer for third-party contacts of which advance notice has otherwise been provided to the taxpayer pursuant to another statute, regulation or administrative procedure. For example, Collection Due Process notices sent to taxpayers pursuant to section 6330 and its regulations constitute reasonable advance notice that contacts with third parties may be made in order to effectuate a levy.

(e) *Post-contact reports*—(1) *Requested reports.* A taxpayer may request a record of persons contacted in any manner that the Commissioner reasonably permits. The Commissioner may set reasonable limits on how frequently taxpayer requests need be honored. The requested report may be mailed either to the taxpayer's last known address or such other address as the taxpayer specifies in the request.

(2) *Contents of record*—(i) *In general.* The record of persons contacted should contain information, if known to the IRS employee making the contact, which reasonably identifies the person contacted. Providing the name of the person contacted fully satisfies the requirements of this section, but this section does not require IRS employees to solicit identifying information from a person solely for the purpose of the post-contact report. The record need not contain any other information, such as the nature of the inquiry or the content of the third party's response. The record need not report multiple contacts made with the same person during a reporting period.

(ii) *Special rule for employees.* For contacts with the employees, officers, or

fiduciaries of any entity who are acting within the scope of their employment or relationship, it is sufficient to record the entity as the person contacted. A fiduciary, officer or employee shall be conclusively presumed to be acting within the scope of his employment or relationship during business hours on business premises. For purposes of this paragraph (e)(2)(ii), the term *entity* means any business (whether operated as a sole proprietorship, disregarded entity under § 301.7701–2 of the regulations, or otherwise), trust, estate, partnership, association, company, corporation, or similar organization.

(3) *Post-contact record not required.* A post-contact record under this section need not be made, or provided to a taxpayer, for third-party contacts of which the taxpayer has already been given a similar record pursuant to another statute, regulation, or administrative procedure.

(4) *Examples.* The following examples illustrate this paragraph (e):

*Example 1.* An IRS employee trying to find a specific taxpayer's assets in order to collect unpaid taxes talks to the owner of a marina. The employee asks whether the taxpayer has a boat at the marina. The owner gives his name as John Doe. The employee may record the contact as being with John Doe and is not required by this regulation to collect or record any other identifying information.

*Example 2.* An IRS employee trying to find a specific taxpayer and his assets in order to collect unpaid taxes talks to a person at 502 Fernwood. The employee asks whether the taxpayer lives next door at 500 Fernwood, as well as where the taxpayer works, what kind of car the taxpayer drives and whether the camper parked in front of 500 Fernwood belongs to the taxpayer. The person does not disclose his name. The employee may record the contact as being with a person at 502 Fernwood. If the employee then makes the same inquiries of another person on the street in front of 500 Fernwood, and does not learn that person's name, the latter contact may be reported as being with a person on the street in front of 500 Fernwood.

*Example 3.* An IRS employee examining a return obtains loan documents from a bank where the taxpayer applied for a loan. After reviewing the documents, the employee talks with the loan officer at the bank who handled the application. The employee has contacted only one ''person other than the taxpayer.'' The bank and not the loan officer is the ''person other than the taxpayer'' for section 7602(c) purposes. The contact with the loan officer is treated as a contact with the bank because the loan officer was an employee of the bank and was acting within the scope of her employment with the bank.

*Example 4.* An IRS employee issues a summons to a third party with respect to the determination of a taxpayer's liability and properly follows the procedures for such summonses under section 7609, which requires that a copy of the summons be given to the taxpayer. This third-party contact need not be maintained in a record of contacts available to the taxpayer because providing a copy of the third-party summons to the taxpayer pursuant to section 7609 satisfies the post-contact recording and reporting requirement of this section.

*Example 5.* An IRS employee serves a levy on a third party with respect to the collection of a taxpayer's liability. The employee provides the taxpayer with a copy of the notice of levy form that shows the identity of the third party. This third-party contact need not be maintained in a record of contacts available to the taxpayer because providing a copy of the notice of levy to the taxpayer satisfies the post-contact recording and reporting requirement of this section.

(f) *Exceptions.* (1) *Authorized by taxpayer*—(i) *Explanation.* Section 7602(c) does not apply to contacts authorized by the taxpayer. A contact is ''authorized'' within the meaning of this section if—

(A) The contact is with the taxpayer's authorized representative, that is, a person who is authorized to speak or act on behalf of the taxpayer, such as a person holding a power of attorney, a corporate officer, a personal representative, an executor or executrix, or an attorney representing the taxpayer; or

(B) The taxpayer or the taxpayer's authorized representative requests or approves the contact.

(ii) *No prevention or delay of contact.* This section does not entitle any person to prevent or delay an IRS employee from contacting any individual or entity.

(2) *Jeopardy*—(i) *Explanation.* Section 7602(c) does not apply when the IRS employee making a contact has good cause to believe that providing the taxpayer with either a general pre-contact notice or a record of the specific person contacted may jeopardize the collection of any tax. For purposes of this section only, good cause includes a reasonable belief that providing the notice or record will lead to—

(A) Attempts by any person to conceal, remove, destroy, or alter records or assets that may be relevant to any tax examination or collection activity;

(B) Attempts by any person to prevent other persons, through intimidation, bribery, or collusion, from communicating any information that may be relevant to any tax examination or collection activity; or

(C) Attempts by any person to flee, or otherwise avoid testifying or producing records that may be relevant to any tax examination or collection activity.

(ii) *Record of contact.* If the circumstances described in this paragraph (f)(2) exist, the IRS employee must still make a record of the person contacted, but the taxpayer need not be provided the record until it is no longer reasonable to believe that providing the record would cause the jeopardy described.

(3) *Reprisal*—(i) *In general.* Section 7602(c) does not apply when the IRS employee making a contact has good cause to believe that providing the taxpayer with either a general pre-contact notice or a specific record of the person being contacted may cause any person to harm any other person in any way, whether the harm is physical, economic, emotional or otherwise. A statement by the person contacted that harm may occur against any person is sufficient to constitute good cause for the IRS employee to believe that reprisal may occur. The IRS employee is not required to further question the contacted person about reprisal or otherwise make further inquiries regarding the statement.

(ii) *Examples.* The following examples illustrate this paragraph (f)(3):

*Example 1.* An IRS employee seeking to collect unpaid taxes is told by the taxpayer that all the money in his and his brother's joint bank account belongs to the brother. The IRS employee contacts the brother to verify this information. The brother refuses to confirm or deny the taxpayer's statement. He states that he does not believe that reporting the contact to the taxpayer would result in harm to anyone but further states that he does not want his name reported to the taxpayer because it would appear that he gave information. This contact is not excepted from the statute merely because the brother asks that his name be left off the list of contacts.

*Example 2.* Assume the same facts as in *Example 1,* except that the brother states that he fears harm from the taxpayer should the taxpayer learn of the contact, even though the brother gave no information. This contact is excepted from the statute because the third party has expressed a fear of reprisal. The IRS employee is not required to make further inquiry into the nature of the brothers' relationship or otherwise question the brother's fear of reprisal.

*Example 3.* An IRS employee is examining a joint return of a husband and wife, who recently divorced. From reading the court divorce file, the IRS employee learns that the divorce was acrimonious and that the ex-husband once violated a restraining order issued to protect the ex-wife. This information provides good cause for the IRS employee to believe that reporting contacts which might disclose the ex-wife's location may cause reprisal against any person. Therefore, when the IRS employee contacts the ex-wife's new employer to verify salary information provided by the ex-wife, the IRS employee has good cause not to report that contact to the ex-husband, regardless of whether the new employer expresses concern about reprisal against it or its employees.

(4) *Pending criminal investigations*—(i) *IRS criminal investigations.* Section

7602(c) does not apply to contacts made during an investigation, or inquiry to determine whether to open an investigation, when the investigation or inquiry is—

(A) Made against a particular, identified taxpayer for the primary purpose of evaluating the potential for criminal prosecution of that taxpayer; and

(B) Made by an IRS employee whose primary duties include either identifying or investigating criminal violations of the law.

(ii) *Other criminal investigations.* Section 7602(c) does not apply to contacts which, if reported to the taxpayer, could interfere with a known pending criminal investigation being conducted by law enforcement personnel of any local, state, Federal, foreign or other governmental entity.

(5) *Governmental entities.* Section 7602(c) does not apply to any contact with any office of any local, state, Federal or foreign governmental entity except for contacts concerning the taxpayer's business with the government office contacted, such as the taxpayer's contracts with or employment by the office. The term *office* includes any agent or contractor of the office acting in such capacity.

(6) *Confidential informants.* Section 7602(c) does not apply when the employee making the contact has good cause to believe that providing either the pre-contact notice or the record of the person contacted would identify a confidential informant whose identity would be protected under section 6103(h)(4).

(7) *Nonadministrative contacts*—(i) *Explanation.* Section 7602(c) does not apply to contacts made in the course of a pending court proceeding.

(ii) *Examples.* The following examples illustrate this paragraph (f)(7):

*Example 1.* An attorney for the Office of Chief Counsel needs to contact a potential witness for an upcoming Tax Court proceeding involving the 1997 and 1998 taxable years of the taxpayer. Section 7602(c) does not apply because the contact is being made in the course of a pending court proceeding.

*Example 2.* While a Tax Court case is pending with respect to a taxpayer's 1997 and 1998 income tax liabilities, a revenue agent is conducting an examination of the taxpayer's excise tax liabilities for the fiscal year ending 1999. Any third-party contacts made by the revenue agent with respect to the excise tax liabilities would be subject to the requirements of section 7602(c) because the Tax Court proceeding does not involve the excise tax liabilities.

*Example 3.* A taxpayer files a Chapter 7 bankruptcy petition and receives a discharge. A revenue officer contacts a third party in order to determine whether the taxpayer has any exempt assets against which the IRS may take collection action to enforce its federal tax lien. At the time of the contact, the bankruptcy case has not been closed. Although the bankruptcy proceeding remains pending, the purpose of this contact relates to potential collection action by the IRS, a matter not before or related to the bankruptcy court proceeding.

(g) *Effective Date.* This section is applicable on December 18, 2002.

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

**Pamela F. Olson,**

*Assistant Secretary of the Treasury.*

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## DEPARTMENT OF JUSTICE

## Bureau of Prisons

## 28 CFR Part 540

**[BOP–1064–F]**

**RIN 1120–AA59**

## Incoming Publications: Nudity and Sexually Explicit Material or Information

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Final rule.

**SUMMARY:** In this document, we finalize our interim final rule which implemented a statutory provision prohibiting the Bureau of Prisons (Bureau) from using appropriated funds to ''distribute or make available any commercially published information or material'' that features nudity or is sexually explicit. We now publish this rule as a final rule and further clarify that ''commercially published information or material'' includes photographs or other pictorial depictions.

**DATES:** This rule is effective on December 18, 2002.

**ADDRESSES:** Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

**SUPPLEMENTARY INFORMATION:**

### History of This Rule

The Fiscal Year 1997 Omnibus Budget Act (Pub. L. 104–208) first required that we use no funds available to the Bureau ''to distribute or make available any commercially published information or material to a prisoner when it is made known to [us] that such information or material is sexually explicit or features nudity.''

On November 6, 1996, we published procedures implementing this provision in the Act as an interim final rule (61 FR 57568). The rule, effective December 1, 1996, became 28 CFR 540.70—540.72.

Within the two months after publishing this rule, we received six comments from individuals challenging the constitutionality of the statutory provisions underlying these rules on First Amendment grounds. The commenters generally argued that denying inmates access to information or material that is sexually explicit or features nudity violated their constitutional right to freedom of speech and communication.

Before we could respond to these comments, a group of inmates and publishers promptly challenged the constitutionality of the policy implemented by these rules in the case of *Amatel* v. *Reno,* 975 F. Supp. 365 (D.D.C. 1997). On August 12, 1997, the court in Amatel issued a nationwide preliminary injunction prohibiting us from using these procedures. We then suspended application of these rules.

On September 15, 1998, the U.S. Court of Appeals for the District of Columbia Circuit reversed the district court's preliminary injunction. *Amatel* v. *Reno,* 156 F.3d 192 (D.C. Cir. 1998) (rehearing *en banc* denied Dec. 23, 1998). They further appealed to the U.S. Supreme Court, which denied certiorari on June 24, 1999, *Amatel* v. *Reno,* 119 S. Ct. 2392 (1999).

*Amatel* upheld the apparent constitutionality of this statutory provision. By lifting the injunction, the U.S. Court of Appeals in *Amatel* allowed us to reimplement the policy mandated by statute through these rules.

### What We Are Doing Now

In this rule, we finalize 28 CFR 540.70 through 540.72, as originally published in 1996 (61 FR 57568). We also amend § 540.72(b)(1) to clarify that ''commercially published information or material'' includes photographs or other pictorial depictions in response to a recent trend towards receipt of such prohibited materials. These photographs often arrive as commercially published information or material and are, therefore, prohibited by this rule. Although our previous definition of commercially published information or material did not explicitly include photographs or pictorial depictions, that prohibition is certainly implicit.

The Fiscal Year 1997 Omnibus Budget Act (Pub. L. 104–208) (1997 Budget Act)

prohibited us from using authorized funds to ''distribute or make available any commercially published information or material'' (emphasis added) if it is ''sexually explicit or features nudity''. This effectively requires us to prohibit dissemination in our institutions of this type of material. We do not have the discretion to allow inmates to receive the information or material that the statute prohibits. We therefore interpret this provision to prohibit mailroom intake processing of this type of material.

The prohibition in the 1997 Budget Act was later repeated in section 615 of the Fiscal Year 2000 Omnibus Budget Act (Pub. L. 106–113) and section 614 of the D.C. Appropriations Act for Fiscal Year 2001 (Pub. L. 106–553). Currently, the prohibition is found in section 614 of the Department of Commerce, Justice, and State, The Judiciary and Related Agencies Appropriations Act 2002 (P.L. 107–77)(2002 Budget Act). We therefore clarify in our regulation that ''commercially published information or material'' includes photographs or pictorial depictions.

Although photographs and pictorial depictions that are ''sexually explicit'' or feature nudity are implicitly banned by the aforementioned statutory prohibitions, this clarification is necessary because inmates and members of the public misread our previous rule, which did not explicitly mention photographs and pictorial depictions. A recent trend involves inmates receiving sexually explicit or nude photographs from apparently commercial photography studios or from individual members of the public attempting to set up a form of paid correspondence through which inmates would buy photographs that were sexually explicit or featured nudity.

Inmates and members of the general public have the misapprehension that this type of ''paid correspondence'' (soliciting payment for photographs that are sexually explicit or feature nudity) is not prohibited by either (1) the general restriction in 28 CFR 540.12(a) on correspondence that threatens the security, discipline and good order an institution; or (2) our rule in 28 CFR 540.72(b)(1) defining ''commercially published information or material'' prohibited under section 614 of the 2002 Budget Act.

The general restriction in 28 CFR 540.12(a), which allows Wardens to ''establish and exercise controls to protect individuals, and the security, discipline, and good order of the institution'' encompasses the Bureau's discretion to reject photographs featuring nudity and explicit sexuality from non-commercial sources, such as an inmate's wife or girlfriend. Such personal photographs typically cause disciplinary problems among inmates and compromise institution security and good order. However, the ''paid correspondence'' incidents described above could be viewed as commercial correspondence which, arguably, could be thought beyond the reach of the Warden's controls on personal correspondence.

Likewise, it was argued that the restrictions on commercial correspondence did not apply to this form of ''paid correspondence'' because it was not explicitly encompassed in the previous rule. 28 CFR 540.72(b)(1) defined ''commercially published information or material'' under the statutory prohibition as: ''any book, booklet, pamphlet, magazine, periodical, newsletter, or similar document, including stationery and greeting cards, published by any individual, organization, company, or corporation which is distributed or made available through any means or media for a commercial purpose. This definition includes any portion extracted, photocopied, or clipped from such items.''

This definition represented the Bureau's efforts to encompass all ''material'' featuring nudity or explicit sexuality contemplated by the statute. Although we believed our definition of commercially published information or material was sufficiently inclusive, inmates and members of the public have misinterpreted this definition as not applicable to photographs or pictorial depictions that are sexually explicit or featuring nudity. This rule change is therefore necessary to explicitly clarify that the statutory prohibition in section 614 of the 2002 Budget Act of all ''commercially published information or material'' that is ''sexually explicit or features nudity'' includes photographs and pictorial depictions. We intend this change to eliminate current misunderstanding of the statute by inmates and the general public.

Inmates are allowed to possess material that is ''sexually explicit or features nudity'' if that material was in their possession before this interim final rule became effective on December 1, 1996. Other regulations prohibit inmates from receiving sexually explicit materials during visits or through personal mail. Similarly, inmates may not receive, through the mail or otherwise, any materials which threaten the safety, security, good order of the institution, or violates criminal laws. Such materials are prohibited by the these rules, and the rules on inmate correspondence, part 540, subpart B.

**Executive Order 12866**

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', section 1(b), Principles of Regulation. The Director of the Bureau of Prisons has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

**Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

**Regulatory Flexibility Act**

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

**Unfunded Mandates Reform Act of 1995**

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-

based companies in domestic and export markets.

**Plain Language Instructions**

We want to make Bureau documents easier to read and understand. If you can suggest how to improve the clarity of these regulations, call or write to Sarah Qureshi at the address or telephone number listed above.

**List of Subjects in 28 CFR Part 540**

Prisoners.

**Kathleen Hawk Sawyer,**

*Director, Bureau of Prisons.*

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 540 as follows.

**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

## PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for part 540 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

**§ 540.72 [Amended]**

2. Amend § 540.72 by adding ''photograph or other pictorial depiction,'' before ''or similar document'' in paragraph (b)(1).

[FR Doc. 02–31660 Filed 12–17–02; 8:45 am]

**BILLING CODE 4410–05–P**

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### 28 CFR Part 541

**[BOP–1083–I]**

**RIN 1120–AA78**

## Inmate Discipline: Prohibited Acts: Change in Code Numbers for Agency Tracking Purposes Only

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Interim final rule.

**SUMMARY:** This document makes a minor change to a recently published Bureau of Prisons (Bureau) final rule on inmate discipline regarding violations of the Bureau's telephone policy. Before we published the final rule, our prohibited acts code number 406 referred to minor mail *and* telephone infractions (in the existing low moderate severity level category prohibited act). When we published our final rule, we wished to distinguish minor mail infractions from minor telephone infractions, so we created a new code number, 497, for minor telephone infractions. Code number 406, therefore, covered only minor mail infractions. However, if we use the code number 406 in the Bureau's computer tracking system, that code number will retrieve both mail *and* telephone minor infractions, instead of *only* the mail infractions covered by the code number 406. For clarity, therefore, we reserve code number 406 and assign the code number 410 to the prohibited act covering minor mail infractions. This correction, while maintaining the language of 406, as published in the previous rule, only changes the number of that prohibited act to 410. We make this change to be able to more accurately track specific telephone-related acts using code number 497 only or mail-related prohibited acts using code number 410 only.

**DATES:** *Effective:* December 18, 2002. *Comments:* Comments by February 18, 2003.

**ADDRESSES:** Send comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

**SUPPLEMENTARY INFORMATION:** The Bureau makes this minor correction to its final rule published on October 6, 2000 (64 FR 59724), on inmate discipline regarding violations of the telephone policies.

**Why Are We Making This Rule Change?**

Before we published the October 6th final rule, our prohibited acts code number 406 referred to minor mail *and* telephone infractions (in the existing low moderate severity level category prohibited act).

When we published the October 6th final rule, we wished to distinguish minor mail infractions from minor telephone infractions, so we created a new code number, 497, for minor telephone infractions. Code number 406, therefore, covered only minor mail infractions.

However, if we use the code number 406 in the Bureau's computer tracking system, that code number will retrieve both mail *and* telephone minor infractions, instead of *only* the mail infractions covered by the code number 406.

For clarity, therefore, we reserve code number 406 and assign the code number 410 to the prohibited act covering minor mail infractions. This correction, while maintaining the language of 406, as published in the previous rule, only changes the number of that prohibited act to 410. We make this change to be able to more accurately track specific telephone-related acts using code number 497 only or mail-related prohibited acts using code number 410 only.

**Why Are We Making This Change as an Interim Final Rule?**

The Administrative Procedure Act (5 U.S.C. 553) allows exceptions to notice-and-comment rulemaking for ''(A)interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

This rulemaking is exempt from normal notice-and-comment procedures because it is a minor clarification of currently existing Bureau policy. We are modifying our rule to enable us to more accurately track specific prohibited acts using original prohibited act code numbers in our computer tracking system. The language of the prohibited act remains the same, only the code number that refers to it changes.

Because this change reflects current Bureau policy and is a minor clarification of current agency procedure and practice, we find that normal notice-and-comment rulemaking is unnecessary. We are, however, allowing the public to comment on this rule change by publishing it as an interim final rule.

**Where To Send Comments**

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

We will consider comments received during the comment period before taking final action. We will try to consider comments received after the end of the comment period. In light of comments received, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments received remain on file for public inspection at the above address.

**Executive Order 12866**

This regulation has been drafted and reviewed in accordance with Executive

Order 12866, ''Regulatory Planning and Review'', section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

**Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Regulatory Flexibility Act**

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Plain Language Instructions**

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, 202–514–6655.

**List of Subjects in 28 CFR Part 541**

Prisoners.

**Kathleen Hawk Sawyer,**

*Director, Bureau of Prisons.*

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend part 541 in subchapter C of 28 CFR, chapter V as follows.

**Subchapter C—Institutional Management**

## PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for part 541 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. In § 541.13, Table 3 is amended by redesignating the text of code 406 as 410 under the low moderate category, and adding the phrase ''(Not to be used)'' after code 406.

**§ 541.13 Prohibited acts and disciplinary severity scale.**

* * * * *

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE

| Code | Prohibited acts | Sanctions |
|---|---|---|
| * | * | * * * |
| LOW MODERATE CATEGORY | | |
| * | * | * * * |
| 406 | (Not to be used) | |
| * | * | * * * |

[FR Doc. 02–31661 Filed 12–17–02; 8:45 am]

BILLING CODE 4410–05–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[COTP Los Angeles–Long Beach 02–006]**

**RIN 2115–AA97**

## Security Zone; Waters Adjacent to Diablo Canyon Nuclear Power Plant, Avila Beach, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has established a security zone in the waters adjacent to Diablo Canyon Nuclear Power Plant near Avila Beach, California. This action is necessary to ensure public safety and prevent sabotage or terrorist acts against the power plant and individuals near or in the power plant facilities and the surrounding communities. Entry into this zone will be prohibited unless specifically authorized by the Captain of the Port Los Angeles-Long Beach.

**DATES:** This rule is effective January 17, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP Los Angeles-Long Beach 02–006] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On March 29, 2002, we published an interim rule with request for comments entitled ''Security Zone; Waters Adjacent to Diablo Canyon Nuclear Power Plant, Avila Beach, CA'' in the **Federal Register** (67 FR 15117). We received no letters commenting on the rule. No public hearing was requested, and none was held.

Previously, on October 24, 2001, we published a temporary final rule (TFR) entitled ''Security Zones: Los Angeles Harbor, Los Angeles, CA and Avila Beach, CA'' in the **Federal Register** (66 FR 53713) that expired on March 29, 2002.

The Captain of the Port has determined the need for continued security regulations exists. Accordingly, this rulemaking makes permanent the temporary security zone published in the **Federal Register** on March 29, 2002.

**Background and Purpose**

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports and properties of national significance to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on the waterfronts of nuclear power plants by establishing security zones to aid in the waterside protection of these facilities. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a nuclear power plant would have on the surrounding area and communities, the Coast Guard is establishing a security zone around the Diablo Canyon Nuclear Power Plant near Avila Beach, California. This security zone helps the Coast Guard to prevent vessels or persons from engaging in terrorist actions against nuclear power plants.

**Discussion of Comments and Changes**

We received no letters commenting on the interim rule. No public hearing was requested, and none was held. Therefore, we have made no changes and will implement the provisions of the interim rule as written.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, l979).

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

**Small Entities**

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

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

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

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

**Collection of Information**

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

**Federalism**

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

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

**Unfunded Mandates Reform Act**

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

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

**Taking of Private Property**

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

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

**Civil Justice Reform**

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

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

**Protection of Children**

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

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

**Indian Tribal Governments**

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

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

**Energy Effects**

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

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

**Environment**

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

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

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

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

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

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

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

2. Add § 165.1155 to read as follows:

**§ 165.1155 Security Zone; Diablo Canyon Nuclear Power Plant, Avila Beach, California.**

(a) *Location.* The following area is a security zone: all waters of the Pacific Ocean, from surface to bottom, within a 2,000 yard radius of Diablo Canyon Nuclear Power Plant centered at position 35°12′23″ N, 120°51′23″ W. [Datum: NAD 83].

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

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

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

Dated: December 6, 2002.

**J. M. Holmes,**

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

[FR Doc. 02–31767 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[KY 139–200307(a); FRL–7423–3]**

## Approval and Promulgation of Implementation Plans for Kentucky: Source-Specific Revision for Lawson Mardon Packaging

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a source-specific revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky. This revision allows Lawson Mardon Packaging, USA, Corporation to have an alternative compliance averaging period of 30 days instead of the 24-hour averaging period specified by Kentucky air quality regulations 59:210 and 59:212.

**DATES:** This direct final rule is effective February 18, 2003 without further notice, unless EPA receives adverse comment by January 17, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** All comments should be addressed to: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).)

Copies of the Commonwealth's submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Michele Notarianni, 404/562–9031, *notarianni.michele@epa.gov*)

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382)

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni at address listed above or 404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

**SUPPLEMENTARY INFORMATION:**

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I. Today's Action
II. EPA's Evaluation
III. Final Action

### I. Today's Action

The EPA is approving a source-specific revision into the Kentucky SIP for the Lawson Mardon Packaging, USA, Corporation (LMP) located in Shelby County, Kentucky. The revision was submitted to EPA by Kentucky on March 4, 2002. This revision allows LMP to use a 30-day averaging period instead of the required 24-hour averaging period as specified in Kentucky air quality regulations 59:210, ''New fabric, vinyl and paper surface coating operations,'' and 59:212, ''New graphic arts facilities using rotogravure and flexography.'' The effect of today's approval action is that once LMP's synthetic minor operating permit is finalized, LMP shall determine compliance with volatile organic compound (VOC) emission rates allowed by its permit every 30 days instead of every 24 hours.

### II. EPA's Evaluation

The LMP plant in Shelbyville, Kentucky manufactures flexible packaging for the food and pharmaceutical industries. LMP currently operates a total of 15 printing and/or laminating machines. The plant's proposed, facility-wide synthetic minor operating permit covers all 15 machines,

and is conditioned on EPA's approval of the permit as a source-specific SIP revision.

The Agency's policy regarding emissions time averaging for existing sources of VOCs is established and clarified in a January 20, 1984, EPA Memorandum from John O'Connor, Acting Director of the Office of Air Quality Planning and Standards, to Air Directors in Regions I-X. The policy requires that SIP revisions relating to VOC control must maintain the National Ambient Air Quality Standards (NAAQS) for ozone. To allow VOC compliance averaging periods greater than 24 hours, the policy establishes four conditions which are summarized below along with EPA's analysis of the LMP submittal.

*Condition 1:* Real reductions in actual emissions must be achieved, consistent with Reasonably Available Control Technology (RACT) levels in SIPs or Agency control technique guidelines. *EPA Analysis:* Incinerators are used as add-on controls on those production lines required to have them. These controls meet or exceed RACT control levels.

*Condition 2:* Averaging periods must be as short as practicable, and in no case longer than 30 days. *EPA Analysis:* LMP has requested a 30-day compliance averaging period, which meets this condition. LMP supported its request with a statistical analysis demonstrating that daily, maximum potential VOC emissions are significantly less than daily, maximum allowable VOC emissions. The level of confidence for the statistical analysis is 99.73 percent.

*Condition 3:* A demonstration must be made that the use of averaging periods greater than 24 hours will not jeopardize the ozone NAAQS or the Reasonable Further Progress (RFP) plan for the area. *EPA Analysis:* LMP submitted a statistical analysis to compare 24-hour and 30-day compliance averaging results against maximum allowable permit VOC emission rates. The analysis accounts for potential daily emission fluctuations and shows that actual VOC emissions for eight of LMP's older machines are consistently and far below the allowable VOC emission rates. The analysis does not include data from seven, newer machines, which were installed after submittal of LMP's permit application, because data were not available at that time. However, because the seven, newer machines have better overall control efficiencies and less variation than the older machines, the statistical analysis for the existing machines may also be applied to the new machines as representative. A further consideration is that LMP uses continuous emission monitoring systems to ensure its control equipment is operating properly and within limits.

*Condition 4:* Sources in areas with measured violations cannot be considered for longer term averaging until the SIP has been revised to demonstrate attainment of the ozone NAAQS and maintenance of RFP. *EPA Analysis:* Shelby County, Kentucky is currently classified as unclassified/attainment for the 1-hour ozone NAAQS and is currently attaining the standard. The closest, downwind monitor has not shown an exceedance of the 1-hour NAAQS within the last five years. Conditions addressing RFP plans are not applicable to 1-hour ozone attainment areas.

## III. Final Action

EPA is approving this source-specific revision to the Kentucky SIP allowing LMP to use a 30-day compliance averaging period because it is consistent with the requirements of the Clean Air Act and EPA policy. Use of an alternative averaging period is not expected to jeopardize maintenance of the 1-hour ozone NAAQS in Shelby County for reasons discussed in section II.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 18, 2003 without further notice unless the Agency receives adverse comments by January 17, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 18, 2003 and no further action will be taken on the proposed rule.

## V. Administrative Requirements

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 5, 2002.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart S—Kentucky

2. Section 52.920(d) is amended by adding a new entry at the end of the table to read as follows:

**§ 52.920 Identification of plan.**

* * * * *

(d) * * *

EPA—APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

| Name of source | Permit number | State effective date | EPA approval date | Federal Register Notice |
|---|---|---|---|---|
| * | * | * | * | * |
| Lawson Mardon USA Packaging Corporation | N/A ..... | February 18, 2003 ..... | December 18, 2002 ... | [Insert FR page citation] |

* * * * *

[FR Doc. 02–31666 Filed 12–17–02; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 32

**[CC Docket No. 02–269; FCC 02–309]**

## Federal-State Joint Conference on Accounting Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** This order suspends the implementation of four previously adopted accounting and reporting rule changes until July 1, 2003 to allow the recently established Federal-State Joint Conference on Accounting Issues to review them because of the great interest in these changes by Joint Conference members.

**DATES:** The effective date for amendments to 47 CFR 32.5200, 32.6562 and 32.6620 published at 67 FR 5670, February 6, 2002, is further delayed until July 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jane Jackson, Associate Chief, Wireline Competition Bureau, (202) 418–1500.

**SUPPLEMENTARY INFORMATION:** On November 5, 2001, the Commission released a Report and Order, 67 FR 5670, February 6, 2002, as part of its biennial review of accounting requirements and Automated Reporting Management Information System (ARMIS) reporting requirements. In the order, the Commission adopted a number of accounting and reporting requirement reforms. The reforms included the creation of several new part 32 Uniform System of Accounts subaccounts and the elimination or modification of other part 32 accounts and subaccounts and modification of ARMIS reporting requirements. Changes to the part 32 accounting rules are scheduled to take effect January 1, 2003. On March 8, 2002, BellSouth Corporation, SBC Communications Inc., and Verizon filed a joint petition for reconsideration asking that two newly-created subaccounts—the wholesale and retail subaccounts to Account 6620, Services—be eliminated. The petitioners also requested that the Commission change the reporting of ''Loop Sheath Kilometers'' back to ''Sheath Kilometers.'' The petitioners argued that the Commission should delay implementation of the relevant rule changes pending review of the arguments raised in their earlier reconsideration petition. The petitioners asserted that implementation of the rule changes will be very costly and time-consuming, and requested that they not be required to undertake this work while the Commission considers their petition. AT&T Corp. opposed both the petition for reconsideration and the request to delay implementation. On September 5, 2002, the Commission convened the Federal-State Joint Conference on Accounting Issues, which is undertaking ''a cooperative federal and state review of regulatory accounting and reporting requirements in order to determine their adequacy and effectiveness in the current market and make recommendations for improvements.'' In preliminary discussions, members of the Joint Conference identified the following two part 32 accounting changes adopted earlier that they believe should be subject to further consideration before implementation: the consolidation of

Account 5230, Directory revenue, with other miscellaneous revenue accounts into Account 5200, Miscellaneous revenue; and the consolidation of the depreciation and amortization expense accounts (Accounts 6561 through 6565) into Account 6562, Depreciation and amortization expenses. The Commission believes that further consideration of these changes by the Joint Conference is reasonable and defers the implementation of the following accounting and reporting requirement rule changes for six months: (1) The consolidation of Accounts 6621 through 6623 into Account 6620, with subaccounts for wholesale and retail; (2) the consolidation of Account 5230, Directory revenue, into Account 5200, Miscellaneous revenue; (3) the consolidation of the depreciation and amortization expense accounts (Accounts 6561 through 6565) into Account 6562, Depreciation and amortization expenses; and (4) the revised ''Loop Sheath Kilometers'' data collection in Table II of ARMIS Report 43–07. The effective date for the rule changes to Accounts 5200, 6562, and 6620 had earlier been extended to January 1, 2003, published on April 24, 2002, at 67 FR 20052, and now are further extended to July 1, 2003. The change affecting ARMIS Report 43–07 is extended to July 1, 2003.

Federal Communications Commission.

**Jane E. Jackson,**

*Associate Chief, Wireline Competition Bureau.*

[FR Doc. 02–31606 Filed 12–17–02; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[I.D. 121202A]**

### Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

**ACTION:** General category closure.

**SUMMARY:** NMFS has determined that the 2002 fishing year Atlantic bluefin tuna (BFT) General category quota will be attained by December 15, 2002. Therefore, the General category fishery will be closed effective 11:30 p.m. on December 15, 2002. This action is being taken to prevent overharvest of the total adjusted General category quota of 882.0 metric tons (mt).

**DATES:** Effective 11:30 p.m. local time on December 15, 2002, through May 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale or Dianne Stephan,978–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories. The General category landings quota, including time-period subquotas and the New York Bight set-aside, are specified annually as required under § 635.27(a)(1). The 2002 fishing year General category quota and effort control specifications were issued on October 1, 2002 #(67 FR 61537).

#### General Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the **Federal Register** for publication, notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year, or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period, or until such date as specified in the notification.

Adjustments to the 2002 fishing year BFT quota specifications issued pursuant to § 635.27 (FR cites on 67 FR 68045 Nov. 8 '02 adjustments and 67 FR 71487 Dec. 2 '02) set a total coastwide General category quota of 882.0 mt of large medium and giant BFT to be harvested from the regulatory area during the 2002 fishing year. Based on reported landings and effort, NMFS projects that this quota will be reached by December 15, 2002. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT intended for sale by persons aboard vessels in the General or Charter/Headboat categories must cease at 11:30 p.m. local time December 15, 2002. The intent of this closure is to prevent overharvest of the adjusted quota established for the General category.

General category permit holders may tag and release BFT while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26.

Vessels permitted in the HMS Charter/Headboat category may continue to fish for and retain BFT under the Angling category regulations. The current Angling category daily retention limit, effective from November 1, 2002 through May 31, 2003 (67 FR 39869, June 11, 2002) is one large school or small medium BFT (measuring from 47 to less than 73 inches (from 119 to less than 185 cm) curved fork length). In addition, HMS Charter/Headboat category vessels may continue to retain one large medium or giant ''trophy'' BFT, measuring 73 inches (185 cm) or greater, per fishing year (June 1 through May 31). Trophy BFT can not be sold and all BFT landed under the Angling category quota must be reported by calling 1–888–872–8862 or by using the Internet at *www.nmfspermits.com*, unless there is a landing tag requirement in the state of landing.

#### Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds for good cause that providing prior notice and public comment for this action, as required under 5 U.S.C. 553 (b) (B), is impracticable and contrary to the public interest. This closure is intended to prevent the overharvest of the adjusted BFT quota established for the coastwide General category. The fishery is currently underway and any delay in closure could cause the fishery to exceed the quota and be inconsistent with domestic and international requirements and objectives. For these reasons the AA also finds good cause to waive the 30–day delay in effective date pursuant to 5 U.S.C. 553 (d) (1) and (3). NMFS provides as much advance notification of the closure as possible by publishing the closure notice in the **Federal Register**, faxing notification to individuals on the HMS FAX Network and to known fishery representatives, announcing the notice on the Atlantic Tunas Information Line, and announcing the closure notice over NOAA Weather and Coast Guard radio channels. This action is required under 50 CFR 635.28(a) (1) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 13, 2002.

**John H. Dunnigan,**

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

[FR Doc. 02–31853 Filed 12–13–02; 2:38 pm]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[Docket No. 020325070–2296–03; I.D. 071299C]**

**RIN 0648–AM91**

## Atlantic Highly Migratory Species (HMS) Fishing Vessel Permits; Charter Boat Operations

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

**ACTION:** Final rule.

**SUMMARY:** Under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), NMFS amends the consolidated regulations governing the Atlantic HMS fisheries to define operations and regulations for HMS Charter/Headboats (CHBs), require an Atlantic HMS recreational permit, adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarify the regulations regarding the retention of Atlantic bluefin tuna (BFT) in the Gulf of Mexico by recreational and HMS CHB vessels, and allow NMFS to set differential BFT retention limits by vessel type (*e.g.*, charter boats, headboats).

**DATES:** Effective March 1, 2003.

**ADDRESSES:** Copies of supporting documents, including the HMS FMP, are available from the Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. The supporting documents will also be posted on the e-Comments Web site listed under *http://www.nmfs.noaa.gov* and the HMS Web site *http://www.nmfs.noaa.gov/sfa/hmspg.html*. Comments on the burden-hour estimates or other aspects of the collection of information that are part of this rulemaking can be submitted to NMFS, but must also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Brad McHale at (978) 281–9260.

**SUPPLEMENTARY INFORMATION:** Atlantic tunas, swordfish, and billfish are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator (AA) for Fisheries, NOAA. Sharks are managed solely under the authority of the Magnuson-Stevens Act.

### Background

Background information about the need for revisions to the HMS regulations was provided in the preamble to the proposed rule (67 FR 20716, April 26, 2002), and is not repeated here. By this final rule, NMFS defines operations and regulations for HMS CHBs; requires an Atlantic HMS recreational permit; adjusts the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits; and clarifies the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and HMS CHB vessels. This final rule also amends the regulatory text to clarify the authority to set differential BFT retention limits by vessel type (*e.g.*, charter boats, headboats) which was restated less clearly when the HMS regulations were consolidated under 50 CFR part 635 (64 FR 29090, May 28, 1999).

### Changes from the Proposed Rule

This final rule changes some of the proposed revisions to the regulatory text and some paragraphs have been consolidated. In § 635.4, several proposed revisions to paragraphs (b) and (d) have been revised, the references to certain other permit requirements in the proposed revisions to paragraphs (b) and (d) have been consolidated into paragraph (a), and paragraph (c) has been added. These changes were made to clarify the intent of the regulatory text, to reduce duplication and to facilitate enforcement of the regulations.

### Comments and Responses

NMFS conducted three public hearings on the proposed rule and received written, oral, and electronic comments (through the NMFS e-Comments pilot project website at *http://www.nmfs.noaa.gov*) over a 30–day comment period. The majority of the comments were in support of the proposed actions. Responses to specific comments on the issues contained in the proposed rule are provided here.

*Comment 1:* NMFS has received comments stating that applying the recreational yellowfin tuna (YFT) retention limit to HMS CHB vessels at all times precludes legitimate commercial activity when the vessels are not carrying fee-paying anglers. Commenters have also indicated that some HMS CHB vessels have historically conducted commercial fishing trips for YFT when not operating as a for-hire vessel. Some commenters stated that the HMS FMP did not specifically address commercial fishing by the for-hire fleet and the impacts of prohibiting such commercial fishing on this segment of the fishery. Other commenters stated that HMS CHB vessels should not have the ability to land as many YFT as they can on commercial vessels because the stock is currently defined as fully exploited and an increase in fishing mortality could have adverse effects.

*Response:* NMFS agrees that applying the recreational YFT retention limit to HMS CHB vessels at all times precludes legitimate commercial activity when the vessels are not carrying fee-paying passengers. The HMS CHB permit is considered a commercial tuna permit in that tunas caught by vessels possessing the permit may be sold. Prior to July 1, 1999, CHB vessels had the ability to retain and sell all YFT that were caught, as long as they met the minimum size requirements. In 2000, commercial handgear landings of YFT totaled 283.7 metric tons (mt), amounting to approximately 4 percent of total U.S. YFT landings, or 9 percent of all commercial landings. Dealer weighout data reported to NMFS included 839 handgear trips that sold YFT from 1998 through 2000, and about 10 percent of these trips were reported by CHBs. Thus, although commercial YFT landings by CHB vessels may be significant to individual vessel operators, they represent less than 1 percent of total U.S. YFT landings.

NMFS has determined that allowing HMS CHB vessels to retain YFT under the commercial limits when not engaged in for-hire activities would not adversely affect the YFT stock. NMFS recognizes the dual nature of the operations of certain vessels issued the HMS CHB permit. Thus, the final rule defines for-hire fishing in a way that would allow such vessels to fish under commercial limits when not engaged in

for-hire fishing. The definition of for-hire fishing is similar to that used in other U.S. fisheries operating in the Caribbean, Gulf of Mexico, and South Atlantic. For those vessels that engage in both for-hire and commercial fishing, the impact of this action is positive, as it clarifies the requirements to allow them to participate in both types of fisheries.

*Comment 2:* Many comments stated that requiring recreational permits for all HMS vessels is long over due. They noted that issuing an HMS Angling category permit will provide critical data by which to accurately assess the status of the Atlantic HMS fishery in the recreational sector. Other commenters stated that this permit requirement will even the playing field and protect the rights of both commercial and recreational fishermen. NMFS also received comments stating that it is essential to know the universe of participants and the total effort that is involved in the recreational sector of HMS fisheries. It was stated that the permits could be used to further our scientific understanding of these HMS. The comment stated that the permit should be merged with the current Atlantic tunas Angling category permit to reduce the burden on the recreational sector. NMFS also received a comment stating that there are other methods of identifying the universe of recreational HMS fishermen, such as coordinating with the states, which would relieve the public of the burden of having to renew the Federal permit on an annual basis.

*Response:* The HMS recreational permit will enable NMFS to more accurately monitor recreational landings and generate catch and release statistics for all recreational HMS, thereby enhancing HMS management and research efforts. Knowledge of the universe of recreational fishermen and of total fishing effort, catch, and bycatch is incomplete at present, with most data collection currently focused on the Atlantic tunas fisheries. Estimates of some of these parameters are currently made using survey instruments, such as the Large Pelagic Survey (LPS) and the Marine Recreational Fisheries Statistics Survey (MRFSS), as well as reporting from registered tournaments. The current Atlantic tunas angling category permit will be replaced with an Atlantic HMS recreational permit system, which will greatly improve information available to NMFS regarding the recreational Atlantic HMS fisheries by providing an accurate measure of participation, which will improve estimates of effort, catch, and bycatch (including discards) for several important species.

*Comment 3:* NMFS received a number of comments stating that, due to the nature of the HMS fisheries, effective management is essential throughout the entire range of the regulated species. These commenters agreed that NMFS must exercise jurisdiction over U.S.-flagged vessels regardless of where a vessel is fishing.

*Response:* NMFS recognizes that state-federal jurisdictional issues are complex. NMFS will work with the individual states to evaluate how permit conditions applied to recreational vessels issued Federal permits may resolve jurisdictional concerns. Upon completing discussions with the states, NMFS may address this issue in a separate rulemaking.

*Comment 4:* Many comments stated that the different retention limits for inspected headboats are justifiable provided that there is a maximum retention limit placed upon the vessel.

*Response:* With the BFT retention limits generally defined in terms of the number of fish that can be retained per vessel, a maximum retention limit can be inequitable for U.S. Coast Guard (USCG) inspected vessels authorized to carry a larger number of passengers. This action clarifies the HMS regulations for setting differential retention limits by vessel type (*e.g.*, charter boat vs. headboat).

*Comment 5:* Several comments stated that the E-comments system is a step in the right direction in providing the public with efficient means to submit comments, and in allowing NMFS to take more stakeholders' insights into account when making final rules. Some commenters also stated that having the ability to see previously submitted comments enhances their understanding of the proposed changes and the potential impacts.

*Response:* NMFS' E-comments pilot project was a success. NMFS will expand the use of this system and will continue to explore ways to use technology to enhance the public's ability to learn about and participate in NMFS rulemaking activities.

*Comment 6:* Some commenters stated that the HMS CHB recreational trip definition should be coordinated with the regional fishery management councils, NMFS law enforcement, and USCG to minimize the confusion and complexity with different definitions in different fisheries.

*Response:* NMFS coordinated with other management bodies and enforcement agencies to develop a recreational trip definition for HMS CHB vessels. This issue was discussed at length during the 2001 Advisory Panel (AP) meeting, and there was general consensus among the AP members that defining a charter trip in a manner similar to that used in the NMFS Southeast Region regulations (based on paying passengers aboard and/or the number of persons aboard, with three people or less on board constituting a ''commercial'' trip and more than three on board constituting a ''charter'' trip) is appropriate for HMS, especially regarding the YFT bag limit issue.

*Comment 7:* A few comments received stated that it is unacceptable to charge every fishermen $27.00 per year for the use of the HMS resources. These commenters felt that the fee was a means of generating funds for the Federal government and that NMFS could establish a permit program and obtain the same information without charging a fee. Other commenters stated that the fee is reasonable.

*Response:* Under the Magnuson-Stevens Act, NMFS is authorized to charge fees for permits to participants in fisheries conducted in the U.S. exclusive economic zone. Administrative costs recovery is a NOAA policy, and the fee is calculated annually to recover the costs attributable to the automated permit and reporting system. Under current law, these funds cannot be directly applied to NMFS' programs, but must be deposited into the General Fund of the United States Treasury.

**Classification**

These regulatory amendments are published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* The Assistant Administrator (AA) for Fisheries, NOAA, has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and for the management of the Atlantic HMS fisheries.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) at the proposed rule stage that, if implemented, this final rule would not have a significant economic impact on a substantial number of small entities. No comments were received that would alter the basis for this determination. However, as noted above, a few of the comments received expressed concern about charging a fee for the use of the HMS resources. These commenters felt that the permit fee was a means to generate funds for the Federal government and that NMFS could establish a permit program without

charging a fee. However, under the Magnuson-Stevens Act, NMFS is authorized to charge fees for permits issued to participants in fisheries conducted in the U.S. exclusive economic zone. Further, administrative cost recovery is NOAA's policy, and the minimal fee (currently $27 per year) is calculated annually to recover the costs attributable to the automated permit and reporting system. Under current law, these funds cannot be directly applied to NMFS' programs, but must be deposited into the General Fund of the United States Treasury. Given the prior certification to SBA, neither an Initial nor a Final Regulatory Flexibility Analysis was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an Environmental Assessment (EA) for this final rule, and the AA has concluded that there would be no significant impact on the human environment. The EA presents analyses of the anticipated impacts of these final actions and the other alternatives considered. A copy of the EA and other analytical documents prepared for this final rule are available from NMFS (*see* **ADDRESSES**).

The regulations implemented through this final rule are not expected to increase endangered species or marine mammal interaction rates. On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. On July 9, 2002 (67 FR 45393), NMFS implemented the reasonable and prudent alternative required by the BiOp. None of the actions in this final rule would have any additional impact on sea turtles as these actions would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No irreversible or irretrievable commitments of resources are expected from the final actions that would adversely affect the implementation of the requirements of the BiOp.

The areas affected by these final actions have been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of NMFS. It is not anticipated that the actions will have any adverse impacts on EFH; therefore, no consultation is required.

This final rule contains two new collection-of-information requirements and restates several existing reporting requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The first new collection of information is approved under OMB Control Number 0648–0327 and is an extension of the Atlantic tunas recreational Angling category permit requirement to include fishermen who fish for all Atlantic HMS, including swordfish, sharks, and billfish, with an estimated public reporting burden of 30 minutes per response for initial permit applications and 6 minutes per response for renewing the permit. The second collection is approved under OMB Control Number 0648–0373 and extends gear-marking requirements to persons acquiring this permit who were not previously subject to a permit requirement, with an estimated response time of 15 minutes per float. This final rule also restates a number of collection-of-information requirements that OMB has previously approved. These requirements and their OMB control numbers and estimated response times are: vessel permits for Atlantic tunas and Atlantic HMS Charter/headboats, initial (30 minutes; 0648–0327) and renewal (6 minutes; 0648–327); vessel permits for Atlantic shark and swordfish (20 minutes; 0648–0205); dealer permits for Atlantic sharks and swordfish (5 minutes; 0648–0205); call in recreational landing reports for Atlantic bluefin tuna (5 minutes; 0648–0328); dealer permits for Atlantic tunas (5 minutes; 0648–0202); gear marking (15 minutes; 0648–0373); and vessel marking (45 minutes; 0648–0373).

All estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (*see* **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Statistics, Treaties.

Dated: December 10, 2002.

**Rebecca Lent,**

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

For the reasons set out in the preamble, 50 CFR part 635, is amended as follows:

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

**Authority:** Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, the definition for ''For-hire trip'' is added, in alphabetical order, to read as follows:

**§ 635.2 Definitions.**

* * * * *

For-hire trip means a recreational fishing trip taken by a vessel with an Atlantic HMS Charter/Headboat permit during which paying passenger(s) are aboard; or, for uninspected vessels, trips during which there are more than three persons aboard, including operator and crew; or, for vessels that have been issued a Certificate of Inspection by the U.S. Coast Guard to carry passengers for hire, trips during which there are more persons aboard than the number of crew specified on the vessel's Certificate of Inspection.

* * * * *

3. In § 635.4, paragraphs (a)(1), (a)(2), (a)(5), (b), (d)(1) through (d)(3), (h)(1) introductory text, and (m)(1) are revised, and paragraph (c) is added to read as follows:

**§ 635.4 Permits and fees.**

* * * * *

(a) General. (1) Authorized activities. Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities without the appropriate permit, unless otherwise authorized by NMFS in accordance with this part. In certain cases, additional permits may be required to authorize these same or related activities under federal, state or local jurisdictions.

(2) Vessel permit inspection. The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish

for, take, retain, or possess Atlantic HMS when engaged in recreational fishing and to fish for, take, retain or possess Atlantic tunas, swordfish, or sharks when engaged in commercial fishing. The vessel operator must make such permit available for inspection upon request by NMFS or by a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection all required vessel permits.

* * * * *

(5) Display upon offloading. Upon transfer of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit and/or Atlantic tunas, shark, or swordfish permit to the receiving dealer. The permit must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2) and (b)(2)(i).

* * * * *

(b) HMS Charter/Headboat permits. (1) The owner of a charter boat or headboat used to fish for, take, retain, or possess any Atlantic HMS must obtain an HMS Charter/Headboat permit. A vessel issued an HMS Charter/Headboat permit for a fishing year shall not be issued an HMS Angling permit or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(2) While persons aboard a vessel that has been issued an HMS Charter/Headboat permit are fishing for or are in possession of Atlantic HMS, the operator of the vessel must have a valid Merchant Marine License or Uninspected Passenger Vessel License, as applicable, issued by the U.S. Coast Guard pursuant to regulations at 46 CFR part 10. Such Coast Guard license must be carried on board the vessel.

(c) HMS Angling permits. The owner of each vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed, must obtain an HMS Angling permit. Atlantic HMS caught, retained, possessed, or landed by persons on board vessels with an HMS Angling permit may not be sold or transferred to any person for a commercial purpose. A vessel issued an HMS Angling permit for a fishing year shall not be issued an HMS Charter/Headboat permit or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership. An Atlantic Tunas Angling category permit issued for the 2002 fishing year shall meet the vessel permit requirements of this paragraph through May 31, 2003.

(d) Atlantic Tunas vessel permits. (1) The owner of each vessel used to fish for or take Atlantic tunas commercially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat permit issued under paragraph (b) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, Purse Seine, or Trap category of the Atlantic Tunas permit or a valid HMS Charter/Headboat permit.

(3) A vessel issued an Atlantic Tunas permit in any category for a fishing year shall not be issued an HMS Angling permit, HMS Charter/Headboat permit, or an Atlantic Tunas permit in any other category for that same fishing year, regardless of a change in the vessel's ownership.

* * * * *

(h) * * *

(1) Atlantic Tunas, HMS Angling, and HMS Charter/Headboat vessel permits.

* * * * *

(m) Renewal--(l) General. Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, or swordfish vessel permit. Except as specified in the instructions for automated renewals, a renewal application must be submitted to NMFS, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit provided that the specific requirements for the requested permit are met, including those described in § 635.4 (l)(2), all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in § 635.5, and the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section.

* * * * *

4. In § 635.5, the first sentence of paragraph (c) is revised to read as follows:

**§ 635.5 Recordkeeping and reporting.**

* * * * *

(c) Anglers. The owner of a vessel permitted in the HMS Angling or HMS Charter/Headboat category must report all BFT landed under the Angling category quota to NMFS through the automated catch reporting system by calling 1–888–USA-TUNA or posting the required information at http://www.nmfspermits.com within 24 hours of the landing. * * *

* * * * *

5. In § 635.6, paragraph (b)(1) introductory text and the first sentence of paragraph (c)(1) are revised to read as follows:

**§ 635.6 Vessel and gear identification.**

* * * * *

(b) Vessel identification. (1) An owner or operator of a vessel for which a permit has been issued under § 635.4, other than an HMS Angling permit, must display the vessel number

* * * * *

(c) Gear identification. (1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses a handline, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit number on each float attached to a handline or harpoon and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. * * *

* * * * *

6. In § 635.22, paragraphs (a), (c), and (d) are revised to read as follows:

**§ 635.22 Recreational retention limits.**

(a) General. Atlantic HMS caught, possessed, retained, or landed under these recreational retention limits may not be sold or transferred to any person for a commercial purpose. Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic EEZ, and to a yellowfin or bluefin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

* * * * *

(c) Sharks. One shark from either the large coastal, small coastal or pelagic group may be retained per vessel per trip, subject to the size limits described

in § 635.20(e), and, in addition, one Atlantic sharpnose shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark per person may be possessed on board a vessel. No prohibited sharks listed in Table 1(d) of appendix A to this part may be retained. The recreational retention limit for sharks applies to a person who fishes in any manner, except to a person aboard a vessel issued an Atlantic Sharks LAP under § 635.4. When a commercial Atlantic shark fishery is closed under § 635.28, the recreational retention limit for sharks may be applied to persons aboard a vessel issued an Atlantic Sharks LAP under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit under § 635.4 and is engaged in a for-hire trip.(d) Yellowfin tuna. Three yellowfin tunas per person per day may be retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be possessed on board a vessel. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard a vessel issued an Atlantic Tunas vessel permit under § 635.4. The recreational retention limit for yellowfin tuna applies to persons aboard a vessel that has been issued an HMS Charter/Headboat permit only when the vessel is engaged in a for-hire trip.

7. In § 635.23, paragraphs (b) introductory text, (b)(2), (b)(3), (c) introductory text, and (c)(3) are revised to read as follows:

**§ 635.23 Retention limits for BFT.**

* * * * *

(b) Angling category. BFT may be retained and landed under the daily limits and quotas applicable to the Angling category by persons aboard vessels issued an HMS Angling permit as follows:

* * * * *

(2) School, large school, or small medium BFT. (i) No school, large school, or small medium BFT may be retained, possessed, landed, or sold in the Gulf of Mexico.

(ii) One school, large school, or small medium BFT per vessel per day may be retained, possessed, or landed outside the Gulf of Mexico. Regardless of the length of a trip, no more than a single day's allowable catch of school, large school, or small medium BFT may be possessed or retained.

(3) Changes to retention limits. To provide for maximum utilization of the quota for BFT spread over the longest period of time, NMFS may increase or decrease the retention limit for any size class BFT or change a vessel trip limit to an angler limit and vice versa. Such increase or decrease in retention limit will be based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. Such adjustments to the retention limits may be applied separately for persons aboard a specific vessel type, such as private vessels, headboats or charter boats. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing with the Office of the **Federal Register** for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the **Federal Register** for publication.

(c) HMS Charter/Headboat. Persons aboard a vessel issued an HMS Charter/Headboat permit may retain and land BFT under the daily limits and quotas applicable to the Angling category or the General category as follows:

* * * * *

(3) When fishing other than in the Gulf of Mexico and when the fishery under the General category has not been closed under § 635.28, a person aboard a vessel that has been issued an HMS Charter/Headboat permit may fish under either the retention limits applicable to the General category specified in paragraphs (a)(2) and (a)(3) of this section or the retention limits applicable to the Angling category specified in paragraphs (b)(2) and (b)(3) of this section. The size category of the first BFT retained will determine the fishing category applicable to the vessel that day.

* * * * *

8. In § 635.27, the first three sentences of paragraph (a) introductory text, the first two sentences of paragraph (a)(1)(i) introductory text, and the first sentence of paragraph (a)(2) introductory text are revised to read as follows:

**§ 635.27 Quotas.**

(a) BFT. Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits, HMS Angling permits, or HMS Charter/Headboat permits. * * *

(1) * * *

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category landings quota. See § 635.23 (c)(3) regarding landings by vessels with an HMS Charter/Headboat permit that are counted against the General category landings quota. * * *

* * * * *

(2) Angling category landings quota. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent of the overall annual U.S. BFT landings quota. * * *

* * * * *

9. In § 635.28, paragraph (b)(3) is revised to read as follows:

**§ 635.28 Closures.**

* * * * *

(b) * * *

(3) When the fishery for a shark species group is closed, a fishing vessel issued an Atlantic Sharks LAP pursuant to § 635.4 may not possess or sell a shark of that species group, except under the conditions specified in § 635.22 (a) and (c), and a permitted shark dealer may not purchase or receive a shark of that species group from a vessel issued an Atlantic Sharks LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage.

* * * * *

10. In § 635.31, paragraph (a)(1) is revised to read as follows:

**§ 635.31 Restrictions on sale and purchase.**

(a) Atlantic tunas. (1) Persons that own or operate a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit, or a General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic Tunas issued under this part. However, no person shall sell a BFT smaller than the large medium size class. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been

closed, shall be sold (see § 635.23(c)). Persons shall sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part.

* * * * *

11. In § 635.71, paragraphs (b)(1), (b)(3), (b)(14), and (b)(15), are revised to read as follows:

**§ 635.71 Prohibitions.**

* * * * *

(b) * * *

(1) Engage in fishing with a vessel that has been issued an Atlantic Tunas or Atlantic HMS permit under § 635.4, unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings any BFT under control (secured to the catching vessel and/or brought on board) with no assistance from another vessel, except as shown by the operator that the safety of the vessel or its crew was jeopardized or other circumstances existed that were beyond the control of the operator.

* * * * *

(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a person aboard a vessel other than one that has on board a valid HMS Angling or Charter/Headboat permit, or an Atlantic tunas Purse Seine category permit as authorized under § 635.23 (b), (c), and (e)(2).

* * * * *

(14) As a person aboard a vessel issued an HMS Angling or Charter/Headboat permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT or fail to report such catch, as specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

(15) As a person aboard a vessel issued an HMS Angling or HMS Charter/Headboat permit, sell, offer for sale, or attempt to sell a large medium or giant BFT retained when fishing under the circumstances specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

* * * * *

[FR Doc. 02–31695 Filed 12–17–02; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[I.D. 112902A]**

## Fisheries of the Exclusive Economic Zone off Alaska; Bycatch Rate Standards for the First Half of 2003

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

**ACTION:** Pacific halibut and red king crab bycatch rate standards; request for comments.

**SUMMARY:** NMFS announces Pacific halibut and red king crab bycatch rate standards for the first half of 2003. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program (VIP). This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to avoid excessive prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), January 20, 2003, through 2400 hours, A.l.t., June 30, 2003. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., January 2, 2003.

**ADDRESSES:** Comments may be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7557. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228, fax 907–586–7465, e-mail *mary.furuness@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement the VIP to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and ''other trawl'' fisheries and the BSAI yellowfin sole and ''bottom pollock'' fisheries. Vessel operators also must not exceed red king crab bycatch rate standards specified for the BSAI yellowfin sole and ''other trawl'' fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6–month periods of January 1 through June 30, and July 1 through December 31. Because the Alaskan groundfish fisheries are closed to trawling from January 1 to January 20 of each year (§ 679.23(c)), the Administrator, Alaska Region, NMFS (Regional Administrator) is promulgating bycatch rate standards for the first half of 2003 effective from January 20, 2003, through June 30, 2003.

As required by § 679.21(f)(4), bycatch rate standards are based on the following information:

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under §§ 679.21(d) and (e);

(D) Anticipated groundfish harvests for that fishery;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

At its October 2002 meeting, the Council reviewed Pacific halibut and red king crab bycatch rates experienced by vessels participating in the fisheries under the incentive program during

1998 2002. The Council recommended that the same rates used in the first half of 2002 be used for the first half of 2003. Along with bycatch rate standards, the industry and the Council are exploring opportunities under fishery cooperatives and other voluntary or mandatory arrangements to control bycatch and optimize the amount of groundfish harvested under halibut and crab bycatch limits. Under § 679.50(k), vessel specific prohibited species bycatch rates from observer data are published weekly on the NMFS, Alaska Region website (www.fakr.noaa.gov). The Council's recommended bycatch rate standards are listed in Table 1.

TABLE 1—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 2003 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.

| Fishery and quarter | 2003 by-catch rate standard |
|---|---|
| Halibut bycatch rate standards(kilogram (kg) of halibut/metric ton (mt) of groundfish catch) | |
| BSAI Midwater pollock | |
| Qt 1 | 1.0 |
| Qt 2 | 1.0 |
| BSAI Bottom pollock | |
| Qt 1 | 5.0 |
| Qt 2 | 5.0 |
| BSAI Yellowfin sole | |
| Qt 1 | 5.0 |
| Qt 2 | 5.0 |
| BSAI Other trawl | |
| Qt 1 | 30.0 |
| Qt 2 | 30.0 |
| GOA Midwater pollock | |
| Qt 1 | 1.0 |
| Qt 2 | 1.0 |
| GOA Other trawl | |
| Qt 1 | 40.0 |
| Qt 2 | 40.0 |
| Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch) | |
| BSAI yellowfin sole | |
| Qt 1 | 2.5 |
| Qt 2 | 2.5 |
| GOA Other trawl | |
| Qt 1 | 2.5 |
| Qt 2 | 2.5 |

**Bycatch Rate Standards for Pacific Halibut**

The Regional Administrator based standards for the first half of 2003 on the anticipated seasonal fishing effort for groundfish species and on the 1998 2002 halibut bycatch rates observed in the trawl fisheries included under the vessel incentive program. In 2002, the BSAI pollock A season was January 20 through June 10 and the pollock fisheries for processing by the inshore and offshore components ended 9 weeks prior to June 10. Directed fishing for pollock for processing by the inshore and offshore components reopened June 10, the start of the 2002 pollock B season. Also, the community development quota (CDQ) pollock fishery ended 10 weeks before the end of the A season and did not resume until mid-July. In 2003, the proposed A season allowance for Bering Sea pollock (40 percent of the directed fishing allowance) would be available January 20 through June 10, with the remainder available June 10 through November 1. As in past years, the directed fishing allowances specified for the first 2003 pollock season likely will be reached before June 10. In the GOA, the 2003 proposed pollock fishery seasons will be from January 20 to February 25 for the ''A'' season and from March 10 to May 31 for the ''B'' season.

As in past years, the halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The average halibut bycatch rates for the BSAI 2002 first and second calendar quarter fisheries are equal to 0.08 and 0.05 kg halibut/mt groundfish, respectively, and the average halibut bycatch rates for the GOA 2002 first calendar quarter fishery is equal to 0.02 kg halibut/mt groundfish. In the GOA, directed fishing for pollock did not occur in the second calendar quarters of 2001 or 2002. Thus, the incidental catch rates of halibut during this time period in 2001 and 2002 are zero. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations.

Since 1999, the use of nonpelagic trawl gear has been prohibited when engaged in directed fishing for non-CDQ pollock in the BSAI (§ 679.24(b)(4)). Even with this prohibition, a vessel using pelagic trawl gear may be assigned to the BSAI bottom pollock fishery defined at § 679.21(f)(2) because assignment to the bottom pollock fishery for purposes of the VIP is based on retained catch composition during a weekly period instead of gear type. If the majority of the catch is pollock, but pollock comprises less than 95 percent of the catch, then a haul is assigned to the BSAI bottom pollock fishery. The prohibition on the use of nonpelagic trawl gear has reduced the number of hauls assigned to the BSAI bottom pollock fishery. Since the prohibition became effective, the halibut bycatch rates for this fishery are low compared to the halibut bycatch rate standards established for this fishery, with an average halibut bycatch rate for the 2002 first and second calendar quarter fisheries equal to 0.68 and 0.00 kg halibut/mt groundfish, respectively.

Other factors that could affect the spatial and temporal distribution of directed fishing for pollock include the allocations of pollock among the inshore and offshore fleets under the American Fisheries Act and the implementation of conservation measures that are necessary under the Endangered Species Act to mitigate pollock fishery impacts on Steller sea lions. At this time, the effects of these changes on halibut bycatch rates in the pollock fishery are unknown.

Data available on halibut bycatch rates in the BSAI yellowfin sole fishery during the first and second quarters of 2002 showed an average bycatch rate of 5 and 13 kg halibut/mt of groundfish, respectively. These rates are similar to rates experienced in past years. The Council's recommendation to use the same bycatch rates in 2003 as was used in 2002 would continue bycatch rate standards that represent an acceptable level of halibut bycatch in the yellowfin sole fishery while encouraging vessel operators to continue efforts to avoid unacceptably high halibut bycatch rates while participating in this fishery.

For the ''other trawl'' fisheries, the Council supported a 30–kg halibut/mt of groundfish bycatch rate standard for the BSAI and a 40 kg halibut/mt of groundfish bycatch rate standard for the GOA. Observer data collected from the 2002 BSAI ''other trawl'' fishery show first and second quarter halibut bycatch rates of 10 and 26 kg halibut/mt of groundfish, respectively. Observer data collected from the 2002 GOA ''other trawl'' fishery show first and second quarter halibut bycatch rates of 20 and 61 kg halibut/mt of groundfish, respectively.

Since 1997, with the exception of the GOA second quarter ''other trawl'' fishery, the average bycatch rates experienced by vessels participating in the GOA and BSAI ''other trawl'' fisheries for the first half of the year have been lower than the specified bycatch rate standards for these fisheries. The Council and NMFS have determined that the recommended halibut bycatch rate standards for the ''other trawl'' fisheries, including the

second quarter GOA fishery, would continue bycatch rate standards that represent an acceptable level of halibut bycatch in these fisheries and will encourage vessel operators to avoid high halibut bycatch rates while participating in these fisheries. Furthermore, these standards will provide some leniency to those vessel operators who choose to use large mesh trawl gear or other devices as a means to reduce groundfish discard amounts or who are forced to fish in different seasons or fishing grounds under measures implemented to mitigate fishing impacts on Steller sea lions and their critical habitat.

**Bycatch Rate Standards for Red King Crab**

For the BSAI yellowfin sole and ''other trawl'' fisheries in Zone 1 of the Bering Sea subarea, the Council's recommended red king crab bycatch rate standard is 2.5 crab/mt of groundfish. This standard is unchanged since 1992. The red king crab bycatch rates experienced by the BSAI yellowfin sole fishery in Zone 1 for the first and second quarters of 2002 average 0.47 and 1.76 crab/mt of groundfish, respectively. Although these rates are lower than the standards, these rates are higher than bycatch rates experienced in previous years. The average bycatch rates of red king crab experienced in the BSAI ''other trawl'' fishery during the first and second quarters of 2002 were 0.12 and 0.72 crab/mt groundfish, respectively. The trawl closures in Zone 1 that were implemented to reduce red king crab bycatch are one of the primary reasons the red king crab bycatch rates remain below the standards.

For the period January through October 2002, the total bycatch of red king crab by trawl vessels fishing in Zone 1 is estimated at 89,944 crab, less than the 97,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. NMFS anticipates that the 2003 red king crab bycatch in Zone 1 will be similar to 2002 because the crab bycatch reduction measures will remain the same.

In spite of anticipated 2003 red king crab bycatch rates being significantly lower than 2.5 red king crab/mt of groundfish, the Council recommended the red king crab bycatch rate standards be maintained at these levels. These levels continue to provide protection against unacceptably high rates of bycatch in these fisheries while providing some leniency to those vessel operators that choose to use large mesh trawl gear as a means to reduce groundfish discard amounts.

The Regional Administrator has determined that the recommended bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). Therefore, the Regional Administrator establishes the halibut and red king crab bycatch rate standards for the first half of 2003 as set forth in Table 1. These bycatch rate standards may be revised and these revisions published in the **Federal Register** when deemed appropriate by the Regional Administrator pending his consideration of the information set forth at § 679.21(f)(4).

As required in regulations at §§ 679.2 and 679.21(f)(5), the 2003 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1: January 1 through February 1;

Month 2: February 2 through March 1;

Month 3: March 2 through March 29;

Month 4: March 30 through May 3;

Month 5: May 4 through May 31;

Month 6: June 1 through June 28;

Month 7: June 29 through August 2;

Month 8: August 3 through August 30;

Month 9: August 31 through September 27;

Month 10: September 28 through November 1;

Month 11: November 2 through November 29; and

Month 12: November 30 through December 31.

**Classification**

This action is taken under 50 CFR 679.21(f) and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement for prior notice and comment pursuant to 5 U.S.C. 553(b)(B) as such procedures are unnecessary. With the exception of the first quarter BSAI bottom pollock halibut bycatch rate standard that was changed in January 2001, all the first and second quarter halibut and red king crab bycatch rate standards have remained unchanged since the start of the 1994 fishing year. NMFS has not received any written comments on these rate standards during public comment opportunities and did not receive any comments from the public at the council's October 2002 meeting.

**Authority:** Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: December 10, 2002.

**Bruce C. Morehead,**

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

[FR Doc. 02–31696 Filed 12–17–02; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 67, No. 243
Wednesday, December 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 TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–CE–51–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

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

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

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to all Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This proposed AD would require you to repetitively replace the nose landing gear (NLG) drag link right-hand part every 4,000 landings until an improved design NLG drag link right-hand part is installed. This proposed AD would also require you to install an improved design NLG drag link right-hand part as terminating action for the repetitive replacements. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to prevent structural failure of the NLG caused by fatigue damage to the NLG drag link right-hand part that develops over time, which could result in either an unintended NLG extension during flight or the nose landing gear not properly locking upon extension, which could lead to loss of airplane control during landing operations.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 23, 2003.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–51–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–51–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How do I comment on this proposed AD?* The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

*Are there any specific portions of this proposed AD I should pay attention to?* The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

*How can I be sure FAA receives my comment?* If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–51–AD.'' We will date stamp and mail the postcard back to you.

### Discussion

*What events have caused this proposed AD?* The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that 3 aircraft experienced a failure of the nose landing gear (NLG) drag link assembly during cruise flight. The actuator attachment levers on the right-hand upper drag link part failed. In all cases, the NLG fell out due to gravity, and the emergency spring pack extended it forward and allowed safe landings.

*What are the consequences if the condition is not corrected?* Structural failure of the NLG drag link right-hand part could result in either an unintended NLG extension during flight or the NLG not properly locking upon extension. This could lead to loss of airplane control during landing operations.

*Is there service information that applies to this subject?* Pilatus has issued Service Bulletin No. 32–014, dated August 13, 2002.

*What are the provisions of this service information?* The service bulletin includes procedures for replacing the NLG drag link right-hand part with a part number of the improved design. Temporary Revision No. 32–14 (dated June 4, 2002) to Pilatus PC–12 Maintenance Manual 32–20–06 provides instructions for replacing with the same design part.

*What action did the FOCA take?* The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2002–271, dated June 17, 2002, in order to ensure the continued airworthiness of these airplanes in Switzerland.

*Was this in accordance with the bilateral airworthiness agreement?* These airplane models are manufactured in Switzerland and are 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 FOCA has kept FAA informed of the situation described above.

**The FAA's Determination and an Explanation of the Provisions of This Proposed AD**

*What has FAA decided?* The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus Models PC–12 and PC–12/45 of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

*What would this proposed AD require?* This proposed would require repetitive replacement of the NLG drag link right-hand part every 4,000 landings until an improved design NLG drag link right-hand part is installed. This proposed AD would also require you to install an improved NLG drag link as terminating action for the repetitive replacements.

**Cost Impact**

*How many airplanes would this proposed AD impact?* We estimate that this proposed AD affects 265 airplanes in the U.S. registry.

*What would be the cost impact of this proposed AD on owners/operators of the affected airplanes?* We estimate the following costs to accomplish the proposed replacement with the same design part:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 6 workhours × $60 per hour = $360. | $1,000 | $1,360 | $2,560 × 265 = $360,400 |

We estimate the following costs to accomplish the proposed replacement with the improved design part:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 6 workhours × $60 per hour = $360 | $2,200 | $2,560 | $2,560 × 265 = $678,400 |

**Compliance Time of This Proposed AD**

*What would be the compliance time of this proposed AD?* The compliance time of this proposed AD is based on the number of landings rather than hours time-in-service (TIS).

*Why is the compliance time of this proposed AD presented in landings?* The reason for this type of compliance is that the area that is showing fatigue is the NLG drag link right-hand part. This area of the airplane is used during the landing operation. We have determined to base the compliance time for this proposed AD upon the number of landings.

Since airplane operators are not required to keep track of landings, we will provide a method of calculating hours TIS into landings.

**Regulatory Impact**

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

**Pilatus Aircraft Ltd.:** Docket No. 2002–CE–51–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, all serial numbers, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended

to prevent structural failure of the nose landing gear (NLG) caused by fatigue damage to the NLG drag link right-hand part that develops over time. Such failure could result in either an unintended NLG extension during flight or the NLG not properly locking upon extension, which could lead to loss of airplane control during landing operations.

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Replace the nose landing gear (NLG) drag link right-hand part, part number (P/N) 532.20.12.140 with the same part number or FAA-approved equivalent part number. | Initially upon the accumulation of 4,000 landings on the nose landing gear (NLG) drag link right hand part or within the next 100 landings after the effective date of this AD, whichever occurs later. Repetitively thereafter at every accumulated 4,000 landings on the nose landing gear drag link right hand part until accomplishment of paragraph (d)(2) of this AD, which is terminating action for these replacements. | In accordance with Temporary Revision No. 32–14 (dated June 4, 2002) to Pilatus PC–12 Maintenance Manual 32–20–06. |
| (2) Replace the NLG drag link right-hand part, P/N 532.20.12.140, with an improved design NLG drag link right-hand part, P/N 532.20.12.289 or FAA-approved equivalent part number. Installing the improved part number terminates the repetitive replacement requirements of paragraph (d)(1) of this AD. | At the third replacement required in paragraph (d)(1) of this AD (8,000 hours TIS after the initial replacement). | In accordance with Pilatus Aircraft Ltd. Service Bulletin No. 32–014, dated August 13, 2002, and the applicable maintenance manual. |
| (3) Do not install, on any affected airplane, an NLG drag link right-hand part that is not P/N 532.20.12.289 or FAA-approved equivalent part number. | Upon accumulating 8,000 hours TIS after the initial replacement required in paragraph (d)(1) of this AD. | Not Applicable. |

**Note 1:** The compliance times of this AD are presented in landings instead of hours time-in-service (TIS). If the number of landings is unknown, hours TIS may be used by multiplying the number of hours TIS by 0.5.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

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

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

**Note 2:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

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

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

**Note 3:** The subject of this AD is addressed in Swiss AD Number HB 2002–271, dated June 17, 2002.

Issued in Kansas City, Missouri, on December 9, 2002.

**Michael Gallagher,**

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

[FR Doc. 02–31753 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–SW–33–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, SA–366G1 Helicopters

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

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

**SUMMARY:** This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (ECF) Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters. This proposal would require inspecting the 9-degree frame flange (frame) for the correct edge distance of the four attachment holes for the stretcher support and for a crack and repairing the frame if necessary. This proposal is prompted by a quality control check that revealed some stretcher attachment holes were improperly located on the frame where there was insufficient edge distance. The actions specified by this proposed AD are intended to prevent failure of the frame due to a crack at the stretcher support attachment holes, loss of a passenger door, damage to the rotor system, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before February 18, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–33–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–33–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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–33–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**Discussion**

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters. The DGAC advises of the discovery of insufficient edge distance on the left-hand side frame of some stretcher attachment holes improperly located during manufacture. This condition, if not corrected, could lead to failure of the frame, loss of a passenger door, damage to the rotor system, and subsequent loss of control of the helicopter.

ECF has issued AS 365 Alert Service Bulletin (ASB) No. 53.00.43, dated January 31, 2001, for the Model AS and SA 365 helicopters and AS 366 Alert Service Bulletin 53.06, dated June 1, 2001, for the Model SA–366G1 helicopters. The ASB's specify measuring the edge distance on the frame of the four attachment holes of the stretcher support, inspecting for a crack, installing a repair on the frame or stop-drilling the crack, and monitoring the crack for continued growth. The DGAC classified these service bulletins as mandatory and issued AD No. 2001–061–053(A), dated February 21, 2001, for the SA–365N, SA–365N1, AS–365N2, AS 365 N3 helicopters and AD No. 2001–283–025(A), dated July 11, 2001, for the SA–336G1 helicopters to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, 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.

This unsafe condition is likely to exist or develop on other ECF model helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require, within 50 hours time-in-service, inspecting the frame for the correct edge distance of the four attachment holes of the stretcher support and for a crack and repairing the frame if necessary. The repair must be approved by the Manager, FAA, Rotorcraft Standards Staff. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 45 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours to visually inspect each helicopter and 10 work hours to repair an estimated 10 helicopters to correct edge distance only and 12 work hours to repair edge distance and cracks for an estimated 5 helicopters, and that the average labor rate is $60 per work hour. Required parts would cost approximately $200 per helicopter for the repair of the 15 helicopters. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $18,000.

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 a new airworthiness directive to read as follows:

**Eurocopter France:** Docket No. 2001–SW–33–AD.

*Applicability:* Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 failure of the frame due to a crack at the stretcher support attachment holes, loss of a passenger door, damage to the rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service, inspect each 9-degree frame flange (frame) by measuring the edge distance at the four attachment holes of the stretcher support at Z2321 as shown in detail ''A'' of Figure 1 in Eurocopter France AS 365 Alert Service Bulletin 53.00.43, dated January 31, 2001, for the Models SA–365N, SA–365N1, AS–365N2, and AS 365 N3 (365 ASB) or Eurocopter France AS 366 Alert Service Bulletin 53.06, dated June 1, 2001, for the Model SA366G–1 (366 ASB) helicopters. Inspect the area around the attachment holes for a crack.

(1) If the edge distance of all attachment holes is equal to or more than 5 mm (0.197 inch) and no crack is present, no further action is required by this AD.

(2) If the edge distance is less than 5 mm and no crack is present, before further flight, install a reinforcing angle in accordance with the Accomplishment Instructions paragraphs 2.B.2. of the 365 ASB or 366 ASB, as appropriate. Accomplishing the requirements of paragraphs 2.B.2. of the 365 ASB or 366 ASB constitutes terminating action for the requirements of this AD.

(3) If the frame is cracked, before further flight, repair the frame with a repair design approved by the Manager, FAA, Rotorcraft Standards Staff. Repairing the frame constitutes terminating action for the requirements of this AD.

**Note 2:** There is not a specific repair designed for a cracked frame. The ASB advises contacting the manufacturer for a customized repair design.

(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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

**Note 4:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. 2001–283–025(A), dated July 11, 2001, for the Model SA366 helicopters and 2001–061–053(A), dated February 21, 2001, for the Model AS and SA–365N helicopters.

Issued in Fort Worth, Texas, on December 9, 2002.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 02–31830 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–13–P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 4

**RIN 3038–AB34**

### Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term ''Commodity Pool Operator''

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Extension of comment period.

**SUMMARY:** The Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') is extending the comment period for the proposed amendment to Rule. 4.5 (the ''Proposal'') that would add an alternative limitation on the non-hedge activities of eligible persons claiming relief under the rule. The new deadline for submitting public comments is January 13, 2003.

**DATES:** Written comments must be received on or before January 13, 2003.

**ADDRESSES:** Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to *secretary@cftc.gov.* Reference should be made to ''Proposed Amendment to Rule 4.5 for Non-Hedge Activity.''

**FOR FURTHER INFORMATION CONTACT:** Barbara S. Gold, Associate Director, Division of Clearing and Intermediary Oversight, or Ronald Hobson, Industry Economist, Office of the Chief Economist, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418–5441 or (202) 418–5285, respectively; facsimile number: (202) 418–5536, or (202) 418–5660, respectively, and electronic mail: *gbold@cftc.gov* or *3rhobson@cftc.gov,* respectively.

**SUPPLEMENTARY INFORMATION:** On October 28, 2002, the Commission published for comment a proposed amendment to Rule 4.5,[1] the rule that excludes certain eligible persons from the definition of the term ''commodity pool operator'' with respect to the operation of certain otherwise regulated entities, provided that certain commodity interest trading restrictions are met. The Proposal would add an alternative criterion for permissible non-hedge commodity interest trading by entities with respect to which exemption is claimed under Rule 4.5. The Proposal established a 45-day period for submitting public comment, ending December 12, 2002.

By letter dated December 10, 2002, a law firm representing futures industry participants requested an extension of the Proposal's comment period so that the expiration date of this comment period would conform with the expiration date of the comment period for the Commission's Advance Notice of Proposed Rulemaking (''ANPR'') regarding further exemptions from commodity pool operator and commodity trading advisor registration,[2] which is January 13, 2003. The request claims substantial overlap of many of the issues raised by the Proposal and by the ANPR and thus that conforming period for the two releases would facilitate a comprehensive treatment of related issues.

In response to this request and in order to ensure that an adequate opportunity is provided for submission of meaningful comments, the Commission has determined to extend the comment period for the Proposal for an additional thirty days to January 13, 2003.

Issued in Washington, DC on 12, 2002, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02–31847 Filed 12–17–02; 8:45 am]

**BILLING CODE 6351–01–M**

[1] 67 FR 65743.

[2] 67 FR 68785 (November 13, 2002).

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 206

**RIN 3220–AB56**

### Account Benefits Ratio

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) proposes to amend its regulations to add a new part to explain how it will compute the account benefits ratio. The Railroad Retirement and Survivors' Improvement Act of 2001 amended the Railroad Retirement Act to require that on an annual basis the Board compute an account benefits ratio for the most recent 10 preceding fiscal years and a projection of the account benefits ratio for the next 5 succeeding fiscal years. In determining the account benefits ratio, the Board has interpreted several terms utilized in that computation. Since the account benefits ratio will be used in determining the tier II tax rate for calendar years after 2003, we propose to issue this regulation to clarify how we will compute the account benefits ratio.

**DATES:** Comments should be submitted on or before February 18, 2003.

**ADDRESSES:** Any comments should be submitted to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TDD (312) 751–4701.

**SUPPLEMENTARY INFORMATION:** Effective for calendar years after 2003, the tier II tax rate will be determined in accord with a formula that relies on the average account benefits ratio. *See* section 3241 of the Internal Revenue Code as amended by section 204 of Public Law 107–90. The Board has decided to set forth how it will compute the account benefits ratio so that all parties, rail labor, rail management and the public, will be aware of how we intend to compute the account benefits ratio. Part 206 of the Board's regulations deals with the manner by which the account benefits ratio will be computed. Section 206.1 contains definitions of the terms that are used to compute the account benefits ratio. In making these calculations, the Board based its definitions on the language of the statute and the purpose of computing the account benefits ratio.

The term ''total benefits and administrative expenses paid'' is computed on a cash basis, since the use of the word ''paid'' demonstrates that the computation should be made on a cash basis. In addition, ''total benefits paid'' is computed on the basis of net benefits paid, *i.e.* the gross benefits paid in a particular fiscal year minus any benefit overpayments actually recovered in that fiscal year. The purpose of computing the account benefits ratio is to ensure that there are adequate funds to pay benefits due under the Railroad Retirement Act. Using net benefits paid more accurately reflects the amount of benefits paid in a given year.

The term ''assets'' is defined in the regulation as the total of the market value of all cash and investments held in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefits Account). Excluded from ''assets'' is the amount of accounts receivable. While a receivable may be viewed as an asset under certain circumstances, the language of the Railroad Retirement and Survivors' Improvement Act of 2001 leads us to conclude that Congress did not contemplate inclusion of accounts receivable in the computation of the account benefits ratio. By providing that the computation is to be made based on the fair market value of the assets in the Investment Trust and the accounts, Congress signaled that the computation should be made based on the amount of cash and the value of investments in the Investment Trust and the accounts. Moreover, disregarding accounts receivables in computing the account benefits ratio is consistent with the cash basis being used to determine total benefits and administrative expenses paid in a given fiscal year. The term ''administrative expenses paid'' is also defined in the regulation. All Railroad Retirement Board administrative expenses are currently paid from a single administrative account. The only amounts recorded in the Railroad Retirement Account are ''cash transfers'' to that administrative account. The amount used for calculating the administrative expenses paid will be the amount of those cash transfers from the Railroad Retirement Account in each fiscal year. Also included in total administrative expenses will be those amounts transferred from the Railroad Retirement Account to the Limitation on the Office of Inspector General. The expenses of the Inspector General are appropriate railroad retirement program expenses that must be considered in determining total administrative expenses. Finally, the administrative expenses of the National Railroad Retirement Investment Trust will also be included in this term.

**Collection of Information Requirements**

This rule does not impose additional information collection and record keeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

**Regulatory Impact Statement**

Prior to publication of this proposed rule, the Board submitted this rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. This proposed rule is not a major rule in terms of the aggregate costs involved. The costs associated with the addition of a new part to the Board's regulations are administrative in nature, and include the costs associated with drafting and publishing the regulation as a proposed and then a final rule. We have determined that this proposed rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of $100 million or more per year.

The proposed rule is significant. Part 206 explains how the Railroad Retirement Board will compute the account benefits ratio in accordance with sections 108 and 204 of the Railroad Retirement and Survivors Improvement Act of 2001. The purpose of the proposed regulation is to provide a written explanation so that all parties, rail labor, rail management, and the public, will be aware of how the Board intends to compute the account benefits ratio. Thus, the proposed rule will benefit the agency's constituents, who will be aware of how the account benefits ratio is computed.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define ''agency'' by referencing the definition of ''agency'' contained in 5 U.S.C. 551(1). Section 551(1)(E) excludes from the term ''agency'' an agency that is composed of representatives of the parties or of representatives of organizations of the

parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation has been reviewed by the Office of Management and Budget.

**List of Subjects in 20 CFR part 206**

Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to add Part 206 to Title 20, chapter II of the Code of the Federal Regulations to read as follows:

## PART 206—ACCOUNT BENEFITS RATIO

Sec.
206.1 Definitions.
206.2 Computations.

**Authority:** 45 U.S.C. 231f(b)(5); 45 U.S.C. 231u(a).

### § 206.1 Definitions.

Except as otherwise expressly noted, as used in this part—

*Account benefits ratio* means the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years prior to 2002, the Social Security Equivalent Benefits Account) as of the close of each fiscal year by the total benefits and administrative expenses paid from those accounts during the fiscal year.

*Administrative expenses paid* means the amount of the cash transfers from the Railroad Retirement Account to the agency's single administrative fund. Also included in this term is the amount of the cash transfers from the Railroad Retirement Account to the Limitation on the Office of Inspector General and the administrative expenses paid by the National Railroad Retirement Investment Trust.

*Assets* means the market value of cash and investments in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefits Account).

*Average account benefits ratio* means for any calendar year, the average of the account benefits ratio for the 10 most recent fiscal years ending before such calendar year. If the amount computed is not a multiple of 0.1, such amount shall be increased to the next highest 0.1.

*Total benefits paid* means the total amount of benefits paid from the Railroad Retirement Account and the National Railroad Retirement Investment Trust in a fiscal year minus any benefit overpayments actually recovered during that fiscal year.

### § 206.2 Computation.

(a) On or before November 1, 2003, the Railroad Retirement Board shall:

(1) Compute the account benefits ratios for each of the most recent 10 preceding fiscal years; and

(2) Certify the account benefits ratio for each such fiscal year to the Secretary of the Treasury.

(b) On or before November 1 of each year after 2003, the Railroad Retirement Board shall:

(1) Compute the account benefits ratio for the fiscal year ending in such year; and

(2) Certify the account benefits ratio for such fiscal year to the Secretary of the Treasury.

(c) No later than May 1 of each year, beginning in 2003, the Board shall compute its projection of the account benefits ratio and the average account benefits ratios for each of the next succeeding 5 fiscal years.

Dated: December 12, 2002.

By Authority of the Board,

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 02–31776 Filed 12–17–02; 8:45 am]

**BILLING CODE 7905–01–P**

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## RAILROAD RETIREMENT BOARD

## 20 CFR Part 217

**RIN 3220–AB55**

## Application for Annuity or Lump Sum

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) proposes to amend its regulations to permit the filing of applications via the Internet. The Government Paperwork Elimination Act provides that federal agencies are required by October 21, 2003, to provide ''for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper''. The proposed changes to part 217 will permit the filing of applications for benefits under the Railroad Retirement Act electronically.

**DATES:** Submit comments on or before February 18, 2003.

**ADDRESSES:** Address any comments concerning this proposed rule to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TTD (312) 751–4701.

**SUPPLEMENTARY INFORMATION:** The amendments would revise part 217 of the Board's regulations (20 CFR 217) to permit the filing of applications via the Internet. The Government Paperwork Elimination Act, Pub. L. 105–277 §§ 1701–1710 (codified as 44 U.S.C. § 3504n), provides that Federal agencies are required by October 21, 2003, to provide ''for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper''. The proposed changes to part 217 will permit the filing of applications under the Railroad Retirement Act electronically.

The change to § 217.5 provides that the application may be filed electronically. That section is further amended to provide that if the application is filed electronically, the applicant's proper use of the Board's User ID/Pin/Password system is an acceptable signature.

The Board currently uses a User ID/PIN/Password system that allows railroad employers access to RRBLINK to make electronic tax deposits and electronically submit Form DC–1, ''Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act''. A User ID/PIN/Password system is used to access the *http://www.pay.gov* site. The U.S. Department of the Treasury operates the *http://www.pay.gov* site. Such a system also is consistent with the guidance provided by the Department of Justice regarding the use of electronic processes.

The change to § 217.6 makes an electronic submission of an application through the Board's system a valid application for benefits under the Railroad Retirement Act. Section 217.15 is amended to permit a claimant to file

an application electronically through the Board's system.

Section 217.16 has been amended to clarify the filing date when an application is filed electronically. Section 217.17 has been amended to permit the submission of an application through the Board's electronic system using a User ID/PIN/Password as an adequate signature. Section 217.18 has been amended to explain when an electronic submission of an application is not acceptable.

**Collection of Information Requirements**

Under the Paperwork Reduction Act (PRA) of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. Because this rule proposes to collect application information by a different method, *i.e.*, via the Internet rather than on a paper application, and in order to fairly evaluate whether an information collection should be approved, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The information which will be collected via the Internet is the same information currently collected on paper applications. Those information collections through paper applications have been approved by OMB under the following control numbers, which expire as indicated: 3220–0002, Application for Employee Annuity under the Railroad Retirement Act, expiring July 31, 2003; 3220–0030, Application for Survivor Insurance Annuities, expiring March 31, 2004; 3220–0031, Application for Survivor Death Benefits, expiring January 31, 2003; and 3220–0042, Application for Spouse Annuity under the Railroad Retirement Act, expiring July 31, 2003.

The Board has not yet completed development of the format to be used in collecting application information via the Internet. We will therefore again solicit public comment on this rule along with the actual format to be used to collect application information via the Internet at the final rule stage of this rule.

**Regulatory Impact Statement**

Prior to publication of this proposed rule, the Board submitted this rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. This proposed rule is not a major rule in terms of the aggregate costs involved. While this amendment should result in modest savings in administrative costs due to the streamlining of procedures, we have determined that this proposed rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of $100 million or more per year.

The proposed rule is significant because for the first time applicants for benefits under the Railroad Retirement Act will be afforded a method of applying for benefits without completing a written form. Part 217 is proposed to be amended to permit the filing of applications for an annuity or lump sum electronically via the Internet in accordance with the provisions of the Government Paperwork Elimination Act. Sections 1701–1710 of that Act, Pub. L. 105–277 (codified as 44 U.S.C. 3504n), require Federal agencies to provide for the option of electronic maintenance, submission, or disclosure of information, when practicable, as a substitute for paper. The proposed changes to Part 217 will benefit the agency's constituents who will have the opportunity to file applications for benefits electronically via the Internet.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define ''agency'' by referencing the definition of ''agency'' contained in 5 U.S.C. 551(1). Section 551(1)(E) excludes from the term ''agency'' an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation has been reviewed by the Office of Management and Budget.

**List of Subjects in 20 CFR Part 217**

Claims, Railroad retirement, Reporting and record keeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend title 20, chapter II, part 217 of the Code of Federal Regulations as follows:

## PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

1. The authority citation for part 217 continues to read as follows:

**Authority:** 45 U.S.C. 231d and 45 U.S.C. 231f.

2. Section 217.5 of Subpart B is revised to read as follows:

**§ 217.5 When an application is a claim for an annuity or lump sum.**

An application is a claim for an annuity or lump sum if it complies with paragraphs (a), (b), and (c):

(a) It is either on an application form completed and filed with the Board or is submitted electronically through the Board's system as described in § 217.6;

(b) It is either:

(1) Signed by the claimant or by someone described in § 217.17 who can sign the application for the claimant; or

(2) Filed electronically through the Board's system.

(c) It is filed with the Board on or before the date of death of the claimant. (See § 217.10 for limited exceptions.) (Approved by the Office of Management and Budget under control number 3220–0002)

3. Section 217.6 of Subpart B is amended by adding a new paragraph (d) to read as follows:

**§ 217.6 What is an application filed with the Board.**

* * * * *

(d) *Claim filed electronically.* A claim filed electronically utilizing the Board's

system with a User ID/Pin/Password is a valid application for an annuity or lump sum.

4. Section 217.15 of Subpart C is amended by adding a new paragraph (c) to read as follows:

**§ 217.15 Where to file.**

* * * * *

(c) *Electronic filing.* An application for an annuity or lump sum may be filed electronically through the Board's Web site, *www.rrb.gov* utilizing a User ID/Pin/Password.

5. Section 217.16 of Subpart C is amended by adding a new paragraph (f) to read as follows:

**§ 217.16 Filing date.**

* * * * *

(f) On the date that the electronic filing of an application for an annuity or lump sum is accepted as submitted by the Board's electronic system.

6. Section 217.17 of Subpart C is amended by adding a new paragraph (f) to read as follows:

**§ 217.17 Who may sign an application.**

* * * * *

(f) An application for an annuity or lump sum that is filed electronically through the Board's Web site, *http://www.rrb.gov,* utilizing a User ID/Pin/Password. The use by the applicant of his/her self-selected password in conjunction with the Board's User ID/PIN/Password system has the same validity as a signature on a paper application.

(Approved by the Office of Management and Budget under control numbers 3220–0002, 3220–0030, 3220–0031, and 3220–0042)

7. Section 217.18 of Subpart C is amended by adding a new paragraph (d) to read as follows:

**§ 217.18 When application is not acceptable.**

* * * * *

(d) *Electronic filing.* If an application for an annuity is filed through the Board's electronic system and it is rejected by that system, the claimant must submit another application. If the new application, electronic or paper, is submitted within 30 days from the notification that the initial filing was rejected, the Board will set the filing date of the subsequent application as the date the rejected application was attempted to be filed.

Dated: December 12, 2002.

By Authority of the Board.

For the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 02–31775 Filed 12–17–02; 8:45 am]

BILLING CODE 7905–01–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–151043–02]**

**RIN 1545–BB44**

## Rents and Royalties

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the inclusion in gross income of advance rentals. The proposed regulations authorize the Commissioner to provide rules allowing for the inclusion of advance rentals in gross income in a year other than the year of receipt. The proposed regulations will affect taxpayers that receive advance payments for the use of certain items (such as intellectual property) to be designated by the Commissioner.

**DATES:** Written or electronic comments and requests for a public hearing must be received by February 18, 2003.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG–151043–02), Room 5226, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:ITA:RU (REG–151043–02), 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.*

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Edwin B. Cleverdon, at (202) 622–7900; concerning submissions of comments, Guy Traynor, at (202) 622–7190 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains proposed amendments to 26 CFR part 1 relating to the inclusion in gross income of advance rentals under section 61.

### Explanation of Provisions

Currently § 1.61–8(b) provides that, except as provided in section 467 and the regulations thereunder, advance rentals must be included in gross income in the year of receipt regardless of the period covered or the method of accounting employed by the taxpayer. The proposed amendments authorize the Commissioner to provide, through administrative guidance, rules for deferring income inclusion of advance rentals to a taxable year other than the year of receipt. This amendment will ensure that the Commissioner, in modifying Rev. Proc. 71–21 (1971–2 C.B. 549), may provide deferral rules for licenses of intellectual property.

### Proposed Effective Date

The regulations, as proposed, are effective on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

### 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 business.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these regulations is Edwin B. Cleverdon,

Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

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

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendment to the Regulations**

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

## PART 1—INCOME TAXES

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

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

**Par. 2.** In § 1.61–8, the first sentence of paragraph (b) is revised to read as follows:

**§ 1.61–8 Rents and royalties.**

* * * * *

(b) * * * Except as provided in section 467 and the regulations thereunder, and except as otherwise provided by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), gross income includes advance rentals, which must be included in income for the year of receipt regardless of the period covered or the method of accounting employed by the taxpayer. * * *

* * * * *

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

[FR Doc. 02–31858 Filed 12–17–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF AGRICULTURE

## Forest Service

## 36 CFR Part 215

**RIN 0596–AB89**

## Notice, Comment, and Appeal Procedures for Projects and Activities on National Forest System Lands

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule; request for comment.

**SUMMARY:** The Forest Service is proposing to amend the rule adopted in 1994 for the notice, comment, and appeal procedures for projects and activities implementing land and resource management plans on National Forest System lands. The proposed rule changes current procedures to clarify certain provisions and reduce complexity in the current rule, improve efficiency of processing appeals, encourage early and effective public participation in the environmental analysis of projects and activities, and ensure consistency with the provisions of the statutory authority. Topics addressed include emergency situations; 30-day notice and comment procedures; site-specific comments; who may appeal; and the formal disposition process. Public comment is invited and will be considered in development of the final rule.

**DATES:** Comments must be received in writing by February 18, 2003.

**ADDRESSES:** Send written comments to USDA FS, Appeal Rule Content Analysis Team, P.O. Box 9079, Missoula, MT 59807; by electronic mail to *215appeals@fs.fed.us*; or by facsimile to (406) 329–3556. To aid in our analysis of comments, it would be helpful if comments are organized section by section. Please note that all comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The agency cannot confirm receipt of comments. Individuals wishing to inspect the comments should call (406) 329–3038 to facilitate an appointment. Additional information is provided at *http://www.fs.fed.us/emc/applit/index.htm.*

**FOR FURTHER INFORMATION CONTACT:** Ginger Hamilton, Program Manager, Content Analysis Team (406) 329–3038.

**SUPPLEMENTARY INFORMATION:**

### Background

The Forest Service has a long-term commitment to promoting effective public involvement in both planning and project level decisionmaking. For example, in 1977, the proposed National Forest Management Act (NFMA) regulations directed that forest plan approvals, although subject to mandatory public involvement, would not be subject to administrative appeal. 44 FR 25554, 25589 (May 4, 1979). The final regulations adopted in 1979 dropped the no appeal provision and such appeals were allowed. In 1989 the Forest Service again undertook a major revision of its appeal regulations splitting its appeal regulations into two major rules, one for the general public (36 CFR part 217) and one for holders of special use permits (36 CFR 251.80). By 1992, the Forest Service had determined that the process had become too complex, confrontational and costly.

In 1992, the Forest Service undertook a year-long review and evaluation of its administrative appeal procedures. The 1992 review uncovered many problems with the procedures and led to the publication of a proposed rule to amend 36 CFR part 217 to continue allowing forest plan-level appeals but substituting an expanded pre-decisional public involvement opportunity to replace post-decisional administrative appeals of environmental assessments (57 FR 10444) and eliminating appeals of categorical exclusions for projects. The Forest Service received over 30,000 comments on the proposed rule. Before a final rule was published, however, Congress, operating through an annual appropriation rider, enacted section 322 of Interior and Related Agencies Appropriation Act of Fiscal Year 1993, Pub. L. 102–381, 106 Stat. 1419, (hereinafter ''Appeals Reform Act'' (ARA) instructing the Secretary of Agriculture to establish a notice, comment and appeal process modifying the existing appeal regulations.

The ARA contains relatively little specific guidance beyond the statutorily established timelines. The Forest Service was, therefore, tasked with establishing the process that would lay out the particulars of the appeals procedures. The origins of the ARA derive primarily from an amendment co-sponsored by Senators Craig and DeConcinni. The Craig-DeConcinni amendment was subsequently amended by the conference committee with a consensus from both parties of Congress. The Senate floor colloquy during consideration of the conference committee report contains revealing statements which support the conclusion that Congress intended to allow the agency to determine the appropriate scope and other details regarding the appeal process to be developed by the Secretary. Senator Craig described ''a reasonable and balanced approach to resolve the debate over the future of the Forest Service's appeal process.'' 138 Cong. Rec. S15848 (Sept. 30, 1992). While Congress was clearly taking matters into its own hands regarding whether there should be an appeal system and the specific timeframes for how long such an appeal could take, Congress did not provide a detailed legislative framework. In fact, the legislative history shows that Congress even intended for the agency to address a statutory drafting error regarding the duration of administrative stays through the agency regulations.

The Forest Service has a continuing commitment to periodically review its regulations, identify specific problems in administering them, and determine whether they meet Congressional intent, as well as agency and public needs. Experience with the procedures at 36

CFR part 215 has shown that certain provisions in the current rule consistently raise questions or reduce efficient processing of appeals. In April 2001, the agency chartered a team to assess the part 215 appeal rule, identify ways to reduce the complexity of the current rule, and improve efficiency for the public and the Forest Service. The team conducted interviews with and solicited comments from a cross-section of agency personnel at the various field levels and the national headquarters staff.

Implementation issues associated with the current rule that were most often cited generally fell into two areas: inefficiency of the procedures and the process for public involvement. Specific issues identified included: The 30-day notice and comment process; emergency situations; informal disposition; dismissals; interested parties; the definition of projects implementing a land and resource management plan; who may file an appeal; appeal issues; and electronic transmission of comments and/or appeals. In addition, many comments stated that the provisions in the current rule exceed the requirements of the Act. After careful consideration, the agency has determined that the major areas needing attention are: Emergency situations; 30-day notice and comment process; site-specific comments; who may file an appeal; and the formal disposition process. As a result, the Forest Service is proposing to amend 36 CFR part 215. The proposed changes would clarify and reduce the complexity of the rule; elicit more effective public participation by seeking public comment early in the process; provide for electronic submission of comments; result in more consistent application of the rule; simplify the language; and reorganize the rule into a more logical sequence.

Two particular regulatory issues warrant special attention: The scope of decisions subject to appeal (''proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans'') and stays of ''emergency'' actions. Congress did not provide statutory definitions for either of these terms.

The existing appeal regulations provide for appeals of actions evaluated in an environmental assessment or environmental impact statement, as well as one specific class of categorically excluded activities that is no longer in use. The ARA was enacted in direct response to the Forest Service's 1992 proposed regulation that would have substituted appeals with a pre-decisional review. Congress preferred appeals over pre-decisional public involvement for these assessments. Congress did not express a specific intent regarding where the ''line should be drawn'' or to ''set in concrete'' which activities would be subject to notice, comment and appeal. Nor was there any indication that Congress intended to extend the notice, comment and appeal requirements to all classes of categorically excluded activities. This was a determination left to the discretion and judgment of the Secretary. Congress knew that not every decision of the Forest Service was subject to appeal before the 1992 Act.

The agency believes that Congress used the phrase ''proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans'' to delineate between administrative appeals of forest plans and project level decisions, rather than define a comprehensive or precise set of activities. Congress could, of course, have provided a specific definition. But Congress did not do so and absent such a definition, the courts have recognized that agencies are free, indeed expected, to fill in the gaps and that such regulatory interpretations are due deference. Through the 1993 rulemaking process the Secretary concluded that the Forest Service's categorically excluded activities were generally not of the sort that Congress would have intended to apply additional notice, comment and appeal requirements given the generally minor potential for environmental effects.

One exception was made to require notice, comment and appeal for timber sales exceeding certain volume limits, but that category is no longer in use. This exception, however, does illustrate a consistent interpretation by the Department that Congress intended to grant the Secretary the authority to establish a flexible process through rulemaking. The appeal regulation's reliance upon its existing administrative framework (the agency's NEPA procedures) is also consistent with other Forest Service regulations that rely on the NEPA procedures for guidance regarding public participation (see *e.g.* 36 CFR 219.6(b)). This practice is in keeping with the Council on Environmental Quality's instructions for agencies to ''integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice * * *''. 40 CFR 1500.2(c).

By their very nature, activities that have been categorically excluded generally have no significant environmental effect, or stated otherwise, were determined not to cross the NEPA ''significance threshold'' based on the agency's experience, judgment, and analysis from implementing similar activities over many years. Therefore they typically do not include preparation of extensive records; in fact, the Forest Service NEPA procedures do not require decision documents or project files to be maintained for many categorical exclusions. Congress' intent was to streamline an appeal process in need of revision, not entangle the agency in a costly and time-consuming exercise for minor decisions by Forest Service officials. That being the case, the Forest Service has determined that including affected and interested individuals in project planning early in the process is more effective than subjecting these projects to formal and extensive notice, comment and appeal procedures.

The existing regulation's treatment of categorically excluded activities is the subject of unresolved litigation. While that litigation is currently focused on procedural matters, the agency believes that both the current and proposed regulations are within the scope of the Secretary's delegated authority to establish a notice, comment and appeal process as set forth in the ARA. This assumption is supported by the fact that during the ten years of implementation of the 1993 regulations, Congress has not sought to amend the ARA to adjust the agency's implementation, and has in fact relied upon the regulatory structure and exempted individual and classes of activities from the regulations. For example, in July 2002, Congress passed legislation recognizing the urgency of the severe fire threat posed to private homes from fire and diseased trees in the Black Hills National Forest and the procedural problems that could delay prompt action. The legislation exempted timber cutting as part of a fuels treatment project from public notice and comment as well as judicial review and appeals.

Regardless of the scope of the administrative appeals procedures, Forest Service procedures require that all projects subject to the National Environmental Policy Act (NEPA), including projects covered under categorical exclusions, include interested and affected individuals in project planning to the extent appropriate considering the nature and complexity of the proposed action. For example, for hazardous fuels reduction projects near communities, the Forest Service would collaborate with local constituents in a manner consistent with the process identified in A Collaborative Approach for Reducing Wildland Fire Risks to Communities

and the Environment 10-Year Comprehensive Strategy Implementation Plan.

The ARA expressly authorizes the Chief to exempt certain activities from the mandatory stay provision in an ''emergency'' but does not provide a statutory definition or specify particular criteria for making such determinations. The agency's 1993 regulations attempted to provide such guidance, but experience has shown the need for refinement. In particular, the Forest Service wishes to clarify that economic factors can be relied upon in making the determination of whether to exempt a project from stay while an appeal is pending. During implementation of the current rule, the agency has found that the rule is unnecessarily restrictive and results in undue waste of natural and economic resources. Fire impacted forest ecosystems and damaged watersheds impose a variety of economic costs to communities and implementation delays can result in loss of economic value that may alter the agency's options for addressing resource problems. The proposed regulation would adjust the definition of ''emergency'' to address this issue.

The significance of specific changes to the current rule is indicated in the following section-by-section description. Minor changes are summarized, while more detail is included for new sections and those sections that involve substantive change.

*Proposed Section 215.1 Purpose and scope.* This proposed section incorporates the current § 215.1 with changes that are generally minor and clarifying in nature. Proposed paragraph (b) is rewritten to eliminate repetitive language and to clearly state that the appeals process is available only for those who commented during the time period for the opportunity to comment and that appeal issues are limited to those raised during that comment period (§ 215.5). Other changes to note are that here and throughout the proposed rule the phrase ''opportunity to comment'' is often used to better reflect Congressional intent to require a specific time period to seek public comment.

*Proposed Section 215.2 Definitions.* This proposed section incorporates the current § 215.2 with changes. The proposed rule adds six new terms: Appeal disposition, emergency situation, name, National Forest System lands, projects and activities implementing a land and resource management plan, and substantive comments; removes three terms because they would no longer be applicable to the 215 regulations as amended: Decision document, decision memo, and interested party; removes the definition for ''proposed timber harvest categorically excluded from documentation under Forest Service Handbook 1909.12, section 31.2, paragraph 4'' as this was removed from the Handbook; and revises and updates several terms and definitions as explained in the following paragraphs. Terms and definitions not set out here are unchanged from the current rule.

*Appeal.* The proposed definition replaces the verb ''objects'' with ''seeking review of'' to distinguish appeals from the recently established ''objection'' process in the 2000 planning regulation at 36 CFR part 219.

*Appeal Deciding Officer.* The proposed definition corrects a typographical error and changes ''Forest Service line officer'' to ''Secretary of Agriculture or Department or agency designee,'' making it clear that the Secretary can serve as the Deciding Officer in the event that there is an appeal of a Chief's decision.

*Appeal period.* The proposed definition clarifies that the appeal periods begins following publication of the legal notice of a decision.

*Appeal record.* The proposed definition is rewritten to eliminate unnecessary wording; delete the term ''written comment submitted by interested parties'' to conform to the proposed removal of the term ''interested party''; and add ''the Appeal Reviewing Officer's recommendation,'' which was inadvertently omitted in the current rule.

*Appeal Reviewing Officer.* The proposed definition clarifies that a Department of Agriculture official can also serve as an Appeal Reviewing Officer.

*Categorical Exclusion.* This proposed term was changed to conform to the regulations governing categorical exclusions. The current term is categorically excluded.

*Comment period.* This proposed definition is rewritten and changed to state that the notice of the opportunity to comment must be published in a legal notice as opposed to the current language, which merely says a notice must be published. Additionally, the information in § 215.5 on how to compute the comment period is included.

*Decision document.* For clarity, it is proposed to remove this term and use Decision Notice and/or Record of Decision as appropriate.

*Decision documentation.* It is proposed to shorten and clarify this definition and eliminate the unnecessary examples of what might constitute decision documentation.

*Decision memo.* It is proposed to remove this definition because it is no longer applicable to this regulation.

*Environmental Assessment (EA)—* Language was added to this proposed definition to conform to that found in 40 CFR 1508.9 regarding an EA.

*Emergency situation.* It is proposed to move the definition to § 215.2, while incorporating and revising the description at current § 215.10. While the Act does not specifically define emergency situations, it gives the Chief discretion to determine when an emergency situation exists. This proposed definition would be broadened to make clear that emergency situations can include situations not explicitly listed in the current description at section 215.10. Additionally, experience has shown that some emergency situations on National Forest System lands may pose a risk to adjacent lands and therefore, warrant being included in the definition of emergency situations. Some situations may result in substantial loss of economic value if implementation is delayed. Further, the examples are removed, as it is impossible to predict all possible scenarios where an emergency situation exists.

*Forest Service line officer.* The proposed definition removes the current examples of line positions, as they are not necessary for understanding and applying the definition.

*Interested party.* It is proposed to remove this term and thus the definition, which is not used in the proposed rule. Related information is set out in the description of proposed § 215.12.

*Name.* It is proposed to add this definition. Because the proposed rule provides for accepting electronic comments and appeals, it is critical that the Forest Service have the ability to identify individuals and organizations in order to establish their standing (ability to submit appeals).

*National Forest System lands.* This definition, based on § 200.1(c)(2), is added to clarify what lands comprise the National Forest System. This definition makes clear that research and experimental areas (such as experimental forests) are included in National Forest System lands.

*Projects and activities implementing a land and resource management plan.* It is proposed to add this definition. The Act uses this phrase to define what proposed actions are subject to this part; however, the current regulation does not provide a definition. Application of the current rule has shown that the lack of

a definition causes confusion about exactly which projects and activities are subject to notice, comment, and appeal. Further, the proposed definition makes clear that research activities on all National Forest System lands are subject to this part.

*Proposed action*—The proposed definition was changed to remove the words ''recommend'' and ''implement'' to avoid confusion. Actions that are ''recommended'' are not subject to this rule and actions that have been approved and already subject to this rule are not subjected again at implementation.

*Proposed timber harvest categorically excluded from documentation under Forest Service Handbook 1909.12, section 31.2, paragraph 4.* It is proposed to remove this term from the definitions and throughout the proposed rule because this categorical exclusion is no longer in use.

*Responsible Official.* The proposed definition would replace ''line officer'' and ''authority and responsibility to make decisions'' with ''Forest Service employee who has the delegated authority to make and implement the decision'' to clarify that some decisions subject to this rule are made and implemented by a Regional Director, through delegated authority, even though this position is not considered a ''Forest Service line officer.''

*Substantive comments.* It is proposed to add this definition in order to define a new term that is added to the proposed rule. The explanation for adding this term is included in the proposed §§ 215.5 and 215.6 below.

*Proposed Section 215.3 Proposed actions subject to legal notice and opportunity to comment.* This proposed section revises and incorporates current regulatory text from § 215.3, and revises the heading to include the term ''opportunity to comment.''

Since timber harvest is no longer an activity that may be categorically excluded from documentation in an environmental assessment (EA) or environmental impact statement (EIS), current paragraph (b) is removed; current paragraph (c) on nonsignificant amendments to land and resource management plans is redesignated to paragraph (b).

Proposed paragraph (c) would apply procedures for notice and opportunity to comment to revision of an EA based on new information or changed circumstances. Paragraph (c) is added because confusion has resulted from not having addressed this point in the current rule.

Current paragraph (d) covering National Forests without land and resource management plans is removed as all National Forests now have approved land and resource management plans.

Current paragraph (e) is redesignated (d) and is rewritten to say ''research activities'' instead of ''forestry research activities'' to reflect that research activities conducted on National Forest System lands for which environmental analysis is performed, include forestry as well as other types of research.

*Proposed Section 215.4 Actions not subject to legal notice and opportunity to comment.* This proposed section revises and incorporates the regulatory text from the current § 215.4 and revises the heading to include the term ''opportunity to comment.''

Proposed paragraph (b) is rewritten excluding from notice and opportunity to comment all proposed actions that are categorically excluded. As explained when 36 CFR part 215 was promulgated (58 FR 58905), it is appropriate to exclude proposed actions that are categorically excluded from notice and opportunity to comment. For all projects subject to NEPA, Forest Service procedures require that interested and affected individuals be included in project planning through public involvement commensurate with the nature and complexity of the proposed action. By their very nature, proposed actions that may be categorically excluded from documentation in an EA or EIS generally have little to no environmental effect.

The current rule does not address the application of this section to the following situation: a determination by the Responsible Official that new information or changed circumstances does not result in revision of the EA. Proposed paragraph (d) is added to clarify that such situations are not subject to notice and opportunity to comment.

*Proposed Section 215.5 Legal notice of proposed action and opportunity to comment.* The proposed heading is rewritten for clarity and to include the term ''opportunity to comment.'' This proposed section retains but also revises and reorganizes most of the requirements in current § 215.5 and also incorporates pertinent paragraphs from current § 215.6. The proposed paragraph headings are rewritten for clarity and to reflect the reorganization of this section. In this section and throughout the proposed rule, the terms ''notice'' and ''public notice'' are replaced with the term ''legal notice'' to reflect standard practice and terminology. ''Legal notice'' is intended to mean publication in the legal notice section of the paper of record.

Proposed paragraph (a), ''Timing for publication of legal notice,'' would incorporate and revise current paragraph (b)(2)(i) to give the Responsible Official discretion to determine the most effective timing for publishing the legal notice of the proposed action and opportunity to comment. There are instances when a proposed action is well developed, with sufficient information to allow for substantive public comment during the scoping phase of project planning. Other times, it might be more helpful to the Responsible Official for the comment period to occur prior to alternative development. In a third instance, a comment period after alternative development might be of most benefit. These are examples of how the rule's flexibility allows for the most effective use of the comment period significantly earlier in the project planning than the current rule permits. Timing for the comment period would be determined on a project-by-project basis, depending on the nature and complexity of the project. The flexibility with such discretion would allow the Responsible Official to provide an opportunity for early comment and meaningful public participation during project planning, at the stage when comments will be most helpful in developing public understanding and an effective project. The Forest Service expects to develop policy guidance with regard to the appropriate timing of the 30-day comment period following promulgation of a final rule. This change is consistent with the statutory language of the Act. In contrast, the current rule requires that the EA be mailed to any individual who is known to have participated, a procedure which goes beyond the requirements in the Act and unnecessarily delays the process by requiring, in all cases, the mandated 30-day comment period only after the EA is completed.

Proposed paragraphs (b)(1) through (b)(5) incorporate the regulatory text concerning notice and comments from the current §§ 215.5, 215.6(a) and 215.10(d)(2).

Proposed paragraph (b)(4)(i)–(viii), ''Content of legal notice,'' adds all forms of the Responsible Official's address; the acceptable format for electronic comments; a signature requirement for each individual or organization listed; a statement that the ability to appeal is tied to timely submission of comments; and information about emergency situations.

The proposed rule provides for electronic submission of comments which is not addressed in the current rule. Proposed paragraph (b)(4)(v),

requires that the legal notice specify a standard format for electronic comments, because experience has shown that not all electronic submissions are compatible with the Forest Service computer systems. It should be noted that those availing themselves of electronic transmission of comments are responsible for ensuring that their submissions are timely. The Forest Service is unable to accept responsibility for failure of electronic devices.

The notice requirements for emergency situations are currently described in current § 215.10(d) ''Implementation of decisions,'' but it is more appropriate to include them in proposed paragraph (b)(4)(ix).

Proposed paragraph (b)(5) incorporates current § 215.6(a) concerning the time period for comments and is rewritten for clarity. The current requirement that the public notice for comment include the date the comment period ends has resulted in problems and confusion for the agency and the public. Currently, the agency employee preparing the legal notice must estimate the date of publication and the date the comment period ends, for inclusion in the notice. However, because publication delays are not uncommon, there have been numerous instances of confusion as to the correct deadline for accepting comments. The remedy to this problem is found in proposed paragraphs (b)(5) to (b)(5)(i)(B), which describe how the commenter can determine the last day for accepting comments by noting the newspaper date of the legal notice and adding thirty days. Comments must be sent by the end of the 30th day.

The current regulation does not address extending the comment period and this has resulted in confusion. Proposed paragraph (b)(5)(ii), which conforms to the language in the Act, explicitly states that the period for the opportunity to comment cannot be extended.

Proposed paragraph (c), ''Comments,'' revises and incorporates the requirements regarding the content of comments currently in § 215.6(b), and adds new paragraphs (1) and (3), requiring signatures on the comment letters, that comments must be specific and provides consistent requirements for oral comments. The requirements in paragraph (c) through (c)(3) are rewritten to address the following difficulties encountered during implementation of the current rule: identification of those who can appeal when comment letters list several organizations but include only one signature with a statement that the individual represents all the organizations; uncertainty as to which proposed action the comments address; receipt of comments that are not relevant to the specific project or activity or are so general in nature that they are not useful to the Responsible Official in making a more informed decision; and inconsistency in submission of oral comments.

*Proposed Section 215.6 Consideration of comments.* This section, as proposed, is considerably shortened from the current rule because the current paragraphs (a) and (b) on procedures for commenting are moved to proposed § 215.5. In order to encourage the public to submit meaningful and specific comments, the remaining paragraphs are revised by requiring the consideration of all substantive written and oral comments.

*Proposed Section 215.7 Legal notice of decision.* This proposed section makes minor revisions, incorporates the requirements in the current Notice of decision, § 215.9, and adds two new paragraphs as described below.

Proposed paragraph (a)(2)(ii) would require that the legal notice describe how the time period for filing an appeal is calculated and would clarify that it is the appellants' responsibility to determine the time allotted, based on the publication date of the legal notice and not relying on dates or time frames provided by any other source. To avoid any confusion should publication be delayed, this proposed paragraph also makes clear that an actual date for the end of the comment period shall not be included in the legal notice.

Proposed paragraph (a)(2)(vi) would provide for notification of the public as to when implementation may occur in emergency situations as set out in proposed § 215.9(b). While implementation of decisions regarding emergency situations is discussed in current § 215.10(d), there is no requirement to notify the public of timeframes.

*Proposed Section 215.8 Decision implementation.* This proposed section incorporates, revises, and redesignates at paragraphs (a) through (c)(2), the requirements currently in § 215.10 paragraphs (a) through (c). Proposed paragraph (c) differentiates between when decisions documented in a Decision Notice (DN) or in a Record of Decision (ROD) can be implemented, which was inadvertently omitted from the current § 215.10. This differentiation is necessary to ensure compliance with the Council on Environmental Quality (CEQ) regulations governing final environmental impact statement (FEIS) and ROD timeframes.

*Proposed Section 215.9 Emergency situations.* This proposed section is added to set out procedures for emergency situations in a separate section for clarity and so that they can be located quickly and easily. The definition for emergency situations, at current (§ 215.10(d)(1)), is moved to § 215.2, Definitions.

Proposed paragraph (a) clarifies that authority for determination of an emergency situation is not reserved to the Chief and may be delegated, though not below the Regional Forester or Station Director level. The current regulation appears to reserve this determination solely for the Chief, although the Act does not mandate such reservation.

Proposed paragraph (b) incorporates current § 215.10(d) regarding implementation of emergency situations and clarifies when implementation of the project or activity may begin. In addition, it differentiates between decisions determined to be an emergency documented either in a Decision Notice (DN) or in a Record of Decision (ROD). This differentiation is necessary to clarify compliance with the Council on Environmental Quality (CEQ) regulations governing final environmental impact statement (FEIS) and ROD timeframes.

Proposed paragraph (c) reiterates that the legal notice shall include information about the determination of an emergency situation. Examples of emergency situations are removed because they do not cover all emergency situations that may occur, which caused confusion.

*Proposed Section 215.10 Decisions subject to appeal.* This proposed section incorporates § 215.7(a) of the current rule and adds two new paragraphs to proposed paragraph (a). To clarify existing confusion over how to apply this section when considering new information or changed circumstances, paragraph (a)(2) is added; and a new paragraph (a)(3) is added to clarify and address those instances where the Forest Service makes decisions in conjunction with other federal agencies but where only a portion of the decision applies to National Forest System lands.

Current paragraph § 215.7(b) is removed because Forest Service policy no longer allows timber harvest projects and activities to be documented in a decision memo.

Proposed paragraph (b) is added, but it is only a technical change. Currently these decisions are discussed in § 215.8(c) Decisions not subject to appeal, which could be misleading to someone who has the option to use the appeal process at either part 215 or part

251. It is more appropriate under this section.

*Proposed Section 215.11 Decisions and actions not subject to appeal.* This proposed section revises, reorganizes and incorporates the requirements from current § 215.8. Proposed paragraph (b) is added to address situations involving new information or changed circumstances that do not result in a new decision and make clear that this situation is not subject to appeal. Proposed paragraph (c)(ii) is added (corresponding to that provided for environmental assessments in proposed paragraph (c)(i)) for situations where no comments or only supportive comments are received during the comment period for a draft environmental impact statement (DEIS), and the Responsible Official's decision does not modify the preferred alternative identified in the DEIS. This was an inadvertent omission in the current rule.

Proposed paragraph (c) combines two current paragraphs ((a)(2) and (b)), and removes sentences and examples found in the current rule that are necessary for understanding and paragraph (c) in the current § 215.8 is moved to proposed § 215.10, ''Decisions subject to appeal.''

Proposed paragraph (d) differentiates between environmental assessments (EAs) and environmental impact statements (EISs) not subject to appeal and proposed paragraph (d)(ii) sets out that for a decision to not be subject to appeal under this paragraph, both criteria must be met.

Proposed paragraphs (f), ''Nonsignificant amendments to land and resource management plans,'' and (g), ''Concurrences and recommendations from other federal agencies'' are added for clarification and to eliminate confusion about what is subject to appeal. Concurrences and recommendations from other federal agencies are not Forest Service decisions, nor do they meet the definition of a Forest Service ''project or activity implementing a land and resource management plan'' and thus would not be subject to appeal.

*Proposed Section 215.12 Who may appeal.* This proposed section incorporates current § 215.11, paragraphs (a), (c), and (d) and is rewritten for clarity.

Proposed paragraph (a) combines current paragraphs § 215.11(a)(1) and that portion of (2) regarding submission of comments pursuant to provisions of § 215.6 (now proposed § 215.5). The remaining portion of paragraph (a)(2) is removed to more closely conform to the Act in regard to ''who may appeal''. The Forest Service believes that a mere ''expression of interest'', such as that of an individual having no participation in the project planning process, but who requested a copy of the decision, does not meet Congressional intent for who may appeal. This conclusion is based on a reading of those portions of the Act and the Congressional colloquy regarding the appeal process, which make clear that an individual's participation in the statutorily mandated public comment period is required to establish standing to appeal.

Current § 215.11(b) ''Interested parties,'' is removed. The current provision exceeds the provisions of the Act, which only addresses appellants or those individuals who have participated in the planning process and who have provided comments within the proscribed timeframes.

Proposed paragraph (b) addresses procedures for appeals listing multiple individuals or organizations. The current regulations are unclear on how to process appeals with multiple names to determine who has standing to appeal, resulting in inconsistent application across the Forest Service.

*Proposed Section 215.13 Where to file appeals.* This section incorporates the requirements in current § 215.12, adds two levels of Responsible Officials inadvertently omitted from the current regulation: Chief of the Forest Service and Research Work Unit Leader, and clarifies that a Station Director is also considered a Responsible Official.

*Proposed Section 215.14 Appeal time periods and process.* The requirements in current § 215.13 are incorporated in proposed section § 215.14; paragraphs are rewritten for clarity, reorganized, and redesignated.

Proposed paragraph (b) clarifies that all time periods that end on a Saturday, Sunday, or federal holiday shall be extended to the end of the next federal working day.

Proposed paragraph (c) clarifies how timeliness shall be determined for various methods of delivery, including e-mail; states that an automated response should be received from the agency when an appeal is electronically mailed, as a verification of receipt; and that should an electronic response not be received, it is the appellant's responsibility to provide evidence that the appeal was sent in a timely manner.

Current § 215.13(e), ''Interested party comments,'' is removed, as discussed in proposed § 215.12 and the remainder of proposed § 215.14 is redesignated. Proposed paragraph (e) rewrites current paragraph § 215.13(f)(1) replacing ''transmit appeal record'' with ''transmit decision documentation.'' The appeal record is assembled by the Deciding Officer, not the Responsible Official. Further, the current paragraph on review recommendation (§ 215.13(f)(2)) is removed because the Act does not include any time period for the review recommendation. The regulatory text describing what an appeal decision must contain at § 215.13(f)(3) is moved to proposed § 215.18.

*Proposed Section 215.15 Appeal content.* This section of the proposed rule retains the requirements of current § 215.14.

Proposed paragraph (a) is rewritten with minor changes for terminology consistency and to clarify that the focus of the appeal is providing project- or activity-specific evidence and rationale as it relates to the decision. The term ''remanded'' in current paragraph (a) is removed because it is not used elsewhere in either the current rule or the proposed rule.

Proposed paragraph (b) rewrites, reorganizes, and redesignates current § 215.14(b). Proposed paragraph (b)(5) clarifies that appeal issues are limited to substantive comments submitted during the comment period. This change is consistent with the Act.

Proposed paragraph (c) is added, setting out those instances when an appeal would not be accepted. It makes clear to those planning to appeal that it is to their benefit to include all applicable information.

*Proposed Section 215.16 Dismissal of appeal without review.* The requirements in current § 215.15 now appear in proposed § 215.16.

Proposed paragraph (a) is rewritten for clarity and consistency with proposed § 215.14, to show how timeframes for different delivery methods are applied. Current § 215.15(a)(7) concerning filing for judicial review is removed in accordance with Public Law 103–354, the USDA Reorganization Act of 1993. Current § 215.15(a)(5) is rewritten as proposed paragraph (a)(6) and is consistent with proposed § 215.15(b)(5) concerning the limitation of appeal issues. Proposed paragraph (a)(9) is added to provide for dismissal when an appellant withdraws an appeal and to be consistent with the current rule which provides for dismissal when a responsible official withdraws a decision.

*Proposed Section 215.17 Informal disposition.* The requirements in current § 215.16 are incorporated in proposed § 215.17, with minor changes.

Proposed paragraph (b) is rewritten to clarify that it is the ''initial'' meeting that must occur within 15 days. This change alleviates the confusion about whether informal resolution must be concluded within 15 days.

Proposed paragraph (c) removes the reference to interested parties, consistent with the proposed change removing this term elsewhere in the rule.

Proposed paragraph (d) is rewritten, articulating the various scenarios that may result from informal disposition.

*Proposed Section 215.18 Formal review and disposition procedures.* The requirements of current § 215.17 are incorporated in proposed § 215.18 and the proposed heading is changed to ''Formal review and disposition procedures'' for clarity.

Proposed paragraph (b)(1) adds the procedures to use when an appeal decision includes instructions. The omission of these procedures in the current rule has resulted in confusion about the procedures to follow in such cases. Proposed paragraph (b)(2) articulates that issuing an appeal decision is not required; this change is consistent with the Act.

Proposed paragraph (c) makes clear that an appeal decision cannot be issued after the 45th day.

Proposed paragraph (d) is moved from current § 215.18, ''Appeal Deciding Officer authority'', as it is more appropriate in this section.

*Proposed Section 215.19 Appeal Deciding Officer's authority.* This proposed section incorporates the language from current § 215.18, except for paragraph (c), reorganizing it to more clearly follow the process as it relates to the Appeal Deciding Officer's (ADO) authority.

Proposed paragraph (b) is rewritten to clarify that the ADO may consolidate appeals and issue one or more appeal decisions, whereas the current § 215.18 language implies that the only options are one decision for all appellants or separate decisions for each appellant.

Proposed paragraph (c) is added, describing the ADO's authority when appeals listing multiple names are received. The current regulations do not address these types of appeals, resulting in inconsistent application of the regulation. As discussed above, paragraph (c) regarding appeal decisions from the current § 215.18 is moved to proposed § 215.18(d), ''Formal review and disposition'' and a new paragraph (d) is added, clarifying that the ADO's decision can be different from the Appeal Reviewing Officer's recommendation. This provision was not addressed specifically in the Act but was implied with the use of the term ''recommendation.''

*Proposed Section 215.20 Appeal Reviewing Officer's responsibilities.* This proposed section incorporates and revises the language from current § 215.19. The proposed heading is revised to be consistent with the Act and the paragraph headings are also revised. Proposed paragraph (a) is revised to conform directly with the language in the Act regarding who may be designated as the Appeal Reviewing Officer. Proposed paragraph (b) clarifies the scope of review, using language from the Act. Proposed paragraph (c) clarifies that the Appeal Reviewing Officer has an option to issue one recommendation or as many as appropriate in cases involving multiple appeals of decisions.

*Proposed Section 215.21 Secretary's authority.* This proposed section is added to set out the relationship between the Secretary of Agriculture and the Forest Service concerning decisionmaking and the rules of this part.

*Proposed Section 215.22 Judicial proceedings.* The concepts from current § 215.20 are incorporated in this proposed section, but it is rewritten to remove the option for waiver since Public Law 103–354, the USDA Reorganization Act of 1993 (7 U.S.C. 6901) supercedes this option.

*Proposed Section 215.23 Applicability and effective date.* This proposed section specifies in paragraph (a) when the new procedures in the final rule would apply. Proposed paragraph (b) would provide that decisions for which legal notice is given prior to the effective date of the final rule would remain subject to the rules previously in effect in part 215.

*Proposed Section 215.24 Information Collection Requirements.* This section explains that the rule contains information collection requirements as defined in 5 CFR part 1320 by specifying the information that appellants must supply in an appeal. The OMB Control Number for this information will be included in the final rule.

**Regulatory Certifications**

*Regulatory Impact*

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants user fees, or loan programs or the rights and obligations of recipients of such programs.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required for this proposed rule.

*Environmental Impacts*

This proposed rule would revise the administrative procedures and requirements to guide notice, comment, and appeal of projects and activities implementing a land and resource management plan. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction.'' This proposed rule clearly falls within this category of actions and no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

*Energy Effects*

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this proposed rule would revise the administrative procedures and requirements to guide notice, comment, and appeal of projects and activities implementing a land and resource management plan.

*Controlling Paperwork Burdens on the Public*

This proposed rule at 36 CFR 215.15 sets out requirements for the information that appellants must provide in an appeal. As such, this proposed rule contains information collection requirements as defined in 5 CFR part 1320 and, therefore, is subject to the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. part 3501 *et seq.*) and implementing regulations at 5 CFR part 1320.

*Federalism*

The agency has considered this proposed rule under the requirements of

Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The agency has made a preliminary assessment that the proposed rule conforms with the federalism principles set out in these Executive orders; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Based on comments received on this proposed rule, the agency will consider if any additional consultation will be needed with State and local governments prior to adopting a final rule.

*Consultation and Coordination With Indian Tribal Governments*

This proposed rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

*No Takings Implications*

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally protected private property. This proposed rule would only revise the administrative procedures and requirements that guide notice, comment, and appeal of projects and activities implementing a land and resource management plan.

*Civil Justice Reform*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this proposed rule. Nevertheless, in the event that such a conflict were to be identified, the proposed rule, if implemented, would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) No retroactive effect would be given to this proposed rule; and (2) the Department would not require the parties to use administrative proceedings before parties may file suit in court challenging its provisions.

*Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

**List of Subjects in 36 CFR Part 215**

Administrative practice and procedure, National forests.

Therefore, for the reasons set forth in the preamble, it is proposed to amend Part 215 of Title 36 of the Code of Federal Regulations as follows:

## PART 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

Sec.

215.1 Purpose and scope.
215.2 Definitions.
215.3 Proposed actions subject to legal notice and opportunity to comment.
215.4 Actions not subject to legal notice and opportunity to comment.
215.5 Legal notice of proposed action and opportunity to comment.
215.6 Consideration of comments.
215.7 Legal notice of decision.
215.8 Decision implementation.
215.9 Emergency situations.
215.10 Decisions subject to appeal.
215.11 Decisions and actions not subject to appeal.
215.12 Who may appeal.
215.13 Where to file appeals.
215.14 Appeal time periods and process.
215.15 Appeal content.
215.16 Dismissal of appeal without review.
215.17 Informal disposition.
215.18 Formal review and disposition procedures.
215.19 Appeal Deciding Officer's authority.
215.20 Appeal Reviewing Officer's responsibilities.
215.21 Secretary's authority.
215.22 Judicial proceedings.
215.23 Applicability and effective date.
215.24 Information collection requirements

**Authority:** 16 U.S.C. 472, 551; sec. 322, Pub. L. 102–381, 106 Stat. 1419 (16 U.S.C. 1612 note).

### § 215.1 Purpose and scope.

(a) *Purpose.* The rules of this part have two purposes. First, this part establishes a process by which the public receives notice and an opportunity to comment on proposed actions for projects and activities implementing a land and resource management plan prior to a decision by the Responsible Official. Second, this part establishes an appeal process and identifies the decisions that may be appealed, who may appeal those decisions, the responsibilities of the participants in an appeal, and the procedures that apply for the prompt disposition of the appeal.

(b) *Scope.* The notice of proposed actions and opportunity to comment provides an opportunity for the public to provide meaningful input prior to the decision on projects and activities implementing land and resource management plans. The rules of this part complement, but do not replace, numerous other opportunities to participate in and influence the agency's project and activity planning, such as those provided by the National Environmental Policy Act of 1969 (NEPA), the National Forest Management Act, and the implementing regulations and procedures in 40 CFR parts 1500–1508 and 36 CFR parts 216 and 219, Forest Service Manual (FSM) Chapters 1920 and 1950, and Forest Service Handbooks (FSH) 1909.12 and 1909.15. The appeal process is available to those who submit comments during the comment period, and issues are limited to those specifically raised by the appellant in their comments. Appeal disposition constitutes the final administrative determination of the United States Department of Agriculture.

### § 215.2 Definitions.

*Appeal*—The written document filed with an Appeal Deciding Officer by someone seeking review of a decision.

*Appeal Deciding Officer*—The Secretary of Agriculture or the Department or agency designee having the delegated authority and responsibility to render a decision on an appeal filed under this part.

*Appeal disposition*—Either a written appeal decision or written notification that an appeal decision will not be issued.

*Appeal period*—The 45-calendar-day period following publication of the legal notice of a decision during which an appeal may be filed with the Appeal Deciding Officer.

*Appeal record*—The information upon which review of an appeal is conducted, consisting of the decision documentation, the legal notice of decision, the appeal, the Responsible Official's documentation of the informal disposition meeting, and the Appeal Reviewing Officer's recommendation.

*Appeal Reviewing Officer*—An agency or Department of Agriculture official who reviews an appeal and makes a written recommendation to the Appeal Deciding Officer on the disposition of the appeal.

*Appellant*—An individual or organization filing an appeal under this part.

*Categorically excluded*—Proposed actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental impact statement (EIS) nor an environmental assessment (EA) is required (40 CFR 1508.4; Forest Service Handbook (FSH) 1909.15, Chapter 30).

*Comment period*—The 30-calendar-day period following publication of the legal notice of a proposed action, during which the public has the opportunity to provide comments to a Responsible Official on a proposed action subject to this part. The time period is computed using calendar days, including Saturdays, Sundays, and federal holidays. However, when the time period expires on a Saturday, Sunday, or federal holiday, comments shall be accepted until the end of the next federal working day.

*Decision documentation*—The Decision Notice or Record of Decision and all relevant environmental and other analysis documentation and records on which the Responsible Official bases a decision under appeal.

*Decision Notice (DN)*—A concise written record of a Responsible Official's decision based on an environmental assessment and a finding of no significant impact (40 CFR 1508.9; FSH 1909.15, Chapter 40).

*Emergency situation*—A situation on National Forest System lands in which a proposed action would provide relief from hazards threatening human health and safety or natural resources on those or adjacent lands; or that would result in substantial loss of economic value to the Government if implementation of the proposed action were delayed.

*Environmental Assessment (EA)*—A concise public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact, aids an agency's compliance with NEPA when no environmental impact statement is necessary, and facilitates preparation of a statement when one is necessary. (40 CFR 1508.9; FSH 1909.15, Chapter 40).

*Environmental Impact Statement (EIS)*—A detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR 1508.11; FSH 1909.15, Chapter 20).

*Finding of No Significant Impact (FONSI)*—A document prepared by a federal agency presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement, therefore, will not be prepared. It includes the environmental assessment or a summary of it and shall note any other environmental documents related to it (40 CFR1508.13; FSH 1909.15, Chapter 40).

*Forest Service line officer*—A Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions subject to this part.

*Name*—The first and last name of an individual or the name of an organization. An e-mail address or electronic username is insufficient for identification of an individual or organization.

*National Forest System lands*—Proclaimed or designated National Forests; National Grasslands; Purchase Units; Land Utilization Projects; Research and Experimental Areas; and other areas (36 CFR 200.1(c)(2)).

*Projects and activities implementing a land and resource management plan*—Site-specific projects and activities, including those for research, on National Forest System lands that are approved in a Decision Notice or Record of Decision by a Forest Service official.

*Proposed action*—A proposal made by the Forest Service to authorize an action on National Forest System lands to meet a specific purpose and need which is subject to the notice and comment provisions of this part.

*Record of Decision*—A document signed by a Responsible Official recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2; FSH 1909.15, Chapter 20).

*Responsible Official*—The Forest Service employee who has the delegated authority to make and implement a decision subject to this part.

*Substantive comments*—Comments that are within the scope of the proposed action, are specific to the proposed action, and have a direct relationship to the proposed action.

### § 215.3 Proposed actions subject to legal notice and opportunity to comment.

The legal notice and opportunity to comment procedures (§ 215.5) only apply to:

(a) Proposed projects and activities implementing land and resource management plans (§ 215.2) for which an environmental assessment (EA) is prepared.

(b) Proposed nonsignificant amendments to land and resource management plans (36 CFR part 219) that are included as part of a decision on a project or activity for which an EA is prepared.

(c) Proposed revision of the EA based on consideration of new information or changed circumstances (FSH 1909.15, section 18).

(d) Proposed research activities to be conducted on National Forest System lands for which an EA is prepared.

### § 215.4 Actions not subject to legal notice and opportunity to comment.

The procedures for legal notice and opportunity to comment (§ 215.5) do not apply to:

(a) Proposed projects and activities described in a draft environmental impact statement (EIS), for which notice and comment procedures are governed by 40 CFR 1500–1508.

(b) Projects and activities which are categorically excluded from documentation in an EIS or environmental assessment (EA) pursuant to FSH 1909.15, sections 31.1 and 31.2.

(c) Projects and activities not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500–1508 and the National Forest Management Act and the implementing regulations at 36 CFR part 219.

(d) New information or changed circumstances, based upon which, the Responsible Official determines that revision of the EA is not required (FSH 1909.15, section 18).

(e) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or policies and procedures issued in the Forest Service Manual and Handbooks (36 CFR parts 200 and 216).

(f) Proposed nonsignificant amendment to a land and resource management plan that is made separately from a project or activity specified in § 215.3(b).

### § 215.5 Legal notice of proposed action and opportunity to comment.

(a) *Timing for publication of notice.* Comments on the proposed action shall be accepted for 30 days following the date of publication of the notice; the Responsible Official has the discretion to determine the most effective timing for publishing the legal notice of the proposed action and opportunity to comment (§ 215.5(b)).

(b) *Giving Notice*—(1) *Principal newspaper.* Through notice published annually in the **Federal Register**, each Regional Forester shall advise the public of the principal newspapers utilized for publishing legal notices required by this part.

(2) The Responsible Official shall promptly mail the proposed action (§ 215.2) to any individual or organization who has requested it and to individuals who have participated in project planning.

(3) The Responsible Official shall publish a legal notice of the opportunity to comment on a proposed action in the principal newspaper identified in § 215.5(b)(1), or in the case of the Chief of the Forest Service, in the **Federal Register**.

(4) *Content of legal notice.* All legal notices shall include the following:

(i) The title and brief description of the proposed action;

(ii) A general description of the proposed action's location with sufficient information to allow the interested public to identify the location;

(iii) Instructions on how to obtain additional information on the proposed action;

(iv) The name, title, telephone number, and addresses (street, postal, facsimile, and e-mail) of the Responsible Official to whom comments are to be submitted;

(v) The acceptable format(s) for electronic comments;

(vi) A statement indicating that each individual, or a representative from each organization, must sign comment letters.

(vii) Rather than giving a specific date, a statement indicating that the opportunity to comment ends 30 days following the date of publication of the legal notice;

(viii) A statement indicating that only those who submit timely comments will be accepted as appellants; and

(ix) When applicable, a statement that the Responsible Official is requesting an emergency situation determination or it has been determined that an emergency situation exists for the project or activity as provided for in § 215.9.

(5) *Computation of time period.* The 30-day comment period begins on the first day after publication of the legal notice. The time period is computed using calendar days, including Saturdays, Sundays, and federal holidays. However, when the time period expires on a Saturday, Sunday, or federal holiday, comments shall be accepted until the end of the next federal working day.

(i) The Responsible Official shall accept comments on the proposed action that are:

(A) Postmarked, e-mailed, faxed, or otherwise submitted (for example, express delivery service) by the end of the 30th calendar day following publication of the legal notice (§ 215.5(b)(3)); or

(B) Hand-delivered and received by the end of the 30th calendar day following publication of the legal notice (§ 215.5(b)(3)).

(ii) The time period for the opportunity to comment shall not be extended.

(c) *Comments.* Written and oral comments shall be accepted and shall become a matter of public record.

(1) Anyone commenting must provide the following information:

(i) Name and address;

(ii) Title of the proposed action; and

(iii) Specific substantive comments (§ 215.2) on the proposed action along with supporting reasons that the Responsible Official should consider in reaching a decision.

(2) Written Comments Signature. Written comments, submitted via delivery service (for example, U.S. Postal Service, express mail service, courier, etc.) or submitted in person, must be signed. When a written comment, submitted via delivery service or in person, is filed on behalf of multiple individuals, each name listed must include a signature.

Verification of the author(s) may be necessary for electronically submitted comments. For organizations, a signature of an individual officially representing each organization must be included. Comments received from an official representative(s) of an organization are considered as those of the organization only, and do not meet comment requirements of this section for individual members of that organization.

(3) Oral Comments—Oral comments must be provided at the agency office during normal business hours via telephone or in person, or if non-business hours, must be at an official agency function which is designed to elicit public comment.

### § 215.6 Consideration of comments.

(a) All written comments received by the Responsible Official shall be placed in the project file.

(b) The Responsible Official shall clearly identify the date all oral comments are received in response to the legal notice (§ 215.5), document them, and place in the project file.

(c) The Responsible Official shall consider all substantive written and oral comments submitted in compliance with § 215.5(b)(5)(i) and (c).

### § 215.7 Legal notice of decision.

(a) The Responsible Official shall publish a legal notice of any decision subject to appeal (§ 215.10) in the principal newspaper (§ 215.5(b)(1)). The legal notice shall:

(1) Include the title of the project or activity and a concise description of the action(s) to be taken, the name and title of the Responsible Official, and instructions for obtaining a copy of the Decision Notice (DN) and Finding of No Significant Impact (FONSI) or Record of Decision (ROD).

(2) State that the decision is subject to appeal pursuant to 36 CFR part 215 and include the following:

(i) Name and address of the Appeal Deciding Officer with whom an appeal is to be filed. The notice shall specify a street, postal, fax, and e-mail address, and acceptable format(s) for electronically submitted appeals.

(ii) A statement that the publication date of the legal notice is the exclusive means for calculating the time to file an appeal (§ 215.14)) and that appellants should not rely upon dates or timeframe information provided by any other source. An actual date shall not be included in the legal notice.

(iii) A statement that an appeal, including attachments, must be postmarked, faxed, e-mailed, hand-delivered, or otherwise submitted to the appropriate Appeal Deciding Officer (§ 215.13) within 45 days following the date of publication of the legal notice.

(iv) A statement indicating that individuals or organizations who submitted comments during the comment period (§ 215.5) may appeal. Appeal issues are limited to those raised by the appellant in his/her comments (§ 215.5).

(v) A statement specifying, when applicable, that the Chief of the Forest Service, or a designee, has determined that an emergency situation exists (§ 215.9), and which portion of the project is covered by that determination as provided for in § 215.9.

(vi) A statement indicating how many days following publication that implementation may begin (§ 215.8), including those portions covered by an emergency situation determination, if applicable (§ 215.9).

(3) When no comments or only supportive comments are received, include a statement indicating that the decision is not subject to appeal pursuant to § 215.11.

(b) The Responsible Official shall promptly mail the ROD or the DN and FONSI to those who requested the decision document and those who submitted comments during the comment period provided under § 215.5.

### § 215.8 Decision implementation.

(a) If no appeal is filed within the time period provided, implementation of the decision may begin on, but not before, the fifth (5th) business day following the close of the appeal-filing period (§ 215.14).

(b) Except for emergency situations as noted in § 215.9(b), when an appeal is filed, implementation may occur on, but not before, the 15th business day following the date of appeal disposition (§ 215.2). In the event of multiple appeals of the same decision, the implementation date is controlled by the date of the last appeal disposition.

(c) When a project or activity decision is not subject to appeal (§ 215.11), implementation may occur as follows:

(1) Immediately when documented in a Decision Notice; or

(2) Immediately when documented in a Record of Decision after complying with the timeframes described in 40 CFR 1506.10(b)(2).

**§ 215.9 Emergency situations.**

(a) *Determination.* The Chief of the Forest Service or a designee may make the determination that an emergency situation (§ 215.2) exists. The authority for determination of an emergency situation may not be delegated below the Regional Forester or Station Director. The determination that an emergency situation exists shall be based on an examination of the relevant information. During the review, additional information may be requested and/or the Responsible Official may be consulted.

(b) *Implementation.* When it is determined that an emergency situation exists with respect to all or part of the decision, implementation may proceed as follows:

(1) Immediately when documented in a Decision Notice, for that portion of the decision determined to be an emergency.

(2) Immediately when documented in a Record of Decision, after complying with the timeframes described in 40 CFR 1506.10(b)(2), for that portion of the decision determined to be an emergency.

(c) *Notification.* The Responsible Official shall notify the public that the Forest Service is handling part of, or the entire project, as an emergency in the legal notice of decision (§ 215.7).

**§ 215.10 Decisions subject to appeal.**

(a) The following decisions are subject to appeal under this part:

(1) Decisions for projects and activities implementing land and resource management plans (§ 215.2) documented in a Record of Decision (ROD) or Decision Notice (DN), including those which, as a part of the decision, contain a nonsignificant amendment to a land and resource management plan (36 CFR 219.10).

(2) A new DN or ROD made after supplementation or revision of an environmental assessment or environmental impact statement pursuant to FSH 1909.15, section 18. However, only that portion of the decision that is changed is subject to appeal.

(3) Decisions made in conjunction with other federal agencies and meeting the requirements of preceding paragraph (a)(1) of this section. However, only that portion of the decision made by the Forest Service affecting National Forest System lands (§ 215.2) is subject to appeal under this part.

(b) Decisions solely affecting the business relationship between the Forest Service and holders of written instruments regarding occupancy and use of National Forest System lands and meeting the requirements of preceding paragraph (a) of this section are subject to appeal by permit holders under either this part or 36 CFR part 251, subpart C, but not under both parts.

**§ 215.11 Decisions and actions not subject to appeal.**

The following decisions are not subject to appeal under this part:

(a) Decisions for projects or activities included in a Record of Decision for significant amendment, revision, or adoption of a land and resource management plan (36 CFR part 217 and part 219).

(b) Documentation that a new decision is not needed following supplementation or revision of an environmental assessment (EA) pursuant to FSH 1909.15, section 18.

(c) Preliminary findings made during planning and/or analysis processes on a project or activity and the subsequent implementing actions that result from the initial project decision subject to appeal.

(d) Projects or activities for which notice of the proposed action and opportunity to comment is published (§ 215.5) and

(i) No comments or only supportive comments are received during the comment period (§ 215.5); or

(ii) No comments or only supportive comments are received during the comment period for a draft environmental impact statement (EIS) (40 CFR 1502.19), and the Responsible Official's decision does not modify the preferred alternative identified in the draft EIS.

(e) Decisions for actions that have been categorically excluded from documentation in an EA or EIS in FSH 1909.15, sections 31.1 and 31.2.

(f) An amendment to a land and resource management plan that is made independent of a project or activity (36 CFR 219.32).

(g) Concurrences and recommendations to other federal agencies.

**§ 215.12 Who may appeal.**

(a) Individuals and organizations who submit written or oral comments during the comment period for an environmental assessment (§ 215.5), or in response to a draft environmental impact statement, except as provided in paragraph (c) of this section, may file an appeal. Comments received from an official representative(s) of an organization are considered as those of the organization only, and individual members of that organization do not meet appeal requirements on the basis of membership in an organization which submitted comments.

(b) When the appeal lists multiple individuals or organizations, each shall meet the requirements of paragraph (a) of this section.

Individuals or organizations that do not meet the requirements of paragraph (a) of this section shall not be accepted as appellants.

(c) Federal agencies may not appeal.

(d) Federal employees filing appeals in a non-official capacity under this part shall comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees shall not be on official duty nor use government property or equipment in the preparation or transmittal of an appeal. Further, employees shall not incorporate official information not yet released to the public, including federal agency documents that are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552 (b).

**§ 215.13 Where to file appeals.**

Appeals must be filed with the Appeal Deciding Officer as follows:

| If the Responsible Official who made the decision is: | Then the Appeal Deciding Officer is: |
|---|---|
| Chief | Secretary of Agriculture. |
| Regional Forester or Station Director. | Chief of the Forest Service. |
| Forest Supervisor | Regional Forester. |
| District Ranger | Regional Forester. |
| Research Work Unit Project Leader. | Station Director. |

**§ 215.14 Appeal time periods and process.**

(a) *Time to file an appeal.* Written appeals, including any attachments, must be submitted to the Appeal Deciding Officer within 45 days

following the publication date of the legal notice (§ 215.7).

(b) *Computation of time periods.* (1) All time periods are computed using calendar days, including Saturdays, Sundays, and federal holidays. However, when the time period expires on a Saturday, Sunday, or federal holiday, the time is extended to the end of the next federal working day.

(2) The day after the publication of the legal notice (§ 215.7) is the first day of the appeal-filing period.

(3) The publication date of the legal notice of the decision is the exclusive means for calculating the time to file an appeal. Appellants should not rely on dates or timeframe information provided by any other source.

(c) *Evidence of timely filing.* When there is a question about timely filing of an appeal, timeliness shall be determined by:

(1) The postmark on an appeal and/or attachment mailed or otherwise submitted (for example, express mail service), or evidence of the date sent on an e-mailed or faxed appeal and/or attachments. When an appeal is electronically mailed, the appellant should expect to receive an automated electronic response from the agency as confirmation of receipt; or

(2) The time and date imprint at the correct receiving office on a hand-delivered appeal and/or attachments.

(d) *Extensions.* Time extensions, except as noted in paragraph (b) of this section, are not permitted.

(e) *Other timeframes.* Unless an appeal is resolved through the informal disposition process (§ 215.17), the following timeframes and processes shall apply:

(1) *Transmittal of decision documentation.* Within 15 days of the close of the appeal-filing period, the Responsible Official shall transmit the decision documentation to the Appeal Reviewing Officer.

(2) *Appeal decision.* Within 45 days following the end of the appeal-filing period, the Appeal Deciding Officer shall issue a written decision to the appellant(s) concerning the disposition of the appeal. When an appeal decision is not issued within 45 days, the Responsible Official's decision is deemed the final agency action and the appellant shall be so notified (§ 215.18).

### § 215.15 Appeal content.

(a) It is the appellant's responsibility to provide sufficient project- or activity-specific evidence and rationale, focusing on the decision, to show why the Responsible Official's decision should be reversed.

(b) The appeal must be submitted to the Appeal Deciding

Officer in writing. At a minimum, an appeal must include the following:

(1) Appellant's name (as defined in § 215.2), signature (for those appeals submitted via delivery service, for example, United States Postal Service, express mail service, courier, etc.) and address, with a telephone number, if available;

(2) The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;

(3) The regulation under which the appeal is being filed, when there is an option to appeal under this part or 36 CFR part 251 subpart C (§ 215.10(b));

(4) Any specific change(s) in the decision that the appellant seeks or portion(s) of the decision with which the appellant disagrees; and

(5) Why the appellant believes the Responsible Official's decision failed to consider their substantive comments and/or how the appellant believes the decision specifically violates law, regulation, or policy. Appeal issues are limited to those raised by the appellant in her/his comments (§ 215.5).

(c) The Appeal Deciding Officer shall not accept an appeal when:

(1) The identity of an appellant cannot be determined; or

(2) A reasonable means of contact is not provided; or

(3) The appellant's signature is not provided, except for those appeals submitted electronically, which may be subject to verification of the author; or

(4) Multiple names are listed without a signature accompanying each name except for those appeals submitted electronically, which may be subject to verification of the author; or

(5) The signature of the individual representing an organization is not provided, except for those appeals submitted electronically, which may be subject to verification of the author; or

(6) The decision cannot be identified.

### § 215.16 Dismissal of appeal without review.

(a) The Appeal Deciding Officer shall dismiss an appeal without review when:

(1) The postmark on an appeal and/or attachment mailed or otherwise submitted (for example, express mail service) or the evidence of the date sent on an e-mailed or faxed appeal and/or attachments is not within the 45-day appeal-filing period (§ 215.14); or

(2) The time and date imprint at the correct receiving office on a hand-delivered appeal and/or attachments is not within the 45-day appeal-filing period (§ 215.14); or

(3) The requested relief or change cannot be granted under law, policy, or regulation; or

(4) The appellant has appealed the same decision under 36 CFR part 251 (§ 215.10(b)); or

(5) The decision is excluded from appeal (§ 215.11); or

(6) The appellant did not submit comments during the comment period (§ 215.5); or

(7) The Responsible Official withdraws the decision; or

(8) The appellant's appeal does not provide sufficient information in response to § 215.15(b)(4) and (5) for the Appeal Deciding Officer to render a decision; or

(9) The appellant withdraws the appeal.

(b) The Appeal Deciding Officer shall give written notice to the appellant and the Responsible Official when an appeal is dismissed and shall give the reasons for dismissal.

### § 215.17 Informal disposition.

(a) *Offer to meet.* When an appeal is received, the Responsible Official must contact the appellant and offer to meet and discuss resolution of the issues raised in the appeal. This contact shall be as soon as practicable after the appeal is received.

(b) *Time and location of meeting.* When an appellant agrees to meet, the initial meeting(s) shall take place within 15 days after the closing date for filing an appeal (§ 215.14). The location of the meeting shall be in the vicinity of the lands affected by the decision. When the District Ranger is the Responsible Official, meetings will generally be located on or near that Ranger District. When the Forest Supervisor or Regional Forester is the Responsible Official, meetings will generally take place at a location within or near the National Forest.

(c) *Meeting structure.* Generally, the appellant and any other participants should be physically present at informal disposition meetings. If the appellant cannot attend a meeting in person because of schedule conflicts or travel distances, alternative types of meetings (such as telephone conferences or video conferences) may be arranged. All meetings are open to the public.

(d) *Outcome.* The Responsible Official shall notify the Appeal Deciding Officer of the meeting participants and the outcome of the informal disposition meeting in writing. If the appellant(s) decline to meet, the Responsible Official shall advise the Appeal Deciding Officer.

(1) When an appellant and the Responsible Official reach agreement on

disposition of all or a portion of an appeal, the appellant shall withdraw all or the agreed upon portion of the appeal by letter to the Appeal Deciding Officer within 15 days of the agreement. When the appellant does not withdraw the appeal in writing, formal review and disposition of the appeal shall continue.

(2) When, as a result of the agreement reached at the informal disposition meeting, new information is received or changes to the original decision or environmental analysis are proposed, the Responsible Official must follow the procedures in FSH 1909.15, section 18, and §§ 215.3 and 215.4.

(3) When an appeal is not entirely resolved through informal disposition, formal review and disposition of the appeal shall continue (§ 215.18).

**§ 215.18 Formal review and disposition procedures.**

(a) *Scope of review.* The Appeal Deciding Officer shall complete a review based on the appeal record (§ 215.2) and the Appeal Reviewing Officer's recommendation (§ 215.19(b)).

(b) *Disposition.* The Appeal Deciding Officer shall issue either:

(1) Within 45 days following the end of the appeal filing period, a written appeal decision affirming or reversing the Responsible Official's decision, in whole or in part, and may include instructions for further action. When an appeal decision involves instructions concerning new information or changed circumstances, the Responsible Official must follow the procedures in FSH 1909.15, section 18; and §§ 215.3, 215.4, 215.10, and 215.11. A copy of the appeal decision shall be sent to the appellant, the Appeal Reviewing Officer, and the Responsible Official; or

(2) No sooner than 46 days nor later than 50 days following the end of the appeal filing period, written notification to the appellant that an appeal decision will not be issued and that the Responsible Official's decision constitutes the final administrative decision of the Department of Agriculture (§ 215.14(e)(2)). A copy shall be sent to the Responsible Official.

(c) The Appeal Deciding Officer shall not issue an appeal decision when 45 days have elapsed following the end of the appeal filing period.

(d) The Appeal Deciding Officer's appeal decision constitutes the final administrative determination of the Department of Agriculture.

**§ 215.19 Appeal Deciding Officer's authority.**

(a) *Procedural decisions.* The Appeal Deciding Officer makes all procedural determinations. Such determinations are not subject to further administrative review.

(b) *Consolidation of appeal decisions.* In cases involving multiple appeals of a decision, the Appeal Deciding Officer may consolidate appeals and may issue one or more appeal decisions.

(c) *Multiple names.* (1) When an appeal lists multiple names, the Appeal Deciding Officer shall identify all qualified appellants (§ 215.12).

(2) The Appeal Deciding Officer has the discretion to appoint a representative from those listed on an appeal to act on behalf of all parties to that appeal.

(d) The Appeal Deciding Officer may issue an appeal decision different from the Appeal Reviewing Officer's recommendation.

**§ 215.20 Appeal Reviewing Officer's responsibilities.**

(a) *Designation.* The Appeal Reviewing Officer may be:

(1) designated by the Chief or designee, and shall be a line officer at least at the level of the agency official who made the initial decision on the project or activity that is under appeal, who has not participated in the initial decision and will not be responsible for implementation of the initial decision after the appeal is decided.

(2) or designated by the Secretary in the case of Chief's decisions.

(b) *Review and recommendation.* The Appeal Reviewing Officer shall review an appeal and make a written recommendation to the Appeal Deciding Officer on the disposition of the appeal. That recommendation shall be released only upon issuance of an appeal decision.

(c) *Multiple appeals.* In cases involving multiple appeals of a decision, the Appeal Reviewing Officer may consolidate appeals and issue one or more recommendations.

**§ 215.21 Secretary's authority.**

(a) Nothing in this part limits the Secretary of Agriculture's authority for making decisions subject to this part.

(b) When the Secretary of Agriculture or Under Secretary, Natural Resources and Environment, issues a decision for projects and activities implementing land and resource management plans, such decisions shall not be subject to the notice, comment, and appeal procedures of this part. A decision by the Secretary of Agriculture constitutes the final administrative decision of the Department of Agriculture.

**§ 215.22 Judicial proceedings.**

It is the position of the Department of Agriculture that any filing for federal judicial review of a decision subject to appeal is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the appeal procedures in this part (7 U.S.C. 6901).

**§ 215.23 Applicability and effective date.**

(a) These procedures apply to all projects and activities for which notice is published after 30 days from date of publication of final rule in the **Federal Register**.

(b) Decisions for which legal notice is given (§ 215.5) on or prior to 30 days from date of publication of final rule in the **Federal Register** remain subject to the appeal procedures of 36 CFR part 215 in effect when the final rule is published

**§ 215.24 Information collection requirements.**

The rules of this subpart governing appeal of decisions regarding projects and activities implementing a land and resource management plan specify the information that appellants must provide in an appeal (§ 215.15). As such, these rules contain information collection requirements as defined in 5 CFR part 1320. These information requirements are assigned OMB Control Number 0596–_____.

Dated: December 11, 2002.

**Dale N. Bosworth,**

*Chief, Forest Service.*

[FR Doc. 02–31681 Filed 12–17–02; 8:45 am]

BILLING CODE 3410–11–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[KY 139—200307(b); FRL–7423–5]**

## Approval and Promulgation of Implementation Plans for Kentucky: Source-Specific Revision for Lawson Mardon Packaging

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve a source-specific revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky. This revision allows Lawson Mardon Packaging, USA, Corporation to have an alternative compliance averaging period of 30 days instead of the 24-hour averaging period specified by Kentucky air quality regulations 59:210 and 59:212. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the

Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this direct final rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before January 17, 2003.

**ADDRESSES:** All comments should be addressed to: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).)

Copies of the Commonwealth's submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Michele Notarianni, 404/562–9031, *notarianni.michele@epa.gov*.)

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382).

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni at address listed above or 404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: December 5, 2002.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 02–31667 Filed 12–17–02; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AH02**

## Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for Plant Species From the Island of Hawaii, HI

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; extension of comment period and notice of availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis for the proposed designations of critical habitat for 47 plant species from the island of Hawaii. The comment period for the proposed critical habitat designations originally closed on July 29, 2002. On August 26, 2002, we reopened the comment period and provided notice that the comment period would close on September 30, 2002. On September 24, 2002, we announced two public hearings and extended the comment period to allow all interested parties to submit oral or written comments on the proposal until November 30, 2002. We are now providing notice of another extension of the comment period to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Over a 10-year period, the draft economic analysis shows a range of total direct costs for both the plant species listings and critical habitat to be estimated at $53.1 million to $71.8 million and some of the indirect costs could be substantially larger. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in preparation of the final rule.

**DATES:** We will accept public comments until January 17, 2003.

**ADDRESSES:** Send your written comments and information to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001or e-mail your comments to *FW1PIE_Hawaii_Island_Crithab@r1.fws.gov.* To obtain a copy of the draft economic analysis, send a written requests to the address listed above, call 808/541–3441, or visit the following Internet site: *http://pacificislands.fws.gov.* For further instructions on commenting, refer to Public Comments Solicited section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

**SUPPLEMENTARY INFORMATION:**

### Background

On May 28, 2002, we published in the **Federal Register** (67 FR 36968) a proposed rule to propose critical habitat for 47 of the 58 plant species known historically from the island of Hawaii that are listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), known historically from the island of Hawaii.

A total of 58 species historically found on the island of Hawaii were listed as endangered or threatened species under the Act between 1991 and 1996. Some of these species may also occur on other Hawaiian islands. In previously published proposals, we proposed that critical habitat was prudent for 31 (*Achyranthes mutica, Adenophorus periens, Asplenium fragile* var. *insulare*, Bonamia menziesii, Cenchrus agrimonioides, Clermontia lindseyana, Clermontia peleana, Colubrina oppositifolia, Ctenitis squamigera, Delissea undulata, Diellia erecta, Flueggea neowawraea, Gouania vitifolia, Hedyotis cookiana, Hedyotis coriacea, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Mariscus fauriei, Mariscus pennatiformis, Phlegmariurus mannii, Phyllostegia parviflora, Plantago princeps, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium, Vigna *o-wahuensis*, and *Zanthoxylum hawaiiense*) of the 58 species reported from the island of Hawaii. No change is made to the 31 proposed prudency determinations in the May 28, 2002, proposed rule for plants from Hawaii. In addition, in the May 28, 2002, proposal we proposed that designation of critical habitat was not prudent for two species of loulu palm, *Pritchardia affinis* and *Pritchardia schattaueri*, because it would likely increase the threat from vandalism or collection of these species on the island of Hawaii. We also proposed that critical habitat designation was not prudent for two species, *Cyanea copelandii* ssp. *copelandii* and *Ochrosia kilaueaensis*, known only from the island of Hawaii, because these species have not been seen in the wild since 1957 and 1927, respectively, and no viable genetic material is known to exist. We further proposed that designation of critical habitat is prudent for 23 species (*Argyroxiphium kauense, Clermontia drepanomorpha, Clermontia pyrularia, Cyanea hamatiflora* ssp. *carlsonii, Cyanea platyphylla, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Isodendrion hosakae, Melicope zahlbruckneri, Neraudia ovata, Nothocestrum breviflorum,*

*Phyllostegia racemosa, Phyllostegia velutina, Phyllostegia warshaueri, Plantago hawaiensis, Pleomele hawaiiensis, Sicyos alba, Silene hawaiiensis*, and *Zanthoxylum dipetalum* var. *tomentosum*) for which prudency determinations had not been made previously.

We also proposed designation of critical habitat for 47 plant species (*Achyranthes mutica, Adenophorus periens, Argyroxiphium kauense, Asplenium fragile* var. *insulare, Bonamia menziesii, Clermontia drepanomorpha, Clermontia lindseyana, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Cyanea hamatiflora* ssp. *carlsonii, Cyanea platyphylla, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Delissea undulata, Diellia erecta, Flueggea neowawraea, Gouania vitifolia, Hedyotis coriacea, Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion hosakae, Isodendrion pyrifolium, Mariscus fauriei, Melicope zahlbruckneri, Neraudia ovata, Nothocestrum breviflorum, Phyllostegia racemosa, Phyllostegia velutina, Phyllostegia warshaueri, Plantago hawaiensis, Pleomele hawaiiensis, Portulaca sclerocarpa, Sesbania tomentosa, Sicyos alba, Silene hawaiiensis, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium, Vigna o-wahuensis, Zanthoxylum dipetalum* var. *tomentosum*, and *Zanthoxylum hawaiiense*). We did not propose critical habitat for 4 (*Cyanea copelandii* ssp. *copelandii, Ochrosia kilaueaensis, Pritchardia affinis*, and *Pritchardia schattaueri*) of the 58 species for the reasons given above, and we did not propose critical habitat for 7 species (*Cenchrus agrimonioides, Ctenitis squamigera, Hedyotis cookiana, Mariscus pennatiformis, Phlegmariurus mannii, Phyllostegia parviflora*, and *Plantago princeps*) which no longer occur on the island of Hawaii and for which we are unable to determine any habitat that is essential to their conservation on the island of Hawaii.

Twenty-eight critical habitat units, totaling approximately 176,968 hectares (437,285 acres), are proposed for designation for 47 plant species on the island of Hawaii. For locations of these proposed units, please consult the proposed rule was published May 28, 2002.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available on the Internet and from the mailing address listed below in the Public Comments Solicited section.

The public comment period for the May 28, 2002, proposal (67 FR 36968) originally closed on July 29, 2002. On August 26, 2002, we published in the **Federal Register** (67 FR 54766) a notice reopening the comment period for the proposed designations and non-designations of critical habitat for plant species on the island of Hawaii, as well as for the proposed designations and non-designations of critical habitat for plant species on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, Oahu, and the Northwestern Hawaiian Islands, and we announced that the comment period would close on September 30, 2002. On September 24, 2002, we announced two public hearings and extended the comment period to allow all interested parties to submit oral or written comments on the proposal until November 30, 2002 (67 FR 59811). We are now announcing the availability of the draft economic analysis and another extension of the comment period for the proposed designations and non-designations of critical habitat for plant species on the island of Hawaii. Over a 10-year period, the draft economic analysis shows a range of total direct costs for both the plant species listings and critical habitat to be estimated at $53.1 million to $71.8 million and some of the indirect costs could be substantially larger. However, many of the indirect costs shown in the analysis result from uncertain and possibly unlikely future private and governmental actions, and we expressly request comments as to the likelihood of these actions occurring and of the indicated costs from these possible actions being incurred. We will accept public comments on the proposal and the associated draft economic analysis for the island of Hawaii until the date specified above in **DATES**. The extension of the comment period gives all interested parties the opportunity to comment on the proposal and the associated draft economic analysis for the island of Hawaii. Comments already submitted on the proposed designations and non-designations of critical habitat for plant species from the island of Hawaii need not be resubmitted as they will be fully considered in the final determinations.

**Public Comments Solicited**

If you wish to provide written comments, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to: *FW1PIE_Hawaii_Island_Crithab@r1.fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AH02'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Honolulu Fish and Wildlife Office at telephone number 808/541–3441.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above under (1).

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above.

Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the address and phone number listed in **ADDRESSES.**

**Author**

The primary author of this document is Michelle Mansker (see **ADDRESSES** section).

**Authority:** The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 11, 2002.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02–31876 Filed 12–17–02; 8:45 am]

**BILLING CODE 4310–55–P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

## Endangered and Threatened Wildlife and Plants; Status Review for the Westslope Cutthroat Trout

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Reopening of public comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period for a new status review for the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) in the United States, pursuant to a recent Court order and the Endangered Species Act of 1973, as amended. We request additional data, information, technical critiques, and relevant comments that may be available for this subspecies of fish, as previously described in the **Federal Register** (67 FR 56257; September 3, 2002).

**DATES:** The reopened comment period closes on February 15, 2003. Any comments that are received after the closing date will not be considered in the status review.

**ADDRESSES:** Comments should be submitted to Westslope Cutthroat Comments, U.S. Fish and Wildlife Service, 2900 4th Avenue North, Room 301, Billings, MT 59102. Comments also may be submitted electronically to <*fw6_westslope@fws.gov*>.

**FOR FURTHER INFORMATION CONTACT:** Lynn R. Kaeding at e-mail <*lynn_kaeding@fws.gov*> or telephone (406) 582–0717.

**SUPPLEMENTARY INFORMATION:**

### Background

A September 3, 2002, **Federal Register** notice (67 FR 56257) announced the opening of a 60-day public comment period for a new status review for the westslope cutthroat trout in the United States, pursuant to a recent Court order and the Endangered Species Act of 1973, as amended. During that comment period, we received written requests for an extension of the comment period from the game and fish departments of the States of Washington, Oregon, Idaho, and Montana, as well as the Kalispel Tribe of Indians and the Earthjustice Legal Foundation. In their letters, those entities indicated that they were assembling or awaiting important information relevant to the status of westslope cutthroat trout and that those entities wanted to make such information available to us for use in the status review. The present action satisfies those requests.

### Author

The primary author of this document is Lynn R. Kaeding, Chief, Branch of Native Fishes Management, Montana Fish and Wildlife Management Assistance Office, U.S. Fish and Wildlife Service, 4052 Bridger Canyon Road, Bozeman, MT 59715.

### Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 4, 2002.

**Marshall P. Jones, Jr.,**

*Director, Fish and Wildlife Service.*

[FR Doc. 02–31875 Filed 12–17–02; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register
Vol. 67, No. 243
Wednesday, December 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

### Notice of Resource Advisory Committee Meeting

**AGENCY:** Crook County Resource Advisory Committee, Sundance, Wyoming, Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure rural schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Black Hills National Forests' Crook County Resource Advisory Committee will meet Monday, January 20, 2003 in Sundance, Wyoming for a business meeting. The meeting is open to the public.

**SUPPLEMENTARY INFORMATION:** The business meeting on January 20, begins at 6:30 p.m., at U.S. Forest Service, Barlodge Ranger District Office, 121 South 21st Street, Sundance, Wyoming. Agenda topics will include deciding on project selection criteria, Review of NEPA requirements, review of project proposals and scheduling of future meetings. A public forum will begin at 8:30 p.m. (MT).

**FOR FURTHER INFORMATION CONTACT:** Steve Kozel, Bearlodge District Ranger and Designated Federal Office at (307) 283–1361.

Dated: December 9, 2002.

**Steve Kozel,**

*Bearlodge District Ranger.*

[FR Doc. 02–31746 Filed 12–7–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 58–2002]**

### Foreign-Trade Zone 7—Mayaguez, Puerto Rico; Request for Manufacturing Authority, ChemSource Corporation (Bulk and Intermediate Pharmaceutical Chemicals)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Industrial Development Corporation (PRIDCO), grantee of FTZ 7, on behalf of ChemSource Corporation (ChemSource), requesting authority to manufacture bulk and intermediate pharmaceutical chemicals under FTZ procedures within FTZ 7. The application was formally filed on December 10, 2002.

The application requests authority on behalf of ChemSource to manufacture bulk and intermediate pharmaceutical chemicals under zone procedures within FTZ 7—site 4, L–381–0–80 (lot 2). The ChemSource facility is located at State Road No. 3, Km. 143, Guayama, Puerto Rico (12 bldgs., 170,000 sq. ft., on 45 acres).

The facility (129 employees) is currently used for the manufacture of bulk and intermediate pharmaceutical chemicals. The chemicals that are being requested for manufacture under zone procedures are etodolac, fluvoxamine maleate, lisinopril, metformin hydrocholride, nabumetone, sililad triptophol, amiodopine besylate and enalapril maleate. Foreign-sourced materials for these products currently include dicyandiamide, celite, toluene, sodium chloride, methanol, ethyl acetate, maleic acid, sodium hydroxide and hydrazine sulfate. Materials sourced from abroad represent some 50% of finished product value.

The application also requests to include general categories of inputs that have recently been approved by the Board for other pharmaceutical plants that may be used to produce the chemicals listed above: chemically pure sugars, protein concentrates, ethyl alcohol, natural magnesium phosphates and carbonates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, phosphoric acid, other inorganic acids or compounds of nonmetals, ammonia, sodium hydroxide, zinc oxide, iron oxide, titanium oxides, hydrazine and hydroxylamine, fluorides, chlorides, chlorates, sulfites, sulfates, salts of oxometallic acids, radioactive chemical elements, compounds of rare earth metals, acyclic and cyclic hydrocarbons, derivatives of phenols or peroxides, acetals and hemiacetals, aldehydes, ketone function compounds, carboxylic acids, phosphoric esters and their salts, heterocyclic compounds, sulfanomides, hormones, vitamins, glycosides, diazo-compounds, essential oils, wadding, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic polymers, cellulose, ion exchangers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, aluminum foil, tin plates and sheets, and taps, cocks and valves.

Zone procedures would exempt ChemSource from Customs duty payments on foreign materials used in production for export. Nearly 25 percent of the plant's shipments are exported. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to the chemical products (duty free) instead of the rates otherwise applicable to the foreign input materials (ranging from 3.7%–10.7% on current production, and up to 20% on future production). ChemSource would also be exempt from duty payments on foreign merchandise that becomes scrap or waste resulting from the production process. FTZ procedures will help ChemSource implement a more efficient and cost-effective system for handling Customs requirements because of direct delivery. The application indicates that the savings from zone procedures would help improve ChemSource's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

*1. Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce,

Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

*2. Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period of their receipt is February 18, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 3, 2003.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, San Juan, PR 00918.

Dated: December 10, 2002.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 02–31894 Filed 12–17–02; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–813]**

### Notice of Final Results of Antidumping Duty New Shipper Review; Stainless Steel Butt-Weld Pipe Fittings From Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty New Shipper Review.

**SUMMARY:** On July 17, 2002, the Department of Commerce published the preliminary results of the new shipper review of the antidumping duty order on stainless steel butt-weld pipe fittings from Korea. This new shipper review covers imports of subject merchandise from TK Corporation.

The period of review is February 1, 2001, through August 1, 2001.

No party submitted any comments on the preliminary results, and we have made no changes to the programming. Therefore, the final results do not differ from the preliminary results.

**EFFECTIVE DATE:** December 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker, Mike Heaney, or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2924, (202) 482–4475, or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

**Applicable statute and regulations:**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (April 1, 2001).

**Background**

On July 17, 2002, the Department published the preliminary results of the new shipper review of the antidumping duty order on stainless steel butt-weld pipe fittings from Korea. *See Notice of Preliminary Results of Antidumping Duty New Shipper Review Stainless Steel Butt-Weld Pipe Fittings from Korea*, 67 FR 46953 (July 17, 2002). We extended the due date for the final results of review on October 31, 2002. *See Notice of Extension of Time Limit of Final Results of New Shipper Review: Stainless Steel Butt-Weld Pipe Fittings from Korea*, 67 FR 66383 (October 31, 2002). This review covers one manufacturer, TK Corporation.

On October 5, 2001, the Department initiated this new shipper review for the period February 1, 2001, through July 31, 2001. However, on April 5, 2002, TK Corporation, in response to a supplemental questionnaire that the Department issued on March 28, 2002, submitted the information that any shipments during the period of review (POR) entered U.S. Customs territory on August 1, 2001, one day after the POR ended. Therefore, we have expanded the POR by one day. Thus, the POR for this new shipper review is February 1, 2001, through August 1, 2001.

The Department has now completed this review in accordance with section 751 of the Tariff Act.

**Scope of the Review**

The products subject to this review are certain welded stainless steel butt-weld pipe fittings (pipe fittings), whether finished or unfinished, under 14 inches in inside diameter.

Pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise can be used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, and the following five are the most basic: ''elbows,'' ''tees,'' ''reducers,'' ''stub ends,'' and ''caps.'' The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

**Analysis of Comments Received**

No parties submitted comments on the preliminary results of review. Accordingly, there is no concurrent issues and decision memorandum or analysis memorandum issued with these final results of review.

**Changes Since the Preliminary Results**

We have made no changes in programming since the preliminary results of review.

**Final Results of Review**

We determine that a margin of zero percent exists for TK Corporation for the period February 1, 2001, through August 1, 2001.

**Assessment**

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

**Cash Deposit Requirements**

Bonding is no longer permitted to fulfill security requirements for shipments from TK Corporation of stainless steel butt-weld pipe fittings from Korea entered, or withdrawn from warehouse, for consumption on or after

the publication date of these final results of new shipper review. The following cash-deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise entered or withdrawn from warehouse for consumption on or after the publication date as provided for by section 751(a)(2)(C) of the Tariff Act:

• For subject merchandise manufactured and exported by TK Corporation no cash deposit is required. In accordance with the practice established in *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) and *Notice of Preliminary Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 FR 52442 (August 12, 2002), the new shipper review cash deposit rate will only apply to the merchandise subject to this new shipper review, *i.e.*, merchandise produced and exported by TK Corporation.

• For subject merchandise exported by TK Corporation but not manufactured by TK Corporation, the cash-deposit rate will be the rate applicable to the manufacturer.

• If the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer in the most recent segment of these proceedings in which that manufacturer participated.

• If neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 21.2 percent, the all others rate established in the less-than-fair-value investigation. (*See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from the Republic of Korea*, 57 FR 61881 (December 29, 1992)).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act.

Dated: December 9, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 02–31893 Filed 12–17–02; 8:45 am]

BILLING CODE 3510–DS–S

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

December 12, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** December 19, 2002.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 351/651 is being increased for swing, reducing the limit for Categories 340/640 to account for the swing being applied to Categories 351/651.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 54983, published on October 31, 2001.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 12, 2002.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 25, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 19, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 340/640 | 2,171,078 dozen. |
| 351/651 | 501,290 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 02–31834 Filed 12–17–02; 8:45 am]

BILLING CODE 3510–DR–S

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 12, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** December 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift and the cancellation of special shift. This will reopen embargoes in both Categories 361 and 666-S.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63683, published on December 10, 2001.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 12, 2002.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 18, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Twelve-month restraint limit [1] |
|---|---|
| Specific limits | |
| 360 | 8,520,672 numbers. |
| 361 | 9,639,744 numbers. |
| 666–P [2] | 1,079,969 kilograms. |
| 666–S [3] | 6,208,419 kilograms. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[3] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.02–31835 Filed 12–17–02; 8:45 am]

**BILLING CODE 3510–DR–S**

## COMMODITY FUTURES TRADING COMMISSION

### Review by the National Futures Association of Annual Financial Reports Required To Be Filed by Commodity Pool Operators

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice and order.

**SUMMARY:** The Commodity Futures Trading Commission (the ''Commission'') is authorizing the National Futures Association (''NFA'') to conduct reviews of annual financial reports filed with the Commission by commodity pool operators (''CPOs''), as required by Commission Rules 4.22(c) and 4.7(b)(3), and to grant and deny certain requests for extensions of time to file such reports. In addition, the Commission is authorizing NFA to maintain and to serve as the official custodian of Commission records required by Rules 4.22 and 4.7(b)(3).

**EFFECTIVE DATE:** December 18, 2002; with regard to all commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter.

**FOR FURTHER INFORMATION CONTACT:** Kevin P. Walek, Assistant Director, Eileen R. Chotiner, Futures Trading Specialist, Audit and Financial Review Section, or Michael A. Piracci, Attorney Advisor, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Commission previously has authorized NFA to conduct many functions that, until that time, were conducted by Commission staff. Such delegated functions include: the processing of applications for registration of intermediaries and floor traders under the Commodity Exchange Act (the ''Act''); [1] the processing of notices of eligibility for certain exemptions from registration as a CPO and commodity trading advisor (''CTA''); [2] and the review of Disclosure Documents required to be filed by CPOs and CTAs pursuant to Commission rules.[3]

The Commission has found that NFA exercises its authority in these areas with particular proficiency. Additionally, authorizing NFA to perform such functions has enabled Commission staff to devote resources to other aspects of the Commission's regulatory mission.

The futures industry is continually expanding and transforming itself. As the industry changes and evolves, the Commission must also change and evolve, reassessing the manner in which it allocates its resources. Accordingly, by this order, the Commission is authorizing NFA to perform certain regulatory functions that may properly be performed by NFA instead of Commission staff. In particular, the Commission is authorizing NFA to review commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter, that CPOs are required to submit, pursuant to Commission Rules 4.22 and 4.7(b)(3).[4] In addition, the Commission is authorizing NFA, with regard to such reports, to receive, grant, and deny, requests submitted pursuant to Rule 4.22(f)(1) for extensions of time to distribute and file annual financial reports and to process notices of claims of extension of time filed pursuant to Rule 4.22(f)(2).

[1] 7 U.S.C. 1 *et seq.* (2000). *See, e.g.*, 48 FR 35158 (Aug. 3, 1983) (introducing brokers and associated persons thereof); 49 FR 39593 (Oct. 9, 1984) (futures commission merchants, commodity pool operators, commodity trading advisors, and associated persons thereof); 51 FR 34490 (Sep. 29, 1986) (floor brokers); 58 FR 19657 (Apr. 15, 1993) (floor traders).

[2] *See* 62 FR 52088 (Oct. 6, 1997) (the ''1997 Order'').

[3] *Id.*

[4] Commission rules referred to herein may be found at 17 CFR Ch. I (2002).

## II. Authority

Section 4n(3)(A) of the Act provides, among other things, that each CPO shall ''file such reports in such form and manner as may be prescribed by the Commission.'' The Commission also notes that, in amending the Act through passage of the Commodity Futures Modernization Act of 2000 (the ''CFMA''),[5] Congress intended, as evidenced in section 2 of the CFMA, to transform the role of the Commission from that of a frontline regulator to one of an oversight regulator of the futures industry. Moreover, section 125 of the CFMA required the Commission to conduct a study of the Act and the Commission's rules and orders governing the conduct of registrants under the Act, identifying, among other things, regulatory functions the Commission performs that can be delegated to NFA.[6] Additionally, the Commission notes that NFA, as a registered futures association, is obligated to establish a program for the protection of customers and customer funds and to prevent fraudulent acts and practices.[7]

## III. Review of Annual Financial Reports

Commission Rule 4.22(c) requires, among other things, that each CPO distribute an annual financial report to each participant in each pool that it operates and file two copies with the Commission. Rule 4.12(b)(2)(iii) modifies the requirements as to the information to be contained in annual financial reports for certain commodity pools and the CPOs that operate such pools. CPOs that have claimed relief pursuant to Rule 4.12(b), with respect to qualifying pools, still must distribute and file annual financial reports for such pools pursuant to Commission Rule 4.22(c). Commission Rule 4.7(b)(3) exempts a CPO from the specific requirements of Rule 4.22(c) for certain commodity pools. Pursuant to Rule 4.7(b)(3)(i), however, a CPO still must distribute and file with the Commission an annual financial report for such pools. Commission staff currently review annual financial reports and issue letters to the CPO noting any issues concerning the CPO's compliance with relevant sections of the Act or Commission Rules, and work with the CPO to resolve such issues.

NFA Compliance Rule 2–13 [8] requires NFA members to file with NFA copies of any documents required to be filed with the Commission pursuant to part 4 of the Commission's rules. NFA staff reviews CPO annual financial reports during on-site audits as well as through a desk review program. Through working closely with NFA over the years, the Commission is confident in the expertise of NFA staff in reviewing these annual financial reports.

Commission and NFA staffs have had extensive discussions concerning the specific elements of the Commission's review of CPO annual financial reports under the Act and regulations thereunder. Further, Commission and NFA staff have worked closely to ensure that NFA's procedures for review of CPO annual financial reports similarly conform to the Act and regulations thereunder. Further, NFA has represented it will take appropriate steps to address deficiencies found in such reports, that it will maintain records reflecting its review and corrective activities, and that the information contained in such reports and such records will be maintained by NFA in electronic format that shall be accessible to Commission staff by electronic means. Based on the foregoing, the Commission is satisfied that NFA has established that it is capable of and willing to receive and to appropriately review CPO annual financial reports.[9] Accordingly, the Commission believes it would be appropriate for NFA to receive and to review CPO annual financial reports for compliance with the Act and applicable regulations thereunder.

In order to avoid disruption of outstanding reviews of annual financial reports, this authorization is effective only with regard to commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter. Stated another way, annual financial reports of commodity pools for fiscal years ending prior to December 31, 2002, shall still be received and reviewed in the first instance by the Commission.

## IV. Extensions of Time

Commission Rule 4.22(f)(1) provides that if a CPO is unable to disburse the annual financial report for a pool within the time specified in Rule 4.22(c) it may apply for an ''extension of time to a specific date not more than 90 calendar days after the date as of which the Annual Report was to have been distributed.'' This application must be filed with the Commission prior to the date on which the annual financial report is due. The Commission must then notify the CPO, within ten calendar days after receipt of the application, whether the application has been granted, denied, or whether additional time is needed to analyze the application. As part of this order, the Commission is authorizing NFA to undertake this function. In a separate notice, published elsewhere today in the **Federal Register**, the Commission is amending its rules with regard to the submission of these applications for extensions of time so as to make clear that they need be filed only with NFA.

In granting or denying applications made pursuant to Rule 4.22(f)(1), Commission staff have issued, and made publicly available, letters that make clear the reasoning for granting or denying such requests. NFA, in determining whether to grant or deny requests made pursuant to Rule 4.22(f)(1), shall consult, and comply with, the guidance provided by the previous letters of Commission staff on this subject, as well as any future guidance, in whatever form, the Commission or Commission staff might provide. The Commission notes that in other contexts, such as determining whether to grant or deny an application for registration, NFA makes independent decisions based on general guidance provided by the Commission.[10] The Commission fully expects that NFA will exercise the authority granted in this order with regard to requests for extensions of time in the same skillful manner as it has with regard to the registration of applicants.

Commission Rule 4.22(f)(2) provides for a self-executing extension of time of no more than 60 calendar days for distributing and filing an annual financial report of a commodity pool where the CPO is unable to prepare the annual financial report in the time required under the Commission's rules as a result of the pool's investments in

[5] Pub. L. 106–554, 114 Stat. 2763 (codified as amended in scattered sections of 7 U.S.C.).

[6] A copy of the study may be viewed on the Commission's Web site at: *www.cftc.gov/files/opa/opaintermediarystudy.pdf.*

[7] *See* Commission Rule 170.5; *See also* section 17(b)(7) of the Act.

[8] NFA Rules may be found on NFA's Web site at: *www.nfa.futures.org.*

[9] *See, e.g.*, Letter from Regina L. Thoele, Managing Director, Compliance, National Futures Association, to Jane Kang Thorpe, Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission (Sep. 17, 2002); *see also,* Letter from Yvonne Downs, Senior Vice President, Compliance, National Futures Association, to Jane Kang Thorpe, Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission (Nov. 4, 2002); and Letter from Jane Kang Thorpe, Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, to Yvonne Downs, Senior Vice President, Compliance, National Futures Association (Nov. 22, 2002).

[10] *See* Appendix A to Part 3 of the Commission's rules.

another collective instrument vehicle. To obtain the extension of time provided for in Rule 4.22(f)(2), the CPO must file a notice, in the form specified in the Rule, with the Commission and NFA. In the separate notice being published today, as discussed above, the Commission is amending Rule 4.22(f)(2) to provide that the notice need only be filed with NFA. As part of this order, the Commission is authorizing NFA to maintain and to serve as the official custodian of these notices.

**V. Maintenance of and Access to CPO and CTA Filings**

As noted above, in a separate document, published elsewhere today in the **Federal Register**, the Commission is amending its rules with regard to the submission of annual financial reports, extensions of time for filing annual financial reports,[11] and notices of eligibility for exemption from registration and certain part 4 requirements required to be filed by CPOs and CTAs.[12] Specifically, the Commission is amending the subject rules to make clear that CPOs and CTAs need only file the relevant documents with NFA and need not also file them with the Commission. As a result, NFA will act as official custodian of such records and will receive and maintain all records required to be filed by CPOs and CTAs with regard to the authorization made by the Commission in this and the 1997 Order.

As the Commission will no longer receive the subject filings, Commission staff has made NFA staff aware of the requirements that shall apply to NFA in maintaining these records. In particular, NFA will maintain these records in accordance with the Commission's Records Disposition Schedule. In addition, although Commission staff will no longer be reviewing the subject documents on a regular basis, the work of the Commission requires that Commission staff have ready electronic access to the information contained in the documents encompassed by this and the 1997 Order. NFA and Commission staffs have discussed the required availability and access by Commission staff to these records and the information contained therein. Effective March 10, 2003, Commission staff will have, at all times, immediate electronic access to a database containing all pertinent information contained in the subject filings, as well as the results of the NFA's review thereof.[13] Moreover, NFA will, at the request of the Commission, Commission staff, or the Department of Justice,[14] make available within 24 hours hard copies of any of the documents encompassed by this and the 1997 Order.

The Commission has determined to authorize NFA to maintain and serve as official custodian of record for the filings, notice, reports, and claims required by Rules 4.7(b)(3), 4.22(c), 4.22(f)(1), and 4.22(f)(2). This determination is based upon NFA's representations regarding procedures for maintaining and safeguarding all such records, in connection with NFA's assumption of the responsibilities for the activities referenced above. In maintaining the Commission's records pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed upon it by the Commission in existing or future orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are acceptable to the Commission and as are necessary to: Ensure the security and integrity of the records in NFA's custody; to facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission orders or rules; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission orders or rules and to keep logs as required by the Commission concerning disclosure of nonpublic information; and otherwise to safeguard the confidentiality of the records.

**VI. Advisory 18–96**

CFTC Advisory 18–96 makes generally available to certain registered CPOs relief from disclosure, reporting, and certain recordkeeping requirements in connection with the operation of offshore commodity pools.[15] In order to obtain the relief provided for in the advisory, a CPO must file a claim for exemption with the Commission and NFA, as required in the advisory. In the 1997 Order, the Commission authorized NFA to process notices of claims filed by qualifying CPOs pursuant to CFTC Advisory 18–96. As discussed above, in a separate document published elsewhere today in the **Federal Register**, the Commission is, among other things, amending Commission rules with regard to notices of eligibility for exemption from registration and certain part 4 requirements required to be filed by CPOs and CTAs to make clear that CPOs and CTAs need only file the relevant documents with NFA and need not also file them with the Commission. In order to conform the process for all claims for exemptions that the Commission has authorized NFA to process, the Commission is also ordering that as of January 1, 2003, all claims for exemption filed pursuant to CFTC Advisory 18–96 need only be filed with NFA and not also with the Commission.

**VII. Conclusion and Order**

For the reasons discussed above, and pursuant to its authority under the Act, the Commission has determined to authorize NFA, with regard to commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter, to: (1) Receive and review annual financial reports required to be filed by CPOs pursuant to Commission Rules 4.7(b)(3) and 4.22(c), including annual financial reports required to be filed by CPOs that have claimed relief pursuant to Rule 4.12(b) with respect to qualifying pools, and to review such reports for compliance with the Act and the Commission Rules thereunder and to provide notice of deficiencies; (2) receive and grant or deny applications filed pursuant to Commission Rule 4.22(f)(1) for extensions of time to distribute annual financial reports; and (3) process notices of claims of extension of time to distribute and file annual financial reports filed pursuant to Commission Rule 4.22(f)(2). In addition, the Commission has determined to authorize NFA to maintain and to serve as the official custodian of such records. The Commission has also determined that, as of January 1, 2003, all claims for exemption filed pursuant to CFTC Advisory 18–96 need only be filed with NFA and need not also be filed with the Commission.

These determinations are based upon: (1) The Congressional intent that the Commission be permitted to determine the best manner in which to oversee CPOs; (2) the Congressional intent that NFA, where appropriate, assume responsibility under the Act for regulatory functions the Commission has deemed unnecessary to retain; and (3) NFA's representation and

[11] With regard to annual financial reports and extensions of time for filing such reports, the rule amendments shall be made effective for such reports and extensions of time with regard to commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter.

[12] As noted above, in the 1997 Order the Commission authorized NFA to process notices of eligibility for certain exemptions.

[13] Due to routine maintenance of the system on which this information will reside, NFA has made the Commission aware that there may be times at which the system will not be accessible. NFA, however, has indicated that, whenever possible, all maintenance of the system will be conducted after business hours.

[14] *See* section 4n(3) of the Act.

[15] CFTC Advisory No. 18–96, (1994–1996 Transfer Binder), Comm. Fut. L. Rep. (CCH) ¶ 26,659 (Apr. 11, 1996).

demonstration of its willingness and ability to administer the required regulatory functions in accordance with the standards established by the Act, the Commission's regulations and orders promulgated thereunder, any supplemental direction established by the Commission or Commission staff, and relevant case law, and to provide the Commission with whatever information, reports, summaries, or records the Commission may determine are necessary for effective oversight of NFA's administration of the functions delegated herein, or for the Commission to fulfill its role of regulatory oversight of the futures markets.

This order does not authorize NFA to accept or act upon requests for exemption from the requirements of Rule 4.7(b)(3) or Rule 4.22(c), except applications for extensions of time filed pursuant to Commission Rule 4.22(f)(1), as discussed in this order. Moreover, NFA is not authorized to issue any interpretations, ''no-action'' positions, or exemptions with respect to the requirements of Rules 4.7(b)(3) and 4.22(c).

NFA is authorized to perform all functions specified in this order until the Commission orders otherwise. Nothing in this order shall prevent the Commission from exercising the authority delegated herein. NFA may submit to the Commission for decision any specific matter regarding the functions delegated to it by this order. Nothing in this order affects the applicability of any previous orders issued by the Commission.

Issued in Washington, DC on December 11, 2002, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02–31684 Filed 12–17–02; 8:45 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 03–03]**

### 36(b)(1) Arms Sales Notifications

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–03 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 4, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001–08–M**

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

**21 November 2002**

**In reply refer to:**
**I-02/010000**

**The Honorable J. Dennis Hastert**
**Speaker of the House of**
**Representatives**
**Washington, D.C. 20515-6501**

**Dear Mr. Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-03, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $875 million. Soon after this letter is delivered to your office, we plan to notify the news media.**

**Sincerely,**

Richard J. Millies
Acting Director

**Same ltr to: House Committee on International Relations**
**Senate Committee on Foreign Relations**
**House Committee on Armed Services**
**Senate Committee on Armed Services**
**House Committee on Appropriations**
**Senate Committee on Appropriations**

**Attachments**

**Transmittal No. 03-03**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act, as amended**

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $425 million |
| Other | $450 million |
| TOTAL | $875 million |

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 4 KIDD Class Guided Missile Destroyers, 248 SM-2 Block IIIA STANDARD missiles, 32 RGM-84L BLOCK II HARPOON Missiles, shipyard/port support services and post transfer activities relating to "cold ship" turnover of 4 KIDD Class destroyers from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, repair and calibration services for shipboard equipment, design/construction/upgrade of shipyard maintenance and docking facilities, publications and technical data/drawings, personnel training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the destroyers for transfer to Taiwan in a "Safe to Steam" condition with all shipboard and weapon systems operational.

(iv) Military Department: Navy (SDV, LGM, LGN, LFV, and TDA)

(v) Prior Related Cases, if any:
FMS Case LGI - $109 million – 13Sep01
FMS Case LGB - $85 million – 30Sep98
FMS Case LFV - $84 million – 18Jun97
FMS Case LEZ - $67 million – 3Sep 99
FMS Case LEX - $73 million – 30Sep92
FMS Case LEL - $41 million – 18Sep89

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 21 November 2002

as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

**Taipei Economic and Cultural Representative Office in the United States - KIDD Class Guided Missile Destroyers**

**Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 4 KIDD Class Guided Missile Destroyers, 248 SM-2 Block IIIA STANDARD missiles, 32 RGM-84L BLOCK II HARPOON Missiles, shipyard/port support services and post transfer activities relating to "cold ship" turnover of 4 KIDD Class destroyers from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, repair and calibration services for shipboard equipment, design/construction/upgrade of shipyard maintenance and docking facilities, publications and technical data/drawings, personnel training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the destroyers for transfer to Taiwan in a "Safe to Steam" condition with all shipboard and weapon systems operational. The estimated cost is $875 million.**

**This sale is consistent with United States law and policy as expressed in Public Law 96-8.**

**The recipient needs these KIDD Class destroyers as well as the weapons and ammunition to continue its naval modernization program and enhance its Anti-Submarine Warfare (ASW) capability. The recipient already has HARPOON missiles and STANDARD missiles in its weapon inventory.**

**The proposed sale of this equipment and support will not affect the basic military balance in the region.**

**The principal contractors will be: BAV, Division of VAE in Alexandria, Virginia; Raytheon Surface Navy Air Defense System in Tucson, Arizona; and the Boeing Company in St. Louis, Missouri. There are no offset agreements proposed in connection with this potential sale.**

**Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives for extended periods of time in support of this transfer.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

**Transmittal No. 03-03**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act, as amended**

**Annex**
**Item No. vii**

**(vii) Sensitivity of Technology:**

**1. The KIDD Class guided missile destroyers contain sensitive state-of-the-art technology. The classified information that will be provided consists of only that necessary for the recipient to operate, maintain, and repair the ships and their installed systems and related software. The proposed sale provides equipment and services and technical information related to the following classified equipment and documentation:**

**a. The MK 15 PHALANX Close-In Weapon System: Unclassified components with Confidential software.**

**b. AN/SYR-1 Communication Tracking Set: Unclassified hardware with Confidential software.**

**c. AN/SLQ-25A NIXIE Torpedo CM: Secret hardware, software, and documentation requiring sanitization.**

**d. AN/SLQ-32A(V)3 Improved ECM Set: Secret hardware. Due to USN requirements, this system must be removed and replaced with the basic AN/SLQ-32(V)2 system. Removal includes hardware, software, and technical manuals. When replaced with the basic AN/SLQ-32(V)2, the following release considerations apply: (1) hardware is Secret, (2) software is Confidential, (3) U.S. threat libraries are Secret and will not be released, and (4) technical manuals are Confidential and need to be sanitized.**

**e. MK 36 MOD 0 SRBOC Launching System: Confidential components with documentation requiring sanitization from Secret to Confidential.**

**f. AN/UYK-7(V) Computer CDS: Unclassified hardware. After sanitization, software and documentation will be Confidential.**

**g. MK 116 MOD 2 Underwater Fire Control System: Confidential hardware, software, and documentation requiring sanitization.**

**h. MK 14 MOD 5 Weapons Direction System: Secret hardware/documentation and Secret software requiring sanitization, which will downgrade classification to Confidential.**

**i. MK 74 MOD 14 Fire Control System GUI: Secret hardware with Secret software/documentation requiring sanitization, which will downgrade classification to Confidential.**

**j. AN/SQQ-28(V)11 Sonar Signal Processing System: Confidential components and documentation requiring sanitization.**

**k. AN/SQR-17A(V) Sonar Signal Processing System: Confidential hardware. Secret software/documentation requiring sanitization which will downgrade classification to Confidential.**

**l. AN/SQS-53A EC-16: Unclassified hardware. Secret software/documentation requiring sanitization which will downgrade classification to Confidential.**

**m. AN/SQS-53A Sonar Set: Confidential components and documentation.**

**2. The SM-2 Block IIIA STANDARD missile is a U.S. Navy surface-launched guided missile and is classified Secret. It is operationally deployed on cruisers, destroyers, and frigates for use against air and surface threats (aircraft, missiles and ships). The guidance system employs a continuous-wave or interrupted continuous-wave radar link for homing in on a target. Steering and roll commands from the adaptive auto-pilot system provide flight stability via four aft-mounted control surfaces. Propulsion is provided by a solid-propellant, dual-thrust rocket motor that is an integral part of the missile airframe. The target detecting device (TDD) is a complex fuze with dual radar systems to optimize warhead lethality against a spectrum of target sizes and speeds.**

**3. The RGM-84L HARPOON Block II missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:**

**a. Radar seeker**
**b. Missile characteristics and performance data**
**c. Global Positioning System/Precise Positioning Service improves mid-course guidance to the target area**

**4. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures, which might reduce the effectiveness of the reconnaissance system, or be used in the development of a system with similar capabilities.**

**5. A determination has been made that the recipient can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.**

[FR Doc. 02–31750 Filed 12–17–02; 8:45 am]
BILLING CODE 5001–08–C

## DEPARTMENT OF DEFENSE

### Notice of Availability of a Finding of No Significant Impact for the Transport of Polychlorinated Biphenyl-Containing Items From Japan and Wake Island to the United States

**AGENCY:** Defense Logistics Agency.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** The Defense Logistics Agency announces the availability of the Final Environmental Assessment and the Finding of No Significant Impact for the Transport of Polychlorinated Biphenyl-Containing Items from Japan and Wake Island to the United States. The final environmental assessment evaluates the environmental impacts of the transport to the United States, from military bases in Japan and Wake Island, of approximately seven million pounds of obsolete electrical equipment and related materials (including liquids and packaging materials) containing polychlorinated biphenyls. Treatment and disposal will be conducted in accordance with Environmental Protection Agency approved methods. The environmental assessment determined that neither transportation alternative (shipment by water or shipment by air) is likely to result in an accidental release of polychlorinated biphenyls or have a significant impact on the environment or public safety. The No Action alternative was not adopted, as it was not considered a feasible solution for continuing accumulations of this material. As a result, the Finding of No Significant Impact concludes that the proposed action does not constitute a major federal action significantly affecting the quality of the human environment and an environmental impact statement is not required. DLA plans to use a combination of both transportation alternatives.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack Hooper at (703) 767–5121.

**SUPPLEMENTARY INFORMATION:** On August 28, 2002, a **Federal Register** notice invited public comment on the draft environmental assessment for a period of 30 days. Two comments were received and were considered. The comments and DLA's responses are summarized in Appendix G of the final environmental assessment. The final environmental assessment and the Finding of No Significant Impact are available at the Defense Logistics Agency, Attention: Mr. Jack Hooper, DLA–CP, 8725 John J. Kingman Road, STOP 6220, Fort Belvoir, VA 22060–6221 and on the World Wide Web at *http://www.dla.mil/ea082802.asp.*

Dated: December 13, 2002.

**Richard J. Connelly,**

*Director, DLA Support Services.*

[FR Doc. 02–31840 Filed 12–17–02; 8:45 am]

**BILLING CODE 3620–01–M**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0145]**

### Federal Acquisition Regulation; Information Collection; Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0145).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning use of data universal numbering system (DUNS) as primary contractor identification. This OMB clearance expires on March 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before February 18, 2003.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Laura Smith, Acquisition Policy Division, GSA, (202) 208–7279.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The Data Universal Numbering System (DUNS) number is the nine-digit identification number assigned by Dun and Bradstreet Information Services to an establishment. The Government uses the DUNS number to identify contractors in reporting to the Federal Procurement Data System (FPDS). The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data on all contracts in excess of $25,000.00 to the Federal Procurement Data Center which collects, processes, and disseminates official statistical data on Federal contracting. Contracting officers insert the Federal Acquisition Regulations (FAR) provision 52.204–6, Data Universal Numbering System (DUNS) Number in solicitations they expect will result in contracts in excess of $25,000.00. This provision requires offerors to submit their DUNS number with their offer. If the offeror does not have a DUNS number, the provision provides instructions on obtaining one.

**B. Annual Reporting Burden**

*Respondents:* 35,694.

*Responses Per Respondent:* 4.00.

*Annual Responses:* 142,776.

*Hours Per Response:* .0200. (Averaged)

Total Burden Hours: 2,852.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.

Dated: December 11, 2002.

**Jeremy F. Olson,**

*Acting Director, Acquisition Policy Division.*

[FR Doc. 02–31718 Filed 12–17–02; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### HQ USAF Scientific Advisory Board

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the C2 Advisory Group and the leadership of the AFC2ISR Center. The purpose of the meeting is to allow the SAB leadership to advise the commander of the AC2ISRC. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

**DATES:** 18–19 December 2002.

**ADDRESSES:** Air Force C2ISR Center, Langley Air Force Base.

**FOR FURTHER INFORMATION CONTACT:** Captain Kent Broome, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4648.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 02–31781 Filed 12–17–02; 8:45 am]

**BILLING CODE 5001–05–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before January 17, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Whittenberg@omb.eop.gov*.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 12, 2002.

**John D. Tressler,**

*Leader, Regulatory Management Group, Office of the Chief Information Officer.*

### Federal Student Aid

*Type of Review:* Revision.

*Title:* Equity in Athletics Disclosure Act (EADA).

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 1,800.

*Burden Hours:* 10,800.

*Abstract:* The EADA amended the Higher Education Act of 1965, as amended (HEA), to require coeducational institutions of higher education that participate in any program under Title IV of the HEA and have an intercollegiate athletic program, annually to make available upon request a report on institutional financing and student and staff participation in men's and women's intercollegiate athletics. The Higher Education Amendments of 1998 amended the EADA to require additional disclosures, to require that an institution submit its report to the Department of Education, and to require the Department to report to Congress on gender equity in intercollegiate athletics and to make its report and institutions' EADA reports publicly available.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov*. Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–31769 Filed 12–17–02; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before January 17, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Whittenberg@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by

office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: December 12, 2002.

**John D. Tressler,**

*Leader, Regulatory Management Group, Office of the Chief Information Officer.*

**Office of the Chief Financial Officer**

*Type of Review:* New.

*Title:* Survey on Ensuring Equal Opportunity for Applicants.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 17,000.

Burden Hours: 1,360.

*Abstract:* To ensure equal opportunity for all applicants including small community-based, faith-based and religious groups, it is essential to collect information that allows Federal agencies to determine the level of participation of such organizations in Federal grant programs while ensuring that such information is not used in grant-making decisions.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–31770 Filed 12–17–02; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–193–000]**

## Algonquin Gas Transmission Company; Notice of Tariff Filing

December 11, 2002.

Take notice that on December 6, 2002, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets listed in Appendix A of the filing, effective January 1, 2003.

Algonquin states that the purpose of this filing is to comply with the Order on Investigation issued by the Commission in Docket No. RP00–533–003 on November 22, 2002 [101 FERC ¶ 61,214 (2002)] (November 22 Order) and the Order on Remand in Docket No. RM98–10–011 (Remand Order).

Algonquin states that it is hereby submitting tariff revisions that comply with such orders and, in particular, eliminate (i) provisions that preclude long-term shippers from having and exercising a ROFR when they terminate a contract, and (ii) provisions relating to the term matching cap.

Algonquin states that copies of its filing have been mailed to all affected customers of Algonquin and interested state commissions, as well as to all parties listed on the Official Service List compiled by the Secretary of the Commission in Docket No. RP00–533.

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 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. 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. 02–31738 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–192–000]**

## ANR Pipeline Company; Notice of Tariff Filing

December 11, 2002.

Take notice that on December 6, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of January 6, 2003:

Fourth Revised Sheet No. 46.
Second Revised Sheet No. 47.
Third Revised Sheet No. 59.
Second Revised Sheet No. 60.
First Revised Third Revised Sheet No. 153A.

ANR states that the tariff sheets are being filed in order clarify the operational flexibility provided within its No Notice Rate Schedule ''NNS''.

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 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. 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. 02–31737 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–206–010]**

## Atlanta Gas Light Company; Notice of Compliance Filing

December 11, 2002.

Take notice that on December 6, 2002, Atlanta Gas Light Company (Atlanta), in compliance with the Commission's November 21, 2002 Order in the above-referenced proceeding, has supplemented its Rate Schedule IBSS filing to include its section 15 of the Terms of Service of the currently effective Atlanta tariff on file with the Georgia Public Service Commission. In addition, Atlanta has included its Section 1 definitions contained in the currently effective Atlanta tariff. These revised definitions are being filed to replace an incorrect version of that section of Atlanta's tariff inadvertently filed on August 19, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

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

*Deputy Secretary.*

[FR Doc. 02–31744 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. RP00–335–002 and RP01–414–002]**

## Black Marlin Pipeline Company; Notice of Compliance Filing

December 11, 2002.

Take notice that on November 14, 2002, Black Marlin Pipeline Company tendered for filing as part of its Order No. 637 proceeding, a statement regarding park and loan service. The filing is being submitted in compliance with Commission letter order issued in October 30, 2002 in Docket No. RP02–568–000.

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 on or before December 18, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

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

*Deputy Secretary.*

[FR Doc. 02–31728 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–161–001]**

## Chandeleur Pipe Line Company; Notice of Filing

December 11, 2002.

Take notice that on December 6, 2002, Chandeleur Pipe Line Company (Chandeleur) tendered Substitute 13th Revised Sheet No. 5 correctly identifying its proposed Line Loss Allowance as 0.3%.

Chandeleur asserts that this filing is tendered in order to correct and replace previously-tendered materials, docketed on November 29, 2002. Calculations contained in worksheets accompanying the November 29 filing indicate a retention value of 0.3%, however tariff sheets and accompanying materials were submitted with a proposed percentage of 0.03%.

Chandeleur states that the purpose of this filing is to account for changes in amounts retained for Fuel and Line Loss Allowance pursuant to the provisions of 18 CFR 154.403(d)(3) and in accordance with section 21.0 of the General Terms and Conditions of Chandeleury's FERC Gas Tariff, Second Revised Volume No. 1.

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 on or before December 18, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

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

*Deputy Secretary.*

[FR Doc. 02–31731 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–54–035]**

## Colorado Interstate Gas Company; Notice of Settlement Agreement

December 11, 2002.

Take notice that on December 3, 2002, Colorado Interstate Gas Company tendered for filing a settlement agreement with IMC Global, Inc. associated with the refund of Kansas ad valorem tax reimbursements.

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 on or before December 18, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

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

*Deputy Secretary.*

[FR Doc. 02–31745 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–187–000]**

## Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

December 11, 2002.

Take notice that on December 4, 2002, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of January 3, 2003:

Second Revised Sheet No. 218
Second Revised Sheet No. 221

Dauphin Island states that this filing is submitted to revise its tariff to reflect modifications necessary to reinstate the rate ceiling for short-term capacity release transactions following the conclusion of FERC's two-year waiver period as provided for in Order No. 637.

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

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 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. 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. 02–31733 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP03–18–000]**

## City of Duluth Public Works & Utilities Department; Notice of Application

December 11, 2002.

Take notice that on November 29, 2002, the City of Duluth Public Works & Utilities Department (City of Duluth), filed an application with the Commission in Docket No. CP03–18–000 under section 7 of the Natural Gas Act, as amended, seeking authority to construct, install, and operate certain natural gas pipeline facilities which will be owned by the City of Duluth, all as more fully stated in the application which is open to public inspection.

The City of Duluth currently owns and operates a municipal distribution system providing natural gas service to almost 90,000 residents in and around the City of Duluth, Minnesota. The City of Duluth proposes to construct, install, and operate approximately 5.33 miles of 10-inch diameter pipeline and appurtenances. The proposed facilities would provide the incremental capacity sufficient for the City of Duluth to receive up to 35,000 Mcf/day of natural gas from an interconnection with Great Lakes Gas Transmission Company (Great Lakes) in Douglas County, Wisconsin. The City of Duluth would transport natural gas from the Great Lakes interconnection to a town border station that would be constructed in St. Louis County, Minnesota. The City of Duluth would construct the proposed facilities to increase the reliability of natural gas service to residents in the Duluth, Minnesota, area and to introduce competition into the interstate natural gas supply market. The City of Duluth would operate the proposed pipeline facilities at a maximum operating allowable pressure of 974 psig.

The City of Duluth states that it estimates the total construction cost of the proposed facilities at $3,500,000. The City of Duluth seeks to have the FERC issue a limited jurisdiction certificate of public convenience and

necessity by February 28, 2003, so that the facilities may be placed in service before the commencement of the 2003–2004 heating season. The City of Duluth states that it does not propose any rates for the new facilities.

Any questions regarding the application should be directed to Gregory A. Wheeler, Esquire, as agent for the City of Duluth Public Works & Utilities Department, ProSource Technologies, Inc., 277 Coon Rapids Boulevard, Suite 304, Coon Rapids, MN 55433 or at (763) 786–1445.

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 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 January 2, 2003, 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, please 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.

A person obtaining intervenor status will be placed on the service list maintained by FERC and will receive copies of all documents filed by applicant and by every one of the intervenors. An intervenor can file for rehearing of any FERC order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with FERC to every other intervenor in the proceeding, as well as 14 copies with FERC.

However, a person does not have to intervene in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of FERC. Commenters will be placed on FERC's environmental mailing list, receive copies of environmental documents, and be able to participate in meetings (if any) associated with FERC's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by FERC and will not have the right to seek rehearing or appeal FERC's final order to a federal court.

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 receiver 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon FERC by sections 7 and 15 of the Natural Gas Act and FERC's rules of practice and procedure, a hearing will be held without further notice before FERC or its designee on this application if no motion to intervene is filed within the time required herein, if FERC on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if FERC on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the City of Duluth to appear or be represented at the hearing.

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

*Deputy Secretary.*

[FR Doc. 02–31723 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–188–000]**

## East Tennessee Natural Gas Company; Notice of Tariff Filing

December 11, 2002.

Take notice that on December 5, 2002, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing, to be effective January 6, 2003.

East Tennessee states that the purpose of this filing is to modify the East Tennessee Tariff to: (1) Delete all references to the Daily Delivery Service; (2) delete the provision related to an alternate Reservation Charge; (3) modify the two Forms of Service Agreement used for Points of Delivery to achieve consistency between the agreements; (4) reflect the reinstatement of the price ceiling for short-term capacity release transactions; (5) achieve consistency in terminology related to East Tennessee's liquefied natural gas storage service; (6) achieve consistency in terminology related to contractual quantities; (7) delete the Form of Release Request and Form of Bid; and (8) make miscellaneous non-substantive housekeeping changes to various sections of the East Tennessee Tariff.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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. 02–31734 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–39–001]**

## Enbridge Pipelines (Midla) L.L.C.; Notice of Compliance Filing

December 11, 2002.

Take notice that on December 6, 2002, Enbridge Pipelines (Midla) L.L.C. (Midla) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be made effective December 1, 2002.

Midla states that the filing is being made in compliance with the Commission's order dated November 20, 2002 in Docket No. RP03–39-000 wherein Midla was directed to file revised tariff sheets when the Commission issues its orders in Docket Nos. RP00–400–000, *et al.* and RP02–486–000.

Midla states that copies of its transmittal letter has been provided by First Class mail and/or electronic communication, depending on the method that such party elected to receive such copies, to all 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.

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

*Deputy Secretary.*

[FR Doc. 02–31740 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–40–001]**

## Enbridge Pipelines (AlaTenn) L.L.C.; Notice of Compliance Filing

December 11, 2002.

Take notice that on December 6, 2002, Enbridge Pipelines (AlaTenn) L.L.C. (AlaTenn) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 143; First Revised Sheet No. 144; First Revised Sheet No. 197; and First Revised Sheet No. 198, to be made effective December 1, 2002.

AlaTenn states that the purpose of the filing is to comply with the Commission's Order dated November 20, 2002 in FERC Docket No. RP03–40–000 wherein AlaTenn was directed to file revised tariff sheets when the Commission issues its orders in FERC Docket Nos. RP00–401–000, *et al.* and RP02–485–000. By its Order dated November 4, 2002, in FERC Docket No. RP02–485–001, the Commission found that AlaTenn's tariff revisions fully comply with the requirements of Order No. 587–O. AlaTenn further states that the proposed tariff sheets include the same language as was contained on the Sheets accepted by the Commission,*i.e.*, Substitute First Revised Sheet Nos. 141, 142, 195 and 196 to its FERC Gas Tariff, Third Revised Volume No. 1.

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.

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

*Deputy Secretary.*

[FR Doc. 02–31741 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–43–001]**

## Enbridge Pipelines (KPC); Notice of Compliance Filing

December 11, 2002.

Take notice that on December 6, 2002, Enbridge Pipelines (KPC) (Enbridge KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be made effective December 1, 2002:

Substitute Third Revised Sheet No. 15
Substitute Third Revised Sheet No. 21
Substitute Third Revised Sheet No. 26
Substitute Third Revised Sheet No. 28
Substitute Third Revised Sheet No. 30
Substitute Second Revised Sheet No. 31A
Substitute Second Revised Sheet No. 31C

Enbridge KPC states that the purpose of the filing was to comply with the Commissions Order dated November 29, 2002 in FERC Docket No. RP03–43–000. Additionally, KPC stated that in addition to the correction described above, the instant filing also reflected the rates as approved by the Commission's Order dated November 27, 2002 in Docket Nos. RP03–50–000 and 001. Because the Commission

approved an effective date of December 1, 2002 in that docket, which is the same effect date that the Commission conditionally accepted in this docket, the proposed tariff sheets show the rates and fuel retention percentages that will be effective on December 1, 2002.

Enbridge KPC states that copies of its transmittal letter has been provided by First Class mail and/or electronic communication, depending on the method that such party elected to receive such copies, to all 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.

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

*Deputy Secretary.*

[FR Doc. 02–31742 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–190–000]**

## Florida Gas Transmission Company; Notice of Tariff Filing

December 11, 2002.

Take notice that on December 6, 2002, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, with an effective date of January 6, 2003:

Sixth Revised Sheet No. 187

FGT states that in *Interstate Natural Gas Association of America* v. *FERC*, 285 F. 3d 18 (DC Cir. 2002) (INGAA), the United States Court of Appeals for the District of Columbia remanded certain issues to the Commission regarding Order No. 637. Subsequently, in response to the Court's remand, the Commission issued its Order on Remand on October 31, 2002 in Docket No. RM98–10–011 (''Order''). Among other things, the Order removed the term matching cap for Shippers exercising their Right-of-First Refusal (''ROFR''). FGT states that in the instant filing, it is proposing modifications to the ROFR provisions of its Tariff. Specifically, FGT states it is modifying section 20.B.4 of its General Terms and Conditions (''GT&C'') by removing tariff provisions where Shippers are only required to match term provisions up to five years.

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 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. 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. 02–31736 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–189–000]**

## Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

December 11, 2002.

Take notice that on December 6, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective February 1, 2003:

Twelfth Revised Sheet No. 1
Fifth Revised Sheet No. 8A
Eleventh Revised Sheet No. 9
Sixth Revised Sheet No. 40A
Ninth Revised Sheet No. 41
Seventh Revised Sheet No. 42A
Second Revised Sheet No. 50K
Third Revised Sheet No. 51
First Revised Sheet No. 57B
Third Revised Sheet No. 87
First Revised Sheet No. 87A
Third Revised Sheet No. 88
Second Revised Sheet No. 89

Great Lakes states that the proposed revised tariff sheets are being filed to expand the scope of Great Lakes' Master Service Agreement and Award Acknowledgment. Currently the Master Service Agreement is used only to facilitate multiple temporary capacity release transactions. Great Lakes proposes here to expand use of the Master Service Agreement and Award Acknowledgment also to facilitate multiple firm and/or limited firm transportation transactions. This change is being made to provide Great Lakes' shippers with greater ease in obtaining and finalizing contracts for service. In addition, the proposed changes will reduce the processing time for the increasing number of multiple firm or limited firm transportation transactions.

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 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. 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. 02–31735 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–157–009]**

## Kern River Gas Transmission Company; Notice of Negotiated Rates

December 11, 2002.

Take notice that on December 5, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective December 1, 2002.

Substitute Third Revised Sheet No. 495.
Substitute Original Sheet No. 496.

Kern River states that the purpose of this filing is to submit corrected tariff sheets to reinstate the negotiated rate agreement between Kern River and Eagle Mountain on the list of negotiated rate agreements in Kern River's tariff.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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. 02–31726 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–2353–009]**

## New York State Electric & Gas Corporation; Notice of Filing

December 11, 2002.

Take notice that on November 7, 2002, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) its revised sheets for Rate Schedule Nos. 110 and 229 pursuant to the Commission's Opinion No. 447–B issued October 10, 2002. Copies of the tendered filing have been served by NYSEG upon the other parties to the above captioned proceeding.

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 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. 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:* December 20, 2002.

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

*Deputy Secretary.*

[FR Doc. 02–31724 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–2353–010]**

## New York State Electric & Gas Corporation; Notice of Filing

December 11, 2002.

Take notice that on November 7, 2002, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report pursuant to the Commission's Opinion No. 447–B issued October 10, 2002. Copies of the tendered filing have been served by NYSEG upon the other parties to the above captioned proceeding.

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 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. 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:* December 20, 2002.

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

*Deputy Secretary.*

[FR Doc. 02–31725 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–2–006]**

## Overthrust Pipeline Company; Notice of Compliance Filing

December 11, 2002.

Take notice that on December 6, 2002, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Ninth Revised Sheet No. 70, to be effective January 1, 2003.

Overthrust states that the filing is being made in compliance with Commission letter order issued July 13, 2000, in Docket No. RP00–2–000.

Overthrust states that by letter order issued July 13, 2000, the Commission approved the March 24, 2000, settlement of its rate case in Docket No. RP00–2–000.

Overthrust states that paragraph III.A.(3)(b) of the settlement provided that effective January 1, 2003, the Interruptible Revenue Sharing provision of Overthrust's General Terms and Conditions would be modified so that 50% rather than 100% of interruptible revenues would be shared annually rather than monthly and only if the total of all firm and interruptible revenues exceed $4,689,819 annually.

Further, Overthrust states that Ninth Revised Sheet No. 70 submitted with its filing implements the modified Interruptible Revenue Sharing provision in the manner set forth on the tariff sheet attached as Appendix A to the settlement, with one minor clarification regarding the annual nature of the revised provision.

Overthrust states that a copy of this filing has been served upon Overthrust's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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.

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

*Deputy Secretary.*

[FR Doc. 02–31727 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL03–29–000]**

## PG&E Energy Trading-Power, L.P., Complainant, v. California Power Exchange Corporation, Respondent; Notice of Filing

December 12, 2002.

Take notice that on December 10, 2002, pursuant to 16 U.S.C. 824e and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the Commission or the FERC), 18 CFR 385.206, PG&E Energy Trading-Power, L.P. (PGET) submitted its Complaint, requesting that the Commission order the California Power Exchange Corporation (CalPX) to reduce the amount of the collateral that PGET must provide as a condition for having participated in the now-defunct CalPX markets. In particular, PGET seeks a Commission order directing the CalPX to release PGET's letter of credit currently held in the amount of $19,000,000.

Any person desiring to be heard 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. The answer to the complaint and all comments, interventions or protests must be filed on or before January 6, 2003. 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 for TTY, contact (202) 502–8659. The answer to the complaint, 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.

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

*Deputy Secretary.*

[FR Doc. 02–31896 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP02–408–002]**

## Sabine Pipe Line LLC; Notice of Compliance Filing

December 11, 2002.

Take notice that on December 6, 2002, Sabine Pipe Line LLC (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective October 1, 2002.

Substitute First Revised Sheet No. 204A
Second Sub Third Revised Sheet No. 297

Sabine asserts that the purpose of this filing is to comply with Commission's order issued December 3, 2002, in Docket No. RP02–408–001.

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.

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

*Deputy Secretary.*

[FR Doc. 02–31730 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–312–117]**

## Tennessee Gas Pipeline Company; Notice of Change in Negotiated Rates

December 11, 2002.

Take notice that on December 6, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a notice of a change in the rates for the October 18, 2001 Negotiated Rate Agreement between Tennessee and NJR Energy Services (Negotiated Rate Agreement) which was accepted by the Commission in Tennessee Gas Pipeline Company, 97 FERC ¶ 61,248 (2001) (November 30 Order). As agreed to in the November 30 Order, Tennessee is providing notice of a change in rate to be effective 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 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. 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. 02–31743 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–194–000]**

## Texas Eastern Transmission, LP; Notice of Tariff Filing

December 11, 2002.

Take notice that on December 6, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets listed in Appendix A of the filing, effective January 1, 2003.

Texas Eastern states that the purpose of this filing is to comply with the Order on Investigation issued by the Commission in Docket No. RP00–535–003 on November 22, 2002 [101 FERC ¶ 61,215 (2002)] (November 22 Order) and the Order on Remand in Docket No. RM98–10–011 (Remand Order).

Texas Eastern states that it is hereby submitting tariff revisions that comply with such orders and, in particular, eliminate (i) provisions that preclude long-term shippers from having and exercising a ROFR when they terminate a contract, and (ii) provisions relating to the term matching cap.

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 listed on the Official Service List compiled by the Secretary of the Commission in Docket No. RP00–535.

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 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. 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. 02–31739 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–186–000]**

## Transwestern Pipeline Company; Notice of Tariff Filing

December 11, 2002.

Take notice that on December 3, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to become effective January 3, 2003:

Eleventh Revised Sheet No. 20
Second Revised Sheet No. 98

Transwestern states that the instant filing is to remove the five year limitation from the ROFR matching provisions and to permit forwardhauls and backhauls to the same point, all in compliance with the Order on Remand issued October 31, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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. 02–31732 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–494–002]**

## Williams Gas Pipelines Central, Inc.; Notice of Compliance Filing

December 11, 2002.

Take notice that on December 4, 2002, Williams Gas Pipelines Central, Inc. (Central) tendered for filing, as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective as noted.

Effective October 1, 2002
Substitute Original Sheet No. 298B
Effective April 1, 2003
Substitute Second Revised Sheet No. 250

Central states that this filing is being made to comply with the Commission's Second Order on Compliance with Order Nos. 637 issued on November 4, 2002 (101 FERC ¶ 61,164 (2002)). The tariff changes filed herewith are intended only to implement certain changes directed by the Commission in its November 4 Order.

Central states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

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

*Deputy Secretary.*

[FR Doc. 02–31729 Filed 12–17–02; 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

December 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 Minor License.

b. *Project No.:* 7725–005.

c. *Date Filed:* September 27, 2002.

d. *Applicant:* Barton Village, Inc.

e. *Name of Project:* Barton Village Hydroelectric Project.

f. *Location:* On the Clyde River in the Town of Charleston, Orleans County, Vermont.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Denis H. Poirier, Village Supervisor, Barton Village Inc., 17 Village Square, P.O. Box 519, Barton, Vermont 05822. (802) 525–4747.

i. *FERC Contact:* Frank Winchell at 202–502–6104, or *frank.winchell@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* February 9, 2003.

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 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.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Barton Village Hydroelectric Project consists of:

(1) A 77-foot-long, 24-foot-high masonry and concrete gravity dam; (2) 1.5-foot-high flashboards extending 57 feet across a concrete spillway; (3) a 187-acre impoundment at elevation 1,140.9 feet mean sea level (msl); (4) a 665-foot-long, 7-foot-diameter steel penstock; (5) two 105-foot-long, 5.8-foot-diameter steel penstocks leading to: (6) a powerhouse with two units having a total installed capacity of 1.4 MW; and (7) other appurtenant facilities.

m. 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 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 *FERCOlineSuport@ferc.gov*. or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

n. 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.

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

*Deputy Secretary.*

[FR Doc. 02–31897 Filed 12–17–02; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0295; FRL–7279–2]**

## Tetrachlorvinphos; Availability of Interim Risk Management Decision Document

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of the interim risk management decision document for tetrachlorvinphos. This decision document has been developed as part of the public participation process that EPA and the U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8062; e-mail address: *fuller.demson@epamail.epa.gov*.

**SUPPLEMENTARY INFORMATION**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the interim risk management decision document for tetrachlorvinphos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food and pets. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0295. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

### II. What Action is the Agency Taking?

EPA has assessed the risks of tetrachlorvinphos and reached an Interim Tolerance Reassessment Eligibility Decision (TRED) or a Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision for this pesticide. With risk mitigation measures adopted, tetrachlorvinphos fits into its own risk cup-its individual, aggregate risks are within acceptable levels. The RED for tetrachlorvinphos was completed in 1995. At that time, the Agency assessed the risk for dietary, occupational, ecological, and residential concerns. With the passage of FQPA, the tolerances for tetrachlorvinphos needed to be reassessed according to the FQPA safety standard. In this current assessment, the Agency looked at dietary, residential and occupational concerns.

Tetrachlorvinphos is currently applied dermally to livestock to control flies and mites; used as a feed-through (oral) larvicide in cattle, hogs, goats, and horses; in cattle ear tags to control flies; and in poultry production to control beetles, flies, and mites. Tetrachlorvinphos also is used as a dust/powder, aerosol, and pump spray on pets and in pet sleeping areas, and in collars and shampoos for direct treatment of pets. It is used as a spray to control nuisance and public health pests (flies) in and around refuse sites, recreational areas, and for general outdoor treatment.

Dietary risks from eating food items containing residues of tetrachlorvinphos are below the level of concern for the entire U.S. population, including infants and children. Drinking water is not a significant source of exposure. Residential handler and post application risks were also not of concern for all exposure scenarios. However, the Agency has concern over

the potential for over-application of powder products. Labels need to be modified to specify how much product to apply to treat pets of different sizes. Additionally, based on discussions with stakeholders, EPA believes that directions for outdoor uses as premise sprays around kennels, yards, campgrounds, and parks, and along foot paths and roadways leading to such areas, must clearly limit use to spot treatments only.

Worker risks for most scenarios are not of concern if measures to reduce exposure, such as personal protective equipment, are used. However, use of the EC formulation as a paint-on poses high risks to workers despite the maximum protection feasible. Therefore this use will be removed from product labels. For other scenarios, such as applying dusts with power dusting equipment, additional data are needed to confirm that risks to workers will not be excessive.

In addition, EPA has determined that labels for tetrachlorvinphos feed-through products for horses must state that the product is a chlolinesterase inhibitor, describe signs of cholinesterase inhibition in horses, caution against the use with other cholinesterase inhibiting compounds, and direct horse owners to consult a veterinarian before using products containing tetrachlorvinphos on debilitated, aged, breeding, pregnant or nursing animals.

The interim risk management decision document for tetrachlorvinphos was made through the organophosphate pesticide pilot public participation process, which increases transparency and maximizes stakeholder involvement in EPA's development of risk assessments and risk management decisions. The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation.

EPA worked extensively with affected parties to reach the decisions presented in the interim risk management decision documents, which conclude the pilot public participation process for tetrachlorvinphos. As part of the pilot public participation process, numerous opportunities for public comment were offered as these interim risk management decision documents were being developed. The tetrachlorvinphos interim risk management decision document therefore is issued in final, without a formal public comment period. The docket remains open, however, and any comments submitted in the future will be placed in the public docket.

The risk assessments for tetrachlorvinphos were released to the public through a notice published in the **Federal Register** of January 15, 1999 (64 FR 2644) (FRL–6056–9) and March 27, 2000 (65 FR 16197) (FRL–6551–4). Addenda to these assessments are also available in the public docket.

EPA's next step under FQPA is to complete a cumulative risk assessment and risk management decision for the organophosphate pesticides, which share a common mechanism of toxicity. The interim risk management decision document on tetrachlorvinphos cannot be considered final until this cumulative assessment is complete.

When the cumulative risk assessment for the organophosphate pesticides has been completed, EPA will issue its final tolerance reassessment decision for tetrachlorvinphos and further risk mitigation measures may be needed.

### List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 3, 2002.

**Lois A. Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 02–31361 Filed 12–17–02; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7423–8]**

## Clean Water Act Section 303(d): Final Agency Action on 37 Total Maximum Daily Loads (TMDLs)

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

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces final agency action on 37 TMDLs prepared by EPA Region 6 for waters listed in the state of Arkansas, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled Sierra Club, *et al.* v. *Clifford, et al.*, No. LR–C–99–114. Documents from the administrative record files for the final 37 TMDLs, including TMDL calculations and responses to comments, may be viewed at *http://www.epa.gov/earth1r6/6wq/artmdl.htm*.

**ADDRESSES:** The administrative record files for these 37 TMDLs may be obtained by writing or calling Ms. Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. Please contact Ms. Caldwell to schedule an inspection.

**FOR FURTHER INFORMATION CONTACT:** Ellen Caldwell at (214) 665–7513.

**SUPPLEMENTARY INFORMATION:** In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled Sierra Club, *et al.* v. *Browner et al.*, No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner.

### EPA Takes Final Agency Action on 37 TMDLs

By this notice EPA is taking final agency action on the following 37 TMDLs for waters located within the state of Arkansas:

| Segment-reach | Waterbody name | Pollutant |
|---|---|---|
| 11140203–20–11.9 | Dorcheat Bayou | Mercury |
| 11140203–22–8.4 | Dorcheat Bayou | Mercury |
| 11140203–24–7 | Dorcheat Bayou | Mercury |
| 11140203–26–23.3 | Dorcheat Bayou | Mercury |
| 11110206–02–8.7 | Fourche LaFave River | Mercury |
| 11010014–36 | South Fork Little Red River | Mercury |
| 11140203 | Columbia Lake | Mercury |

| Segment-reach | Waterbody name | Pollutant |
|---|---|---|
| 11110206 | Cove Creek Lake | Mercury |
| 11110206 | Dry Fork Lake | Mercury |
| 11110206 | Nimrod Lake | Mercury |
| 11010014 | Johnson Hole | Mercury |
| 11110201 | Shepherd Springs Lake | Mercury |
| 11110207 | Lake Sylvia | Mercury |
| 11110207 | Spring Lake | Mercury |
| 08040201–02–22.5 | Ouachita River | Mercury |
| 08040201–04–2.5 | Ouachita River | Mercury |
| 08040202 | Oxbow River—Oxbows below Camden | Mercury |
| 08040202 | Felsenthal Wildlife Refuge | Mercury |
| 08040202–02–4 | Ouachita River | Mercury |
| 08040202–03–8.4 | Ouachita River | Mercury |
| 08040202–04–28.9 | Ouachita River | Mercury |
| 08040203 | Lake Winona | Mercury |
| 08040203–01–0.2 | Saline River | Mercury |
| 08040204–01–2.8 | Saline River | Mercury |
| 08040204–02–53 | Saline River | Mercury |
| 08040204–04–16.4 | Saline River | Mercury |
| 08040204–06–17.5 | Saline River | Mercury |
| 08040201–01–12 | Moro Creek | Mercury |
| 08040201–03–20 | Champagnolle Creek | Mercury |
| 08040202–03–8.4 | Little Champagnolle | Mercury |
| 08040205–02–17.9 | Bayou Bartholomew | Mercury |
| 08040205–12–82.7 | Bayou Bartholomew | Mercury |
| 08040205–07–16.8 | Cutoff Creek | Mercury |
| 08040201–606–8.5 | ELCC Tributary | Chloride |
| 08040201–606–8.5 | ELCC Tributary | Sulfate |
| 08040201–606–8.5 | ELCC Tributary | TDS |
| 08040201–606–8.5 | ELCC Tributary | Ammonia |

EPA requested the public to provide EPA with any significant data or information that may impact the 37 TMDLs at **Federal Register** Notice: Volume 67, Number 202, pages 64369–64370 (October 18, 2002). The comments received and EPA's response to comments may be found at *http://www.epa.gov/earth1r6/6wq/artmdl.htm*.

Dated: December 10, 2002.

**Miguel I. Flores,**

*Director, Water Quality Protection Division, Region 6.*

[FR Doc. 02–31902 Filed 12–17–02; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2588]**

### Petition for Reconsideration of Action in Rulemaking Proceeding

December 16, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by January 2, 2003. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations, (Tyler and Lufkin, Texas) (MM Docket No. 01–244, RM–10234, and MM Docket No. 01–245, RM–10235).

*Number of Petitions Filed:* 1.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–31895 Filed 12–17–02; 8:45 am]

**BILLING CODE 6712–01–M**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Withdrawal of Eligibility Standards for FDIC/RTC Roster of Neutrals and Roster of Neutral Questionnaires

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Withdrawal of policies relating to the creation and maintenance of a Roster of Neutrals.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC or Corporation) herewith withdraws its prior Policies regarding the establishment and maintenance of the FDIC Roster of Neutrals. The FDIC has carefully considered the maintenance of the Roster and issues raised by the development of separate neutral qualifications. The FDIC has determined that alternative dispute resolution (ADR) organizations with ample neutral qualification standards exist within the federal government and private industry sufficient to meet the FDIC's current and future demands for ADR services. As such, the FDIC's maintenance of the FDIC Roster of Neutrals with separate qualifying criteria established by the FDIC duplicates ADR neutral rosters (with highly qualified ADR specialists) that are readily available within the private and federal sectors. Therefore, the FDIC by this Notice withdraws and rescinds all prior notices (59 FR 15205–01, March 31, 1994; 56 FR 50585–02, October 7, 1991; 59 FR 47876–01, September 19, 1994; 62 FR 48659–01, September 16, 1997; and 62 FR 63177–02, November 26, 1997) establishing the FDIC's criteria for neutral selection and the maintenance of the FDIC's Roster of Neutrals.

**EFFECTIVE DATE:** December 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Terry Fenton, Paralegal, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Room H–3138, Washington, DC 20429, (202) 736–0369.

Dated at Washington, DC, this 11th day of December, 2002.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 02–31852 Filed 12–17–02; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notice; Correction

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, December 18, 2002, 10 a.m.—Open Meeting Will be Held on Wednesday, December 18, 2002.

**DATE AND TIME:** Wednesday, December 18, 2002 at 10 a.m.

**PLACE:** 999 E. Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:** Correction and Approval of Minutes.

Election of Officers.

Interim Rules and Explanation and Justification for BCRA's Millionaire's Amendment.

Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 02–31971 Filed 12–16–02; 1:26 pm]

**BILLING CODE 6715–01–M**

## FEDERAL MARITIME COMMISSION

### Security for the Protection of the Public

### Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 App. U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Carnival Corporation
3655 N.W. 87th Avenue
Miami, FL 33178–2193
Vessel: *Carnival Conquest*

Delta Queen Steamboat Company, Inc. and American Queen Steamboat, LLC
1380 Port of New Orleans Place
New Orleans, LA 70130
Vessel: *American Queen*

Delta Queen Steamboat Company, Inc. and Delta Queen Steamboat, LLC
1380 Port of New Orleans Place
New Orleans, LA 70130
Vessel: *Delta Queen*

Delta Queen Steamboat Company, Inc. and Mississippi Queen Steamboat, LLC
1380 Port of New Orleans Place
New Orleans, LA 70130
Vessel: *Mississippi Queen*

Holland America Line Inc., Holland America Line N.V. and HAL Antillen N.V.
300 Elliott Avenue West
Seattle, WA 98119
Vessel: *Zuiderdam*

Norwegian Cruise Line Limited
7665 Corporate Center Drive
Miami, FL 33126
Vessel: *Norwegian Sky*

Norwegian Cruise Line Limited and Norwegian Dawn Limited
7665 Corporate Center Drive
Miami, FL 33126
Vessel: *Norwegian Dawn*

P & O Princess Cruises International Limited, Princess Cruise Lines, Ltd. and P & O Princess Cruises plc
Richmond House, Terminus Terrace
Southampton SO14 3PN
United Kingdom
Vessel: *Oceana*

Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited, Brittany Shipping Corporation, Ltd. and P & O Princess Cruises plc
24305 Town Center Drive
Santa Clarita, CA 91355–4999
Vessel: *Coral Princess*

Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited, P & O Princess Cruises plc and Copropriete du Navire R3
24305 Town Center Drive
Santa Clarita, CA 91355–4999
Vessel: *Pacific Princess*

Royal Caribbean Cruises Ltd. (d/b/a Royal Caribbean International) and Navigator of the Seas Inc.
1050 Caribbean Way
Miami, FL 33132–2096
Vessel: *Navigator of the Seas*

Royal Caribbean Cruises Ltd. (d/b/a Royal Caribbean International), RCL (UK) Ltd. and Halifax Leasing (September) Limited
1050 Caribbean Way
Miami, FL 33132–2096
Vessel: *Brilliance of the Seas*

Royal Olympic Cruises Ltd and Royal World Cruises Inc.
805 3rd Avenue, 18th Floor
New York, NY 10022
Vessel: *Olympia Explorer*

Royal Olympic Cruises Ltd and Olympic World Cruises Inc.
805 3rd Avenue, 18th Floor
New York, NY 10022
Vessel: *Olympia Voyager*

Silversea Cruises, Ltd. and Silver Cloud Shipping Company S.A.
110 East Broward Blvd.
Fort Lauderdale, FL 33301
Vessel: *Silver Cloud*

Dated: December 13, 2002.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 02–31878 Filed 12–17–02; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 App. U.S.C. 817 (e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Delta Queen Steamboat Company, Inc. and American Queen Steamboat, LLC
1380 Port of New Orleans Place
New Orleans, LA 70130
Vessel: *American Queen*

Delta Queen Steamboat Company, Inc. and Delta Queen Steamboat, LLC
1380 Port of New Orleans Place
New Orleans, LA 70130
Vessel: *Delta Queen*

Delta Queen Steamboat Company, Inc. and Mississippi Queen Steamboat, LLC
1380 Port of New Orleans Place
New Orleans, LA 70130
Vessel: *Mississippi Queen*

Glacier Bay Park Concessions, Inc. (d/b/a Glacier Bay Cruises) and Glacier Bay Marine Services, Inc.
107 W. Denny Way, Suite 303
Seattle, WA 98119
Vessels: *Wilderness Adventurer and Wilderness Discoverer*

Holland America Line Inc. (d/b/a Holland America Line), Holland America Line N.V., and HAL Antillen N.V.
300 Elliott Avenue West
Seattle, WA 98119
Vessel: *Zuiderdam*

Magic Cruise Line Services Co. (d/b/a Magic Cruise Line)
c/o Fowler White Burnett P.A.
Bank of America Tower, 17th Floor
100 Southeast Second Street
Miami, FL 33131
Vessel: *Magic I*

Norwegian Cruise Line Limited (d/b/a Orient Lines)
7665 Corporate Center Drive
Miami, FL 33126
Vessel: *Marco Polo*

P & O Princess Cruises International Limited and Princess Cruise Lines, Ltd.
Richmond House, Terminus Terrace
Southampton SO14 3PN
United Kingdom
Vessel: *Adonia*

Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited and P & O Princess Cruises plc
24305 Town Center Drive
Santa Clarita, CA 91355–4999
Vessel: *Pacific Princess*

RCL (UK) Ltd. (d/b/a Royal Caribbean International)
Royal Caribbean House
Addlestone Road
Weybridge, Surrey KT15 2LLE
England
Vessel: *Brilliance of the Seas*

Royal Caribbean Cruises Ltd. (d/b/a Royal Caribbean International)
1050 Caribbean Way
Miami, FL 33132–2096
Vessels: *Jewel of the Seas, Mariner of the Seas Navigator of the Seas and Serenade of the Seas*

Royal Olympic Cruises Ltd
805 3rd Avenue, 18th Floor
New York, NY 10022
Vessels: *Olympia Explorer and Lympia Voyager*

Silversea Cruises, Ltd. and Silver Cloud Shipping Company S.A.
110 East Broward Blvd.
Fort Lauderdale, FL 33301
Vessel: *Silver Cloud*

Dated: December 13, 2002.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 02–31879 Filed 12–17–02; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant: Speedier Logistics (U.S.A.), Inc., 147–39 175th Street, Room 215, Jamaica, NY 11434. Officer: Richard Ying, President (Qualifying Individual).

Dated: December 13, 2002.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 02–31877 Filed 12–17–02; 8:45 am]

**BILLING CODE 6730–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Public Health and Science; Office of the Secretary

### Request for Nominations for Members of the Chronic Fatigue Syndrome Advisory Committee

The Office of Public Health and Science (OPHS), Department of Health and Human Services (DHHS), request nominations for representatives to serve on the Chronic Fatigue Syndrome Advisory Committee (CFSAC). Nominations are solicited for biomedical research scientists with demonstrated achievements in biomedical research relating to Chronic Fatigue Syndrome (CFS); individuals with expertise in health care delivery, private health care services or insurers, or voluntary organizations concerned with the problems of individuals with CFS.

DHHS has a strong interest in ensuring that women, minority groups, and physically challenged individuals are adequately represented on the Committee and, therefore, encourages nominations of qualified candidates from these groups. DHHS also encourages geographic diversity in the composition of the Committee.

*Information Required:* A nominations package must include the following information for each nominee:

1. A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (i.e., what specific attributes recommend him/her for service in this capacity), and the nominee's area of expertise;

2. A biographical sketch of the nominee and a copy of his or her curriculum vitae; and

3. The name, return address, and daytime telephone number at which the nominator can be contacted. Organizational nominators must identify a principal contact person in addition to contact information. Optimally, a nomination package would also include a statement by the nominee that he/she is willing to accept an appointment to Committee membership.

All nomination information for a nominee must be provided in a complete single package within 45 days of the publication of this notice. Incomplete nominations cannot be considered. The nomination letter must bear an original signature; facsimile transmissions or copies are not acceptable.

**DATES:** All nominations must be received at the address below no later than 4 p.m. EDT within 45 days of the publication of this notice.

**ADDRESSES:** All nomination packages shall be submitted to Debra Nichols, MD, MPH, Executive Secretary, CFSAC, Office of Disease Prevention and Health Promotion, 200 Independence Ave, Room 738G, Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Debra Nichols, MD at the above address or at 202–401–0735, or e-mail at *dnichols@osophs.dhhs.gov*.

Dated: December 6, 2002.

**Debra Nichols,**

*Executive Secretary, CFSAC, Office of Disease Prevention and Health Promotion, Office of Public Health and Science, DHHS.*

[FR Doc. 02–31829 Filed 12–17–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Proposed Research Protocol: Precursors to Diabetes in Japanese American Youth

**AGENCY:** Office of the Secretary, Office of Public Health and Science, Office for Human Research Protections.

**ACTION:** Notice.

**SUMMARY:** On August 7, 2002, the Office of Human Research Protections (OHRP), Office of Public Health and Science, Department of Health and Human Services (HHS), gave notice (67 FR 51283) that it was proposing to recommend approval of HHS support for the research protocol entitled ''Precursors to Diabetes in Japanese American Youth,'' subject to a stipulation that certain modifications be made to the protocol and consent forms. OHRP is reopening the period for public comment and is making available additional information regarding the protocol.

**DATES:** To be considered, written or electronic comments must be received on or before January 17, 2003.

**ADDRESSES:** Submit written comments to: Kelley Booher, Division of Policy, Planning, and Special Projects, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, The Tower Building, Rockville, MD 20852, telephone number (301) 402–5942 (not a toll free number). Comments also may be sent via facsimile at (301) 402–2071 (not a toll free number) or by e-mail to: *kbooher@osophs.dhhs.gov.*

**SUPPLEMENTARY INFORMATION:** On August 7, 2002, the Office for Human Research Protections published a notice in the **Federal Register**, 67 FR 51283 (*http://frwebgate.access.gpo. gov/cgi-bin/*

*getdoc.cgi?dbname=2002__register&docid=02–19871-filed.pdf*), soliciting comments on its proposal to recommend approval on HHS support for the research protocol entitled ''Precursors to Diabetes in Japanese American Youth'' (1 R01 DK59234–01). The comment period closed on August 21, 2002. OHRP hereby gives notice that the comment period is being reopened for 30 days, and additional information regarding the protocol is being made available.

OHRP received a number of comments in response to the August 7, 2002, notice. Several who commented stated that (1) the 14-day comment period was too short, and (2) the information about the research protocol that OHRP provided to the public was insufficient to allow for meaningful comment about whether the research was appropriate for HHS to support. In response to these comments, OHRP is reopening the public comment period for 30 days. OHRP also is making available additional information regarding the research protocol, namely: the protocol application reviewed by the Children's Hospital and Regional Medical Center (Seattle) IRB; the assent form; the consent form; and selected parts of the grant application, including the abstract, specific aims, background and significance, discussion of the involvement of human subjects, and literature cited. These materials are available for review on the OHRP Web page at (*http://ohrp.osophs.dhhs.gov/pdjay/pdjayindex.htm*). A paper copy of the information referenced here is available upon request.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information about the research proposal may be submitted under the Freedom of Information Act (FOIA). Such requests should be directed to: Ms. Darlene Christian, PHS FOIA Office, Parklawn Building, Room 17A–46, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–5252; fax (301) 443–0925.

Dated: December 12, 2002.

**Eve E. Slater,**

*Assistant Secretary for Health.*

[FR Doc. 02–31848 Filed 12–17–02; 8:45 am]

**BILLING CODE 4150–28–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–07–03]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

*Proposed Project:* Requirement for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States (0920–0263)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). To receive a special permit to import cynomolgus, African green and/or rhesus monkeys, a registered importer of nonhuman primates must submit to the Director, CDC, a written plan which specifies the steps that will be taken to prevent exposure of persons and animals during the entire importation and quarantine process for the arriving nonhuman primates.

Under the special permit arrangement, registered importers must submit a plan to CDC for the importation and quarantine if they wish to import the specific monkeys covered. The plan must address disease prevention procedures to be carried out in every step of the chain of custody of such monkeys, from embarkation in the country of origin to release from quarantine. Information such as species, origin and intended use for monkeys, transit information, isolation and quarantine procedures, and procedures for testing of quarantined animals is necessary for CDC to make public health decisions. This information enables CDC to evaluate compliance with the standards and determine whether the measures being taken to prevent exposure of persons and animals during importation are adequate. Once CDC is assured, through the monitoring of shipments (normally no more than 2), that the provisions of a special permit plan are being followed by a new permit holder and that the use of adequate disease control practices is being demonstrated, the special permit is extended to cover the receipt of additional shipments under the same plan for a period of 180 days, and may be renewed upon request. This eliminates the burden on importers to repeatedly report identical information, requiring only that specific shipment itineraries and information on changes to the plan which require approval be submitted.

Respondents are commercial or not-for-profit importers of nonhuman primates. The burden represents full submission of information and itinerary/change information respectively. The burden hours are estimated to be approximately 20.

| Respondents | Number of respondents | Number of responses per respondents | Avg. burden responses (in hrs.) |
|---|---|---|---|
| Businesses | 2 | 5 | 30/60 |
| | 3 | 5 | 10/60 |
| Organizations (limited permit) | 15 | 5 | 10/60 |

Dated: December 10, 2002.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 02–31748 Filed 12–17–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–09–03]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

*Proposed Project:* PHS Supplements to the Application for Federal Assistance SF–424 (0920–0428)—Extension—Office of the Director (OD), Centers for Disease Control and Prevention (CDC) is requesting a three-year extension for continued use of the Supplements to the Request for Federal Assistance Application, SF–424. The Checklist, Program Narrative, and the Public Health System Impact Statement (PHSIS, third party notification form) are a part of the standard application for State and local governments and for private non-profit and for-profit organizations when applying for financial assistance from PHS grant programs. The Checklist assists applicants to ensure that they have included all required information necessary to process the application. The Checklist data helps to reduce the time required to process and review grant applications, expediting the issuance of grant awards. The PHSIS Third Party Notification Form is used to inform State and local health agencies of community-based proposals submitted by non-governmental applicants for Federal funding. The total annualized estimated burden is 42,695 hours.

| Respondents | Number of respondents | Number of responses/respondent | Avg. burden/response (in hrs.) |
|---|---|---|---|
| State and local health departments; non-profit and for-profit organizations | 7,457 | 1 | 5.73 |

Dated: December 10, 2002.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 02–31749 Filed 12–17–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Interagency Committee on Smoking and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92–463), the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Interagency Committee on Smoking and Health Cessation Subcommittee.

*Date and Time:* January 16, 2003; 8:30 a.m.–2:30 p.m.

*Place:* Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., 7th Floor, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available. Those who wish to attend are encouraged to register with the contact person listed below. If you will require a sign language interpreter, or have other special needs, please notify the contact person by 4:30 E.S.T. on January 14, 2003.

*Purpose:* The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health in the: (a) Coordination of all research and education programs and other activities within the Department and with other federal, state, local and private agencies, and (b) establishment and maintenance of liaison with appropriate private entities, federal agencies, and state and local public health agencies with respect to smoking and health activities.

*Matters to be discussed:* The agenda will focus on developing a plan of action to promote tobacco use cessation to be presented to the Secretary of Health and Human Services.

*Contact Person for More Information:* Substantive program information as well as summaries of the meeting and roster of committee members may be obtained from the Internet at *http://www.cdc.gov/tobacco* in mid-March 2003, or from Ms. Monica L. Swann, Committee Management Specialist, Interagency Committee on Smoking and Health, Office on Smoking and Health, NCCDPHP, CDC, 200 Independence Avenue, SW., Room 317B, Washington, DC, 20201, telephone (202) 205–8500.

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: December 10, 2002.

**Joseph E. Salter,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–31774 Filed 12–17–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Title:* Child Care and Development Fund Plan for States/Territories.

*OMB No.:* 0970–0114.

*Description:* The Child Care and Development Fund (CCDF) Plan for States and Territories is required from the Child Care Lead Agency by section 658E of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508), 42 U.S.C. 9858). The implementing regulations for the statutorily required Plan are at 45 CFR 98.10 through 98.18. The Plan, submitted on the ACF–118, is required biennially and remains in effect for two years. This Plan provides ACF and the public with a description of, and assurance about, the State's child care

program. The ACF–118 is approved through February 29, 2004, making it available to States and Territories needing to submit Plan Amendments through the end of the FY 2003 Plan Period. However, in July 2003, States and Territories will be required to submit their FY 2004–2005 Plans. consistent with the statute and regulations, ACF requests extension of the ACF–118 with minor corrections and modification. The Tribal Plan (ACF–118A) is not affected by this notice.

*Respondents:* State and Territorial Lead Agencies.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ACF–118 | 56 | .5 | 162.57 | .552 |

*Estimated Total Annual Burden Hours:* 4,552.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. The Department specifically requests comment to: (a) Evaluate 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) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Consideration will be given comments and suggestions submitted within 60 days of this publication.

Dated: December 12, 2002.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 02–31833 Filed 12–17–02; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02N–0281]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by January 17, 2003.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions (OMB Control Number 0910–0183)—Extension**

The Administrative Procedures Act (5 U.S.C. 553(e)) provides that every agency shall give an interested person the right to petition for issuance, amendment, or repeal of a rule. Section 10.30 (21 CFR 10.30) sets forth the format and procedures by which an interested person may submit to FDA, in accordance with § 10.20 (21 CFR 10.20) (submission of documents to the Dockets Management Branch), a citizen petition requesting the Commissioner of Food and Drugs (Commissioner) to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action. The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take other action as the petition warrants. Respondents are individuals or households, State or local governments, not-for profit institutions and businesses or other for-profit institutions or groups. Section 10.33 (21 CFR 10.33) issued under section 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(a)), sets forth the format and procedures by which an interested person may request reconsideration of part or all of a decision of the Commissioner on a petition submitted under § 10.25 (21 CFR 10.25) (initiation of administrative proceedings). A petition for reconsideration must contain a full statement in a well organized format of the factual and legal grounds upon which the petition relies. The grounds must demonstrate that relevant information and views contained in the administrative record were not previously or not adequately considered by the Commissioner. The respondent must submit a petition no later than 30 days after the decision involved. However, the Commissioner may, for good cause, permit a petition to be filed after 30 days. An interested

person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision. FDA uses the information provided in the request to determine whether to grant the petition for reconsideration. Respondents to this collection of information are individuals of households, State or local governments, not-for-profit institutions, and businesses or other for-profit instructions who are requesting from the Commissioner a reconsideration of a matter. Section 10.35 (21 CFR 10.35) issued under section 701(a) of the act, sets forth the format and procedures by which an interested person may request, in accordance with § 10.20 (submission of documents to the Dockets Management Branch), the Commissioner to stay the effective date of any administrative action. Such a petition must: (1) Identify the decision involved, (2) state the action requested including the length of time for which a stay is requested, and (3) include a statement of the factual and legal grounds on which the interested person relies in seeking the stay. FDA uses the information provided in the request to determine whether to grant the petition for stay of action. Respondents to this information collection are interested persons who choose to file a petition for an administrative stay of action. Section 10.85 (21 CFR 10.85), issued under section 701(a) of the act, sets forth the format and procedures by which an interested person may request, in accordance with § 10.20 (submission of documents to the Dockets Management Branch), an advisory opinion from the Commissioner on a matter of general applicability. An advisory opinion represents the formal position of FDA on a matter of general applicability. When making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested, and, a full statement of the facts and legal points relevant to the request. Respondents to this collection of information are interested persons seeking an advisory opinion from the Commissioner on the agency's formal position for matters of general applicability.

In the **Federal Register** of July 9, 2002 (67 FR 45525), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 10.30 | 150 | 3 | 450 | 12 | 5,400 |
| 10.33 | 10 | 1 | 10 | 10 | 100 |
| 10.35 | 13 | 1 | 13 | 10 | 130 |
| 10.85 | 3 | 1 | 3 | 16 | 48 |
| Total | | | | | 5,678 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates for this collection of information is based on agency records and experience over the past 3 years. Agency personnel handling the petitions for § 10.30 estimate 150 (citizen petitions) received by the agency annually, each requiring an average of 12 hours preparation time. Agency personnel handling the petitions for § 10.33 (administrative reconsideration of an action) estimate 10 requests are received by the agency annually, each requiring an average of 10 hours preparation time. Agency personnel handling the petitions for § 10.35 (administrative stay of an action) estimate 13 requests are received by the agency annually, each requiring an average of 10 hours preparation time. Agency personnel handling the petitions for § 10.85 (advisory opinions) estimate three requests are received by the agency annually, each requiring an average of 16 hours preparation time.

Dated: December 6, 2002.

**Margaret M.Dotzel,**

*Assistant Commissioner for Policy.*

[FR Doc. 02–31722 Filed 12–17–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01P–0150]**

## Salad Dressing Deviating From Identity Standard; Temporary Permit for Market Testing

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the extension of a temporary permit issued to Kraft Foods, Inc., to market test products designated as ''salad dressing'' that deviate from the U.S. standard of identity for salad dressing. The extension will allow the permit holder to continue to collect data on the consumer acceptance of products, identify mass production problems, and assess commercial feasibility, in support of a petition to amend the standard of identity for salad dressing.

**DATES:** The new expiration date of the permit will be either the effective date of a final rule amending the standard of identity for salad dressing that may result from the petition or 30 days after denial of the petition, whichever the case may be.

**FOR FURTHER INFORMATION CONTACT:** Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

**SUPPLEMENTARY INFORMATION:** In accordance with § 130.17 (21 CFR 130.17), FDA issued a temporary permit to Kraft Foods, Inc., Three Lakes Dr., Northfield, IL 60093–2753, to market test products identified as ''salad dressing'' that deviate from the requirement of the standard of identity for salad dressing in 21 CFR 169.150 (66 FR 18957, April 12, 2001). The agency issued the permit to facilitate market testing of products that deviate from the requirements of the standard of identity for salad dressing issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). The permit covers limited interstate market testing of products that deviate from the standard for salad dressing in 21 CFR 169.150. The products may contain potassium sorbate at levels not to exceed 1 percent, and must contain not less yolk-containing ingredient than is equivalent to 2 percent by weight of liquid egg yolks (the food standard

requires 4 percent). The test product meets all the requirements of the standard with the exception of these deviations.

On April 19, 2002, Kraft Foods, Inc., requested that its temporary permit be extended to allow for additional time for the market testing of its products under the permit in order to gain additional information in support of the petition to amend the standard for salad dressing. The petitioner requests FDA to revise, simplify, and modernize the standard for salad dressing.

The agency finds that it is in the interest of consumers to issue an extension of the time period for the market testing of products identified as salad dressing to gain information on consumer expectations and acceptance. FDA is inviting interested persons to participate in the market test under the conditions that apply to Kraft Foods, Inc. (e.g., the composition of the test product), except for the designated area of distribution. Any person who wishes to participate in the extended market test must notify, in writing, the Team Leader, Conventional Foods Team, Division of Standards and Labeling Regulations, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. The notification must include a description of the test products to be distributed, justification for the amount requested, the area of distribution, and the labeling that will be used for the test product (i.e., a draft label for each size of container and each brand of product to be market tested). The information panel of the label must bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101.

Therefore, under the provisions of § 130.17(i), FDA is extending the temporary permit granted to Kraft Foods, Inc., Three Lakes Dr., Northfield, IL 60093–2753 to provide for continued market testing of 150 million pounds of product on an annual basis. The test products will bear the name ''salad dressing.'' FDA is extending the expiration date of the permit so that the permit expires either on the effective date of a final rule amending the standard of identity for salad dressing that may result from the petition or 30 days after denial of the petition, which ever the case may be. All other conditions and terms of this permit remain the same.

Dated: December 9, 2002.

**Christine Taylor,**

*Director, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition.*

[FR Doc. 02–31720 Filed 12–17–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02D–0468]**

### Draft Guidance for Industry on Manufacture and Labeling of Raw Meat Foods for Companion and Captive Noncompanion Carnivores and Omnivores; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the draft guidance for industry (#122) entitled ''Manufacture and Labeling of Raw Meat Foods for Companion and Captive Noncompanion Carnivores and Omnivores.'' This draft guidance document is intended to provide specific guidance on the manufacture and labeling of foods that contain raw meat, or other raw animal tissues, for consumption by dogs, cats, other companion or pet animals, and captive noncompanion animal carnivores and omnivores.

**DATES:** Submit written or electronic comments on the draft guidance by March 3, 2003, to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of the draft guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance document 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*. Comments should be identified with the full title of the draft guidance document and the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** William Burkholder, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0179, e-mail: *bburkhol@cvm.fda.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Commercial foods for carnivorous and omnivorous animals containing raw meat, or other raw animal tissues, have been on the market for many years for use by zoos, mink farms, dog-racing facilities, and other professional establishments. Some of these products have included meat and other tissues from mammals and poultry that have died other than from slaughter or have otherwise been unfit for human consumption. Products containing such tissues are adulterated under section 402(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)). However, FDA's Compliance Policy Guide 7126.23 provides that investigation should only be conducted as a followup to complaints or reports of injuries. When raw meat or raw animal tissues were purchased and used by zoos, mink farms, dog-racing facilities, or other professional establishments, there was a presumption that the purchaser was aware of the potential food safety and nutritional deficiency risks of using such products. However, the new trend is toward use of raw meat foods by pet owners and others who may not be as aware of the potential harm.

FDA does not believe that raw meat foods are consistent with the goal of protecting the public from significant health risks, particularly when such products are brought into the home and/or used to feed domestic pets. Objective data derived specifically from commercial raw meat pet foods are sparse for quantifying the magnitude of risk to public health from such products. However, the potential for risk to public health from such products is undeniable, and the magnitude of such risk is likely significant given the microbiological results from studies of ingredients that could compose such products and the limited sampling of commercial raw pet foods themselves. Therefore, for firms choosing to manufacture and market raw meat and raw animal tissue products, more specific guidance for industry is warranted for how such products could be manufactured and labeled to protect pet owners and pets from risks

involving food safety and nutritional deficiency.

**II. Significance of Guidance**

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking about the manufacture and labeling of raw meat foods for companion and captive noncompanion carnivores and omnivores. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

**III. Comments**

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this draft guidance document. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**IV. Electronic Access**

Electronic comments may be submitted on the Internet at *http://www.fda.gov/dockets/ecomments*. Once on this site, select ''02D–0468—Manufacture and Labeling of Raw Meat Foods for Companion and Captive Noncompanion Carnivores and Omnivores'' and follow the directions. Copies of this draft guidance may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm*.

Dated: December 8, 2002.

**Margaret M. Dotzel,**

*Assistant Commissioner for Policy.*

[FR Doc. 02–31721 Filed 12–17–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: Cross-site Evaluation of the Effectiveness of the Infant Adoption Awareness Training Program (IAATP)—NEW**

HRSA proposes to evaluate the Infant Adoption Awareness Training Program being implemented by adoption organizations. The IAATP is authorized under the Children's Health Act of 2000 (CHA), Title XII, Subtitle A to develop, implement and evaluate curricula to achieve the goal of providing adoption information and referrals on an equal basis with other courses of action included in non-directive counseling to pregnant women. National, regional and local organizations whose primary purpose includes adoption were funded under IAATP cooperative agreements to deliver adoption training to health care workers with a special focus on those working in health care facilities funded under section 1001 and section 330 of the Public Health Service Act and those receiving grants to provide health services in schools. The Children's Health Act mandates that the Secretary submit to Congress a report evaluating the effectiveness of training delivered under the IAATP and the extent to which it results in the provision of adoption information and referrals to pregnant women on an equal basis with other courses of action included in non-directive counseling to pregnant women.

To determine if the IAATP is effective in achieving the intent of the congressional mandate, the proposed study will assess the effect of IAATP training on knowledge, attitudes and self-reported practices for health care workers who counsel pregnant women in health care settings. An estimated 1,752 health care workers who regularly counsel pregnant women and who completed IAATP training will be recruited into the study and will complete a 15 minute mail survey instrument covering the time and extent of their exposure to the IAATP training, as well as knowledge, attitudes and self-reported practices in providing adoption information and referrals to pregnant women. A comparison group of 572 health care workers who perform pregnancy counseling but did not receive the IAATP training, will receive a mail survey on their knowledge, attitudes and self-reported behaviors in providing adoption information and referrals to the pregnant women that they counsel.

In addition, staff of each of the four grantees, their trainers and trainees will participate in interviews and focus groups to document the program development and training processes and delivery of the IAATP. For each grantee, there will be one and half hour individual interviews of grantee staff, one focus group of trainers from each of four grantees, and two focus groups of trainees from each of four grantee programs.

| Respondents | Number of respondents | Responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Trainee Survey | 1,144 | 1 | .25 | 286 |
| Comparison Group Survey | 572 | 1 | .25 | 143 |
| Telephone Focus Group | 36 | 1 | 1.5 | 54 |
| Total | 1,752 | | | 483 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, NewExecutive Office Building, Room 10235, Washington, DC 20503.

Dated: December 11, 2002.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 02–31719 Filed 12–17–02; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Spores in Pancreatic Cancer.

*Date:* February 24–26, 2003.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites, 1250 22nd Street, NW., Washington, DC 20037.

*Contact Person:* Brian E. Wojcik, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8019, Bethesda, MD 20892, 301/402–2785.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 9, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–31826 Filed 12–17–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH

### National Institutes of Health and Human Services

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group, Subcommittee G—Education.

*Date:* March 12–14, 2203.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

*Contact Person:* Harvey P. Stein, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8107, Bethesda, MD 20892, (301) 496–7481, *hs27p@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.932, Cancer Construction, 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Center Support; 93398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 9, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–31827 Filed 12–17–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Hepatitis C Prevention Research.

*Date:* December 13, 2002.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michael W. Edwards, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301 594–8886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 10, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–31818 Filed 12–17–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–29, Review of R13 Grants.

*Date:* December 17, 2002.

*Time:* 11 AM to 1 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–32, Review of R13 Grants.

*Date:* December 20, 2002.

*Time:* 11 AM to 1:30 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* H. Geroge Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–26, Review of R13 Grants.

*Date:* February 19, 2003.

*Time:* 8 AM to 5 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 594–5006.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 10, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–31819 Filed 12–17–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant of section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 542b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Deafness and Other Communication Disorders Advisory Council.

*Date:* January 31, 2003.

*Open:* 8:30 a.m. to 11:30 a.m.

*Agenda:* Staff reports on divisional, programmatic, and special activities.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

*Closed:* 11:30 a.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Craig A. Jordan, Phd., Chief, Scientific Review Branch NIH/NIDCD/DER, Excutive Plaza South, Room 400C, Bethesda, MD 20892–7180, (301) 496–8683.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show to photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *www.nidcd.nih.gov/about/councils/ndcdac/ndcdac.htm,* where an agenda and any additional information for the meeting will be posed when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 10, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–31820 Filed 12–17–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel, Research Centers in Trauma, Burn, and Perioperative Injury (PAR–02–092).

*Date:* January 6–8, 2003.

*Time:* 7:30 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Boston Copley Place, 110 Huntington Avenue, Boston, MA 02116.

*Contact Person:* Carole H. Latker, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18B, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 10, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–31822 Filed 12–17–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Mental Health Council.

*Date:* January 16–17, 2003.

*Closed:* January 16, 2003, 10:30 a.m. to recess.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

*Open:* January 17, 2003, 8:30 a.m. to adjournment.

*Agenda:* Presentation of NIMH Director's report and discussion on NIMH program and policy issues.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C10, Bethesda, MD 20892.

*Contact Person:* Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609. 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the contact person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.nimh.nih.gov/council/advis.cfm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 9, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–31823 Filed 12–17–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN RESOURCES

### National Institutes of Health

### National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council for Biomedical Imaging and Bioengineering.

*Date:* January 16–17, 2003.

*Open:* January 16, 2003, 8 a.m. to 3:30 p.m.

*Agenda:* Open program advisory discussions and presentations.

*Place:* National Institutes of Health, Building 31C, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Closed:* January 16, 2003, 3:30 p.m. to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31C, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892. 301–451–4776. *harmonj@nibib.nih.gov.*

Dated: December 9, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–31825 Filed 12–17–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

*Date:* January 23, 2003.

*Open:* 8:30 a.m. to 12 p.m.

*Agenda:* The meeting will be open to the public to discuss administrative details relating to Council business and special reports.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

*Closed:* 1 p.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Cheryl Kitt, PhD, Director, Division of Extramural Activities, National Institutes of Arthritis and Musculoskeletal and Skin Diseases, 1 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–2463, *kittc@niams.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 9, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–31828 Filed 12–17–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Library of Medicine Special Emphasis Panel, IAIMS Site Visit—Cincinnati, OH.

*Date:* January 5–7, 2003.

*Time:* January 5, 2003, 7 p.m. to 10 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Kingsgate Conference Hotel, 151 Goodman Drive, Cincinnati, OH 45219.

*Time:* January 6, 2003, 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Kingsgate Conference Hotel, 151 Goodman Drive, Cincinnati, OH 45219.

*Time:* January 7, 2003, 8 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Kingsgate Conference Hotel, 151 Goodman Drive, Cincinnati, OH 45219.

*Contact Person:* Merlyn M. Rodrigues, MD, Ph.D., Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 10, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–31821 Filed 12–17–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Center for Scientific Review Advisory Committee, Workgroup.

*Date:* January 27–28, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* Discussion of activities to evaluate organization and function of the Center for Scientific Review Process.

*Place:* National Institutes of Health, Two Rockledge Center, Conference Room 6087, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, PhD, Deputy Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3016, MSC 7776, Bethesda, MD 20892, (301) 435–1114.

Information is also available on the Institute's/Center's home page: *www.csr.nih.gov/drgac/drgac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 9, 2002.

**LaVerne Y. Stringfield,**

*Director Office of Federal Advisory Committee Policy.*

[FR Doc. 02–31824 Filed 12–17–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Reopening of Public Comment Period for Incidental Take Permits for the Alabama Beach Mouse

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of reopening of public comment period.

**SUMMARY:** The Fish and Wildlife Service previously announced a public comment period concerning a notice of intent to prepare an Environmental Impact Statement. 67 FR 62809 (October 8, 2002). The previous notice indicated that the comment period ended on November 22, 2002; however, the comment form distributed at the October 29, 2002, scoping meeting incorrectly indicated that the comment period ended on November 29, 2002, inadvertently extending the comment period an additional 7 days. In order to assure that all interested parties are able to comment on the preparation of an EIS, we are re-opening the comment period for 15 days.

The environmental impact statement would address the proposed Gulf Highlands Area Habitat Conservation Plan (HCP) and issuance of two permits for the incidental take of the Alabama beach mouse. Comments previously submitted between October 8, 2002, and November 29, 2002, need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final determination on the proposal. These permits are for the construction, occupancy, use, operation, and maintenance of two residential/recreational condominium projects—the Gulf Highlands Condominiums by Gulf Highlands LLC and Beach Club West by Fort Morgan Paradise Joint Venture on the Fort Morgan Peninsula, in Baldwin County, Alabama.

**DATES:** Written comments concerning our intent to prepare an EIS and

concerning the HCP should be received on or before January 2, 2003.

**ADDRESSES:** Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office at Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Endangered Species Permits,) or Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, AL 36526 (Attn: Ms. Barbara Allen). Documents will be available for public inspection by appointment during normal business hours at the regional office. Written data or comments concerning the HCP and our notice of intent to prepare an EIS should be submitted to the Regional Office. Please reference permit numbers TE–007985–0 (Gulf Highlands) and TE–031307–0 (Fort Morgan Peninsula Joint Venture) in such comments, or in requests for documents.

**FOR FURTHER INFORMATION CONTACT:** Mr. Aaron Valenta, Regional Permit Coordinator, (*see* **ADDRESSES** above), telephone: 404/679–4144; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (*see* **ADDRESSES** above), telephone: 334/441–5181, extension 33.

**SUPPLEMENTARY INFORMATION:** The proposed residential/recreational condominium developments will be located on approximately 196 acres in south Baldwin County, Alabama, between State Highway 180 and the Gulf of Mexico (Section 28, Township 9 South, Range 2 East) about twelve miles west of Highway 59 in Gulf Shores, Alabama, on the Fort Morgan Peninsula.

Some of the Applicants' future activities have the potential to impact species subject to protection under the Act, including the Alabama beach mouse (*Peromyscus polionotus ammobates*). Section 10(a)(1)(B) permits non-Federal landowners to take endangered and threatened species, provided the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood for the survival and recovery of the species in the wild, among other permit issuance criteria. An applicant for a permit under section 10 of the Act must prepare and submit to the Service for approval a plan containing, among other things, a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for implementation of the plan will be provided.

The Applicants have initiated and continued discussions with the Service regarding the possibility of Permits and an associated HCP for their activities on lands to be covered by the Permits. General activities proposed for permit coverage include residential, commercial and industrial development, construction, and maintenance activities.

The Service previously considered the Applicants' HCP in an Environmental Assessment and issued a finding of no significant impact. 67 FR 17089 (April 9, 2002). That environmental analysis was challenged in an action for judicial review brought by Sierra Club and Friends of the Earth. The United States District Court for the Southern District of Alabama granted a preliminary injunction against any take of the Alabama beach mouse pursuant to the permits previously issued to Applicants. *Sierra Club and Friends of the Earth* v. *Norton,* 207 F. Supp. 2d. 1310 (S.D. Ala. 2002).

Subsequently, the Service determined to revisit the earlier NEPA analysis for this HCP and the issued permits. *See* Defendant's Motion for Voluntary Remand, *Sierra Club and Friends of the Earth* v. *Norton,* No. CV–02–0258–CB–C (S.D. Ala. Aug. 8, 2002). The Service has decided, and announces through this and the previous notice, its intent to review the proposed HCP and the environmental effects of issuing the permits through preparation of an EIS.

The environmental review will analyze the Applicants' proposed HCP as well as a full range of reasonable alternatives and the associated impacts of each. The Service is currently in the process of developing alternatives for analysis. The alternatives identified to date are as follows:

*Alternative 1*—No action: The service would not re-affirm the ITPs.

*Alternative 2*—Development according to original Gulf Highlands Subdivision plat: A portion of the Applicants' properties were originally platted and zoned for single family residential development by the Baldwin County Planning Commission. This development alternative involves development according to the original plat or by additional platting and subdivision of the lands.

*Alternative 3*—Development with primary features occupying full width of the escarpment: Alternative 3 consists of the residential high-rise building complexes placed atop the escarpment.

*Alternative 4*—Development entirely north of the escarpment: This alternative would involve development of residential condominium buildings and infrastructure approximately 300 feet north of the escarpment for both projects.

*Alternative 5*—Development of portions of the escarpment with a 325-ft. habitat corridor between the projects: Alternative 5 consists of the development of the same number of units, but placed on different portions of the escarpment and adjacent areas. This development configuration would result in the preservation of an undeveloped corridor of ABM habitat approximately 325 feet wide separating the individual developments and connecting the interior scrub areas with the designated critical habitat to the south of the developments.

*Alternative 6*—Development of onsite mitigation including a 909-foot corridor connecting adjacent primary/secondary dunes and escarpment to the interior: This alternative increases the width of the undeveloped corridor described above and repositions the corridor to the west side of the property. This alternative provides for dedication of 105.5 acres of Applicant-owned lands into conservation status via covenants, conditions and restrictions attached to the property, and conditions of any ITP that might be issued.

Persons wishing to provide relevant information and comments regarding this activity should submit these to the above address. For information, please contact the individual identified above in the section entitled **FOR FURTHER INFORMATION CONTACT**.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR parts 1500 through 1508), and with other appropriate Federal laws and regulations, policies, and procedures of the Service for compliance with those regulations. It is estimated that the draft EIS will be available for public review in early 2003.

Dated: December 4, 2002.

**Sam D. Hamilton,**

*Regional Director.*

[FR Doc. 02–31777 Filed 12–17–02; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for The Meadows, Douglas County, CO

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and receipt of application.

**SUMMARY:** Castle Rock Development Company and Castle Rock Land Company have applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The permit would authorize the incidental take of Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (''Preble's''), federally listed as threatened, and loss and modification of its habitat associated with construction and use of a portion of The Meadows property in the Town of Castle Rock, Colorado. The permit would be in effect for 30 years from the date of issuance.

We announce the receipt of the applicants' incidental take permit application that includes a combined proposed Habitat Conservation Plan (HCP) and Environmental Assessment (EA) for the Preble's at The Meadows. The proposed HCP/EA is available for public comment. It fully describes the proposed project and the measures the applicants would undertake to minimize and mitigate project impacts to Preble's.

The Service requests comments on the Plan for the proposed issuance of an Incidental Take Permit. We provide this notice pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments on the Plan and permit application will become part of the administrative record and will be available to the public.

**DATES:** Written comments on the permit application, Habitat Conservation Plan, and Environmental Assessment should be received on or before February 18, 2003.

**ADDRESSES:** Comments regarding the permit application and HCP/EA should be addressed to LeRoy Carlson, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

**SUPPLEMENTARY INFORMATION:**

## Document Availability

Individuals wishing copies of the HCP/EA and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the Lakewood, Colorado, Field Office (*see* **ADDRESSES** above).

## Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of a species listed as endangered or threatened. Take is defined under the Act, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize ''incidental take'' of listed species under limited circumstances. Incidental take is defined under the Act as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The applicants plan to develop portions of The Meadows in Douglas County, Colorado, that may constitute habitat for the Preble's. Such development would include commercial parcels, water well construction and a recreational trail extension. The planning area for the permit application is approximately 194 hectares (480 acres) and is located west of Interstate Highway 25 (I–25), within the corporate boundaries of the Town of Castle Rock. The area subject to the permit application straddles the East Plum Creek drainage and is entirely contained within two major railway lines, with the exception of one small parcel. An existing bridge spans East Plum Creek and carries The Meadows Parkway as it crosses the property on the southern (upstream) portion of the property. The project would permanently alter a total of 3.5 hectares (8.6 acres) of vegetation within the riparian corridor and would temporarily alter an additional 10.06 hectares (24.87 acres) of vegetation. As discussed below, the applicants propose a number of measures to mitigate possible impacts of the proposed action.

Alternatives considered in addition to the proposed action were: alternative site design based on land use plans approved by the Town of Castle Rock, alternative site location, wait for a regional 10(a)(1)(B) permit, and no action. None of these alternatives eliminated potential take of Preble's.

Only one federally listed species, the threatened Preble's, occurs onsite and has the potential to be adversely affected by the project. To mitigate impacts that may result from incidental take, the HCP provides that mitigation will include the dedication of 17.5 hectares (43.3 acres) of additional open space (in addition to 98.6 hectares (243.7 acres) already designated as open space), enhancement of habitat within 4 hectares (10 acres) of existing open space, segregation of commercial areas and riparian areas with barriers, revegetation of areas of temporary disturbance with native vegetation, limitations on project sizes, limitations on access, elimination of cattle grazing, and regulation of trail use and location. All efforts will be made to minimize the temporary disturbance during construction of water wells and water delivery systems and impacts to in-stream flows. All construction will be initiated between October 15 and April 30 to minimize and avoid impacts to Preble's.

The Applicants are committed to providing the necessary funding to support the mitigation. The Applicants will place the necessary funds into an escrow or similar type account that will limit use of the funds to mitigation activities.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the plan, and comments submitted therein to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's in conjunction with the construction and use of The Meadows. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: December 4, 2002.

**Ralph O. Morgenweck,**

*Regional Director, Denver, Colorado.*

[FR Doc. 02–31773 Filed 12–17–02; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Neotropical Migratory Bird Conservation Act: Request for Grants Proposals for Year 2003

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of request for proposals.

**SUMMARY:** The purpose of this notice is to advise the public that the Fish and Wildlife Service (Service) is accepting proposals for funding under the Neotropical Migratory Bird Conservation Act (Act) program. Projects may be for protection and management of neotropical migratory bird populations; maintenance, management, protection, and restoration of their habitats; research and monitoring; law enforcement; and community outreach and education. Projects may be located in the United

States, Latin America, or the Caribbean. Projects require matching funds.

**DATES:** Proposals must be sent no later than Friday, January 31, 2003.

**ADDRESSES:** Application materials may be found at *http://birdhabitat.fws.gov.* Proposals may be submitted as an electronic mail attachment to *neotropical@fws.gov,* or sent on a computer disk to: NMBCA Program, Division of Bird Habitat Conservation, U.S. Fish and Wildlife Service, Mail Stop MBSP—4075, 4401 North Fairfax Drive, Arlington, Virginia USA 22203.

**FOR FURTHER INFORMATION CONTACT:** Mr. Doug Ryan or Office Secretary, Division of Bird Habitat Conservation, (703) 358–1784; facsimile (703) 358–2282.

**SUPPLEMENTARY INFORMATION:** The purposes of the Neotropical Migratory Bird Conservation Act (Act) are to:

1. Perpetuate healthy populations of neotropical migratory birds;

2. Assist in the conservation of these birds by supporting conservation initiatives in the United States, Latin America, and the Caribbean; and

3. Provide financial resources and foster international cooperation for those initiatives.

The Act authorizes $5 million for this program, and Congress appropriated $3 million for Fiscal Year (FY) 2002. The program is expected to be funded in FY 2003. At a minimum, 75 percent of this money will be available for projects outside the United States. The maximum individual award for FY2003 will be $250,000. Federal funds requested under the Act must be matched 3:1 by non-Federal funds. That is, for every U.S. Federal dollar, three non-U.S. Federal dollars are required for the project. For projects in the United States, the non-Federal share must be in cash. For projects in Latin America and the Caribbean, the non-Federal share may be cash or an in-kind contribution.

Projects may be located in the United States and in all countries of Latin America and the Caribbean, with the exception of Cuba. Projects in Canada are not eligible for this funding.

An applicant may be an individual, corporation, partnership, trust, association, other private entity, government agency in the United States or a foreign country, or an international organization.

The information collection requirements associated with grant proposals under the Act are approved under Office of Management and Budget (OMB) control number 1018–0113, which expires on November 30, 2005.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection solicited: is necessary to gain a benefit in the form of a grant, as determined by the Fish and Wildlife Service; is necessary to determine the eligibility and relative value of projects; results in an approximate paperwork burden of 40 hours per application; and does not carry a premise of confidentiality. The information collections in this program will not be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: November 14, 2002.

**Steve Williams,**

*Director.*

[FR Doc. 02–31836 Filed 12–17–02; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Meeting of the Klamath Fishery Management Council

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objectives of this meeting are to hear technical reports, to discuss and develop Klamath fall Chinook salmon harvest management options for the 2003 season, and to make recommendations to the Pacific Fishery Management Council and other agencies.

**DATES:** The Klamath Fishery Management Council will meet from 3 p.m. to 8 p.m. Sunday, March 9, 2003.

**ADDRESSES:** The meeting will be held at the Red Lion Hotel Sacramento, 1401 Arden Way, Sacramento, California.

**FOR FURTHER INFORMATION CONTACT:** Phil Detrich, Project Leader, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

**SUPPLEMENTARY INFORMATION:** At the March 9, 2003, meeting, the Klamath Fishery Management Council may schedule short follow-up meetings to be held between March 10, through March 14, 2003, at the Red Lion Hotel Sacramento, 1401 Arden Way, Sacramento, California, where the Pacific Fishery Management Council will be meeting.

For background information on the Klamath Fishery Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: December 11, 2002.

**John Engbring,**

*Manager, California/Nevada Operations Office, Sacramento, CA.*

[FR Doc. 02–31778 Filed 12–17–02; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Meeting of the Klamath Fishery Management Council

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objectives of this meeting are to hear technical reports (including the ocean stock projection for Klamath River fall chinook in 2003), review the 2002 fishery season, and discuss and plan management of the 2003 season. The meeting is open to the public.

**DATES:** The Klamath Fishery Management Council will meet from 9 a.m. to 5 p.m. on Thursday, February 27, 2003, and from 8 a.m. to 5 p.m. on Friday, February 28, 2002.

**ADDRESSES:** The meeting will be held at the Best Western Beachfront Inn, 16008 Boat Basin Road, Brookings, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Phil Detrich, Project Leader, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

**SUPPLEMENTARY INFORMATION:** For background information on the Klamath Fishery Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: December 11, 2002.

**John Engbring,**

*Acting Manager, California/Nevada Operations Office, Sacramento, CA.*

[FR Doc. 02–31779 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Meetings of the Klamath River Basin Fisheries Task Force

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Klamath River Basin Fisheries Task Force (Task Force), established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meetings are open to the public. The purpose of the meetings is to continue providing recommendations from the affected interests to the Department of the Interior on implementation of their program to restore anadromous fisheries, including salmon and steelhead, of the Klamath River in California and Oregon.

**DATES:** The first meeting will be from 9 a.m. to 5 p.m. on February 19, 2003, and from 8 a.m. to 1 p.m. on February 20, 2003. The second meeting will be from 9 a.m. to 5 p.m. on June 18, 2003, and from 8 a.m. to 1 p.m. on June 19, 2003. The third meeting will be from 9 a.m. to 5 p.m. on October 22, 2003, and from 8 a.m. to 1 p.m. on October 23, 2003.

**ADDRESSES:** The first meeting will be held at the Best Western Beachfront Inn, 16008 Boat Basin Road, Brookings, Oregon. The second meeting will be held at the North Coast Inn, 4975 Valley West Blvd, Arcata, California. The third meeting will be held at the Convention Center, Best Western Miner's Inn, 112 E. Miner Street, Yreka, California.

**FOR FURTHER INFORMATION CONTACT:** Phil Detrich, Project Leader, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

**SUPPLEMENTARY INFORMATION:** For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: December 11, 2002.

**John Engbring,**

*Manager, California/Nevada Operations Office, Sacramento, CA.*

[FR Doc. 02–31780 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of amendment to approved Tribal-State Compact.

**SUMMARY:** Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, a notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistance Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment VII to the Class III gaming compact between the Burns-Paiute Tribe and the State of Oregon.

**EFFECTIVE DATE:** December 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 13, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 02–31874 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–4N–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–310–1820–AE]**

### Notice of Public Meeting: Northwest California Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

**DATES:** The meeting will be held Wednesday and Thursday, Jan. 29 and 30, in the Conference Room of the Bureau of Land Management's Arcata Field Office, 1695 Heindon Road, Arcata, California. On Jan. 29, the meeting convenes at 10 a.m for a field trip to public lands managed by the BLM Arcata Field Office. Members of the public are welcome. They must provide their own transportation and lunch. On Jan. 30, the meeting begins at 8 a.m. Time for public comments has been set aside for 1 p.m. on Jan. 30.

**FOR FURTHER INFORMATION CONTACT:** Rich Burns, BLM Ukiah field manager, 2550 North State Street, Ukiah, CA, (707) 468–4000; or BLM Public Affairs Officer Joseph J. Fontana, telephone (530) 252–5332.

**SUPPLEMENTARY INFORMATION:** The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting, agenda topics will include discussion about a management plan update for the King Range National Conservation Area, and work planning for the coming year. The council will also hear status reports from the managers of the BLM's Arcata, Ukiah and Redding field offices.

All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: December 10, 2002.

**Joseph J. Fontana,**

*Public Affairs Officer.*

[FR Doc. 02–31747 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–910–03–0777–30]**

### Northeastern Great Basin Resource Advisory Council; Notice of 2003 Meetings, Locations, and Times

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of 2003 meetings, locations, and times for the

Northeastern Great Basin Resource Advisory Council (Nevada).

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Nevada Northeastern Great Basin Resource Advisory Council (RAC), will meet as indicated below. Topics for discussion at each meeting will include, but are not limited to: February 14, 2003 (Eureka, Nevada)—update on noxious weed program, mining update, Ely Resource Management Plan (RMP) status report, vegetation guidelines update, and California National Historic Trail Interpretive Center update; June 19, 2003 (Ely, Nevada)—possible joint session with Mojave/Southern Great Basin RAC, review of Elko RMP Fire Management Amendment, and review of final Off-Highway Vehicle (OHV) guidelines; September 12, 2003 (Battle Mountain, Nevada)—review of Appropriate Management Levels (AML) for Wild Horse and Burro Program, fire season status update, and Great Basin Restoration Initiative update.

Managers' reports of field office activities will be given at each meeting. The council may raise other topics at any of the three planned meetings.

**DATES AND TIMES:** The RAC will meet three times in 2003 on February 4 at the Eureka Opera House, 31 South Main, Eureka, Nevada; on June 19 at the BLM Ely Field Office, 702 North Industrial Way, Ely, Nevada; and on September 12 at the BLM Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada. All meetings are open to the public. Each meeting will last from 9 a.m. to 5 p.m. and will include a general public comment period, where the public may submit oral or written comments to the RAC. Each public comment period will begin at approximately 1 p.m. unless otherwise listed in each specific, final meeting agenda.

Final detailed agendas, with any additions/corrections to agenda topics, locations, field trips and meeting times, will be available on the internet at least 14 days before each meeting, at *http://www.nv.blm.gov/rac*; hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Mike Brown, Elko Field Office, 3900 East Idaho Street, Elko, Nevada 89801, telephone (775) 753–0386 no later than 10 days prior to each meeting.

**FOR FURTHER INFORMATION CONTACT:** Mike Brown, Public Affairs Officer, Elko BLM Field Office 3900 E. Idaho Street, Elko, NV 89801. Telephone: (775) 753–0386. E-mail: *mbrown@nv.blm.gov*.

Dated: December 11, 2002.

**David Stout,**

*Associate Field Manager.*

[FR Doc. 02–31844 Filed 12–17–02; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–952–03–1420–BJ]**

### Notice of Filing of Plats of Survey; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication

*Indian Meridian, Oklahoma:*

T. 26 N., R. 24 W., approved November 13, 2002, for Group 72 OK;

T. 2 S., R. 12 W., approved September 23, 2002, for Group 89 OK;

*New Mexico Principal Meridan, New Mexico:*

T. 24 N., R. 12 W., approved October 29, 2002, for Group 963 NM;

*Amended Supplemental Plat for:*

T. 13 N., R. 3 E., approved September 30, 2002, NM;

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of a protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained form this office upon payment of $1.10 per sheet.

Dated: November 29, 2002.

**Robert A. Casias,**

*Acting Chief Cadastral Surveyor.*

[FR Doc. 02–31845 Filed 12–17–02; 8:45 am]

**BILLING CODE 4310–FB–M**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–747 (Final)]**

### Fresh Tomatoes From Mexico

**AGENCY:** United States International Trade Commission.

**ACTION:** Cancellation of hearing.

**SUMMARY:** On September 5, 2002, the Commission published notice in the **Federal Register** of the scheduling of its investigation, including a hearing to be held on December 16, 2002. On December 4, 2002, the Department of Commerce and Mexican tomato growers/exporters accounting for substantially all exports of fresh tomatoes from Mexico to the United States signed a suspension agreement suspending the antidumping investigation on fresh tomatoes from Mexico. The agreement will take effect upon its publication in the **Federal Register**. Accordingly, the Commission gives notice that its hearing in this investigation is cancelled. The Commission unanimously determined that no earlier announcement of this cancellation was possible.

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

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained 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 investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public*.

**Authority:** This hearing is being cancelled under authority of title VII of the Tariff Act

of 1930; this notice is published pursuant to sections 207.21 and 207.40 of the Commission's rules (19 CFR 207.21 and 207.40).

By order of the Commission.

Issued: December 12, 2002.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 02–31772 Filed 12–17–02; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Comment Request

**ACTION:** Request OMB emergency approval and 60-day notice; immigration bond; Form I–352.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an information collection request (ICR) utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. INS is requesting emergency review from OMB of this information collection to ensure the INS has the necessary time to complete Paperwork Reduction Act clearance process while maintaining the effectiveness of the program. OMB approval has been requested by December 31, 2002. If granted, the emergency approval is only valid for 180 days.

All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Karen Lee, Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20503.

Comment are encouraged and will be accepted for sixty days until February 18, 2003. 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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, to 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 currently approved collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–352. Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or household. The data collected on this form is used by the INS to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The form serves the purpose of instruction in the completion of the form, together with an explanation of the terms and conditions of the bond.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 30, 000 responses at 30 minutes (.50) per response.

(6) *At estimate of the total public burden (in hours) associated with the collection:* 15,000 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, 425 I Street, NW., Room 4304, 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: December 12, 2002.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 02–31756 Filed 12–17–02; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 30-Day notice of information collection under review: monthly report naturalization papers; Form N–4.

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 56591, 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 January 17, 2003. 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 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 currently approved collection.

(2) *Title of the Form/Collection:* Monthly Report Naturalization Papers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–4. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government. This form is used by the clerk of courts that administer the oath of allegiance for naturalization to notify the Immigration and Naturalization Service of all person to whom the oath was administered.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,920 responses at approximately 30 minutes (.50) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 960 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: December 10, 2002.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 02–31757 Filed 12–17–02; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Comment Request

**ACTION:** 30-Day notice of information collection under review: Petition for nonimmigrant filing Fee Exemption; Form I–129W.

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 October 2, 2002 at 67 FR 61923, allowing for a 60-day public comment period. No comments were received.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 17, 2003. 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 burdens 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 currently approved collection.

(2) *Title of the Form/Collection:* H–1B Data Collection and Filing Fee Exemption.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–129W. 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. This addendum to Form I–129 will be used by the INS to determine if an H–1B petitioner is exempt from the additional filing fee, as provided by the American Competitiveness and Workforce Improvement Act of 1998.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 128,092 respondents 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 64,046 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 Office, 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: December 10, 2002.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 02–31758 Filed 12–17–02; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 30-Day notice of information Collection under review: Arrival Departure Record (Transit Without Visa); Form I–94T.

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 13, 2002 at 67 FR 458078, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of the notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 17, 2003. 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 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 currently approved collection.

(2) *Title of the Form/Collection:* Arrival Departure Record (Transit Without Visa).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–94T. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collection is used to track the arrival and departure of aliens under the Transit Without Visa program to ensure compliance with 8 CFR 212.1(f) and 8 CFR 214.2(c).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200,000 responses at 4 minutes (.066) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13.200 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: December 10, 2002.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 02–31759 Filed 12–17–02; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 30-Day notice of information collection under review: Guam visa waiver information; form I–736.

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 56593, allowing for a 60-day public comment period. No public comment was 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 January 17, 2003. 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 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 currently approved collection.

(2) *Title of the Form/Collection:* Guam Visa Waiver Information.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–736. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used to record an alien's application for a waiver of the nonimmigrant visa requirement for entry into Guam in compliance with 8 CFR 212.1(e).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 170,000 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,110 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: December 10, 2002.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 02–31760 Filed 12–17–02; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 30-Day notice of information collection under review: application for posthumous citizenship, form N–644.

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 comment period. No public comment was 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 January 17, 2003. 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 estimate 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 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 currently approved collection.

(2) *Title of the Form/Collection:* Application for Posthumous Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–644. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected will be used to determine an applicant's eligibility to request posthumous citizenship status for a decedent and to determine the decedent's eligibility for such status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 1 hour and 50 minutes (1.83) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 92 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: December 10, 2002.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 02–31761 Filed 12–17–02; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 30-Day notice of information collection under review: Application for suspension of deportation or special rule cancellation of removal (pursuant to section 203 of Public Law 105–100); form I–881.

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 13, 2002, at 67 FR 58077, allowing for a 60-day public comment period. No comments were received by the INS on the 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 January 17, 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 practically 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:* Revision of currently approved information collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–881. Office of International Affairs, Asylum 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. This form is used by nonimmigrant to apply for suspension of deportation or special rule cancellation of removal. The information collected on this form is necessary in order to determine if the individual applying for this benefit meets the criteria for eligibility under section 203 of Public Law 105–100. The information collected on this form is also necessary in order for the INS to determine if it has jurisdiction over an individual applying for this benefit under section 203 of Public Law 105–100.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 55,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hour) associated with the collection:* 660,000 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 Office, 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: December 12, 2002.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 02–31771 Filed 12–17–02; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF LABOR

### Office of the Secretary Proposed Collection; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Civil Rights Center within the Office of the Assistant Secretary for Administration and Management is soliciting comments concerning the proposed extension of the collection of the Compliance Information Report—29 CFR part 31 (Title VI of the Civil Rights Act), Nondiscrimination—Disability—29 CFR part 32 (section 504 of the Rehabilitation Act), and Nondiscrimination—Workforce Investment Act—29 CFR part 37 (section 188 of the Workforce Investment Act). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice. In addition, a copy of the ICR in alternate formats of large print and electronic file on computer disk are available upon request.

**DATES:** Written comments must be submitted to the office listed in the

**ADDRESSES** section below on or before February 18, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gregory T. Shaw, Civil Rights Center, (202) 693–6502 (Voice) or (202) 693–6515/16 (TTY). Please note that these are not toll free telephone numbers.

**ADDRESSES:** Comments should be sent to Annabelle T. Lockhart, Director of the Civil Rights Center. Electronic mail is the preferred method of submittal of comments. Comments by electronic mail must be clearly identified as pertaining to the ICR and sent to *civilrightscenter@dol.gov*. Brief comments (maximum of five pages), clearly identified as pertaining to the ICR, may be submitted by facsimile machine (Fax) to (202) 693–6505. Where necessary, hard copies of comments, clearly identified as pertaining to the ICR, may also be delivered to the Civil Rights Center Director at the U.S. Department of Labor, 200 Constitution Ave., NW., Room N–4123, Washington, DC 20210. Because of problems with U.S. Postal Service mail delivery, the Civil Rights Center suggests that those submitting comments by means of the U.S. Postal Service should place those comments in the mail well before the deadline by which comments must be received.

Receipt of submissions, whether by U.S. Postal Service, e-mail, fax transmittal, or other means will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning the Civil Rights Center at the telephone numbers listed below.

Comments received will be available for public inspection during normal business hours at the above address. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of the ICR will be made available, upon request, in large print or electronic file on computer disk. Provision of the rule in other formats will be considered upon request. To schedule an appointment to review the comments and/or obtain the ICR in an alternate format contact the Civil Rights Center at (202) 693–6500 (Voice) or (202) 693–6515/16 (TTY). Please note that these are not toll free telephone numbers.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Compliance Information Report and its information collection is designed to ensure that programs or activities funded in whole or in part by the Department of Labor operate in a nondiscriminatory manner. The Report requires such programs and activities to collect, maintain and report upon request from the Department, race, sex, age and disability data for program applicants, eligible applicants, participants, terminees, applicants for employment and employees.

## II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

## III. Current Actions

The Department of Labor seeks an extension of the current OMB approval of the paperwork requirements in the Compliance Information Report. Extension is necessary to ensure nondiscrimination in programs or activities funded in whole or in part by the Department of Labor.

*Type of Review:* Extension.

*Agency:* Civil Rights Center, Office of the Assistant Secretary for Administration and Management.

*Title:* Compliance Information Report—29 CFR part 31 (Title VI), Nondiscrimination-Disability—29 CFR part 32 (section 504), Nondiscrimination-Job Training Partnership Act—29 CFR part 34 (section 167).

*OMB Number:* 1225–0077.

*Affected public:* State, local or Tribal governments.

*Total Burden Cost (capital/startup):* $0.00.

*Total Burden Cost (operating/maintenance):* $84,289.86.

Comments submitted in response to this comment request will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC this 11th day of December, 2002.

**Annabelle T. Lockhart,**

*Director, Civil Rights Center.*

[FR Doc. 02–31766 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–23–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Child Labor Education Initiative

**AGENCY:** Bureau of International Labor Affairs, U.S. Department of Labor.

**ACTION:** Notice of intent to solicit cooperative agreement applications.

**SUMMARY:** The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), intends to award approximately U.S. $30 million to organizations to develop and implement formal, non-formal, and vocational education programs as a means to combat exploitative child labor in the following countries: Benin, Brazil, Burkina Faso, Cambodia, Dominican Republic, Mali, Morocco, Philippines and Uganda. ILAB will solicit cooperative agreement applications from qualified organizations (*i.e.*, any commercial, international, or non-profit organization capable of successfully developing and implementing education programs) to implement programs that promote school attendance and provide educational opportunities for working children or children at risk of starting working. The programs should focus on innovative ways to address the many gaps and challenges to basic education found in the countries mentioned above.

**DATES:** The solicitations for cooperative agreement applications will be published in the **Federal Register** and will remain open for at least 30 days from the date of publication. All awards will be made before September 30, 2003.

**ADDRESSES:** Once solicitations are published in the **Federal Register**, applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Lisa Harvey. E-mail address: *harvey-lisa@dol.gov*. All inquiries should make reference to the USDOL Child Labor Education Initiative—Solicitations for Cooperative Agreement Applications.

**SUPPLEMENTARY INFORMATION:** Since 1995, USDOL has supported a worldwide technical assistance program implemented by the International Labor Organization's International Program on the Elimination of Child Labor (ILO–

IPEC). In that time, ILAB has provided $195 million to ILO–IPEC and other organizations for international technical assistance to combat abusive child labor around the world.

In its FY 2002 appropriations, in addition to funds earmarked for ILO-IPEC, USDOL received $37 million for the Child Labor Education Initiative to fund programs that increase access to quality basic education in areas with a high incidence of abusive and exploitative child labor. The cooperative agreements awarded under these solicitations will be funded by this initiative.

USDOL's Education Initiative nurtures the development, health, safety, and enhanced future employability of children around the world by increasing access to basic education for children removed from child labor or at risk of entering it. Eliminating child labor will depend in part on improving access to, quality of, and relevance of education. Without improving educational quality and relevance, children withdrawn from child labor may not have viable alternatives and may return to work or resort to other hazardous means of subsistence.

The Education Initiative has the following four goals:

1. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

2. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;

3. Strengthen national institutions and policies on education and child labor; and

4. Ensure the long-term sustainability of these efforts.

When working to increase access to quality basic education, USDOL strives to complement existing efforts to eradicate the worst forms of child labor, to build on the achievements of and lessons learned from these efforts, to expand impact and build synergies among actors, and to avoid duplication of resources and efforts.

Signed at Washington, DC, this 12th day of December, 2002.

**Lawrence J. Kuss,**

*Grant Officer.*

[FR Doc. 02–31784 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–28–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Collection; Unemployment Compensation for Federal Employees (UCFE) Program Forms Comment Request

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

**SUMMARY:** The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision and extension of the Unemployment Compensation for Federal Employees (UCFE) Handbook.

A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 18, 2003.

**ADDRESSES:** Merri Baldwin, Office of Workforce Security, U.S. Department of Labor, Room S–4231, Frances Perkins Building, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–3220 (this is not a toll-free number), fax number (202) 693–3229. E-mail address: *mbaldwin@doleta.gov.*

**SUPPLEMENTARY INFORMATION:**

I. *Background:* The UCFE law (5 U.S.C. 8501–8509) requires State workforce agencies (SWAs) to pay UCFE in the same amount and under the same terms and conditions as would be payable under the unemployment insurance law of the State if the claimant's Federal service and Federal wages had been included as employment and wages under that State's law. Each State agency must obtain from the Federal agency wage and separation information for each claimant filing a UCFE claim to enable it to determine his/her eligibility for benefits. As a result of reorganization, all the form numbers have been changed from ES to ETA. The State agencies obtain and record required UCFE information on the following forms (either electronic or paper) developed by the Department of Labor: ETA–931, ETA–931A, ETA–933, ETA–934, and ETA–935. The use of each of these forms is essential to the UCFE claims process.

Information pertaining to the UCFE claimant may be obtained from the individual's former employing Federal agency only by using form ETA–931, Request for Wage and Separation Information. Form ETA–931A is used to request separation information or the reason for non-pay status when a claimant has a previously established benefit year and is reopening his claim after an intervening period of employment in a Federal agency. Form ETA–933 is used to obtain information from the Office of Workers' Compensation. Form ETA–934 is used to obtain information when missing or clarified data is needed from a Federal agency. This form is used in about 10% of claims. If the claimant's former employer does not provide the information, the next most feasible and effective way to obtain this information is by use of form ETA–935, the claimantss Affidavit of Federal Civilian Service, Wages and Reason for Separation, prescribed by the Department of Labor for State agency use. Without this information, States could not adequately determine the UCFE eligibility of former Federal employees and would not be able to properly administer the program. Form ETA–935 is used, generally, to overcome delays in the normal claims process caused by delayed returns of completed form ETA–931 by the employing Federal agency. The ETA–935 is required to be completed in 100% of all claims. Form ETA–936, Request for Verification of Wage and Separation Information Furnished on Form ETA–931, is sent to payroll offices to verify a sample of the forms ETA–931 submitted by that office and to provide the Federal agency with an opportunity to request technical assistance concerning the UCFE program. This form is used semi-annually. Form ETA–939, Federal Agency Visits Report, is completed by a SWA representative, on *each* visit to a Federal agency installation in connection with the UCFE program. The number of times this form is used varies with each State. Form ETA 8–32, Report of UCFE Activities, is used by each SWA every 6 months to verify activities and federal agency visits.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* This is a request for the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB control no. 1205–0179. A total of 78,000 UCFE claims was filed in fiscal year (FY) 2001, and an estimated workload of 87,000 UCFE claims is projected for fiscal year (FY) 2002 reflecting a slight workload increase of 9,000, resulting in an increase of 14.15 hours toward ETA's Information Collection Budget.

*Type of Review:* Extension.

*Agency:* Employment and Training Administration.

*Title:* Unemployment Compensation for Federal Employees (UCFE) Handbook.

*OMB Number:* 1205–0179.

*Recordkeeping:* DOL does not maintain a system of records for the UCFE program. UCFE records are maintained by the SWAs acting as agents for the federal government in the administration of the UCFE program. The DOL procedures permit the SWAs, upon request, to dispose of UCFE records according to state law provisions, 3 years after final action (including appeals or court action) on the claim, or such records may be transferred in less than the 3-year period if micro photographed in accordance with appropriate micro photography standards.

*Affected Public:* State governments (State workforce agencies) and Federal government agencies.

*Cite/Reference/Form/etc.:* Forms ETA–931, ETA–931A, ETA–933, ETA–934, ETA–935, ETA–936, ETA–939, and ETA 8–32.

| Cite/reference | Total respondents | Frequency | Total responses | Average time per response (minutes) | Burden hrs. |
|---|---|---|---|---|---|
| ETA–931 | 87,000 | 1 | 87,000 | .05 | 72 |
| ETA–931A | 21,750 | 1 | 21,750 | .05 | 18.0 |
| ETA–935 | 87,000 | 1 | 87,000 | .08 | 116.0 |
| ETA–933 | 4,350 | 1 | 4,350 | .05 | 4.0 |
| ETA–934 | 8,700 | 1 | 8,700 | .05 | 7.0 |
| ETA–936 | 13,050 | 1 | 13,050 | .05 | 11.0 |
| ETA–939 | 75 | 1 | 75 | 1.75 | 2.0 |
| ETA–8–32 | 53 | 2 | 106 | .08 | .15 |
| TOTAL | ..... | ..... | 213,031 | ..... | 230.15 |

*Total Burden Cost (Capital/Startup)*: 0.

*Total Burden Cost (Operating/Maintaining)*: $88,303. The cost of the Louisiana Claims Control Center (LCCC) for FY 2002 was about $883,035 for UCFE/UCX claims processing of which approximately 10 percent ($88,303) was for UCFE claim processing. This amount is allocated to the LCCC by the Federal government as a State grant.

Comments submitted in response to this comment request will be summarized and/or included in the request for the Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Dated: December 12, 2002.

**Cheryl Atkinson,**

*Administrator, Office of Workforce Security.*

[FR Doc. 02–31768 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6627]**

### State of Alaska Commercial Fisheries Entry Commission Permit #65136N, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65136N, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31786 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6628]**

### State of Alaska Commercial Fisheries Entry Commission Permit #56241F, Togiak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section

250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56241F, Togiak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31787 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6629]**

### State of Alaska Commercial Fisheries Entry Commission Permit #58075V, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58075V, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31788 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6630]**

### State of Alaska Commercial Fisheries Entry Commission Permit #59311O, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59311O, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31789 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6631]**

### State of Alaska Commercial Fisheries Entry Commission Permit #59555R, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59555R, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31790 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6633]**

### State of Alaska Commercial Fisheries Entry Commission Permit #66431B, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66431B, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31791 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6637]**

### State of Alaska Commercial Fisheries Entry Commission Permit #56925M, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56925M, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31792 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6638]**

### State of Alaska Commercial Fisheries Entry Commission Permit #67350U, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #67350U, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31793 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6645]**

### State of Alaska Commercial Fisheries Entry Commission Permit #57398V, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57398V, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31794 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6780]**

### State of Alaska Commercial Fisheries Entry Commission Permit #65026H, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65026H, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31796 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6781]**

### State of Alaska Commercial Fisheries Entry Commission Permit #57478J, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57478J, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31797 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6782]**

### State of Alaska Commercial Fisheries Entry Commission Permit #59451O; King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59451O, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31798 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6784]**

### State of Alaska Commercial Fisheries Entry Commission Permit #67594X; King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #67594X, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31799 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6785]**

### State of Alaska Commercial Fisheries Entry Commission Permit #60136S; King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60136S, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31800 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6834]**

### State of Alaska Commercial Fisheries Entry Commission Permit #55857I, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55857I, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31801 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6835]**

### State of Alaska Commercial Fisheries Entry Commission Permit #63407P, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #63407P, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31802 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6836]**

### State of Alaska Commercial Fisheries Entry Commission Permit #60296O, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60296O, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31803 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6837]**

### State of Alaska Commercial Fisheries Entry Commission Permit #58412Q; Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58412Q, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31804 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6839]**

### State of Alaska Commercial Fisheries Entry Commission Permit #56513U; Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56513U, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31805 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6647]**

### State of Alaska Commercial Fisheries Entry Commission Permit #64636I; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64636I, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31806 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6648]**

### State of Alaska Commercial Fisheries Entry Commission Permit #54135R; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #54135R, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31807 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6649]**

### State of Alaska Commercial Fisheries Entry Commission Permit #61300M; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61300M, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31808 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6651]**

### State of Alaska Commercial Fisheries Entry Commission Permit #55589K, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55589K, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31809 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6652]**

### State of Alaska Commercial Fisheries Entry Commission Permit #67874E, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #67874E, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31810 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6654]**

### State of Alaska Commercial Fisheries Entry Commission Permit #59494I, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59494I, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31811 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6655]**

### State of Alaska Commercial Fisheries Entry Commission Permit #57363P, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57363P, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31812 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6656]**

### State of Alaska Commercial Fisheries Entry Commission Permit #58988Z, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58988Z, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31813 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6657]**

### State of Alaska Commercial Fisheries Entry Commission Permit #59135M Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59135M, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31814 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6658]**

### State of Alaska Commercial Fisheries Entry Commission Permit #61985J, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61985J, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31815 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–7621]**

### Intertape Polymer Group, Menosha, WI; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on October 21, 2002, in response to a petition filed by the company on behalf of workers at Intertape Polymer Group, Menosha, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 6th day of December, 2002.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–31795 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration Proposed Information Collection Request Submitted for Public Comment and Recommendations; Notification of Commencement of Operations and Closing of Mines

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal Agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 (c)(c)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources (is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR sections 56.1000 and 57.1000; Notification of Commencement of Operations and Closing of Mines.

**DATES:** Submit comments on or before February 18, 2003.

**ADDRESSES:** Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov.* Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

**FOR FURTHER INFORMATION CONTACT:** Jane Tarr, Management Analyst, Record Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov.* (Internet E-mail),

(202) 693–9824 (voice), or (202) 693–9801 (facsimile).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Sections 56.1000 and 57.1000 state that the owner, operator, or person in charge of any metal and nonmetal mine shall notify the nearest MSHA Metal and Nonmetal Mine Safety and Health District Office before starting operations, of the approximate or actual date mine operation will commence. The notification shall include the mine name, location, the company name, mailing address, person in charge, and whether operations will be continuous or intermittent. When any mine is closed, the person in charge shall notify the nearest sub-district office as provided above and indicate whether the closure is temporary or permanent.

**II. Desired Focus of Comments**

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

**III. Current Actions**

Under 30 CFR 56.1000 and 57,1000, operators of metal and nonmetal mines must notify MSHA when the operation of a mine will commence or when a mine is closed. Openings and closings of mines are dictated by the economic strength of the mined commodity and by weather conditions prevailing at the mine site during various seasons.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:* Notification of Commencement of Operations and Closing of Mines.

*OMB Number:* 1219–0092.

*Recordkeeping:* Sections 56.1000 and 57.1000 state that the owner, operator, or person in charge of any metal and nonmetal mines shall notify the nearest MSHA Metal and Nonmetal Mine Safety and Health District Office before starting operations, of the approximate or actual date mine operation will commence. The notification shall include the mine name, location, the company name, mailing address, person in charge, and whether operations will be continuous or intermittent.

When any mine is closed, the person in charge shall notify the nearest sub-district office as provided above and indicate whether the closure is temporary or permanent.

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit.

*Respondents:* 2,300.

*Estimated Time Per Respondent:* .113 hours.

*Total Burden Hours:* 259 hours.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintaining):* $1,446.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: Dated in Arlington, Virginia, this 11th day of December, 2002.

**David L. Meyer,**

*Director, Office of Administration and Management.*

[FR Doc. 02–31763 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–43–M**

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(c)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR sections:

7.83 and 7.97—Application Requirements;

7.90 and 7.105—Approval Markings;

75.363—Hazardous Conditions; Posting Correction, and Recording;

75.371(r), (kk), (ll), (mm), (nn), (oo), and (pp)—Mine Ventilation Plan, Contents;

75.1901(a)—Diesel Fuel Requirements;

75.1904(b)(4)(i)—Underground Diesel Fuel Tanks and Safety Cans;

75.1911(i) and (j)—Fire Suppression Systems for Diesel-Powered Equipment and Fuel Transportation Units;

75.1912(h) and (i)—Fire Suppression Systems for Permanent Underground Diesel Fuel Storage Facilities;

75.1914(f)(1), (2), (g)(5), (h)(1), and (2)—Maintenance of Diesel-Powered Equipment; and

75.1915(a), (b)(5), (c)(1) and (2)—Training and Qualification of Persons Working on Diesel-Powered Equipment.

**DATES:** Submit comments on or before February 18, 2003.

**ADDRESSES:** Send comments to Jane Tarr, Management Analyst, Administration and Management, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov.* Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

**FOR FURTHER INFORMATION CONTACT:** Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet e-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The regulation addresses three major areas: Diesel engine design and testing requirements; safety standards for the maintenance and use of this equipment; and exhaust gas sampling provisions to protect miners' health. It first requires that diesel engines and their critical components meet design specifications and tests to demonstrate that they are explosion-proof and will not cause a fire in a mine where methane may accumulate. Second, the safety requirements for diesel equipment include many of the proven features required in existing standards for electric-powered equipment, such as cabs or canopies, methane monitors, brakes and lights. The regulation also sets safety requirements for fuel handling and storage and fire suppression. Third, sampling of diesel exhaust emissions is required to protect miners from overexposure to carbon monoxide and nitrogen dioxide contained in diesel exhaust.

**II. Desired Focus of Comments**

MSHA is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

**III. Current Actions**

Provisions under part 7 provides that manufacturers submit applications to demonstrate compliance with the test and specification requirements. In part 75, they establish mandatory safety standards for diesel-powered equipment for use in underground coal mines, minimum ventilating air quantities, the incorporation of the air quantities into the mine ventilation plan, requirements for routine sampling of toxic exhaust gases, and the use of low sulfur diesel fuel. It also provides that diesel equipment maintenance be performed by adequately trained persons. In addition, the regulation includes standards for storage, transportation and dispensing of diesel fuel, and the installation and maintenance of fire suppression systems on diesel equipment and in permanent underground fuel storage facilities.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:* Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines.

*OMB Number:* 1219–0119.

*Recordkeeping:* The information gathered is required to be recorded, maintained for the period specified, and made accessible, upon request, to authorized representatives of the Secretary of Labor and miners' representatives. This may be done in a traditional manner by recording in a book, or electronically by computer.

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit.

| Section | Total respondents | Total responses | Avg time/response (hrs) | Burden hrs |
|---|---|---|---|---|
| 7.83 (permissible applications) | 690 | 2 | .1 | 66 |
| 7.83 (non-permissible applications) | 690 | 20 | .8 | 863 |
| 7.9 | 690 | 148 | .04 | 25 |
| 7.97 | 690 | 2 | .09 | 65 |
| 7.105 | 690 | 20 | .004 | 3 |
| 75.363 | 690 | 110 | .28 | 193 |
| 75.371 | 690 | 136 | .06 | 44 |
| 75.1901 | 690 | 1,690 | .12 | 85 |
| 75.1904(b)(4)(i) | 690 | 404 | .02 | 14 |
| 75.1911(i)(j) | 690 | 169,654 | 8.91 | 6,146 |
| 75.1912(h)(i) | 690 | 1,250 | .11 | 75 |
| 75.1914(f)(1)(2) & (h) | 690 | 32,530 | 42.35 | 29,220 |
| 75.1914(g) & (h) | 690 | 25 | .07 | 49 |
| 75.1914(g)(5) & (h) | 690 | 154 | 20.79 | 4,343 |
| 75.1915(a) | 690 | 1,010 | 7.32 | 5,050 |
| 75.1915(b)(5) & (c) | 690 | 6 | .12 | 83 |
| Totals | 690 | 207,161 | ..... | 56,324 |

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintaining):* $635,359.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated in Arlington, Virginia, this 11th day of December, 2002.

**David L. Meyer,**

*Director, Office of Administration and Management.*

[FR Doc. 02–31764 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–43–M**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Proposed Information Collection Request, Submitted for Public Comment and Recommendations; Mine Operator Dust Cards

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR sections 70.209, 71.209, and 90.209—Mine Operator Dust Data Card; 70.201(c), 71.201(c), 90.201(c)—Reporting Operator Sampling Dates; 70.202(b), 71.202(b), and 90.202(b)—Dust Sampling Certification; 70.220(a), 71.220(a), and 90.220(a)—Reporting Status Changes; and 71.300, 71.301(d), 90.300, and 90.301(d)—Respirable Dust Control Plan.

**DATES:** Submit comments on or before February 18, 2003.

*Addresses:* Send comments to Jane Tarr, Manaagement Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet e-mail to *Tarr-Jane@Msha.Gov.* Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

**FOR FURTHER INFORMATION CONTACT:** Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

**SUPPLEMENTARY INFORMATION:**

## I. Background

30 CFR, 70.201(c), 71.201(c), and 90.201(c), authorizes the District Manager to require the mine operator to submit and dates(s) when sampling will begin. Only a certified person is allowed to conduct the respirable dust sampling required by these parts.

Sections 70.202(b), 71.202(b), and 90.202(b), requires that the person must pass the MSHA examination on sampling of respirable coal mine dust.

Sections 70.220(a), 71.220(a), requires the operator to report status changes to MSHA in writing within 3 working days after the status change has occurred.

Sections 70.209, 71.209, and 90.209, requires persons who are certified by MSHA to take respirable dust samples to complete the dust data card that accompanies each sample being submitted for analysis.

Sections 71.300 and 90.300 require a coal mine operator to submit to MSHA for approval a written respirable dust control plan with 15 calendar days after the termination data of a citation for violation of the applicable dust standard.

Section 71.301(d) requires the respirable dust control plan to be posted on the mine bulletin board however, 90.301(d) prohibits posting of the dust control plan for P–90 miners and, instead, requires a copy be provided to the affected P–90 miner.

## II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of the appropriate automated, electronic, mechanical, or other technologies collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

## III. Current Actions

The information provided by the mine operator on the dust data card that accompanies each dust sample, the reporting of when such samples will be collected to allow MSHA to observe the actual collection, and the reporting of any changes in operation status affecting sampling, is vital to effectively administer the operator sampling program. This allows MSHA to determine not only whether mine operators have compiled with the sampling requirements stipulated in the regulations but also which operators were in noncompliance with the applicable dust standard. After processing, results are reported back to mine operators for posting on the mine bulletin board and viewing by miners. MSHA also uses this information to plan enforcement activities and evaluate programs.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:* Mine Operator Dust Cards.

*OMB Number:* 1219–0011.

*Recordkeeping:* 30 CFR, 70.201(c), 71.201(c), and 90.201(c), authorizes the District Manager to require the mine operator to submit the dates(s) when sampling will begin. Only a certified person is allowed to conduct the respirable dust sampling required by these parts.

Sections 70.202(b), 71.202(b), and 90.202(b), require that the person must pass the MSHA examination on sampling of respirable coal mine dust.

Sections 70.220(a), 71.220(a), and 90.220(a), require the operator to report status changes to MSHA in writing within 3 working days after the status change has occurred.

Sections 70.209, 71.209, and 90.209, require persons who are certified by MSHA to take respirable dust samples to complete the dust data card that accompanies each sample being submitted for analysis.

Sections 71.300 and 90.300 require a coal mine operator to submit to MSHA for approval a written respirable dust control plan with 15 calendar days after the termination date of a citation for violation of the applicable dust standard.

Section 71.301(d) requires the respirable dust control plan to be posted on the mine bulletin board however, 90.301(d) prohibits posting of the dust control plan for P–90 miners and, instead, requires a copy be provided to the affected P–90 miner.

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit.

| Section | Total respondents | Total responses | Avg. time/response | Burden hours |
|---|---|---|---|---|
| 70.209 | 1,911 | 36,000 | .83 | 29,998 |
| 71.209 | | | | |
| 90.209 | | | | |
| (submit) | | | | |
| 70.209 | 1,911 | 50,200 | .17 | 8,534 |
| 71.209 | | | | |
| 90.209 | | | | |
| (monitor) | | | | |
| 70.201(c) | 1,911 | 630 | 1 | 630 |
| 71.201(c) | | | | |
| 90.201(c) | | | | |
| 70.202(b) | | 182 | 8 | 1,456 |
| 71.201(b) | | | | |
| 90.201(b) | | | | |
| (Train and Test) | | | | |
| 70.202(b) | 1,911 | 48 | 1.5 | 72 |
| 71.201(b) | | | | |
| 90.201(b) | | | | |
| (Test only) | | | | |
| 70.220(a) | 1,911 | 3,200 | .5 | 1,600 |
| 71.220(a) | | | | |
| 90.220(a) | | | | |
| 71.300 | 1,900 | 40 | 3 | 120 |
| (new) | | | | |
| 71.300 | 1,900 | 5 | 1.2 | 6 |
| (revised) | | | | |
| 71.300 | | N/a | | 8 |
| (copy & mail) | | | | |
| 71.301(d) | 1,900 | 45 | .24 | 11 |
| 90.300 | 1,900 | 4 | 3 | 12 |
| (new) | | | | |
| 90.300 | 1,900 | 2 | 1.5 | 3 |
| (revised) | | | | |
| 90.300 | | N/a | | 1 |
| (copy & mail) | | | | |
| 90.301(d) | 1,900 | 6 | .33 | 2 |
| Total | 1,900 | 90,362 | | 42,453 |

*Total Burden Cost (capital/startup):* $990,887.

*Total Burden Cost (operation/maintaining):* $2,136,598.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 11th day of December, 2002.

**David L. Meyer,**

*Director, Office of Administration and Management.*

[FR Doc. 02–31765 Filed 12–17–02; 8:45 am]

**BILLING CODE 4510–43–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–373 and 50–374]**

## Exelon Generation Company, LLC; LaSalle County Station, Units 1 and 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Exelon Generation Company, LLC (the licensee), to withdraw its May 31, 2002 application, as supplemented by letter dated October 4, 2002, for proposed amendments to Facility Operating License Nos. NPF–11 and NPF–18 for LaSalle County Station, Units 1 and 2, respectively, located in LaSalle County, Illinois.

The proposed amendments would have changed Appendix A, Technical Specifications (TS) , of the Facility Operating Licenses. Specifically, the proposed change would have modified TS Surveillance Requirement 3.6.1.3.8 to reduce the number of excess flow check valves required to be tested every 24 months.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 23, 2002 (67 FR 48218). However, by letter dated October 30, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 31, 2002, as supplemented by letter dated October 4, 2002, and the licensee's letter dated October 30, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to

ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of December, 2002.

For the Nuclear Regulatory Commission.

**William A. Macon, Jr.,**

*Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02–31871 Filed 12–17–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–2259]**

## Notice of Amendment Request and Consideration of Proposed Use of Alternate Concentration Limits for Ground Water for Pathfinder Mines Corporation's Lucky MC Site, Gas Hills, WY, and Opportunity To Provide Comments and To Request a Hearing

### I. Introduction

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC) has received, by letter dated December 21, 2000, a license amendment application from Pathfinder Mines Corporation (PMC), requesting alternate concentration limits (ALCs) for six ground water constituents at their Lucky Mc site located in the Gas Hills region of Wyoming. Staff submitted a request for additional information by letter dated October 26, 2001, and PMC responded January 11, and November 4, 2002, with page changes.

The PMC Lucky Mc former uranium mill site (now a mill tailings disposal site) is licensed by the NRC under Source Materials License SUA–672 to possess byproduct material in the form of uranium processing waste, such as mill tailings, generated by past uranium processing operations. The PMC Lucky Mc site is located in the Gas Hills region of western Natrona and eastern Freemont Counties, Wyoming, approximately 80 kilometers (50 miles) southeast of the town of Riverton, Wyoming. The mill operated from 1958 to 1988 and has been dismantled and disposed of. The site contains three disposal areas (tailings impoundments) and three tailings 2 solution ponds. The license establishes a ground water protection standard at one Point of Compliance (POC) well near the disposal area. This well is used to monitor water quality because hazardous constituents have leached from the milling waste into the upper aquifer.

The ACL application requests that site-specific concentration limits for six hazardous constituents in ground water be granted for the PMC site in place of the current concentration values in the license. The licensee has indicated that the concentration limits required to be met under the licensed corrective action program are not attainable due to the high cost and the influence of mining-impacted water. Also, the ground water at the PMC site and surrounding areas is impacted by open-pit uranium mines having the same constituents as those resulting from the tailings seepage. The requested concentration limits would be protective of public health and the environment, and appear to meet the requirements of 10 CFR Part 40, Appendix A.

PMC also is proposing that the site's Point of Exposure (POE) be established at the long-term care boundary. This boundary encompasses all the land that will be transferred to the U.S. Department of Energy (DOE) for perpetual care of the disposal site. The POE is the location nearest the site where the public or environment might be exposed to milling impacted ground water, even though such exposure is highly unlikely.

### II. Opportunity To Provide Comments

The NRC is providing notice to individuals in the vicinity of the facility that the NRC is in receipt of this request, and will accept comments concerning this action within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room T–6 D59, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852, from 7:30 a.m. until 4:15 p.m. on Federal Workdays.

### III. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by email to *hearingdocket@nrc.gov.*

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Pathfinder Mines Corporation, P.O. Box 730, Mills, WY 82644, Attention: Tom Hardgrove; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by email to *OGCMailCenter@nrc.gov.*

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

**IV. Further Information**

The application for the license amendment is available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Assession Numbers: ML010250146 and ML023160530). Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Elaine Brummett, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone: (301) 415–6606; Fax: (301)415–5390.

Dated at Rockville, MD, this 12th day of December, 2002.

For the Nuclear Regulatory Commission.

**Daniel M. Gillen,**

*Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 02–31870 Filed 12–17–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide and Associated Standard Review Plan; Issuance, Availability, Workshop

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft of a regulatory guide (and its associated Standard Review Plan). Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–1122, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG–1122, ''An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities,'' is being developed to provide guidance to licensees in determining the technical adequacy of a PRA used in a risk-informed integrated decision making process, and to endorse standards and industry guidance. Guidance is provided in four areas:

(1) A minimal set of functional requirements of a technically acceptable PRA.

(2) NRC position on consensus PRA standards and industry PRA program documents.

(3) Demonstration that the PRA (*in toto* or specific parts) used in regulatory applications is of sufficient technical adequacy.

(4) Documentation that the PRA (*in toto* or specific parts) used in regulatory applications is of sufficient technical adequacy.

DG–1122 proposes to endorse, with certain clarifications and substitutions, ASME Standard RA–S–2002, ''Standard for Probabilistic Risk Assessment for Nuclear Power Plant Applications,'' and Revision A3 of NEI–00–02, ''Probabilistic Risk (PRA) Peer Review Process Guidance,'' with its August 16, 2002 supplemental guidance on industry self-assessment.

Chapter 19.1 of the Standard Review Plan (SRP), ''Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities,'' is being developed to provide guidance to the NRC staff on how to determine that the PRA that provides the results being used in a decision is technically adequate.

This draft guide and draft standard review plan chapter have not received complete staff approval and do not represent an official NRC staff position.

It is the NRC's intent to update this RG when a new or revised PRA standard or industry program is published. If a new standard or program is published, an additional appendix will be added to set forth the staff position. If a revision of a current standard or program would impact the staff position, the appropriate appendix would be revised.

The NRC intends to conduct a workshop on January 9, 2003, to be held in the auditorium at NRC headquarters, 11545 Rockville Pike, Rockville, Maryland, (the agenda will be announced in a future public notice), to discuss and explain the material contained in DG 1122 and SRP Chapter 19.1, and to answer questions and receive comments and feedback on the proposed documents. The purpose of the workshop is to facilitate the comment process. In the workshop, the staff will describe each document and its basis and solicit comment and feedback on their completeness, correctness, and usefulness. Since these documents cover a wide range of technical areas, many topics will be discussed. Listed below are particular topics (not limited to) on which discussion and feedback are sought at the workshop:

(1) Is the relationship of this regulatory guide to other regulatory guides (e.g., RG 1.174, RG 1.177) clear? Is it clear how this guide is to be used to support risk-informed applications? If more discussion is needed, what level of detail is needed?

(2) Is the associated SRP the appropriate place for the staff review guidance, or should the guidance be included in the application specific SRPs?

(3) Is the level of detail in the proposed guidance clear and sufficient to demonstrate the technical adequacy of the PRA to support a regulatory application? Or is more detailed guidance necessary? What level of detail is needed?

(4) Is the level of detail in the proposed guidance clear and sufficient in regard to the scope, level of detail and technical adequacy of the PRA? Or is more detailed guidance necessary? What level of detail is needed?

(5) Is the staff regulatory position on consensus PRA standards and industry PRA programs clear and sufficient? Or is more detailed guidance necessary? What level of detail is needed?

(6) Is the level of detail in the proposed guidance clear and sufficient in regard to documentation and submittal? Or is more detailed guidance necessary? What level of detail is needed?

(7) Is the staff position in the appendices of the proposed regulatory guide clear? Or is more discussion necessary? What level of detail is needed?

(8) In Appendix A, is the discussion provided on the ''issue'' helpful or necessary in providing the bases for the staff position? If not, should this column be removed? Is more discussion needed and what would be the appropriate level of detail?

(9) In Appendix A, the staff has provided ''clarifications'' to the definition regarding ''dominant,'' ''significant,'' and ''important.'' Clarification of these terms is provided because in places, these terms are used interchangeably (to have the same meaning) and in other places, they may be used to convey different meanings. In the context of a PRA, these terms generally are indicating that the entity under question is a major factor to the outcome under consideration. In this general sense, these terms can be used interchangeably (*e.g.*, an important sequence, a significant sequence, a dominant sequence). However, if these terms are used to distinguish whether a requirement is imposed, a common and

specific understanding (*i.e.*, quantitative) of these terms is needed. Is this the appropriate quantitative definition? If not, what quantitative definition is appropriate?

(10) In Appendix B, the staff review of NEI–00–02 and its supplemental guidance, is based on the perspective that this document is primarily historical in that almost all the licensee's PRAs have been peer reviewed using NEI–00–02, Revision A3. Consequently, the staff endorsement does not address future use of this document. If the staff has an objection to this document, the resolution would be addressed via a licensee's self assessment. Is this approach appropriate? That is, should the staff extend its review so that industry would have the staff position regarding this process for future use?

In order to gain experience and more detailed insights into the use of the approach proposed in DG–1122 and the associated draft SRP section, during the public comment period the NRC desires to conduct a review of one or more pilot applications (*e.g.*, Risk-Informed Technical Specifications Initiative 4b, ''Configuration Risk Management for Completion Times'') using this approach. The experience and insights gained from the practical application of the approach proposed in DG–1122 and the associated draft SRP section will support the staff's risk-informed regulatory initiatives, consistent with the NRC's policy statement on PRA. The lessons learned from the pilot applications will be documented and reflected in the final regulatory guide. Since these pilot applications will assist the NRC in developing a regulatory guide, the Chief Financial Officer will waive the review fees in accordance with 10 CFR 170.11(b)(1). By granting this waiver for the pilot applications, the NRC continues its longstanding policy of granting fee exemptions for the review of license applications accepted for review as a pilot application.

The NRC staff is soliciting comments on these proposed documents. Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by February 14, 2003.

Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (*http://www.nrc.gov).* This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV.* For information about the draft guide and the related standard review plan chapter, contact Ms. M.T. Drouin at (301) 415–6675; e-mail *MXD@NRC.GOV.*

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of this draft RG are available on the NRC's Web site <*http://www.nrc.gov*> in the Reference Library under Regulatory Guides. Electronic copies are also available in NRC's Public Electronic Reading Room at the same Web site; DG–1122 is under ADAMS Accession Number ML023360076. Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; e-mail *PDR@NRC.GOV.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *DISTRIBUTION@NRC.GOV;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 22nd day of November, 2002.

For the Nuclear Regulatory Commission.

**Scott F. Newberry,**

*Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.*

[FR Doc. 02–31872 Filed 12–17–02; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Notice of Relaxed Rules for the Federal Long Term Care Insurance Program Open Season

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of relaxed rules for the Federal Long Term Care Insurance Program Open Season.

**SUMMARY:** The Office of Personnel Management is relaxing our previous rule for employees' Federal Long Term Care Insurance Program coverage to become effective. Previously, employees with a December 1, 2002, or January 1, 2003 coverage effective date would have to be actively at work on November 29, 2002 or December 31, 2002, respectively, for coverage to become effective. Considering heavy leave usage on those dates, coverage will not be delayed for employees on approved leave status on those dates, as long as they return to being actively at work during the month when their coverage becomes effective and they pay their premiums within the established deadlines.

**DATES:** This relaxed rule affects employees with December 1, 2002, or January 1, 2003, Federal Long Term Care Insurance Program coverage effective dates.

**FOR FURTHER INFORMATION CONTACT:** Office of Personnel Management, Office of Long Term Care Insurance, (202) 606–1413, or *ltc@opm.gov.*

**SUPPLEMENTARY INFORMATION:** On June 28, 2002, the Office of Personnel Management announced in the **Federal Register** an Open Season for eligible persons to apply for coverage in the Federal Long Term Care Insurance Program (FLTCIP). Open Season began on July 1, 2002, and will end on December 31, 2002.

The **Federal Register** notice stated that the effective date of coverage for an Open Season enrollment is the later of October 1, 2002, or the first day of the month that is after the date LTC Partners approves an application for coverage. A Federal civilian or Postal employee or member of the uniformed services also must be actively at work on the coverage effective date for coverage to become effective. A Federal civilian or Postal employee must meet all of the following conditions to be considered actively at work:

- The employee is reporting for work at his/her usual place of employment or other location to which Government business requires him/her to travel;

• The employee is able to perform all the usual and customary duties of his/her employment on his/her regular work schedule; and

• The employee is not absent from work due to sickness, injury, annual leave, sick leave or any other leave. (An employee is not considered to be on leave on an alternate work schedule's scheduled day off.)

For coverage effective dates that fall on a weekend or holiday, the **Federal Register** notice stated that an employee must be actively at work on the last workday before his/her coverage effective date for coverage to become effective. This meant that coverage could be delayed for one month, or more, for employees with applications approved in November and December if they were on leave on November 29 or December 31, 2002, respectively.

In view of heavy leave usage on November 29th and December 31st, and in keeping with our objectives of being employee-oriented and family friendly, we have relaxed this actively at work requirement.

For this year only, coverage will not be delayed for employees in an approved leave status November 29 or December 31, 2002, as long as they return to being actively at work during the month when their coverage becomes effective and they pay their premium within established deadlines. This applies to any approved leave, including annual leave, sick leave, leave without pay and administrative leave.

Employees, as well as all applicants, still have an obligation to contact Long Term Care Partners if their health changes in a way that would affect their answers to one or more questions on their long term care insurance application on the effective date of their coverage.

We made this change in response to employee and agency concerns about holiday leave usage toward the end of the Open Season, a period in which large numbers of employees have expressed interest in applying. We also recognize that this is the first FLTCIP Open Season.

This family-friendly policy affects only employees and members of the uniformed services applying with the abbreviated underwriting application and will not be repeated in the future or apply to leave usage other than on November 29 and December 31, 2002. It does not apply to spouses of employees and members of the uniformed services, since they do not have an actively at work requirement, nor does it apply to annuitants, retired members of the uniformed services, or other qualified relatives who apply using the full underwriting application.

**Authority:** 5 U.S.C. 9008.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 02–31854 Filed 12–17–02; 8:45 am]

**BILLING CODE 6325–50–P**

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments.

**SUMMARY:** Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. Additional proposed amendments the Commission is considering promulgating, as both temporary and permanent amendments, in response to the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, and the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–55, can be found in the November 22, 2002, **Federal Register** (67 FR 70999).

The specific amendments proposed in this notice are as follows: (1) A proposed amendment and issues for comment that respond to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107–56; the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188; and the Terrorist Bombings Convention Implementation Act of 2002, Pub. L. 107–197; (2) a proposed amendment that addresses various application issues in § 2L1.2 (Unlawful Entering or Remaining in the United States); (3) a proposed amendment and issue for comment that addresses a number of issues in § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment); (4) a proposed amendment that makes technical and conforming changes to various guideline provisions; and (5) a proposed amendment and issue for comment regarding appropriate guideline penalties for offenses involving involuntary manslaughter.

In addition to the issues for comment that are contained within these proposed amendments, this notice sets forth separate issues for comment regarding the following: (1) Section 225 of the Homeland Security Act of 2002 (the Cyber Security Enhancement Act of 2002), Pub. L. 107–296, which directs the Commission to review and amend, if appropriate, the sentencing guidelines and policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code; and (2) sections 11008 and 11009 of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107–273, which direct the Commission to review and amend the sentencing guidelines, as appropriate, to provide an appropriate sentencing enhancement for any crime of violence or drug trafficking crime in which the defendant used body armor and an appropriate enhancement for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a federal judge, magistrate judge, or any other official described in section 111 or section 115 of title 18, United States Code.

**DATES:** Written public comment regarding (1) the amendments set forth in this notice, including public comment regarding retroactive application of any of these proposed amendments; and (2) the proposed repromulgation of the proposed emergency amendments set forth in the **Federal Register** on November 27, 2002 (67 FR 70999) as permanent, non-emergency amendments, should be received by the Commission not later than February 18, 2003.

**ADDRESSES:** Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o)

and submits guideline amendments to the Congress not later than the first day of May of each year pursuant to 28 U.S.C. 994(p).

The Commission seeks comment on the proposed amendments, issues for comment, and any other aspect of the sentencing guidelines, policy statements, and commentary.

The proposed amendments are presented in this notice in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part for comment and suggestions for alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at *www.ussc.gov*.

**Authority:** 28 U.S.C. 994(a), (o), (p), (x); USSC rules of practice and procedure, rule 4.4.

**Diana E. Murphy,**

*Chair.*

**1. Terrorism**

*Synopsis of Proposed Amendment:* This proposed amendment is a continuation of the Commission's work over the past two years to ensure that the guidelines provide appropriate guideline penalties for offenses involving terrorism. Specifically, this proposed amendment responds to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub.L. 107–56; the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub.L. 107–88; and the Terrorist Bombings Convention Implementation Act of 2002, Pub.L. 107–97.

**I. Remaining USA PATRIOT Act Amendments**

The following amendments build on the Commission's response during the last amendment cycle to the USA PATRIOT Act.

*A. Terrorism Enhancement in Money Laundering Guideline*

This amendment provides two options for treatment of the current 6-level terrorism enhancement in the money laundering guideline, § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity). Option One eliminates the terrorism enhancement. Elimination of the enhancement is appropriate because it prevents ''double-counting'' with the terrorism adjustment in § 3A1.4 (Terrorism). Specifically, the money laundering terrorism enhancement applies if the defendant knew or believed that any of the laundered funds were the proceeds of, or were intended to promote, an offense involving terrorism. The terrorism adjustment at § 3A1.4 applies if the offense is a felony that involved, or was intended to promote, a federal crime of terrorism as defined in 18 U.S.C. 2332b(g)(5). Therefore, if the money laundering terrorism enhancement applied, the terrorism adjustment at § 3A1.4 also would apply based on the same conduct.

In the event the Commission determines that the money laundering terrorism adjustment should not be eliminated, Option Two provides a definition of terrorism in the money laundering guideline that mirrors the definition in § 3A1.4.

Proposed Amendment (Part IA):

[Option One:

Section § 2S1.1(b)(1)(B)(iii) is amended by striking ''terrorism,''.]

[Option Two:

The Commentary to § 2S1.1 captioned ''Application Notes'' is amended in Note 1 by inserting at the end the following new paragraph:

'' 'Terrorism' means a federal crime of terrorism as defined in 18 U.S.C. 2332b(g)(5).''.]

*B. Reference of 18 U.S.C. 1960 to Money Laundering Guideline*

This amendment provides two options for the treatment of certain offenses under 18 U.S.C. 1960. These offenses prohibit knowingly conducting, controlling, managing, supervising, directing, or owning all or part of an unlicensed money transmitting business, as defined in 18 U.S.C. 1960(b)(1)(C). That provision defines an unlicensed money transmitting business as ''a money transmitting business which affects interstate or foreign commerce in any manner or degree and otherwise involves the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity.'' The statutory maximum term of imprisonment is 5 years.

Option One changes the Statutory Index reference for these offenses from § 2S1.3 (Structuring Transactions to Evade Reporting Requirements) to the main money laundering guideline, § 2S1.1. This change is appropriate for this offense because its essence is money laundering rather than structuring to evade reporting requirements.

In contrast, other offenses under 18 U.S.C. 1960 would remain in the structuring guideline under Option One because they are essentially structuring offenses. Specifically, they prohibit knowingly conducting, controlling, managing, supervising, directing, or owning all or part of an unlicensed money transmitting business, as defined in 18 U.S.C. 1960(b)(1)(A) and (B). Those provisions define an unlicensed money transmitting business as ''a money transmitting business which affects interstate or foreign commerce in any manner or degree and (A) is operated without an appropriate money transmitting license * * *; or (B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section.''

Option Two maintains the initial Statutory Index reference for 18 U.S.C. 1960(b)(1)(C) offenses in the structuring guideline but provides a cross reference to the main money laundering guideline for conduct that falls under 18 U.S.C. 1960(b)(1)(C).

An issue for comment requests comment regarding whether the proposed cross reference should be broadened so that any structuring offense that involves the intent to promote unlawful activity, knowledge or belief that the funds were the proceeds of unlawful activity, or reckless disregard of the illicit source of the funds would be cross referenced to main money laundering guideline, leaving the structuring guideline to cover purely regulatory offenses.

Proposed Amendment (Part IB):

[Option One:

The Commentary to § 2S1.1 captioned ''Statutory Provisions'' is amended by inserting '', 1960 (but only with respect to unlicensed money transmitting businesses as defined in 18 U.S.C. 1960(b)(1)(C))'' after ''1957''.

The Commentary to § 2S1.3 captioned ''Statutory Provisions'' is amended by inserting ''(but only with respect to unlicensed money transmitting businesses as defined in 18 U.S.C. 1960(b)(1)(A) and (B))'' after ''1960''.

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. 1960 by inserting ''2S1.1,'' before ''2S1.3''.]

[Option Two:

Section 2S1.3(c) is amended by striking ''Reference'' and inserting ''References''; and by adding at the end the following:

''(2) If the offense involved (A) a money transmitting business; and (B) the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity, apply § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity).''.

The Commentary to § 2S1.3 captioned ''Application Notes'' is amended by adding at the end the following:

''4. Cross Reference in Subsection (c)(2).—For purposes of subsection (c)(2), 'money transmitting business' means a money transmitting business that affects interstate or foreign commerce. 'Money transmitting' includes transferring funds on behalf of the public by any means, including transfers within the United States or to foreign locations by wire, check, draft, facsimile, or courier.''.]

*Issue for Comment*: The proposed amendment provides two options for the treatment of offenses under 18 U.S.C. 1960(b)(1)(C). Option One provides for a Statutory Index reference for these offenses to the main money laundering guideline, § 2S1.1, rather than the structuring guideline, § 2S1.3, because such an offense is essentially a money laundering offense. Option Two references this offense to § 2S1.3 in the first instance but provides a cross reference for this offense from § 2S1.3 to § 2S1.1.

The Commission requests comment regarding whether the proposed cross reference to § 2S1.1 in Option Two should be expanded to cover any offense initially referenced to § 2S1.3 in the Statutory Index that involved the intent to promote unlawful activity, knowledge or belief that the funds were the proceeds of unlawful activity, or reckless disregard of the illicit source of the funds. Such an approach effectively would limit the application of § 2S1.3 to regulatory offenses (such as the failure to file transaction reports or structuring transactions to evade reporting requirements) unaccompanied by aggravated, real offense money laundering conduct. To effectuate such cross reference, § 2S1.3 would likely need to be amended as follows: First, the base offense level of 8 in subsection (a)(1) would be maintained for offenses under 31 U.S.C. 5318 and 5318A, but the alternative base offense level in subsection (a)(2) would be amended to level 6 without any increase from the loss table in § 2B1.1. An alternative base offense level of level 6 for a regulatory offense unaccompanied by aggravated conduct is proportionate to other regulatory offenses under the guidelines. Second, the aggravated conduct described in § 2S1.3(b)(1) and the aggravated conduct the absence of which is described in § 2S1.3(b)(3) would form the basis for the new cross reference. Accordingly, the cross reference to the main money laundering guideline would apply if: (1) The defendant knew or believed that the funds were the proceeds of unlawful activity or were intended to promote unlawful activity; [(2) the offense involved bulk cash smuggling;] or (3) the defendant acted with reckless disregard for the illegal source of the funds. The major possible effects of cross referencing offenses involving real offense money laundering conduct to the money laundering guideline are application of the six-level enhancement in § 2S1.1(b)(1) if the defendant knew or believed that the funds were the proceeds of or were intended to promote certain specified crimes, and application of the enhancement in § 2S1.1(b)(3) for sophisticated laundering.

*C. Enhancement in Accessory After the Fact Guideline for Harboring Terrorists*

Currently in § 2X3.1 (Accessory After the Fact) there exists an offense level ''cap'' of level 20 for offenses in which the conduct is limited to harboring a fugitive (and an offense level ''cap'' of level 30 for all other offenses sentenced under the accessory guideline). This proposed amendment makes the lower offense level ''cap'' of level 20 inapplicable to offenses involving the harboring of terrorists because of the relative seriousness of those offenses.

Last year, the Commission promulgated an amendment that referenced 18 U.S.C. 2339 and 2339A to 2X2.1 (Aiding and Abetting) and 2X3.1 (Accessory After the Fact). The offense at 18 U.S.C. 2339 prohibits harboring or concealing any person who the defendant knows, or has reasonable grounds to believe, has committed or is about to commit one of several enumerated offenses. The maximum term of imprisonment is 10 years. The offense at 18 U.S.C. 2339A prohibits the provision of material support or resources to terrorists, knowing or intending that they will be used in the preparation for, or in carrying out, specified crimes (*i.e.*, those designated as predicate offenses for ''federal crimes of terrorism'') or in preparation for, or in carrying out, the concealment or an escape from the commission of any such violation. The maximum term of imprisonment is 15 years. In contrast, a violation of the general harboring statute, 18 U.S.C. 1071, has a maximum term of imprisonment of 5 years.

For consistency and proportionality, the proposed amendment not only makes the ''cap'' of level 20 inapplicable to harboring a person who is convicted under 18 U.S.C. 2339 or 2339A but also to the conduct of harboring an individual who commits a terrorism offense, *i.e.*, one of the offenses listed in 18 U.S.C. 2339 or 2339A or an offense involving or intending to promote a federal crime of terrorism, as defined in 18 U.S.C. 2332b(g)(5).

Proposed Amendment (Part IC):

Section 2X3.1 is amended by striking subsection (a) and inserting the following:

''(a) Base Offense Level:

(1) Six levels lower than the offense level for the underlying offense, except as provided in subdivisions (2) and (3).

(2) The base offense level under this guideline shall be not less than level 4.

(3)(A) The base offense level under this guideline shall be not more than level 30, except as provided in subdivision (B).

(B) In any case in which the conduct is limited to harboring a fugitive, other than a case described in subdivision (C), the base offense level under this guideline shall not be more than level 20.

(C) The limitation in subdivision (B) shall not apply in any case in which (i) the defendant is convicted under 18 U.S.C. 2339 or 2339A; or (ii) the conduct involved (I) harboring a person who committed any offense listed in 18 U.S.C. 2339 or 2339A or who committed any offense involving or intending to promote a federal crime of terrorism, as defined in 18 U.S.C. 2332b(g)(5); or (II) obstructing the investigation of, or committing perjury with respect to, any offense described in subdivision (I). In such a case, the base offense level under this guideline shall be not more than level 30, as provided in subdivision (A).''.

**II. Amendments Required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002**

The following amendments to the guidelines are proposed in response to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188.

*A. Biological AGents and Toxins*

First, the proposed amendment amends the Statutory Index to refer new offenses involving biological agents and toxins to the guideline covering nuclear, biological, and chemical weapons and materials, § 2M6.1. Specifically, the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 amends 18 U.S.C. 175b to redesignate the existing offense and create new offenses as follows:

(1) The existing offense, redesignated at 18 U.S.C. 175b(a)(1), prohibits any restricted person (as defined in subsection (b)) from transporting, receiving, or possessing any biological agent or toxin that the Secretary of Health and Human Services has listed under regulations as a ''select agent''. The maximum term of imprisonment is 10 years. During the last amendment cycle, the Commission referred this offense to § 2M6.1 and provided an alternative base offense level of level 22.

(2) Two new offenses, at 18 U.S.C. 175b(b)(1) and (2), prohibit a person from transferring a select agent listed in regulations by the Secretary of Health and Human Services, or a biological agent or toxin listed in regulations by the Secretary of Agriculture as posing a severe threat to animal or plant health or products, to any person the transferor knows or has reason to believe is not registered to receive or possess such agent or toxin, as required under regulations prescribed by the pertinent Secretary. The maximum term of imprisonment is 5 years.

(3) Two new offenses, at 18 U.S.C. 175b(c)(1) and (2), prohibit any person from knowingly possessing a select agent listed in regulations by the Secretary of Health and Human Services, or a biological agent or toxin listed in regulations by the Secretary of Agriculture as posing a severe threat to animal or plant health or products, if that person has not registered to receive or possess such agent or toxin, as required under regulations prescribed by the pertinent Secretary. The maximum term of imprisonment is 5 years.

Like the existing offense at 18 U.S.C. 175b(a)(1), reference of the new offenses to § 2M6.1 is appropriate. (An amendment to the statutory index is not necessary because there already exists a reference to § 2M6.1 for section 175b offenses.)

Second, the proposed amendment provides for a base offense level of level 22 for the new offenses involving transfer to, or possession of, select biological agents by unregistered persons. This proposed base offense level is the same as the existing base offense level for offenses involving transfer to, or possession of, select biological agents by restricted persons. The proposed amendment exempts these offenses from application of § 2M6.1(b)(1), which provides a two level enhancement for offenses involving select agents, because that factor is incorporated into the proposed base offense levels.

Third, in response to Act, the proposed amendment makes two modifications to the definition of ''select biological agent'' in § 2M6.1. That definition exists in the guideline for purposes of the two level enhancement in § 2M6.1(b)(1) for offenses that involved such an agent. First, in response to section 212 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the amendment proposes to expand the definition of ''select biological agent'' to include biological agents and toxins the Secretary of Agriculture has determined pose a severe threat to animal and plant health and products. Second, section 201 of the Act codified a number of provisions of the Antiterrorism and Effective Death Penalty Act of 1996 in the Public Health Service Act. This codification necessitates a conforming amendment to the definition of ''select agent'' in Application Note 1 of § 2M6.1.

Proposed Amendment (Part IIA)

Section 2M6.1(a)(2) is amended by inserting ''and'' after ''(a)(3),''; and by striking '', and (a)(5)''.

Section 2M6.1(a)(3) is amended by inserting ''or'' after the semicolon.

Section 2M6.1(a)(4) is amended by inserting ''(A)'' after ''if''; and by inserting ''(B) the offense (i) involved a threat to use a nuclear weapon, nuclear material, or nuclear byproduct material, a chemical weapon, a biological agent, toxin, or delivery system, or a weapon of mass destruction; but (ii) did not involve any conduct evidencing an intent or ability to carry out the threat.'' after ''or''.

Section 2M6.1(a) is amended by striking subdivision (5).

Section 2M6.1(b)(1) is amended by striking the comma after ''(a)(2)'' and inserting ''or''; and by striking '', or (a)(5)''.

Section 2M6.1(b)(2) is amended by inserting ''(A)'' after ''(a)(4)''.

Section 2M6.1(b)(3) is amended by inserting ''or'' after ''(a)(3),'' and by striking '', or (a)(5)''.

The Commentary to § 2M6.1 captioned ''Application Notes'' is amended in Note 1 in the paragraph that begins ''Select biological agent'' by inserting ''(A)'' after ''identified''; by inserting ''and maintained'' after ''established''; and by striking ''511(d) of the Antiterrorism and Effective Death Penalty Act, Pub. L. 104–132. *See* 42 CFR part 72'' and inserting ''351A of the Public Health Service Act (42 U.S.C. 262a); or (B) by the Secretary of Agriculture on the list established and maintained pursuant to section 212 of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401)''.

The Commentary to § 2M6.1 captioned ''Application Notes'' is amended in Note 2 by striking ''(a)(3)'' each place it appears and inserting ''(a)(4)(B)''.

*B. Safe Drinking Water Provisions*

This proposed amendment responds to amendments to the Safe Drinking Water Act made by section 403 of the Public Health Security and Bioterrorism Preparedness and Response of 2002. Section 1432(a) of the Safe Drinking Water Act (42 U.S.C. 300i–1(a)) prohibits any person from tampering with a public water system. The statutory maximum penalty was increased from 5 years imprisonment to 20 years imprisonment. This offense is the only offense referenced to § 2Q1.4 (Tampering or Attempted Tampering with Public Water System). Section 1432(b) of such Act (42 U.S.C. 300i–1(b)) prohibits anyone from attempting or threatening to tamper with a public water system. The statutory maximum penalty was increased from 3 years imprisonment to 10 years imprisonment. This offense is the only offense referenced to § 2Q1.5 (Threatened Tampering with Public Water System). For purposes of both offenses, ''tamper'' means ''to introduce a contaminant into a public water system with the intention of harming persons'' or ''to otherwise interfere with the operation of a public water system with the intention of harming persons''.

First, the amendment proposes to consolidate the guidelines covering tampering with consumer products, § 2N1.1, and tampering with a public water system, § 2Q1.4, and to consolidate the guidelines covering threatened tampering with consumer products, § 2N1.2, and threatened tampering with a public water system, § 2Q1.5. Consolidation is proposed

because of the infrequency of occurrence of these offenses and because these guidelines cover very similar conduct; accordingly, the treatment of these offenses under the same guideline would promote proportionality in punishment. The substantive changes resulting from the proposed consolidation would include (1) increased base offense levels for public water system offenses, as discussed in the following paragraph; (2) application to consumer product cases of an existing enhancement in the public water system guidelines if the offense involved substantial disruption of governmental functions or substantial expenditure of funds to respond to the offense; (3) elimination of the existing enhancement in the public water system guideline for ongoing, continuous, or repetitive release of a contaminant into the water supply (elimination is proposed because of definitional difficulties); (4) replacement of the existing enhancement in the public water system guideline if the purpose of the offense was to influence government action or to extort money with an application note inviting an upward departure if a terrorist motive was present and a cross reference to the extortion guideline if the offense involved extortion; and (5) application to public water system offenses of an existing cross reference in the consumer products guideline to the murder guidelines if death resulted. Conforming changes are made to the Statutory Index.

An issue for comment follows regarding whether the proposed consolidations also should effectuate a consolidation of the tampering guidelines with the threatened tampering guidelines, similar to the manner in which offenses involving threats to use nuclear, biological, or chemical weapons are subsumed within the nuclear, biological and chemical guideline, § 2M6.1.

Second, the amendment proposes to increase the base offense level for offenses involving tampering and threatened tampering with a public water system. Under the proposed consolidation, the base offense level for tampering with a public water system would increase from level 18 to level 25, and the six level enhancement for the risk of death or serious bodily injury would be eliminated and replaced with a graduated enhancement for actual bodily injury. Likewise, the base offense level for threatening to tamper with a public water system is proposed to increase from level 10 to level 16. For point of comparison, the existing base offense level for threatening communications under § 2A6.1 is level 12 and for threatened use of nuclear, biological, and chemical weapons under § 2M6.1 is level 20. These substantial increases in the base offense levels are proposed to ensure proportionality with similar offenses and to respond to the increased statutory maximum penalties made by section 403 of the Public Health Security and Bioterrorism Preparedness and Response of 2002.

Third, the amendment proposes to provide an application note in the consolidated guideline that an upward departure (as provided in Application Note 4 of the terrorism adjustment in § 3A1.4 (Terrorism)) may be warranted if the tampering or threatened tampering was accompanied by a terrorist motive. The amendments to the Safe Drinking Water Act made by the Public Health Security and Bioterrorism Preparedness and Response of 2002 contemplated that terrorism may be the motive behind tampering with the public water supply. Section 1431 of the Safe Drinking Water Act (42 U.S.C. 300i–1) was amended to expand the authority of the Administrator of the Environmental Protection Agency to take emergency action to protect the public health if the Administrator determines that ''there is a threatened or potential terrorist attack or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals, which may present an imminent and substantial endangerment'' to the public health. Terrorist motives similarly may be present in offenses involving tampering with consumer products.

One other criminal provision was added by the Act, but it may be appropriate not to list this provision in the Statutory Index at this time. Section 401 of the Public Health Security and Bioterrorism Preparedness and Response of 2002 added section 1433 to the Safe Drinking Water Act. This provision requires local communities to conduct assessments of the vulnerability of their public water systems to terrorist and other intentional acts. Section 1433(a)(6) of the Safe Drinking Water Act (42 U.S.C. 300i–2(a)(6)) provides that any person who acquires information from this assessment and knowingly or recklessly reveals such information to a person other than to specified persons authorized to receive such information shall be imprisoned for not more than one year and/or fined in accordance with the fines applicable to Class A misdemeanors. This provision does not provide a neat fit within the guidelines. Most of the environmental regulatory guidelines cover the failure to report information or the falsification of information, rather than the reckless disclosure of information. Rather than provide a Statutory Index reference at this point, it may be best to assess over the next few years the frequency of prosecution of this offense and what conduct typically occurs in connection with the offense.

Proposed Amendment (Part IIB)

Chapter two, part N is amended in the heading by inserting ''Public Water Systems,'' after ''Involving''.

Chapter two, part N, subpart 1 is amended in the heading by inserting ''Or Public Water Systems'' after ''Products''.

Section 2N1.1 is amended in the heading by inserting ''with Consumer Products'' after ''Tampering''; by inserting ''with Consumer Products'' after ''Tamper''; and by adding ''; Tampering or Attempting to Tamper with a Public Water System'' after ''Injury''.

Section 2N1.1(b) is amended by striking ''Characteristic'' and inserting ''Characteristics''; and by adding at the end the following:

''(2) If the offense resulted in (A) substantial disruption of public, governmental, or business functions or services; or (B) a substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense, increase by 4 levels.''.

The Commentary to § 2N1.1 captioned ''Statutory Provisions'' is amended by inserting ''; 42 U.S.C. 300i–1'' after ''(e)''.

The Commentary to § 2N1.1 captioned ''Application Notes'' is amended by striking Notes 1 and 2 and inserting the following:

''1. Application of Special Instruction.—Subsection (d) applies in any case in which the defendant is convicted of a single count involving (A) the death or permanent, life-threatening, or serious bodily injury of more than one victim; or (B) conduct tantamount to the attempted murder of more than one victim, regardless of whether the offense level is determined under this guideline or under another guideline in Chapter Two (Offense Conduct) by use of a cross reference under subsection (c).

2. Departure Provisions.—

(A) Downward Departure Provision.—The base offense level reflects that offenses covered by this guideline typically pose a risk of death or serious bodily injury to one or more victims; or cause, or are intended to cause, bodily injury. In the unusual case in which the offense did not cause a risk of death or serious bodily injury, and neither

caused nor was intended to cause bodily injury, a downward departure may be warranted.

(B) Upward Departure Provisions.—If the offense posed a substantial risk of death or serious bodily injury to numerous victims, caused extreme psychological injury, or caused substantial property damage or monetary loss, an upward departure may be warranted.

If the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, an upward departure may be warranted. *See* Application Note 4 of § 3A1.4 (Terrorism).''.

Section 2N1.2 is amended in the heading by adding at the end ''; Threatening to Tamper with a Public Water System''.

Section 2N1.2 is amended by redesignating subsection (b) as subsection (c); and by inserting after subsection (a) the following:

''(b) Specific Offense Characteristic

(1) If the offense resulted in (A) substantial disruption of public, governmental, or business functions or services; or (B) a substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense, increase by 4 levels.''.

The Commentary to § 2N1.2 captioned ''Statutory Provisions'' is amended by inserting ''; 42 U.S.C. 300i–1'' after ''(d)''.

The Commentary to § 2N1.2 captioned ''Application Note'' is amended in Note 1 by inserting ''Upward Departure Provisions.—'' before ''If''; and by adding at the end the following paragraph:

''If the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, an upward departure may be warranted. *See* Application Note 4 of § 3A1.4 (Terrorism).''.

Chapter two, part Q is amended by striking §§ 2Q1.4 and 2Q1.5 in their entirety.

Appendix A (Statutory Index) is amended in the line referenced to 42 U.S.C. 300i–1 by striking ''2Q1.4, 2Q1.5'' and inserting ''2N1.1, 2N1.2''.

*Issue for Comment:* For the reasons stated in the foregoing synopsis, this amendment proposes to consolidate the guidelines covering tampering with consumer products, § 2N1.1, and tampering with a public water system, § 2Q1.4, and to consolidate the guidelines covering threatened tampering with consumer products, § 2N1.2, and threatened tampering with a public water system, § 2Q1.5. The Commission requests comment regarding whether the Commission should effectuate the consolidation of these four guidelines into one guideline covering both tampering and threatened tampering cases. Such an approach would be consistent with the guideline covering nuclear, biological, and chemical weapons and materials, § 2M61, which covers both offenses involving such weapons and materials as well as offenses involving the threatened use of such weapons and materials.

*C. Animal Enterprise Terrorism*

This proposed amendment adds an invited upward departure provision in the fraud, theft, and property destruction guideline, § 2B1.1, to account for aggravating conduct that may occur in connection with an animal enterprise offense under 18 U.S.C. 43.

Specifically, section 336 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 increased the penalty provisions of 18 U.S.C. 43, which makes it an offense to travel in interstate or foreign commerce, or to use or cause to be used the mail or any facility in interstate or foreign commerce for the purpose of causing physical disruption to the functioning of an animal enterprise, and to intentionally damage or cause the loss of any property (including animals and records) used by the animal enterprise, or to conspire to do so.

Before amendment by the Act, the penalty structure was (1) not more than one year imprisonment for causing economic damage exceeding $10,000; (2) not more than 10 years' imprisonment for causing serious bodily injury in the course of such an offense; and (3) life or any term of years of imprisonment if death resulted. As a result of the Act, the penalty structure now is (1) not more than 6 months imprisonment for causing economic damage not exceeding $10,000 (18 U.S.C. 43(b)(1)); (2) not more than 3 years' imprisonment for causing economic damage exceeding $10,000 (18 U.S.C. 43(b)(2)); (3) not more than 20 years' imprisonment for causing serious bodily injury in the course of such an offense (18 U.S.C. 43(b)(3)); and (4) life or any term of years of imprisonment if death resulted (18 U.S.C. 43(b)(4)).

This offense currently is referenced only to § 2B1.1. While reference only to that guideline generally continues to be appropriate for violations under 18 U.S.C. 43, that guideline fails to account for aggravated situations in which serious bodily injury or death results. Although the property damage guideline contains an enhancement for the risk of serious bodily injury or death, there is no enhancement or cross reference in that guideline that would provide a higher offense level if actual serious bodily injury or death resulted. Given the highly unusual occurrence of death or serious bodily injury in property damage cases generally and the infrequency of these specific offenses, the proposed amendment adds an invited upward departure provision in Application Note 15(A)(ii) of § 2B1.1 if death or serious bodily injury occurs in an offense under 18 U.S.C. 43, or if substantial or significant scientific information or research is lost as part of such an offense.

Proposed Amendment (Part IIC)

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in subdivision (A)(ii) of Note 15 by adding at the end the following:

''An upward departure would be warranted, for example, in a case involving animal enterprise terrorism under 18 U.S.C. 43, if, in the course of the offense, serious bodily injury or death resulted, or substantial scientific research or information were destroyed.''.

**III. Amendments Required by the Terrorist Bombings**

*Convention Implementation Act of 2002*

The proposed amendment amends the Statutory Index (and the Statutory Provisions of the pertinent chapter two guidelines) to add three new offenses created by the Terrorist Bombings Convention Implementation Act of 2002, Pub. L. 107–197, and provides conforming amendments within a number of chapter two guidelines to more fully incorporate the new offenses into the offense guidelines.

First, section 102 of the Act created a new offense at 18 U.S.C. 2332f, which provides in subsection (a) that ''whoever unlawfully delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility (A) with the intent to cause death or serious bodily injury, or (B) with the intent to cause extensive destruction of such a place, facility, or system, where such destruction results in or is likely to result in major economic loss'' and in subsection (b) that ''whoever attempts or conspires to commit [such] an offense'' shall be punished as provided under 18 U.S.C. 2332a(a). Section 2332a offenses currently are referenced to §§ 2K1.4 (the arson and property damage by use of explosives guideline) and 2M6.1 (the

guideline covering nuclear, biological, and chemical weapons). The proposed amendment refers this new offense to those guidelines as well. In addition, the proposed amendment amends the alternative base offense levels in the arson guideline § 2K1.4(a)(1) so that the base offense level of level 24 applies to targets of 18 U.S.C. 2332f offenses, namely, state or government facilities, infrastructure facilities, public transportation systems and ''places of public use''.

Second, section 202 of the Act created a new offense at 18 U.S.C. 2339C, which provides in subsection (a)(1) that ''whoever, in a circumstance described in subsection (c) (*i.e.*, in the United States or outside of the United States by a national of the United States or an entity organized under the laws of the United States), by any means directly or indirectly, unlawfully and willfully provides or collects funds, with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out (A) an act which constitutes an offense, within the scope of certain international treaties, as implemented by the United States, or (B) any other act intended to cause death or serious bodily injury to a civilian, or to any person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing an act'', and in subsection (b) that whoever attempts or conspires to commit such an offense, shall be punished for a maximum term of imprisonment of 20 years.

The proposed amendment refers the new offense at 18 U.S.C. 2339C(1)(A) to 2X2.1 (Aiding and Abetting). The new offense involves providing or collecting funds knowing or intending that the funds would be used to carry out any of a number of specified offenses. Accordingly, the proposed amendment treats these offenses in the same manner as 18 U.S.C. 2339A offenses, which aid and abet a predicate offense listed in the statute. An amendment is proposed to be made in § 2X2.1 to conform the definition of the ''underlying offense'' that is aided and abetted.

The proposed amendment refers the new offense at 18 U.S.C. 2339C(a)(1)(B) to 2M5.3 (Providing Material Support or Resources to Designated Foreign Terrorist Organizations). Reference to § 2M5.3 is appropriate because this offense involves generally providing or collecting funds knowing or intending that the funds would be used to carry out not a specified offense but rather an act which by its nature is a terrorist act (because it is meant to intimidate a civilian population or to compel a government or international organization to do something or to refrain from doing something). Therefore, the essence of the offense is the provision of material support to terrorists, which is appropriately referenced to § 2M5.3. The proposed amendment expands § 2M5.3 to include not only designated foreign terrorist organizations but other terrorists as well.

Third, 18 U.S.C. 2339C(c)(2) makes it unlawful in the United States, or outside the United States by a national of the United States or an entity organized under the laws of the United States, to knowingly conceal or disguise the nature, location, source, ownership, or control of any material support, resources, or funds knowing or intending that they were: (A) Provided in violation of 18 U.S.C. 2339B, or (B) provided or collected in violation of 18 U.S.C. 2339C(a)(1) or (2). The maximum term of imprisonment for a violation of subsection 18 U.S.C. 2339C(c) is 10 years.

The proposed amendment references offenses under 18 U.S.C. 2339C(c)(2)(A) to 2X3.1 (Accessory After the Fact), since the essence of such an offense is the concealment of resources that were known or intended to have been provided in violation of another substantive offense, namely, 18 U.S.C. 2339B. An amendment is proposed to be made in § 2X3.1 to conform the definition of the ''underlying offense'' to which the defendant is an accessory.

The proposed amendment references offenses under 18 U.S.C. 2339C(c)(2)(B) to 2M5.3 and 2X3.1. To the extent the offense involved knowingly concealing or disguising the nature, location, source, ownership, or control of any material support, resources, or funds knowing or intending that they were provided or collected in violation of 18 U.S.C. 2339C(a)(1), the offense should be sentenced under 2X3.1. This is because the concealment occurs with respect to material support the defendant knows is to be used, in full or in part, in order to carry out an act which constitutes any number of specified offenses. To the extent the offense involved knowingly concealing or disguising the nature, location, source, ownership, or control of any material support, resources, or funds knowing or intending that they were provided or collected in violation of 18 U.S.C. 2339C(a)(2), the offense should be sentenced under 2M5.3. This is because the concealment occurs with respect to material support the defendant knows is to be used, in full or in part, in order to carry out not a specified offense but rather an act which by its nature is a terrorist act (because it is meant to intimidate a civilian population or to compel a government or international organization to do something or to refrain from doing something). A conforming amendment is proposed to be added to the Statutory Provisions of §§ 2M5.3 and 2X3.1.

Proposed Amendment (Part III)

Section 2K1.4(a)(1)(B) is amended by striking ''or a ferry'' and inserting ''a ferry, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use''.

Section 2K1.4(a) is amended by striking subdivision (2) and inserting the following:

''(2) 20, if the offense (A) created a substantial risk of death or serious bodily injury to any person other than a participant in the offense; (B) involved the destruction or attempted destruction of a structure other than (i) a dwelling, or (ii) an airport, an aircraft, a mass transportation facility, a mass transportation vehicle, a ferry, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use; or (C) endangered (i) a dwelling, (ii) a structure other than a dwelling, or (iii) an airport, an aircraft, a mass transportation facility, a mass transportation vehicle, a ferry, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use; or''.

The Commentary to § 2K1.4 captioned ''Statutory Provisions'' is amended by inserting '', 2332f'' after ''2332a''.

The Commentary to § 2K1.4 captioned ''Application Notes'' is amended in Note 1 by adding at the end the following new paragraph:

'' 'State or government facility', 'infrastructure facility', 'place of public use', and 'public transportation system' have the meaning given those terms in 18 U.S.C. 2332f(e)(3), (5), (6), and (7), respectively.''.

Section 2M5.3 is amended in the heading by adding ''or For a Terrorist Purpose'' after ''Organizations''.

The Commentary to § 2M5.3 captioned ''Statutory Provisions'' is amended by inserting '', 2339C(a)(1)(B), (c)(2)(B) (but only with respect to funds known or intended to have been provided or collected in violation of 18 U.S.C. 2339C(a)(1)(B))'' after ''2339B''.

The Commentary to § 2X2.1 captioned ''Statutory Provisions'' is amended by inserting '', 2339C(a)(1)(A)'' after ''2339A''.

The Commentary to § 2X2.1 captioned ''Application Note'' is amended in Note 1 by inserting ''or 2339C(a)(1)(A)'' after ''2339A''; and by inserting ''or provided or collected funds for'' after ''supported''.

The Commentary to § 2X3.1 captioned ''Statutory Provisions'' is amended by inserting '', 2339C(c)(2)(A), (c)(2)(B) (but only with respect to funds known or intended to have been provided or collected in violation of 18 U.S.C. 2339C(a)(1)(A))'' after ''2339A''.

The Commentary to § 2X3.1 captioned ''Application Notes'' is amended in Note 1 by inserting '', or in the case of a violation of 18 U.S.C. 2339C(c)(2)(A), 'underlying offense' means the violation of 18 U.S.C. 2339B with respect to which the material support, resources, or funds were concealed or disguised'' after ''offense)''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 2332d the following new line:

''18 U.S.C. 2332f 2K1.4, 2M6.1''; and

by inserting after the line referenced to 18 U.S.C. 2339B the following new lines:

''18 U.S.C. 2339C(a)(1)(A) 2X2.1
18 U.S.C. 2339C(a)(1)(B) 2M5.3
18 U.S.C. 2339C(c)(2)(A) 2X3.1
18 U.S.C. 2339C(c)(2)(B) 2M5.3, 2X3.1''.

**IV. Miscellaneous Amendments**

The proposed amendment amends § 2K1.3 to add an additional base offense level of 18 for certain offenses committed under 18 U.S.C. 842(p)(2). Section 842(p)(2) criminalizes knowingly or intentionally facilitating Federal crimes of violence by teaching or demonstrating the making or use of an explosive, destructive device, or weapon of mass destruction. It also criminalizes the distribution ''by any means information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive, device, or weapon of mass destruction'' with the intent or knowing that the teaching, demonstration, or information will be used for or in furtherance of, an activity that constitutes a Federal crime of violence. The statutory maximum term of imprisonment is 20 years.

The statute is referenced in the Statutory Index to §§ 2K1.3 (covering prohibited transactions involving explosive materials) and 2M6.1 (covering weapons of mass destruction). The applicable base offense levels at § 2M6.1 are levels 42 and 28. The applicable offense level at § 2K1.3 currently is base offense level 12. Section 2K1.3 has alternative base offense levels predicated upon recidivism. An alternative base offense level of 24 applies to a defendant with two prior felony convictions of a crime of violence or a controlled substance offense, and an alternative base offense level of 20 applies to a defendant with one prior felony conviction of a crime of violence or a controlled substance offense. The base offense level of 12 appears to be disproportionately low compared with other 20 year offenses, and compared with the treatment of 18 U.S.C. 842(p)(2) offenses under § 2M6.1. This is especially true in light of the definition of ''destructive device'', defined at 18 U.S.C. 921(a)(4) to include ''(A) any explosive, incendiary, or poison gas (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses * * * .''

The proposed amendment also makes the enhancement at § 2K1.3(b)(3) and the cross reference at § 2K1.3(c)(1) applicable to 18 U.S.C. 842(p)(2) offenses. Currently, in cases in which the defendant used or possessed any explosive material in connection with another felony offense or possessed or transferred any explosive material with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense, subsection (b)(3) provides a four level enhancement and a minimum offense level of level 18, and, if the resulting offense level is greater, the cross reference at subsection (c)(1) references such cases either to § 2X1.1 (Attempt, Solicitation, or Conspiracy), or to the most analogous homicide guideline if death resulted. Application of both subsection (b)(3) and subsection (c)(1) to 18 U.S.C. 842(p)(2) offenses is appropriate because of the defendant's knowledge and/or intent that the defendant's teaching would be used to carry out another felony.

Finally, the proposed amendment makes minor technical changes to the Statutory Provisions of § 2M6.1.

Proposed Amendment (Part IV)

Section 2K1.3(a) is amended by redesignating subdivisions (3) and (4) as subdivisions (4) and (5), respectively; and by inserting after subdivision (2) the following:

''(3) 18, if the defendant was convicted under 18 U.S.C. 842(p)(2);''.

Section 2K1.3(b)(3) is amended by inserting ''(A) was convicted under 18 U.S.C. 842(p)(2); or (B)'' after ''defendant''.

Section 2K1.3(c)(1) is amended by inserting ''(A) was convicted under 18 U.S.C. 842(p)(2); or (B)'' after ''defendant''.

The Commentary to § 2K1.3 captioned ''Application Notes'' is amended in Note 3 by striking ''(3)'' and inserting ''(4)''.

The Commentary to § 2K1.3 captioned ''Application Notes'' is amended in the second paragraph of Note 9 by striking ''(3)'' and inserting ''(4)''.

The Commentary to § 2M6.1 captioned ''Statutory Provisions'' is amended by inserting ''(only with respect to weapons of mass destruction as defined in 18 U.S.C. 2332a(c)(2)(B), (C), and (D), but including any biological agent, toxin, or vector),'' after ''842(p)(2)''.

*2. Immigration*

*Synopsis of Amendment:* This proposed amendment addresses various application issues that have come to the Commission's attention through Helpline calls, training sessions, and case law. First, two options are provided to address felony drug trafficking offenses that receive a sentence other than imprisonment. Currently, there is some confusion regarding whether such offenses should receive a 16-, 12-, or 8-level enhancement. Under the current guideline (as well as both proposed options), drug trafficking offenses for which the term of imprisonment imposed was more than 13 months receive a 16-level enhancement. Under Option One, all other felony drug trafficking offenses will receive a 12-level enhancement. Under Option Two, felony drug trafficking offenses that receive a term of imprisonment of less than 13 months will receive a 12-level enhancement, and felony drug trafficking offenses that receive a sentence other than imprisonment (*e.g.*, probation or a fine) will receive an 8-level enhancement.

This amendment also makes the following commentary changes: Adds definitions of ''alien smuggling'', ''child pornography'', and ''human trafficking'' offenses; adds commentary to clarify how revocations of probation, parole, or supervised release should be treated for purposes of determining the term of imprisonment imposed; adds language prohibiting the use of juvenile adjudications under this guideline; and amends the definition of ''aggravated felony'' to exclude offenses of simple possession of a controlled substance.

Proposed Amendment

Section 2L1.2(b)(1)(A)(i) is amended by inserting ''was a term of imprisonment that'' after ''imposed''.

[Option One:

Section 2L1.2(b)(1) is amended by striking subdivision (B) and inserting the following:

''(B) a conviction for a felony drug trafficking offense other than a felony drug trafficking offense covered under subdivision (A), increase by 12 levels;''.]

[Option Two:

Section 2L1.2(b)(1)(B) is amended by inserting ''a term of imprisonment of'' after ''imposed was''.]

The Commentary to § 2L1.2 captioned ''Application Notes'' is amended in subdivision (A) of Note 1 by striking subdivision (iv) and inserting the following:

''(iv) 'Term of imprisonment'.—

(I) Definition.—'Term of imprisonment' means the sentence of incarceration originally imposed.

(II) Probated, Suspended, Deferred, or Stayed Sentences.—If all or any part of a term of imprisonment was probated, suspended, deferred, or stayed, 'sentence imposed' refers only to the portion that was not probated, suspended, deferred, or stayed. A sentence in which all of a term of imprisonment was suspended and a term of probation was imposed is not a term of imprisonment for purposes of this guideline. [Option Two: Accordingly, for purposes of subsections (b)(1)(A) and (B), the sentence imposed for a felony drug trafficking offense must be a sentence of incarceration. Any felony drug trafficking sentence other than a sentence of incarceration (*e.g.*, probation or a fine) shall be counted under subsection (b)(1)(C).]

(III) Revocations of Probation or Parole.—For purposes of determining the term of imprisonment in a case involving a revocation of probation, parole, or supervised release add the term of imprisonment given upon revocation to any term of imprisonment originally imposed.

(v) Subsection (b)(1) does not apply to a conviction for an offense committed prior to age of eighteen years unless it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.*, a Federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).''.

The Commentary to § 2L1.2 captioned ''Application Notes'' is amended in Note 1 by striking subdivision (B) and inserting the following:

''(B) Definitions.—For purposes of subsection (b)(1):

(i) 'Alien smuggling offense committed for profit' means (I) an offense described in section 1324(a) of title 8, United States Code, that was committed for profit, regardless of whether the indictment charged that the offense was committed for profit; or (II) an offense under state law consisting of conduct that would have been an offense under 8 U.S.C. 1324(a) that was committed for profit, regardless of whether the indictment charged that the offense was committed for profit, if the offense had occurred within the special maritime and territorial jurisdiction of the United States. 'Committed for profit' means the offense was committed for payment or expectation of payment.

(ii) 'Child pornography offense' means (I) an offense described in section 2251, 2251A, 2252[, or 2260] of title 18, United States Code; or (II) an offense under state law consisting of conduct that would have been an offense under any such section if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(iii) 'Crime of violence' means any of the following: murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses (including sexual abuse of a minor), robbery, arson, extortion, extortionate extension of credit, burglary of a dwelling, or any offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another.

(iv) 'Drug trafficking offense' means an offense under federal, state, or local law that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

(v) 'Felony' means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.

(vi) 'Firearms offense' means any of the following:

(I) An offense under federal, state, or local law that prohibits the importation, distribution, transportation, or trafficking of a firearm described in 18 U.S.C. 921, or of an explosive material as defined in 18 U.S.C. 841(c).

(II) An offense under federal, state, or local law that prohibits the possession of a firearm described in 26 U.S.C. 5845(a), or of an explosive material as defined in 18 U.S.C. 841(c).

(III) A violation of 18 U.S.C. 844(h).

(IV) A violation of 18 U.S.C. 924(c).

(V) A violation of 18 U.S.C. 929(a).

(VI) An offense under state law consisting of conduct that would have been an offense under subdivision (III), (IV), or (V) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(vii) 'Human trafficking offense' means (I) any offense described in section 1581, 1582, 1583, 1584, 1585, 1588 [, 1589, 1590, or 1591] of title 18, United States Code; or (II) an offense under state law consisting of conduct that would have been an offense under any such section if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(viii) 'Terrorism offense' means any offense involving, or intending to promote, a 'federal crime of terrorism', as that term is defined in 18 U.S.C. 2332b(g)(5).''.

The Commentary to § 2L1.2 captioned ''Application Notes'' is amended by striking Note 2 and inserting the following:

''2. Application of Subsection (b)(1)(C).—

(A) Definitions.—For purposes of subsection (b)(1)(C), 'aggravated felony' (i) has the meaning given that term in 8 U.S.C. 1101(a)(43), without regard to the date of conviction of the aggravated felony, and (ii) does not include the offense of possession of a controlled substance without an intent to distribute that controlled substance.

(B) In General.—The offense level shall be increased under subsection (b)(1)(C) for any aggravated felony (as defined in subdivision (A)), with respect to which the offense level is not increased under subsections (b)(1)(A) or (B) [(*e.g.*, a felony drug trafficking offense for which the sentence imposed was a sentence other than imprisonment)].''.

The Commentary to § 2L1.2 captioned ''Application Notes'' is amended in Note 3(B) by striking ''(i) were separated by an intervening arrest; (ii) did not occur on the same occasion; (iii) were not part of a single common scheme or plan; or (iv) were not consolidated for trial or sentencing'' and inserting ''are not considered related cases as defined in Application Note 3 of § 4A1.2 (Definitions and Instructions for Computing Criminal History)''.

*3. § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment)*

*Synopsis of Proposed Amendment:* This is a three part proposed amendment that addresses a number of issues in § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an

Undischarged Term of Imprisonment). First, the amendment amends § 5G1.3(b) to allow the court to adjust the length of the sentence for any prior period of imprisonment that ''resulted from offenses that have been fully taken into account in the determination of the offense level for the instant offense''. Currently, this subsection only applies to undischarged terms of imprisonment for any such prior period of imprisonment. As a conforming amendment, the proposed amendment deletes the downward departure provision in Application Note 7 for prior discharged terms of imprisonment.

In addition to adding discharged terms of imprisonment to the operation of subsection (b), this amendment proposes two options to clarify the rule for application of subsection (b) to a prior term of imprisonment. There has been litigation regarding what ''fully taken into account'' means. *See United States* v. *Garcia-Hernandez,* 237 F.3d 105, 109 (2d Cir. 2000) (determining that a prior offense is ''fully taken into account'' if and only if the Guidelines provide for sentencing as if both the offense of conviction and the separate offense had been prosecuted in a single proceeding); *United States* v. *Caraballo,* 200 F.3d 20, 25 (1st Cir. 1999) (holding that the term ''fuly'' cannot be read as synonymous with the term ''relevant conduct'' because this would be over-inclusive). Compare *United States* v. *Fuentes,* 107 F.3d 1515, 1524 (11th Cir. 1997) (finding that a prior offense has been ''fully taken into account'' when the prior offense is part of the same course of conduct, common scheme, or plan). Option One makes clear that subsection (b) shall apply only to prior offenses that are relevant conduct to the instant offense of conviction and that resulted in an increase in the offense level for the instant offense. Option Two makes clear that subsection (b) shall apply in cases in which the conduct of the prior offense is (1) Incorporated in the base offense level for the instant offense, (2) covered by a specific offense characteristic in the guideline for the instant offense, or (3) covered by a chapter three adjustment applicable to the instant offense. Option Two does not require that the chapter two or three offense level necessarily be increased by the prior offense.

This proposed amendment provides two options to address how this guideline applies in cases in which an instant offense committed while the defendant is on federal or state probation, parole, or supervised release, and has had such probation, parole, or supervised release revoked. In doing so, this amendment resolves a circuit conflict on the issue. The majority of circuits to consider the issue have held that imposition of consecutive sentence is required by Application Note 6. See, *e.g.*, *United States* v. *Smith,* 282 F.3d 1045, 1048 (8th Cir. 2002) (stating that Application Note 6 requires consecutive sentences); *United States* v. *Alexander,* 100 F.3d 24, 27 (5th Cir. 1996) (same); *United States* v. *Gondek,* 65 F.3d 1, 3 (1st Cir. 1995) (same); *United States* v. *Bernard,* 48 F.3d 427, 431–32 (9th Cir. 1995) (same). *See* also *United States* v. *Campbell,* No. 01–5661, 2002 U.S. App. LEXIS 23024 (6th Cir., Nov. 6, 2002) (affirming imposition of consecutive sentence as consistent with guideline commentary); *United States* v. *Walker*, 98 F.3d 944, 945 (7th Cir. 1996) (noting a strong presumption in favor of consecutive sentence). Three circuits, however, have disagreed. The second, third, and tenth circuits held that the word ''should'' in Application Note 6 renders the commentary non-binding. *See United States* v. *Maria,* 186 F.3d 65, 70–73 (2d Cir. 1999); *United States* v. *Swan,* 275 F.3d 272, 279–83 (3d Cir. 2002); *United States* v. *Tisdale,* 248 F.3d 964, 977–79 (10th Cir. 2001). Under Option One A, the sentence for the instant offense shall be imposed to run consecutively to the undischarged term of imprisonment. Option One B maintains the current language in Application Note 6 which provides that the sentence for the instant offense should run consecutively to the undischarged term of imprisonment.

Finally, an issue for comment is provided regarding whether the Commission should resolve a circuit split with respect to § 5G1.3(c) and whether the sentencing court may grant ''credit'' for time served in state prison for an undischarged sentence, in addition to running the federal sentence concurrently with the remaining portion of the defendant's preexisting state sentence. *Compare Ruggiano* v. *Reish,* 307 F.3d 121 (3d Cir. 2002) (federal sentencing court may grant such credit), with *United States* v. *Fermin,* 252 F.3d 102 (2d Cir. 2001) (court may not grant such credit).

Proposed Amendment

Option One:

Section 5G1.3 is amended in the heading by striking ''on a Defendant Subject to an'' and inserting ''in Cases Involving an''; and by inserting ''or Discharged'' after ''Undischarged''.

[Option One A:

Section 5G1.3(a) is amended by inserting ''(1)'' before ''serving''; and by striking ''imprisonment,'' and inserting ''imprisonment; or (2) on federal or state probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked,''.]

Section 5G1.3 is amended by striking subsection (b) and inserting the following:

''(b) If subsection (a) does not apply, and a term of imprisonment resulted from another offense that (1) is relevant conduct to the instant offense of conviction under the provisions of subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct); and (2) was the basis for an increase in the offense level for the instant offense under chapter two (Offense Conduct) or chapter three (Adjustments), the sentence for the instant offense shall be imposed as follows:

(A) If the term of imprisonment for that other offense is undischarged—

(i) The court [may][shall] adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment if the court determines that such period of imprisonment will not be credited to the federal sentence by the Bureau of Prisons; and

(ii) The sentence for the instant offense shall be imposed to run concurrently to the undischarged term of imprisonment.

(B) If the term of imprisonment is discharged, the court [may][shall] adjust the sentence for any period of imprisonment already served.''.

[Option One A:

The Commentary to § 5G1.3 captioned ''Application Notes'' is amended by striking Note 1 and inserting the following:

''1. Revocations under Subsection (a).—In a case in which the defendant was on federal or state probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked, the sentence for the instant offense shall be imposed to run consecutively to the term imposed for the violation of probation, parole, or supervised release in order to provide an incremental penalty for the violation of probation, parole, or supervised release. *See* subsection (f) of § 7B1.3 (Revocation of Probation or Supervised Release).''.]

The Commentary to § 5G1.3 captioned ''Application Notes'' is amended by striking Note 2 and inserting the following:

''2. Subsection (b) Cases.—

(A) In General.—Subsection (b) applies in cases in which (i) all of the prior offense is relevant conduct to the instant offense under the provisions of subsection (a)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct); and (ii)

such prior offense has resulted in an increase in the chapter two or chapter three offense level for the instant offense. Cases in which only part of the prior offense is relevant conduct to the instant offense are covered under subsection (c).

(B) Inapplicability of Subsection (b).—Subsection (b) does not apply in cases in which the prior offense increased the chapter two or chapter three offense level for the instant offense, but was not relevant conduct to the instant offense under § 1B1.3(a)(1), (a)(2), or (a)(3) (*e.g.*, the prior offense is an aggravated felony for which the defendant received an increase under § 2L1.2 (Unlawfully Entering or Remaining in the United States), or the prior offense was a crime of violence for which the defendant received an increased base offense level under § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition)).

(C) Imposition of Sentence.—If subsection (b) applies, the court should note on the judgment order (i) the amount of time by which the sentence is being adjusted; (ii) the undischarged or discharged term of imprisonment for which the adjustment is being given; and (iii) that the sentence imposed is a 'sentence reduction pursuant to § 5G1.3(b), Application Note 2(C), for a period of imprisonment which will not be credited by the Bureau of Prisons.'

(D) Examples.—The following are examples in which subsection (b) applies and an adjustment to the sentence is appropriate:

(i) The defendant is convicted of a federal offense charging the sale of 40 grams of cocaine. Under § 1B1.3, the defendant is held accountable for the sale of an additional 15 grams of cocaine, an offense for which the defendant has been convicted and sentenced in state court. The defendant received a nine-month sentence of imprisonment for the state offense and has served six months on that sentence at the time of sentencing on the instant federal offense. The guideline range applicable to the defendant is 12–18 months (chapter two offense level of 16 for sale of 55 grams of cocaine; 3-level reduction for acceptance of responsibility; final offense level of 13; Criminal History Category I).

The court determines that a sentence of 13 months provides the appropriate total punishment. Because the defendant already has served six months on the related state charge as of the date of sentencing on the instant federal offense, a sentence of seven months, imposed to run concurrently with the three months remaining on the defendant's state sentence, achieves this result.

(ii) The defendant is convicted of a federal offense charging the sale of 150 grams of cocaine. Under § 1B1.3, the defendant is held accountable for the sale of an additional 50 grams of cocaine, an offense for which the defendant has been convicted and sentenced in state court. The state term was discharged after the defendant served 6 months of imprisonment. The guideline range applicable to the defendant is 24–30 months (chapter two offense level of 20 for sale of 200 grams of cocaine; 3-level reduction for acceptance of responsibility; final offense level of 17; Criminal History Category I). The court determines that a sentence of 24 months provides the appropriate total punishment. Because the defendant already has served six months on the discharged state term, a sentence of 18 months on the instant offense achieves this result.''.

[Option One B would maintain current Application Note 6 of the Commentary to § 5G1.3 as follows:

''6. Revocations. If the defendant was on federal or state probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked, the sentence for the instant offense should be imposed to run consecutively to the term imposed for the violation of probation, parole, or supervised release in order to provide an incremental penalty for the violation of probation, parole, or supervised release. *See* § 7B1.3 (Revocation of Probation or Supervised Release) (setting forth a policy that any imprisonment penalty imposed for violating probation or supervised release should be consecutive to any sentence of imprisonment being served or subsequently imposed).]''.

Section 5G1.3 captioned ''Application Notes'' is amended by striking Note 7.

Option Two:

Section 5G1.3 is amended in the heading by striking ''on a Defendant Subject to an'' and inserting ''in Cases Involving an''; and by inserting ''or Discharged'' after ''Undischarged''.

[Option Two A:

Section 5G1.3(a) is amended by inserting ''(1)'' before ''serving''; and by striking ''imprisonment,'' and inserting ''imprisonment; or (2) on federal or state probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked,''.]

Section 5G1.3 is amended by striking subsection (b) and inserting the following:

''(b) If subsection (a) does not apply, and a term of imprisonment resulted from another offense that is covered by the applicable chapter two guideline or an applicable chapter three adjustment for the instant offense of conviction, the sentence for the instant offense shall be imposed as follows:

(1) If the term of imprisonment for that other offense is undischarged—

(A) The court [may][shall] adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment if the court determines that such period of imprisonment will not be credited to the federal sentence by the Bureau of Prisons; and

(B) The sentence for the instant offense shall be imposed to run concurrently to the undischarged term of imprisonment.

(2) If the term of imprisonment is discharged, the court [may][shall] adjust the sentence for any period of imprisonment already served.''.

[Option Two A:

The Commentary to § 5G1.3 captioned ''Application Notes'' is amended by striking Note 1 and inserting the following:

''1. Revocations under Subsection (a).—In a case in which the defendant was on federal or state probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked, the sentence for the instant offense shall be imposed to run consecutively to the term imposed for the violation of probation, parole, or supervised release in order to provide an incremental penalty for the violation of probation, parole, or supervised release. *See* subsection (f) of § 7B1.3 (Revocation of Probation or Supervised Release).''.]

The Commentary to § 5G1.3 captioned ''Application Notes'' is amended by striking Note 2 and inserting the following:

''2. Subsection (b) Cases.—

(A) In General.—Subsection (b) applies in cases in which the conduct comprising all of the prior offense is covered by the applicable chapter two guideline or an applicable chapter three adjustment for the instant offense of conviction. Such conduct is covered by the chapter two guideline or a chapter three adjustment if the conduct is (i) incorporated in the base offense level for the instant offense of conviction; (ii) covered by a specific offense characteristic in the guideline for the instant offense of conviction; or (iii) covered by a chapter three adjustment applicable to the instant offense of conviction. Cases in which only part of

the prior offense is covered are addressed under subsection (c).

(B) Inapplicability of Subsection (b).—Subsection (b) does not apply in cases in which the base offense level or the specific offense characteristic in the applicable chapter two offense guideline is an enhancement for a prior conviction (*e.g.*, the prior offense is an aggravated felony for which the defendant received an increase under § 2L1.2 (Unlawfully Entering or Remaining in the United States), or the prior offense was a crime of violence for which the defendant received an increased base offense level under § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition)).

(C) Imposition of Sentence.—If subsection (b) applies, the court should note on the judgment order (i) the amount of time by which the sentence is being adjusted; (ii) the undischarged or discharged term of imprisonment for which the adjustment is being given; and (iii) that the sentence imposed is a 'sentence reduction pursuant to § 5G1.3(b), Application Note 2(C), for a period of imprisonment which will not be credited by the Bureau of Prisons.'

(D) Examples.—The following are examples in which subsection (b) applies and an adjustment to the sentence is appropriate:

(i) The defendant is convicted of a Federal offense charging the sale of 30 grams of cocaine. Under § 1B1.3, the defendant is held accountable for the sale of an additional 15 grams of cocaine, an offense for which the defendant has been convicted and sentenced in State court. The defendant received a nine-month sentence of imprisonment for the State offense and has served six months on that sentence at the time of sentencing on the instant Federal offense. The guideline range applicable to the defendant is 10–16 months (chapter two offense level of 14 for sale of 45 grams of cocaine; 2 level reduction for acceptance of responsibility; final offense level of 12; Criminal History Category I). The court determines that a sentence of 13 months provides the appropriate total punishment. Because the defendant already has served six months on the related State charge as of the date of sentencing on the instant Federal offense, a sentence of seven months, imposed to run concurrently with the three months remaining on the defendant's State sentence, achieves this result.

(ii) The defendant is convicted of a Federal offense charging the sale of 150 grams of cocaine. Under § 1B1.3, the defendant is held accountable for the sale of an additional 50 grams of cocaine, an offense for which the defendant has been convicted and sentenced in State court. The State term was discharged after the defendant served 6 months of imprisonment. The guideline range applicable to the defendant is 24–30 months (chapter two offense level of 20 for sale of 200 grams of cocaine; 3-level reduction for acceptance of responsibility; final offense level of 17; Criminal History Category I). The court determines that a sentence of 24 months provides the appropriate total punishment. Because the defendant already has served six months on the discharged State term, a sentence of 18 months on the instant offense achieves this result.''.

[Option Two B would maintain current Application Note 6 of the commentary to § 5G1.3 as follows:

''[6. Revocations. If the defendant was on Federal or State probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked, the sentence for the instant offense should be imposed to run consecutively to the term imposed for the violation of probation, parole, or supervised release in order to provide an incremental penalty for the violation of probation, parole, or supervised release. *See* § 7B1.3 (Revocation of Probation or Supervised Release) (setting forth a policy that any imprisonment penalty imposed for violating probation or supervised release should be consecutive to any sentence of imprisonment being served or subsequently imposed).]''.

Section 5G1.3 captioned ''Application Notes'' is amended by striking Note 7 .

*Issue for Comment:* The Commission requests comment on whether it should resolve a circuit split with respect to § 5G1.3(c) and whether the sentencing court may grant ''credit'' for time served in State prison for an undischarged sentence, in addition to running the Federal sentence concurrently with the remaining portion of the defendant's preexisting State sentence. *Compare Ruggiano* v. *Reish*, 307 F.3d 121 (3d Cir. 2002) (Federal sentencing court may grant such credit), with *United States* v. *Fermin*, 252 F.3d 102 (2d Cir. 2001) (court may not grant such credit). If so, how should this apparent conflict be resolved?

*4. Miscellaneous Amendments*

*Synopsis of Proposed Amendment:* This proposed amendment makes technical and conforming changes to various guideline provisions. The proposed amendment accomplishes the following:

(1) Amends § 1B1.1 (Application Instructions) to (A) provide an instruction that makes clear that the application instructions are to be applied in the order presented in the guideline; (B) amend Application Note 4 to make clear that, absent an instruction to the contrary, multiple specific offense characteristics (or a chapter two specific offense characteristic and a chapter three adjustment) that are triggered by the same conduct are to be applied cumulatively; and (C) provide an application note concerning the use of abbreviated guideline titles to ease reference to guidelines that have exceptionally long titles.

(2) Restructures the definitions of ''prohibited sexual conduct'' in §§ 2A3.1 (Criminal Sexual Abuse) and 4B1.5 (Repeat and Dangerous Sex Offender Against Minors) to eliminate possible ambiguity regarding the interaction of ''means'' and ''includes''.

(3) Amends the definition of ''child pornography'' in §§ 2A3.1 and 4B1.5, and the definition of ''visual depiction'' in § 2G2.4 (Possession of Materials Depicting Minor Engaged in Sexually Explicit Conduct), in light of *Ashcroft* v. *The Free Speech Coalition, et al.*, 122 S.Ct. 1389 (2002).

(4) (A) Amends § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical) by: (i) providing a maximum base offense level of 30 if the defendant receives an adjustment under § 3B1.2 (Mitigating Role) and providing a two level reduction if the defendant meets the criteria of subdivisions (1) through (5) of subsection (a) of § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) to conform this guideline to § 2D1.1 (Drug Trafficking), which was amended last amendment cycle; (ii) adding red phosphorus to the Chemical Quantity Table in response to a recent classification of red phosphorus as a List I chemical; and (B) provides an issue for comment regarding the penalties for oxycodone generally and a brand named pill containing oxycodone known as Oxycontin.

(5) Amends the departure provision in Application Note 6 of § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production) to conform to Application Note 12 of § 2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct).

(6) Amends subsection (b)(5) of § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic) to include receipt and distribution in the enhancement for use of a computer. Currently the enhancement only applies to offenses in which a computer was used for the transmission of child pornography.

(7) Responds to new legislation and makes other technical amendments as follows:

(a) Amends Appendix A (Statutory Index) and § 2N2.1 (Violations of Statutes and Regulations Dealing with any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product) in response to new offenses created by the Farm Security and Rural Investment Act of 2002 (the ''Act''), Pub. L. 107–171. The first new offense provides a statutory maximum of one year for violating the Animal Health Protection Act (subtitle E of the Act), or for counterfeiting or destroying certain documents specified in the Animal Health Protection Act. The second new offense provides a statutory maximum term of imprisonment of five years for importing, entering, exporting, or moving any animal or article for distribution or sale. The Act also provides a statutory maximum of 10 years for a subsequent violation of either offense.

(b) Amends Appendix A (Statutory Index) and § 2B1.1 in response to a new offense (19 U.S.C. 2401f) created by the Trade Act of 2002, Pub. L. 107–210. The new offense provides a statutory maximum term of imprisonment of one year for knowingly making a false statement of material fact for the purpose of obtaining or increasing a payment of federal adjustment assistance to qualifying agricultural commodity producers.

(c) Amends Appendix A (Statutory Index) and §§ 2C1.3 (Conflict of Interest; Payment or Receipt of Unauthorized Compensation) and 2K2.5 (Possession of Firearm or Dangerous Weapon in Federal Facility; Possession or Discharge of Firearm in School Zone) in response to the codification of title 40, United States Code, by Pub. L. 107–217. Section 5104(e)(1) of title 40, United States Code, prohibits anyone (except as authorized by the Capitol Police Board) from carrying or having readily accessible a firearm, dangerous weapon, explosive, or an incendiary device on the Capitol Grounds or in any of the Capitol Buildings. The statutory maximum term of imprisonment is five years. The proposed amendment references 40 U.S.C. 5104(e)(1) to 2K2.5. Section 14309(a) of title 40, United States Code, prohibits certain conflicts of interests of members of the Appalachian Regional Commission and provides a statutory maximum term of imprisonment penalty of two years. Section 14309(b) prohibits certain additional sources of salary and provides a statutory maximum term of imprisonment of not more than one year. The proposed amendment references 40 U.S.C. 14309(a) and (b) to 2C1.3.

(d) Amends Appendix A (Statutory Index) and § 2H2.1 (Obstructing an Election or Registration) to provide a guideline reference for offenses under 18 U.S.C. 1015(f). Currently, 18 U.S.C. 1015 generally is referenced to 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), 2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness), 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status), and 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use). However, 18 U.S.C. 1015(f) specifically relates to knowingly making false statements in order to register to vote, or to vote, in a Federal, State, or local election. The proposed amendment references 18 U.S.C. 1015(f) to § 2H2.1 (Obstructing an Election or Registration).

Proposed Amendment

Section 1B1.1 is amended by adding ''.—Except as specifically directed, the provisions of this manual are to be applied in the following order:'' after ''Application Instructions''.

The Commentary to § 1B1.1 captioned ''Application Notes'' is amended by striking Note 4 and inserting the following:

''4. (A) Specific Offense Characteristics.—The offense level adjustments from more than one specific offense characteristic within an offense guideline are applied cumulatively (added together) unless the guideline specifies that only the greater (or greatest) is to be used. Within each specific offense characteristic subsection, however, the offense level adjustments are alternative; only the one that best describes the conduct is to be used. For example, in § 2A2.2(b)(3), pertaining to degree of bodily injury, the subdivision that best describes the level of bodily injury is used; the adjustments for different degrees of bodily injury (subdivisions (A)–(E)) are not added together.

(B) Adjustments from Different Guideline Sections.—Absent an instruction to the contrary, the adjustments from different guideline sections are applied cumulatively (added together). In some cases, such adjustments (*e.g.*, a chapter two specific offense characteristic and a chapter three [or chapter four] adjustment) may be triggered by the same conduct, but are meant to take into account different aspects of that conduct. For example, shooting a police officer during the commission of a robbery may warrant an injury enhancement under § 2B3.1(b)(3) and an official victim enhancement under § 3A1.1, even though both enhancements are triggered by the shooting of the officer. Section 2B3.1(b)(3) accounts for the injury to the police officer, while § 3A1.2(a) accounts for the official status of the victim.''.

The Commentary to § 1B1.1 captioned ''Application Notes'' is amended by adding at the end the following:

''(7) Whenever a guideline makes reference to another guideline, a parenthetical restatement of that other guideline's heading accompanies the initial reference to that other guideline. This parenthetical is provided only for the convenience of the reader and is not intended to have substantive effect. In the case of lengthy guideline headings, such a parenthetical restatement of the guideline heading may be abbreviated for ease of reference. For example, references to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) may be abbreviated as follows: § 2B1.1 (Theft, Fraud, and Property Destruction).''.

The Commentary to section § 2A3.1 captioned ''Application Notes'' is amended in Note 1 by striking '''Prohibited sexual conduct''' and all that follows through ''child pornography.'' and inserting the following:

'''Prohibited sexual conduct' means any sexual activity for which a person can be charged with a criminal offense. 'Prohibited sexual conduct' includes the production of child pornography, but does not include trafficking in, or possession of, child pornography.''.

The Commentary to § 4B1.5 captioned ''Application Notes'' is amended in subdivision (A) of Note 4 by inserting ''means any of the following:'' After ''conduct''''; by striking ''means'' after ''(i)''; by striking ''includes'' each place it appears; by inserting ''or'' before ''(iii)''; and by striking ''; and (iv)'' and inserting ''. It''.

The Commentary to § 2A3.1 captioned ''Application Notes'' is amended in Note 1 in the paragraph that begins '''Prohibited sexual conduct''' by striking '''Child pornography''' and all that follows through ''2256(8).'' and inserting the following:

'''Child pornography' means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, in which—

(A) The production of such visual depiction involved the use of a minor engaging in sexually explicit conduct;

(B) Such visual depiction is a minor engaging in sexually explicit conduct; or

(C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.''.

The Commentary to § 2G2.4 captioned ''Application Notes'' is amended in Note 1 by deleting '''Visual depiction''' and all that follows through ''and (8).'' and inserting the following:

'' 'Visual depiction' means any visual depiction described in 18 U.S.C. 2256(5) or any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, in which—

(A) The production of such visual depiction involved the use of a minor engaging in sexually explicit conduct;

(B) Such visual depiction is a minor engaging in sexually explicit conduct; or

(C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.''.

The Commentary to § 4B1.5 captioned ''Application Notes'' is amended in subdivision (A) of Note 3 by striking subdivision (ii) and inserting the following:

'' 'Sex offense conviction' means any offense described in 18 U.S.C. 2426(b)(1)(A) or (B), if the offense was perpetrated against a minor, and does not include trafficking in, receipt of, or possession of, child pornography. 'Child pornography' has the meaning given that term in Application Note 1 of § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).''.

The Commentary to § 4B1.5 captioned ''Application Notes'' is amended in subdivision (A) of Note 4 by striking ''18 U.S.C. 2256(8)'' and inserting ''Application Note 1 of § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse)''.

Section § 2D1.11(a) is amended by inserting '', except that if the defendant receives an adjustment under § 3B1.2 (Mitigating Role), the base offense level shall be not more than level 30'' after ''appropriate''.

Section § 2D1.11(b) is amended by inserting at the end the following:

''(4) If the defendant meets the criteria set forth in subdivisions (1)–(5) of subsection (a) of § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by 2 levels.''.

Section § 2D1.11(e)(1) is amended in the subdivision captioned ''List I Chemicals'' by striking the period after ''Gamma-butyrolactone'' and inserting a semi-colon; and by adding at the end the following:

''714 G or more of Red Phosphorus.''.

Section § 2D1.11(e)(2) is amended in the subdivision captioned ''List I Chemicals'' by adding at the end the following:

''At least 214 G but less than 714 G of Red Phosphorus;''.

Section § 2D1.11(e)(3) is amended in the subdivision captioned ''List I Chemicals'' by adding at the end the following:

''At least 71 G but less than 214 G of Red Phosphorus;''.

Section § 2D1.11(e)(4) is amended in the subdivision captioned ''List I Chemicals'' by adding at the end the following:

''At least 50 G but less than 71 G of Red Phosphorus;''.

Section § 2D1.11(e)(5) is amended in the subdivision captioned ''List I Chemicals'' by adding at the end the following:

''At least 29 G but less than 50 G of Red Phosphorus;''.

Section § 2D1.11(e)(6) is amended in the subdivision captioned ''List I Chemicals'' by adding at the end the following:

''At least 7 G but less than 29 G of Red Phosphorus;''.

Section § 2D1.11(e)(7) is amended in the subdivision captioned ''List I Chemicals'' by adding at the end the following:

''At least 6 G but less than 7 G of Red Phosphorus;''.

Section § 2D1.11(e)(8) is amended in the subdivision captioned ''List I Chemicals'' by adding at the end the following:

''At least 4 G but less than 6 G of Red Phosphorus;''.

Section § 2D1.11(e)(9) is amended in the subdivision captioned ''List I Chemicals'' by adding at the end the following:

''At least 3 G but less than 4 G of Red Phosphorus;''.

Section § 2D1.11(e)(10) is amended in the subdivision captioned ''List I Chemicals'' by adding at the end the following:

''Less than 3 G of Red Phosphorus.''

The Commentary to § 2D1.11 captioned ''Application Notes'' is amended by adding at the end the following:

''7. Applicability of Subsection (b)(4).—The applicability of subsection (b)(4) shall be determined without regard to whether the defendant was convicted of an offense that subjects the defendant to a mandatory minimum term of imprisonment. Section § 5C1.2(b), which provides a minimum offense level of level 17, is not pertinent to the determination of whether subsection (b)(4) applies.''.

*Issue for Comment:* The Commission requests comment regarding the penalties for oxycodone generally and a brand named prescription drug containing oxycodone known as Oxycontin. Currently, the Drug Equivalency Tables in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) provide a marihuana equivalency of 500 grams for one gram of a mixture of substance containing oxycodone. Recently, however, drug enforcement has reported an increase in trafficking of the prescription drug Oxycontin, which contains higher than historical amounts of oxycodone but weighs substantially less than other prescription drugs containing oxycodone. Consequently, a defendant convicted of trafficking in certain prescription drugs containing smaller amounts of oxycodone relative to the total weight of the pill may receive a higher sentence than a defendant convicted of trafficking in larger amounts of Oxycontin.

How should the Commission address the weight differential and the resulting sentencing disparity? Should the equivalency for oxycodone be reevaluated? Should the Commission amend the Drug Equivalency Tables in § 2D1.1 to provide a separate marihuana equivalency for Oxycontin, notwithstanding that the guidelines do not otherwise provide specific penalties for brand name drugs? If so, what should that marihuana equivalency be?

Alternatively, should the Commission sentence oxycodone defendants based on the purity of the prescription drug involved (an approach currently used in sentencing methamphetamine and amphetamine defendants)? This approach may require amending the Drug Quantity Tables in § 2D1.1 to provide separate penalties for oxycodone (actual) and oxycodone (mixture). Oxycontin additionally has a time release element that can be eliminated simply by crushing or breaking the pill, increasing the immediate effect for the user. Should the Commission provide an enhancement for trafficking in pills that have a time release element?

The Commentary to § 2G2.1 captioned ''Application Notes'' is amended by striking Note 6 and inserting the following:

''6. Upward Departure Provisions.—An upward departure may be warranted if the offense involved more than 10 victims.''.

Section 2G2.2(b)(5) is amended by inserting '', receipt, or distribution'' after ''transmission''.

The Commentary to § 2B1.1 captioned ''Statutory Provisions'' is amended by inserting ''19 U.S.C. 2401f;'' after ''2332b(a)(1);''.

The Commentary to § 2C1.3 captioned ''Statutory Provisions'' is amended by inserting ''; 40 U.S.C. 14309(a), (b)'' after ''1909''.

The Commentary to § 2H2.1 captioned ''Statutory Provisions'' is amended by inserting '', 1015(f)'' after ''597''.

The Commentary to § 2K2.5 captioned ''Statutory Provisions'' is amended by inserting ''; 40 U.S.C. 5104(e)(1)'' after ''930''.

The Commentary to § 2N2.1 captioned ''Statutory Provisions'' is amended by inserting '', 8313'' after ''7734''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 7 U.S.C. 7734 the following new line:

''7 U.S.C. 8313 2N2.1'';

in the line referenced to 18 U.S.C. 1015 by inserting ''(a)–(e)'' after ''1015'';

by inserting after the line referenced to 18 U.S.C. 1015 the following new line:

''18 U.S.C. 1015(f) 2H2.1'';

by inserting after the line referenced to 19 U.S.C. 2316 the following new line:

''19 U.S.C. 2401f 2B1.1''; and

by inserting after the line referenced 38 U.S.C. 3502 to the following new lines:

''40 U.S.C. 5104(e)(1) 2K2.5

40 U.S.C. 14309(a), (b) 2C1.3''.

*5. Involuntary Manslaughter*

*Synopsis of Proposed Amendment:* This proposed amendment is a continuation of the Commission's work over the past several years to ensure that the guidelines provide appropriate guideline penalties for offenses involving involuntary manslaughter. In 1994, Congress increased the statutory maximum penalty for involuntary manslaughter offenses from three years' to six years' imprisonment after receiving a Commission report analyzing federal criminal penalties and recommending that the statutory maximum penalty for involuntary manslaughter be increased to six years. Studies have shown that the heartland of involuntary manslaughter offenses involves vehicular homicide and that these offenses are punished more severely by many of the States. The Commission further examined both voluntary and involuntary manslaughter offenses in 1997, and in 1998 sent a report and letter to Congress recommending that the statutory maximum penalty for voluntary manslaughter offenses be increased to permit the Commission to make changes that would maintain proportionality based on offense severity. Although no action has been taken on that recommendation, the Commission has received recommendations from Congress and the Department of Justice that it proceed to amend the guidelines for involuntary manslaughter to increase the base offense levels. Accordingly, this proposed amendment increases the base offense levels for involuntary manslaughter by [2][4][6] levels. An issue for comment follows that generally seeks the public's input regarding the appropriate offense levels for involuntary manslaughter offenses, including (with a view toward proportionate sentencing) the appropriate offense levels for involuntary manslaughter offenses compared to offense levels for aggravated assault.

Proposed Amendment

Section 2A1.4(a)(1) is amended by striking ''10'' and inserting ''[12][14][16]''.

Section 2A1.4(a)(2) is amended by striking ''14'' and inserting ''[16][18][20]''.

*Issue for Comment:* The Commission requests comment generally on the appropriate offense levels for offenses involving involuntary manslaughter. In addition, the Commission requests comment regarding the appropriate and proportionate offense levels for involuntary manslaughter compared to offense levels for aggravated assault under § 2A2.2 (Aggravated Assault). Currently, the base offense level for aggravated assault is level 15, and the guideline contains several enhancements, such as enhancements for bodily injury. As a consequence, the guideline penalties for aggravated assault currently are more serious than those for involuntary manslaughter.

*6. Cybersecurity*

*Issue for Comment:* Section 225 of the Homeland Security Act of 2002 (the Cyber Security Enhancement Act of 2002), Pub. L. 107–296, directs the Commission to review and amend, if appropriate, the sentencing guidelines and policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code, to ensure that the sentencing guidelines and policy statements reflect the serious nature of such offenses, the growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses.

The directive also includes a number of factors for the Commission to consider, including the potential and actual loss resulting from the offense, the level of sophistication and planning involved in the offense, whether the offense was committed for purposes of commercial advantage or private financial benefit, whether the defendant acted with malicious intent to cause harm in committing the offense, the extent to which the offense violated the privacy rights of individuals harmed, whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice, whether the violation was intended to, or had the effect of, significantly interfering with or disrupting critical infrastructure, and whether the violation was intended to, or had the effect of, creating a threat to public health or safety, or injury to any person.

The Commission requests comment regarding how it should respond to this directive.

*7. Offenses Involving Body Armor and Assault Against a Federal Judge Issues for Comment:*

1. Section 11009 of the 21st Century Department of Justice Appropriations Authorization Act (the ''Act''), Pub. L. 107–273, directs the Sentencing Commission to review and amend the sentencing guidelines, as appropriate, to provide an appropriate sentencing enhancement for any crime of violence (as defined in 18 U.S.C. 16) or drug trafficking crime (as defined in 18

U.S.C. 924(c) (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) in which the defendant used body armor. The Act further states that it is the sense of Congress that any such enhancement should be at least two levels. The Commission requests comment regarding how it should respond to this directive. For example, should the Commission provide a Chapter Three adjustment for the use of body armor in any crime of violence or drug trafficking crime? Alternatively, should the Commission provide a specific offense characteristic in all relevant chapter two guidelines (*e.g.*, § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy)) that would apply if the defendant used body armor in the course of the offense?

What would be an appropriate increase for the use of body armor if the Commission provides a chapter three adjustment or a specific offense characteristic in the relevant chapter two guidelines?

2. Section 11008 of the Act directs the Commission to review and amend, if appropriate, the guidelines or policy statements to provide an appropriate enhancement for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in 18 U.S.C. 111 or 115. The directive also contains a number of factors for the Commission to consider, including the range of conduct covered by the offenses, the existing sentence for the offense, the extent to which the guidelines for these offenses have been constrained by statutory maximum penalties, and the adequacy of the guidelines to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offense. The Act also increases the statutory maximum terms of imprisonment for the following offenses: For threatened assaults under 18 U.S.C. 115 (Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), from three years to six years; for all other threats made in violation of 18 U.S.C. 115, from five years to ten years; for a violation of 18 U.S.C. 111 (Assaulting, resisting, or impeding certain officers or employees), from three years to eight years; and for the use of a dangerous weapon or inflicting bodily injury in the commission of an offense under 18 U.S.C. 111, from 10 to 20 years.

Appendix A (Statutory Index) references 18 U.S.C. 111 to 2A2.2 (Aggravated Assault) and 2A2.4 (Obstructing or Impeding Officers). These guidelines have base offense levels of 15 and 6, respectively. Section 115 of title 18, United States Code, is referenced to, among other guidelines, §§ 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder), 2A2.2, and 2A2.3 (Minor Assault). The base offense level for § 2A2.1 is level 28 (if the object of the offense would have constituted first degree murder) or level 22. The base offense level for § 2A2.3 is level 6 (if the conduct involved physical contact, or if a dangerous weapon was possessed or its use was threatened) or level 3.

Given the directive, the factors to consider, and the increases in the statutory maximum penalties, the Commission requests comment regarding the following:

(A) Should the Commission provide an enhancement in the assault guidelines for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in 18 U.S.C. 111 or 115? If so, what would be an appropriate increase for such enhancement? Are there additional, related enhancements that the Commission should provide in the assault guidelines, particularly given the directive to consider providing sentences at or near the statutory maximum for the most egregious cases?

(B) Do the current base offense levels in each of the assault guidelines provide adequate punishment for the covered conduct? If not, what would be appropriate base offense levels for §§ 2A2.2, 2A2.3, and 2A2.4?

(C) Should the Commission consider more comprehensive amendments to the assault guidelines as part of, or in addition to, its response to the directives? For example, should the Commission consolidate §§ 2A2.3 and 2A2.4? Should the Commission amend § 2A2.3(b)(1) to provide a two level enhancement for bodily injury? Some commentators have argued that such an amendment would bring the minor and aggravated assault guidelines more in line with one another because there may be cases in which an assault that does not qualify as an aggravated assault under § 2A2.2 nevertheless involves bodily injury. Are there any other application issues pertaining to the assault guidelines that the Commission should address?

[FR Doc. 02–31869 Filed 12–17–02; 8:45 am]

BILLING CODE 2210–40–P

## DEPARTMENT OF STATE

**[Public Notice 4199]**

## Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee Meeting on Thursday, January 23, 2003, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations, a presentation on the status of education in the United States and its impact on American-sponsored overseas schools, and selection of projects for the 2003 program.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to January 13, 2003. Each visitor will be asked to provide a date of birth and Social Security number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the C Street entrance to the building.

Dated: December 10, 2002.

**Keith D. Miller,**

*Executive Secretary, Overseas Schools Advisory Council, Department of State.*

[FR Doc. 02–31850 Filed 12–17–02; 8:45 am]

**BILLING CODE 4710–24–P**

## DEPARTMENT OF STATE

### Delegation of Authority 250; Further Assignment of Functions Under the Trade Act of 2002 (''Trade Act'') to Other Departments and Agencies of the Executive Branch

**AGENCY:** Department of State.

**ACTION:** Further assignment of functions.

**SUMMARY:** The Trade Act specifically granted the President certain authorities and assigned the President certain functions related to agreements covered by Trade Act provisions. In Executive Order No. 13277, the President assigned certain of these functions to the Secretary of State and provided guidance for performing those functions, including the further assignment of functions to officers of any other department or agency within the Executive Branch. This notice informs the public of the Secretary of State's further assignment of certain functions. This notice does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

**DATES:** These actions are effective immediately.

**Further Assignment of Functions**

Pursuant to section 3(b)(ii) of Executive Order No. 13277, the Secretary of State hereby, as set forth below, further assigns certain functions of the Secretary of State under the Order. Departments and agencies shall carry out those functions in a manner that is supportive of agreements subject to the Trade Act.

(a) The functions of the President under section 2102(c)(2) of the Trade Act with respect to establishing consultative mechanisms assigned to the Secretary of State are further assigned to the Secretary of Labor and the United States Trade Representative, and shall be carried out collectively by the Secretary of State, the Secretary of Labor, and the United States Trade Representative.

(b) The functions of the President under section 2102(c)(3) of the Trade Act with respect to establishing consultative mechanisms assigned to the Secretary of State are further assigned to the United States Trade Representative, and shall be carried out jointly by the Secretary of State and the United States Trade Representative. Such consultative mechanisms are those established through trade agreements subject to the Trade Act. This further assignment is without prejudice to the Secretary of State's responsibility for coordinating the operation of such mechanisms and obtaining the advice and assistance of any other agency as necessary and appropriate.

This further assignment of functions shall be published in the **Federal Register.**

Dated: December 10, 2002.

**Colin L. Powell,**

*Secretary of State, Department of State.*

[FR Doc. 02–31849 Filed 12–17–02; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

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

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501, as amended), this notice announces the Department of Transportation's (DOT) intention to request the extension of a previously approved collection.

**DATES:** Comments on this notice must be received by January 17, 2003: attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Ms. Torlanda Archer, Office of the Secretary, Office of Aviation Analysis, U.S. Department of Transportation, (202) 366–2396, 400 7th Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**Office of the Secretary**

*Title:* Public Charter Rules.

*OMB Control Number:* 2106–0005.

*Affected Public:* Public Charter Operators.

*Annual Estimated Burden:* 1,343 hours.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on December 12, 2002.

**Michael Robinson,**

*Information Resource Management, Department of Transportation.*

[FR Doc. 02–31889 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 6, 2002

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–2002–14027.

*Date Filed:* December 6, 2002.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* December 27, 2002.

*Description:* Application of Victory Air Transport, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting a certificate of public convenience and necessity authorizing Victory to engage in interstate charter air transportation of persons, property, and mail.

*Docket Number:* OST–2002–14028.

*Date Filed:* December 6, 2002.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* December 27, 2002.

*Description:* Application of Victory Air Transport, Inc., pursuant to 49

U.S.C. section 41102 and subpart B, requesting a certificate of public convenience and necessity authorizing Victory to engage in foreign charter air transportation of persons, property, and mail.

**Dorothy Y. Beard,**

*Federal Register Liaison.*

[FR Doc. 02–31890 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2002–69]**

### Petitions for Exemption; Dispositions of Petitions Issued

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

**ACTION:** Notice of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**FOR FURTHER INFORMATION CONTACT:** Vanessa Wilkins, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8029.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

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

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Dispositions of Petitions**

*Docket No.:* FAA–2002–13291.

*Petitioner:* Pulaski Technical College.

*Section of 14 CFR Affected:* 14 CFR 65.17.

*Description of Relief Sought/ Disposition:* To permit Pulaski Technical College to administer the aviation mechanic general written test to students immediately following their successful completion of the general curriculum but before they meet the experience requirements of 14 CFR 65.77.

*Grant, 11/25/2002, Exemption No. 7926.*

*Docket No.:* FAA–2000–8177.

*Petitioner:* Experimental Aircraft Association, Inc., (EAA) and the Commemorative Air Force (CAF).

*Section of 14 CFR Affected:* 14 CFR 45.25 and 45.29.

*Description of Relief Sought/ Disposition:* To allow EAA and CAF members to operate historic military aircraft with 2-inch-high nationality and registration marks located under the horizontal stabilizer.

*Grant, 11/22/2002, Exemption No. 5109G.*

*Docket No.:* FAA–2002–11799.

*Petitioner:* Matsushita Avionics Systems Corporation (MAS).

*Section of 14 CFR Affected:* 14 CFR 21.325(b)(3).

*Description of Relief Sought/ Disposition:* To permit to allow MAS airworthiness representatives, reporting to an organizational designated airworthiness representative at MAS Bothell, to issue export airworthiness approvals for class III products manufactured by MAS Osaka.

*Grant, 11/21/2002, Exemption No. 7925.*

[FR Doc. 02–31883 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Air Traffic Procedures Advisory Committee

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

**SUMMARY:** The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

**DATES:** The meeting will be held from January 13–16, 2003, from 1 p.m. to 4:30 p.m. on Monday, January 13, and from 9 a.m. to 4:30 p.m., Tuesday, January 14 to Thursday, January 16.

**ADDRESSES:** The meeting will be held at Summerfield Suites by Wyndham—Lake Buena Vista, 8751 Suiteside Drive, Orlando, Florida 32836.

**FOR FURTHER INFORMATION CONTACT:** Mr. David W. Madison, Acting Executive Director, ATPAC, Air Traffic Planning and Procedures, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3724.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held January 13 through January 16, 2003, at Summerfield Suites by Wyndham—Lake Buena Vista, 8751 Suiteside Drive, Orlando, Florida 32836.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Submission and discussion of areas of concern.
3. Discussion of potential safety items.
4. Report from Executive Director.
5. Items of interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than January 10, 2003. The next quarterly meeting of the FAA ATPAC is planned to be held from April 7–10, 2003, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on December 9, 2002.

**David M. Madison,**

*Acting Executive Director, Air Traffic Procedures Advisory Committee.*

[FR Doc. 02–31884 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 03–15–C–00–ORD To Impose a Passenger Facility Charge (PFC) at Chicago O'Hare International Airport and To Use the Revenue at Chicago O'Hare International Airport, Chicago, Illinois, and Gary/Chicago Airport, Gary, IN

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the

application to impose a PFC at Chicago O'Hare International Airport and use the revenue at Chicago O'Hare International Airport and Gary/Chicago Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before January 17, 2003.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas R. Walker, Commissioner of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, IL 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas E. Salaman, Chicago Metropolitan Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plains, IL 60018, telephone (847) 294–7436. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Chicago O'Hare International Airport and use the revenue at Chicago O'Hare International Airport and Gary/Chicago Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 27, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Chicago Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 26, 2003.

The following is a brief overview of the application.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* December 1, 2016.

*Revised proposed charge expiration date:* February 1, 2019.

*Total estimated PFC revenue:* $258,770,000.

*Brief description of proposed projects at the $4.50 level:*

*Impose and Use at ORD:* Runway Formulation; Equipment Acquisition; School Soundproofing.

*Brief description of proposed project at the $3.00 level:*

*Use at Gary/Chicago:* Acquire Snow Removal Equipment (Snow Broom); Expand Snow Removal Equipment Building; Rehabilitate Runway 12/30; Terminal Apron Expansion and Loading Bridge Installation.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois, on December 11, 2002.

**Mark A. McClardy,**

*Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 02–31885 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent to Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Monroe Regional Airport, Monroe, LA

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

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monroe Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before January 17, 2003.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Cleve Norell, Manager of Monroe Regional Airport at the following address: Manager, Monroe Regional Airport, 5400 Operations Road, Room 220, Terminal Building, Monroe, LA 71203.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monroe Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 10, 2002 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FA will approve or disapprove the application, in whole or in part, no later than April 1, 2003.

The following is a brief overview of the application.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* June 1, 2003.

*Proposed charge expiration date:* April 1, 2006.

*Total estimated PFC revenue:* $1,134,672.

*PFC application number:* 03–01–C–00–MLU.

Brief description of proposed project(s):

**Projects to Impose and Use PFC's**

1. Aircraft Loading Equipment Improvements

2. Rehabilitate Airfield Lighting

3. Professional and Administrative Fees

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR Part 135 on demand air Taxi/Commercial Operators (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Monroe Regional Airport.

Issued in Fort Worth, Texas on December 10, 2002.

**Naomi L. Saunders,**

*Manager, Airports Division.*

[FR Doc. 02–31886 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Approval Guidelines for Airborne Software

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

**ACTION:** Notice of availability for public comment.

**SUMMARY:** This notice announces the availability of and requests comments on a proposed Order that guides the Aircraft Certification Service (AIR) field offices (that is, Aircraft Certification Offices and Manufacturing Inspection District or Satellite Offices) and Designated Engineering Representatives (DER) on how to apply RTCA/DO–17B, ''Software Considerations in Airborne Systems and Equipment Certification,'' for approving airborne software. Advisory Circular (AC) 20–115B, RTCA, Inc. Document RTCA/DO–178B, recognizes RTCA/DO–178B as an acceptable means of compliance for securing the Federal Aviation Administration's (FAA) approval of software in airborne systems and equipment. The proposed Order establishes guidelines for approving software in compliance with RTCA/DO–178B. The guidelines are applicable to the approval of airborne systems and equipment and the software aspects of those systems related to type certificates (TC), supplemental type certificates (STC), amended type certificates (ATC), amended supplemental type certificates (ASTC), and technical standard order (TSO) authorizations.

**DATES:** Comments must be received on or before January 21, 2003.

**ADDRESSES:** Send all comments on the proposed Order to: Technical Programs & Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration 800 Independence Avenue, SW., Room 835, Washington, DC 20591. Or deliver comments to: Federal Aviation Administration (FAA), Room 835, 800 Independence Avenue, SW., Washington, DC 20591. Comments must identify the Order file number.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Lewis, Technical Programs & Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Room 835, Washington, DC 20591; Telephone No. (202) 493–4841; FAX No. (202) 267–5340; E-mail address: *John.Lewis@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

You are invited to comment on the proposed Order by submitting written data, views, or arguments to the above specified address. Comments received on the proposed Order may be examined, before and after the comment closing date, Room 835, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service will consider all communications received on or before the closing date for comments before issuing the final Order.

#### Background

Between 1998–2002, the FAA produced a number of software-related notices to provide guidelines for FAA Aviation Safety Engineers (ASE), Aviation Safety Inspectors (ASI), and DERs in various areas of software approval. The proposed Order combines those notices into a single document. On January 11, 1993, the FAA issued AC 20–115B which recognizes RTCA/DO–178B as a means of demonstrating compliance to regulations for the software aspects of airborne systems and equipment certification. The proposed Order assumes that RTCA/DO–178B is the means of compliance proposed by the applicant for software approval (except where previously developed software and legacy systems are addressed). If the applicant proposes other means, additional policy and FAA guidance may be needed on a project-by-project basis.

#### How To Obtain Copies

You may obtain a copy of the proposed Order via Internet (*http://av-info.faa.gov/software/drafts.htm*) or by inquiring at the office listed under **FOR FURTHER INFORMATION CONTACT**. Copies of Document No. RTCA/DO–178B may be purchased from the RTCA Inc., 1828 L Street, NW., Suite 807, Washington, DC 20036 (Web-site: *http://www.rtca.org*).

You may inspect the RTCA document at the FAA office location listed under **ADDRESSES**. However, RTCA documents are copyrighted and may not be reproduced without the written consent of RTCA, Inc.

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

**Carol Martineau,**

*Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.*

[FR Doc. 02–31887 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Federal Transit Administration

**[FHWA Docket No. FHWA–2002–13290]**

### Draft Nationwide Section 4(f) Evaluation and Proposed Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a Section 4(f) Property

**AGENCIES:** Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

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

**SUMMARY:** The FHWA jointly with the FTA proposes a nationwide programmatic Section 4(f) evaluation (programmatic evaluation) for use in certain federally assisted or direct Federal transportation improvement projects where the use of land from a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic property will result in a net benefit to the Section 4(f) property. The use of such a programmatic evaluation is intended to promote environmental stewardship and streamline the Section 4(f) process by reducing the time necessary to prepare an evaluation that satisfies Section 4(f) requirements. This programmatic evaluation would provide an additional procedural option for demonstrating compliance with the requirements of Section 4(f). It would supplement existing nationwide Section 4(f) evaluations all of which would

remain in effect. The FHWA and the FTA solicit comments on this proposed nationwide programmatic Section 4(f) evaluation that could be used in certain instances where the effects of a proposed transportation project result in a net benefit to a Section 4(f) property.

**DATES:** Comments must be received on or before February 18, 2003.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. FHWA–2002–13290 to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dms.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgement page that appears after submitting comments electronically.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Mr. Leland Dong, Office of Project Development and Environmental Review, HEPE, (202) 366–2058; Ms. April Marchese, Office of the Chief Counsel, HCC–30 (202) 366–0791. FHWA office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For FTA: Mr. Joseph Ossi, Office of Planning, TPL–22, (202) 366–0096; Mr. Scott Biehl, Office of the Chief Counsel, TCC–30, (202) 366–0952. FTA office hours are from 8:30 a.m. to 5:00 p.m. e.t., Monday through Friday, except Federal holidays. Both offices are located at 400 Seventh Street SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

*Electronic Access and Filing:* You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 or 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661 by using a computer, modem and suitable communications software. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

## Background

Federally aided and direct Federal transportation projects that propose to use land from significant public parks, recreation areas, and wildlife and/or waterfowl refuges, or from significant historic sites are subject to Section 4(1) [1] of the U.S. Department of Transportation Act of 1966 (Public Law 89–670, 80 Stat. 931, October 15, 1966), a provision now codified in Title 49 United States Code, section 303 (the Act). The Act prohibits such use unless the FHWA or FTA determines that: (1) There is no feasible and prudent avoidance alternative; and (2) that the project includes all possible planning to minimize harm to the Section 4(f) property.

These efforts are normally documented in an individual Section 4(f) evaluation. For FHWA projects, it may be possible to utilize one of four nationwide programmatic Section 4(f) evaluations that were developed for specific circumstances.[2] It should be noted that the FTA has not previously made any programmatic Section 4(f) determinations.

The benefits of nationwide programmatic Section 4(f) evaluations are realized by substantially reducing the time and effort necessary to satisfy the requirements of the Act, however, each has specific limiting applicability criteria. For projects that do not meet the applicability criteria, the FHWA or the FTA must prepare an individual, case-specific Section 4(f) evaluation.

The purpose in drafting this proposed nationwide programmatic Section 4(f) evaluation is to address projects that have a net benefit, or enhancement to a Section 4(f) property. Currently, if a transportation project proposes a use of a Section 4(f) property, it is possible that none of the existing nationwide programmatic Section 4(f) evaluations can be utilized, even if transportation officials and officials having jurisdiction over the Section 4(f) property all agree that there would be a net benefit to the Section 4(f) property. Officials having jurisdiction may include: Federal, State or local park authorities; in the case of historic resources, the State Historic Preservation Officer (SHPO); or when appropriate, the Tribal Historic Preservation Officer (THPO); and any other official having official involvement (*i.e.* Department of Interior (DOI) representative because of funding from the Land and Water Conservation Fund Act, etc.). A net benefit is achieved when the use and mitigation measures result in an overall enhancement, as compared to the do-nothing alternative, in the functions and values for which the 4(f) property was originally determined eligible for Section 4(f) protection.

## Description of Proposed Action

This action presents a proposed nationwide programmatic evaluation that could be used when there is a net benefit to a Section 4(f) property. The applicability criteria for this proposed programmatic evaluation states that all parties must agree with the assessment of the impacts of the project; the proposed mitigation and other measures must preserve and enhance those activities, features, or attributes of the Section 4(f) property that originally qualified the property for Section 4(f) protection when compared to the avoidance or the do-nothing alternatives; and the result must be a net benefit to the Section 4(f) property. If

[1] Section 4(f) of the U.S. DOT Act of 1966, as subsequently amended, stated in relevant part:

''(b) The Secretary of Transportation shall cooperate with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities.

(c) The Secretary may approve a transportation program or project requiring the use (other than any project for a park road or parkway under section 204 of title 23) of publically owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if—

(1) there is no prudent and feasible alternative to using that land; and

(2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.'' 49 U.S.C 303.

[2] Final Nationwide Section 4(f) Evaluations and Approvals for Federally-Aided Highway Projects with Minor Involvements With Public Parks, Recreational Lands, Wildlife and Waterfowl Refuges, and Historic Sites; *see* 52 FR 31111, August 19, 1987. The Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects With Minor Involvements With Historic Sites was also published on August 19, 1987, and can be found at 52 FR 31118.

*See also* a notice regarding programmatic Section 4(f) evaluation and approval for FHWA projects that necessitate the use of historic bridges. This notice is entitled, ''Historic Bridges; Programmatic Section 4(f) Evaluation and Approval'' and was published in the **Federal Register** on August 22, 1983, at 48 FR 38135. Negative Declaration/Section 4(f) Statement for Independent Bikeway or Walkway Construction Projects, FHWA Memorandum, May 23, 1977.

agreement cannot be reached, then the programmatic evaluation cannot be utilized.

Use of this proposed programmatic evaluation has the potential to streamline the existing Section 4(f) process by allowing the programmatic evaluation in lieu of an individual Section 4(f) evaluation. The programmatic evaluation is also allowed in conjunction with an Environmental Impact Statement (EIS) required by the National Environmental Policy Act of 1969 (42 U.S.C 4331 *et al.*).[3]

**Examples**

We thought it would be beneficial to list some examples of projects having net benefits to Section 4(f) resources. These examples are as follows:

One typical example of a net benefit is the reconstruction of a deteriorated or lost historic feature (such as a rock wall) of a historic Section 4(f) property in a location slightly different than originally sited because of a needed improvement to the adjacent transportation facility. Although the property owner, the SHPO and the transportation agency all agree that the reconstruction would enhance the property, even with the loss of historic land, the consultation required by Section 106 of the National Historic Preservation Act (16 U.S.C. 470f)[4] would likely result in an ''adverse affect'' determination. In such a case, the existing FHWA nationwide programmatic evaluation for historic sites would not be applicable. However, in this situation this proposed programmatic evaluation would be applicable.

A second example could be a partial or even total relocation of a Section 4(f) property (such as a small community park) to a location within the community that would have a greater value and use to that community. In this case, the existing nationwide park programmatic could not be used since there is impairment of the remaining Section 4(f) land. Again, this proposed programmatic evaluation would be applicable. A third example is the placement of transportation guide signs for a recreation facility within the boundary of the Section 4(f) property. The signs would benefit both the traveling public and the Section 4(f) property itself; however, placement location could be considered a permanent use and one of the existing programmatics would not be applicable. Therefore, the proposed programmatic evaluation would be beneficial.

A final example is the renovation of an historic railroad station to maintain its major historic elements and to permit its continued use as a historic transportation facility. In most cases, such renovation, even with considerable sensitivity to the historic character of the resource, cannot be accomplished without an adverse effect on the station. Therefore, neither the regulatory provision at 23 CFR 771.135(f) related to historic transportation facilities nor the historic site programmatic could be utilized. The adverse effect may be caused, for example, by modifications to provide access for the disabled or by interior reconfiguration to provide retail space to keep the station economically viable as a transportation facility. The benefits of the restoration of the station and the assurance of its continued use for its historic purpose may greatly outweigh the small adverse effect.

However, there may be times when the proposed programmatic evaluation would not apply. For example, the owner of a historic building has abandoned the building so that it is likely to continue to deteriorate. The transportation agency proposes to demolish the building for a transportation improvement, and agrees to record the building in accordance with the standards set by the Historic American Building Survey (HABS)[5] prior to its demolition. In the project design year (20 years hence) without the project, the building may be effectively demolished through neglect. In the design year of the project, the building will be demolished but a record of the building will be made. The SHPO agrees that having the record of the demolished building is an improvement over not having such a record. Nevertheless, this programmatic evaluation would not apply because it requires that the improvement of the resource be relative to the present-day condition and status of the resource. The future condition of the resource without the project is too speculative to serve as the basis for deciding whether there is a benefit to the resource. An individual Section 4(f) evaluation would be needed.

**Mechanics**

When it is necessary to use this proposed programmatic evaluation, the FHWA Division Administrator/Division Engineer or FTA Regional Administrator will make the appropriate Section 4(f) determination only after assuring and documenting that the project meets the applicability criteria provided in the programmatic evaluation, that the alternatives to the use of Section 4(f) property have been fully considered, that the measures to minimize harm and mitigation efforts agreed upon by the officials with net benefit to the Section 4(f) property, and that such measures have been incorporated into the project.

**Authority:** 49 U.S.C. 303; 23 U.S.C. 138; 49 CFR 1.48.

Issued on: December 11, 2002.

**Jennifer L. Dorn,**

*Federal Transit Administrator.*

**Mary E. Peters,**

*Federal Highway Administrator.*

The text of the FHWA/FTA Proposed Programmatic Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property is as follows:

**Department of Transportation**

*Federal Highway Administration*

*Federal Transit Administration*

**Proposed Programmatic Section 4 (F) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(F) Property**

This nationwide programmatic Section 4(f) evaluation (programmatic evaluation) has been prepared for transportation improvement projects on existing or new alignments that will use land of a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic property, which in the view of the official with jurisdiction over the Section 4(f) land, the use of the Section 4(f) land will result in a net benefit to the Section 4(f) property. This programmatic evaluation satisfies the requirements of Section 4(f) for projects meeting the applicability criteria listed below. An individual Section 4(f)

[3] The National Environmental Policy Act of 1969 (NEPA) states that Environmental Impact Statements (EIS) are required for all major Federal actions (or those involving Federal monies) that could have a significant effect on the environment.

[4] Section 106 (16 U.S.C. 470f) states that ''The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.''

[5] The Secretary of the Interior issued Standards for Architectural and Engineering Documentation in the Federal Register on September 29, 1983. These standards are commonly known as the Historic American Building Survey/Historic American Engineering Record (HABS/HAER) Standards for the HABS/HAER program of the National Park Service. These Standards are available at the following URL: *http://www.cr.nps.gov/habshaer/pubs/sisgaed.pdf.*

evaluation will *not* need to be prepared for such projects.

''Administration'' refers to the Federal Highway Division Administrator or Division Engineer (as appropriate) for the Federal Highway Administration, and the Regional Administrator for the Federal Transit Administration.

The Administration is responsible for review of each transportation project for which this programmatic evaluation is contemplated to determine that it meets the criteria and procedures of this programmatic evaluation. The information and determination will be included in the applicable National Environmental Policy Act (NEPA) documentation. This programmatic evaluation will not change any existing procedures for NEPA compliance, public involvement, National Historic Preservation Act (NHPA) Section 106 consultation procedures, Land and Water Conservation Fund Act Section 6(f) requirements, or any other applicable Federal environmental requirements.

**Applicability**

This programmatic evaluation may be applied by the Administration to projects meeting the following criteria:

1. The proposed transportation project uses land of a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic site.

2. The proposed project resulting in the use of the Section 4(f) land includes all appropriate measures to minimize harm and mitigation to preserve, rehabilitate, and enhance the activities, features, or attributes of the property that originally qualified the property for Section 4(f) protection.

3. For historic Section 4(f) properties, the project does not require the demolition or major alteration of the characteristics that qualify the property for the National Register of Historic Places (NRHP). Nor does the project require the disturbance or removal of archaeological properties that are determined important for preservation in-place rather than information obtained through data recovery. The determination of a major alteration or the importance to preserve in-place will be based on consultation in accordance with 36 CFR part 800.

4. In accordance with 36 CFR part 800, for historic Section 4(f) properties, there must be agreement reached amongst the SHPO or THPO, as appropriate, transportation officials, and other appropriate parties, on mitigation to minimize harm when there is a use of Section 4(f) property. Such measures must be incorporated into the project.

5. The officials with jurisdiction over the Section 4(f) property, or the SHPO/THPO (for historic/historic tribal properties) agree in writing with the assessment of the impacts, the proposed measures to minimize harm and mitigation necessary to preserve and enhance those activities, features, or attributes of the Section 4(f) property, and that the mitigation will result in a net benefit to the Section 4(f) property. A net benefit is achieved when the use and subsequent measures to minimize harm and mitigation result in an overall enhancement when compared to the do-nothing or avoidance alternatives using the functions and values that made the property eligible for Section 4(f) protection. A project does not achieve a ''net benefit'' if it will result in a substantial diminishment of any particular function or value that made the property eligible for Section 4(f) protection, even if the property overall is enhanced.

6. The Administration determines that the project facts match those set forth in the Applicability, Alternatives, Findings, and Mitigation sections of this programmatic evaluation.

This programmatic evaluation can be applied to any project regardless of class of action under NEPA.

**Alternatives**

To demonstrate that there is no feasible and prudent alternative to the use of Section 4(f) property, the programmatic evaluation analysis must address alternatives that avoid the Section 4(f) land. The following alternatives avoid the use of the Section 4(f) land:

1. Do nothing.

2. Improve the transportation facility in a manner that addresses the project's purpose and need without a use of the Section 4(f) property.

3. Build the transportation facility at a location that does not require use of the Section 4(f) property.

This list is intended to be all-inclusive. The programmatic evaluation does not apply if a feasible and prudent alternative is identified that is not discussed in this document. The project record must clearly demonstrate that each of the above alternatives was fully evaluated before the Administration can conclude that the programmatic evaluation can be applied to the project.

**Findings**

For this programmatic evaluation to be applied to a project, there must be a finding that the do-nothing and avoidance alternatives are not feasible and prudent. The finding must be supported by the circumstances, studies, consultations, and other relevant information for the project. To support the finding, adverse factors associated with the avoidance alternative, such as environmental impacts, safety and geometric problems, decreased transportation service, increased costs, and any other factors may be considered collectively. An accumulation of these kinds of problems must be of extraordinary magnitude when compared to the proposed use of the Section 4(f) land to determine that alternative is not feasible and prudent. The net impact of any no-build or build alternative must also consider the before-and-after value and benefit of the Section 4(f) property itself and relationship to the surrounding area or community:

1. *Do Nothing Alternative.*

The Do Nothing Alternative is not feasible and prudent because it would neither address nor correct the transportation need cited in the Purpose and Need, which necessitated the proposed project.

2. *Improve the facility in a manner that addresses purpose and need without use of the Section 4(f) property.*

It is not feasible and prudent to avoid Section 4(f) lands by using engineering design or transportation system management techniques, such as minor location shifts, changes in engineering design standards, use of retaining walls and/or other structures, and traffic diversions or other traffic management measures. Implementing such measures would result in:

(a) Substantial adverse community impacts to adjacent homes, businesses or other improved properties;

(b) Substantially increased transportation facility or structure cost;

(c) Unique engineering, traffic, maintenance, or safety problems;

(d) Substantial adverse social, economic, or environmental impacts;

(e) A substantial missed opportunity to benefit a Section 4(f) property;

(f) Identified transportation needs not being met; or

(g) Impacts, costs, or problems of truly unusual or unique, or extraordinary magnitude when compared with the proposed use of Section 4(f) lands after taking into account proposed measures to minimize use and mitigate for adverse uses, and enhance the functions and value of the Section 4(f) property. Flexibility in the use of applicable standards is encouraged during the analysis of this alternative.

3. *Build a new facility at a new location without a use of the Section 4(f) property.*

It is not feasible and prudent to avoid Section 4(f) lands by constructing at a new location because:

(a) A new location would not address or correct the problems cited in the Purpose and Need, which necessitated the proposed project;

(b) A new location would result in substantial adverse social, economic, or environmental impacts (including such impacts as extensive severing of productive farmlands, displacement of a substantial number of families or businesses, serious disruption of community cohesion, substantial damage to wetlands or other sensitive natural areas, or greater impacts to other Section 4(f) lands);

(c) A new location would substantially increase costs or cause substantial engineering difficulties (such as an inability to achieve minimum design standards, or to meet the requirements of various permitting agencies such as those involved with navigation, pollution, or the environment); or

(d) Problems, impacts, costs, or difficulties would be truly unusual or unique, or of extraordinary magnitude when compared with the proposed use of the Section 4(f) property after taking into account proposed measures to minimize use, mitigation for adverse uses, and the enhancement of the Section 4(f) property's functions and value.

Flexibility in the use of applicable standards is encouraged during the analysis of this alternative.

**Measures To Minimize Harm and Mitigation**

This programmatic evaluation and approval may be used only for projects where the Administration, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm and includes mitigation measures, and that the agency with jurisdiction agrees in writing with the assessment that the project, including measures to minimize harm, will have a net benefit and contribute towards the preservation and enhancement of the function and values of the Section 4(f) property.

**Coordination**

In early stages of project development, each project will require coordination with the Federal, State, and/or local agency officials having jurisdiction over the Section 4(f) property. For non-Federal Section 4(f) properties, *i.e.* State or local properties, the official with jurisdiction will be asked to identify any Federal encumbrances. When encumbrances exist, coordination will be required with the Federal agency responsible for such encumbrances.

Copies of the final written support required under this programmatic Section 4(f) evaluation shall be provided to the official(s) having jurisdiction over the Section 4(f) property and to other interested parties as part of the normal NEPA documentation process, or upon request.

The Administration will coordinate with the appropriate U.S. Coast Guard District Commander before applying this programmatic evaluation to projects requiring a Section 9 Bridge Permit.

**Public Involvement**

The project includes public involvement activities that are consistent with the specific requirements of 23 CFR 771.111—Early coordination, public involvement and project development. For a project where one or more public hearings are held, information on the proposed use of the Section 4(f) land is communicated at the public hearing(s).

**Approval Procedure**

This programmatic Section 4(f) approval applies only after the Administration has:

1. Determined that the project meets the applicability criteria set forth in *Applicability* section;

2. Determined that all of the alternatives set forth in the Findings section have been fully evaluated;

3. Determined that the findings in this document (which conclude that the alternative recommended is the only feasible and prudent alternative) results in a clear net benefit to the function and value of the Section 4(f) property;

4. Determined that the project complies with the *Measures to Minimize Harm and Mitigation* section of this document;

5. Determined that the coordination and public involvement indicated in this programmatic evaluation have been successfully completed and necessary written agreements have been obtained; and

6. Documented the information that clearly identifies the basis for the above determinations and assurances.

Pursuant to Section 4(f), this statement has been coordinated with the Departments of Interior, Agriculture, Housing and Urban Development, and the Advisory Council on Historic Preservation.

[FR Doc. 02–31888 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2002–14063]**

### Information Collection Available for Public Comments and Recommendations

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

**DATES:** Comments should be submitted on or before February 18, 2003.

**FOR FURTHER INFORMATION CONTACT:** Thomas Christensen, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–5909; fax: 202–493–2180, or e-mail: *tom.christensen@marad.dot.gov.* Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection*: EUSC/Parent Company.

*Type of Request*: Extension of currently approved information collection.

*OMB Control Number*: 2133–0511.

*Form Numbers*: None.

*Expiration Date of Approval*: Three years from date of approval.

*Summary of Collection of Information*: The Effective U.S. Control (EUSC)/Parent Company collection consists of an inventory of foreign-registered vessels owned by U.S. citizens. Specifically, the collection consists of responses from vessel owners verifying or correcting vessel ownership data and characteristics found in commercial publications. The information obtained could be vital in a national or international emergency, and is essential to the logistical support planning operations conducted by MARAD officials.

*Need and Use of the Information*: The information is used in contingency planning and provides data related to potential sealift capacity to support movement of fuel and military equipment to crisis zones.

*Description of Respondents*: U.S. citizens who own foreign-registered vessels.

*Annual Responses*: 80 responses.

*Annual Burden*: 40 hours.

*Comments*: Comments should refer to the docket number that appears at the top of this document. Written comments

may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

Dated: December 13, 2002.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 02–31839 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

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

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 25, 2002 (67 FR 60279).

**DATES:** Comments must be submitted on or before January 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jean McKeever, Associate Administrator for Shipbuilding, Maritime Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: 202–366–5737; FAX: 202–366–7901, or E-mail: *jean.mckeever@marad.dot.gov*. Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title*: Capital Construction Fund and Exhibits.

*OMB Control Number*: 2133–0027.

*Type of Request*: Extension of currently approved collection.

*Affected Public*: Owners and operators of U.S.-flag vessels.

*Form(s)*: None.

*Abstract*: This information collection consists of application for a Capital Construction Fund (CCF) agreement under Section 607 of the Merchant Marine Act, and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax-deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or other property placed into a CCF.

*Annual Estimated Burden Hours*: 2130 hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

*Comments are Invited on*: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on December 13, 2002.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 02–31838 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2002–13933]**

### Notice of Receipt of Petition for Decision That Nonconforming 1996–2002 Mercedes Benz E Class (W210) Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1996–2002 Mercedes Benz E Class (W210) passenger cars are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1996–2002 Mercedes Benz E Class (W210) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because: (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is January 17, 2003.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.].

**FOR FURTHER INFORMATION CONTACT:** Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

**SUPPLEMENTARY INFORMATION:**

#### Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Automobile Concepts, Inc. of Miami, Florida (''AMC'') (Registered Importer 01–278) has petitioned NHTSA to decide whether 1996–2002 Mercedes Benz E Class (W210) passenger cars are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 1996–2002 Mercedes Benz E Class (W210) passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1996–2002 Mercedes Benz E Class (W210) passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 1996–2002 Mercedes Benz E Class (W210) passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1996–2002 Mercedes Benz E Class (W210) passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 114 *Theft Protection,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner claims that the vehicles are exempt from the parts marking requirements of the Federal Motor Vehicle Theft Prevention Standard at 49 CFR Part 541 because they are equipped with U.S.-model anti-theft devices that prevent the vehicles from being driven and activate the horn.

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word ''brake'' on the dash in place of the international ECE warning symbol; (b) replacement of the speedometer with the U.S.-model component that reads in miles per hours.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front side marker lights; (b) installation of U.S.-model tail lamp assemblies which incorporate rear side marker lights; (c) installation of a U.S.-model center high mounted stop light assembly on vehicles that are not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the surface of that mirror.

Standard No. 118 *Power Window Systems:* reprogramming of the power window system so that the windows will not operate with the ignition off.

Standard No. 201 *Occupant Protection in Interior Impact:* The petitioner contends that all components subject to this standard are identical to those on the vehicles' U.S.-certified counterparts, which have been identified by the manufacturer as meeting the upper interior head impact requirements of the standard. All vehicles will be inspected to ensure that they are equipped with the appropriate U.S.-model parts, and those parts will be installed on any vehicles that are not so equipped.

Standard No. 208 *Occupant Crash Protection:* (a) Reprogramming of the seat belt warning buzzer; (b) inspection of all vehicles and replacement of the driver's and passenger's side air bags, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the vehicles are equipped with seat belts in front and rear outboard and the rear center designated seating positions. Petitioner further states that the vehicles are equipped with a seat belt warning lamp that is identical to the lamp installed on U.S.-certified models.

Standard No. 214 *Side Impact Protection:* inspection of all vehicles to ensure that they are equipped with door bars identical to those in the U.S. certified model and installation of those components on vehicles that are not already so equipped.

Standard No. 301 *Fuel System Integrity:* installation of a U.S.-model fuel tank, fuel level sensor, fuel vapor filter, and rollover valve.

The petitioner states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 13, 2002.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 02–31880 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 2002–13989; Notice 1]**

### Glaval Bus, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Glaval Bus Inc. (Glaval) has determined that a total of 900 ''Glaval Model Universal, Primetime, & Titan buses'' do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Glaval has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

**Description of the Noncompliance**

During the period of January 1, 1999 through August 16, 2002, Glaval manufactured 900 buses with erroneous labeling. Of this total, all have been delivered to end users.

FMVSS No. 208 (S4.5.1(b)) requires vehicles to have a warning label permanently affixed to the sun visor concerning air bags. FMVSS No. 208 (S4.5.1(b)(3)) prohibits any other information from being on the same side of the sun visor as the air bag warning label, except an air bag maintenance label or a utility vehicle rollover warning label.

The noncompliance relates to the prohibition in S4.5.1(b)(3), in that Glaval was applying a passenger capacity label and in some instances a back up warning label to the sun visor next to the air bag warning label.

**Information Supporting the Application**

Glaval does not believe that this noncompliance will impact motor vehicle safety because most buses built by Glaval require the driver to have a Commercial Driver's License and these drivers are required to do a pre-trip inspection during which it is highly unlikely they would not notice that the bus had an air bag.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: January 17, 2003.

**Authority:** (49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: December 13, 2002.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 02–31881 Filed 12–17–02; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

**DATES:** The meeting will be held Monday, January 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** Anne Gruber at 1–888–912–1227, or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Monday, January 27, 2003 from 2 pm PST to 4 pm PST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider an oral or written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 12, 2002.

**Maryclare Whitehead,**

*Executive Assistant to the National Taxpayer Advocate.*

[FR Doc. 02–31860 Filed 12–17–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference).

**DATES:** The meeting will be held Monday, January 13, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, January 13, 2003, from 2:30 p.m. central time to 3:30 p.m. central time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 12, 2002.

**Maryclare Whitehead,**

*Executive Assistant to the National Taxpayer Advocate.*

[FR Doc. 02–31862 Filed 12–17–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference).

**DATES:** The meeting will be held Wednesday, January 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Wednesday, January 8, 2003, from 11 a.m. central time to Noon central time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 12, 2002.

**Maryclare Whitehead,**

*Executive Assistant to the National Taxpayer Advocate.*

[FR Doc. 02–31863 Filed 12–17–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

**DATES:** The meeting will be held Tuesday, January 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Barbara Toy at 1–888–912–1227, or 414–297–1611.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, January 21, 2003, from 1 p.m. EST to 2 p.m. EST via a telephone conference call. Public comments will be welcome during the meeting. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or fax to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or fax 414–297–1623.

The agenda will include the following: Monthly committee summary report, discussion of issues brought to the joint committee, office report and discussion of next meeting.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 6, 2002.

**Maryclare Whitehead,**

*Executive Assistant to the National Taxpayer Advocate.*

[FR Doc. 02–31864 Filed 12–17–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

**DATES:** The meeting will be held Friday January 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Sallie Chavez at 1–888–912–1227, or 954–423–7979.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, January 17, 2003, from 11 a.m. EST to 12 noon EST via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: Various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 12, 2002.

**Maryclare Whitehead,**

*Executive Assistant to the National Taxpayer Advocate.*

[FR Doc. 02–31865 Filed 12–17–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

**DATES:** The meeting will be held Monday, January 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Anne Gruber at 1–888–912–1227, or 206–220–6095.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be held Monday, January 6, 2003 from 1 p.m. PST to 3 p.m. PST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, TAP Office, 915 2nd Ave, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6095.

The agenda will include the following: Various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 12, 2002.

**Maryclare Whitehead,**

*Executive Assistant to the National Taxpayer Advocate.*

[FR Doc. 02–31866 Filed 12–17–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted (via teleconference).

**DATES:** The meeting will be held Tuesday, January 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6098.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Tuesday, January 14th, 2002 from 12:30 pm Pacific Time to 2:30pm Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6098, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6098.

The agenda will include the following: Various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 6, 2002.

**Maryclare Whitehead,**

*Executive Assistant to the National Taxpayer Advocate.*

[FR Doc. 02–31867 Filed 12–17–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

**DATES:** The meeting will be held Wednesday, January 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** Sallie Chavez at 1–888–912–1227, or 954–423–7979.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, January 22, 2003, from 12 noon EST to 1 pm EST via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: IRS Notices.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 12, 2002.

**Maryclare Whitehead,**

*Executive Assistant to the National Taxpayer Advocate.*

[FR Doc. 02–31861 Filed 12–17–02; 8:45 am]

**BILLING CODE 4830–01–P**

Federal Register

**Wednesday,**
**December 18, 2002**

## Part II

# Environmental Protection Agency

**40 CFR Part 63**

**National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing; Proposed Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[Docket ID No. OAR–2002–0039; FRL–7417–1]**

**RIN 2060–AJ02**

## National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing

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

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes national emission standards for hazardous air pollutants (NESHAP) for taconite iron ore processing plants. The EPA has identified taconite iron ore processing plants as a major source of hazardous air pollutant (HAP) emissions. These proposed standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT).

The HAP emitted by plants in the taconite iron ore processing source category include metal compounds (primarily manganese, arsenic, lead, nickel, and chromium), products of incomplete combustion (primarily formaldehyde), and acid gases (hydrochloric acid and hydrofluoric acid). Exposure of these substances has been demonstrated to cause adverse health effects, including chronic and acute disorders of the blood, heart, kidneys, liver, reproductive system, respiratory system, and central nervous system. Some of these pollutants are considered to be carcinogens.

**DATES:** *Comments.* Submit comments on or before February 18, 2003.

*Public Hearing.* If anyone contacts the EPA requesting to speak at a public hearing by January 7, 2003, a public hearing will be held on January 17, 2003.

**ADDRESSES:** *Comments.* Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Send comments (in duplicate, if possible) to: Taconite Iron Ore Processing NESHAP Docket, EPA Docket Center (Air Docket), U.S. EPA West, Mail Code 6102T, Room B108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0039. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

*Public Hearing.* If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, NC beginning at 10 a.m.

**FOR FURTHER INFORMATION CONTACT:** Conrad Chin, Metals Group, Emission Standards Division (C439–02), Research Triangle Park, NC 27711, telephone number (919) 541–1512, electronic mail address: chin.conrad@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### Regulated Entities

| Category | NAICS* | Example of regulated entities |
|---|---|---|
| Taconite Iron Ore Processing Facilities ..... | 21221 | Taconite Iron Ore Processing Facilities [taconite ore crushing and handling operations, indurating furnaces, finished pellet handling operations, and ore dryers]. |

*North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your plant is regulated by this action, you should examine the applicability criteria in § 63.9581 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### Docket

The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0039. The official public docket is the collection of materials that is available for public viewing in the Taconite Iron Ore Processing NESHAP Docket at the EPA Docket Center (Air Docket), EPA West, Room B108, 1301 Constitution Avenue, NW., Washington, DC 20460. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is (202) 566–1742.

### Electronic Access

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or review public comments, access the index of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statue, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statue. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### Comments

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification

number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

**Electronically**

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select ''search'' and then key in Docket ID No. OAR–2002–0039. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *air-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2002–0039. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in Wordperfect or ASCII file format. Avoid the use of special characters and any form of encryption.

**By Mail**

Send your comments (in duplicate, if possible) to: Taconite Iron Ore Processing NESHAP Docket, EPA Docket Center (Air Docket), U.S. EPA West, Mail Code 6102T, Room B108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0039.

**By Hand Delivery or Courier**

Deliver your comments (in duplicate, if possible) to: EPA Docket Center, U.S. EPA West, Mail Code 6102T, Room B108, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OAR–2002–0039. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this document.

**By Facsimile**

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Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, 109 TW Alexander Drive, Research Triangle Park, NC 27709, Attention Docket ID No. OAR–2002–0039. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

**Public Hearing**

Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Cassie Posey, Metals Group, Emission Standards Division (C439–02), Research Triangle Park, NC 27711, telephone number (919) 541–0069, in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Cassie Posey to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

**Worldwide Web (WWW)**

In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

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## I. Background

### *A. What Is the Source of Authority for Development of NESHAP?*

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's proposed NESHAP, Taconite Iron Ore Processing, was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tons/yr of any one HAP or 25 tons/yr of any combination of HAP.

### *B. What Criteria Are Used in the Development of NESHAP?*

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

### *C. What Source Category Is Affected by This Proposed Rule?*

Section 112(c) of the CAA requires us to list all categories of major and area sources of HAP for which we will develop national emission standards. We published the initial list of source categories on July 16, 1992 (57 FR 31576). ''Taconite Iron Ore Processing'' is one of the source categories on the initial list. The listing was based on our determination that taconite iron ore processing plants may reasonably be anticipated to emit a variety of HAP listed in section 112(b) in quantities sufficient to be major sources.

A taconite iron ore processing plant separates and concentrates iron ore from taconite, a low-grade iron ore, and produces taconite pellets, which are approximately 60 percent iron. The taconite iron ore processing source category includes, but is not limited to, ore crushing and handling units, ore dryers, indurating furnaces, and finished pellet handling units. At present, taconite iron ore pellets are produced at eight plant sites in the U.S.; six plants are in Minnesota and two plants are in Michigan.

### *D. What Processes Are Used at Taconite Iron Ore Processing Plants?*

Taconite iron ore processing includes crushing and handling of the crude ore; concentrating (milling, magnetic separation, chemical flotation, etc.); agglomerating (dewatering, drying, and balling); indurating; and finished pellet handling. The main processes of interest because of their potential to generate HAP emissions include ore crushing and handling, ore drying, indurating, and finished pellet handling.

Taconite ore is obtained from the ground using a strip mining process. First, millions of tons of surface material and rock are removed to expose the taconite ore-bearing rock layers. Next, the taconite ore is blasted, scooped up with large cranes with shovels, and loaded into transport vehicles such as 240-ton haulage trucks or railcars. The transport vehicles move the ore from the mine to the primary crushers. At most plants the mine is located adjacent to the ore processing plant. However, at a few plants the mine and the ore processing plant are miles apart. In these cases, the taconite ore is loaded onto railcars and transported by train to the processing plant.

The ore crushing process begins where the taconite ore from the mine is dumped from trucks or railcars into the primary crusher or into feed stockpiles for the primary crusher. The ore is dry-crushed in one to four stages depending on the hardness of the ore. Gyratory cone crushers are generally used for all stages of crushing. Primary crushing reduces the crude ore from run-of-mine size to a size about six inches in diameter, while fine crushing further reduces the material to a size about ¾ of an inch in diameter. Intermediate vibratory screens remove the undersized material from the feed before it enters the next crusher. Dry ore crushing and handling also includes a number of conveying and transfer points as the ore is moved from one crushing stage to the next. After it is adequately crushed, the ore is conveyed to large ore storage bins at the concentrator building.

In the concentrator building, water is typically added to the ore as it is conveyed into rod and ball mills which further grind the taconite ore to the consistency of coarse beach sand. A rod/ball mill is a large horizontal cylinder that rotates on its horizontal axis and is charged with heavy steel rods or balls and the taconite ore/water slurry. As the rods/balls tumble inside the mill, they grind the ore into finer particles.

In a subsequent process step, taconite ore is separated from the waste rock material using a magnetic separation process. During magnetic separation, a series of magnetized cylinders rotate while submerged in the taconite iron ore slurry. The iron-bearing taconite particles adhere to the magnetized cylinder surface and are collected as a iron-rich slurry. The iron content of the slurry is further increased using a combination of hydraulic concentration (gravity settling) and chemical flotation.

Since the concentrating processes are completely wet operations, any potential particulate or HAP metal emissions are suppressed. However, there are exceptions, such as one plant that conducts dry cobbing (a dry magnetic separation process) instead of a wet magnetic separation process.

The concentrated taconite slurry then enters the agglomerating process. Water is typically removed from the taconite slurry using vacuum disk filters or similar equipment. One plant, which

processes a finer grained ore, uses rotary dryers after the disc filters to dry the ore further. These dryers are rotary dryers, which repeatedly tumble the wet ore concentrate through a heated air stream to reduce the amount of entrained moisture in the ore. Next, the taconite is mixed with various binding agents such as bentonite or dolomite in a balling drum which tumbles and rolls the taconite into unfired pellets. When the unfired pellets exit the balling drum, they are transferred to a metal grate that conveys them to the furnace. Once the pellets exit the balling drum they are relatively dry and, therefore, have the potential to emit particulate HAP.

During the indurating process, the unfired taconite pellets are hardened and oxidized in the indurating furnace at a fusion temperature between 2,290 to 2,550 °F. Two types of indurating furnaces are currently used within this source category: straight grate furnaces and grate kiln furnaces. The indurating furnace process begins at the point where the grate feed conveyor discharges the unfired pellets onto the furnace traveling grate and ends where the hardened pellets exit the indurating furnace cooler.

In straight grate indurating furnaces, a continuous bed of unfired pellets is carried on a metal grate through different furnace temperature zones. Each zone will have either a heated upward draft or downward draft blown through the pellets. A layer of fired pellets is placed on the metal grate prior to the addition of unfired pellets. This hearth-layer allows for even airflow through the pellet bed and acts as a buffer between the metal grate and the exothermic heat generated from the oxidation of taconite pellets in the indurating stage. Before the pellets can be oxidized, all remaining moisture is driven off in the first two stages of the furnace, the updraft and downdraft drying zones. Unfired pellets must be heated gradually; otherwise, moisture in the unfired pellets expands too quickly and causes the pellets to explode. After they are dried, the pellets enter a preheat zone of the furnace where the temperature is gradually increased for the indurating stage. The next zone is the actual firing zone for induration, where the pellets are exposed to the highest temperature. The fired pellets then enter the post-firing zone, where the oxidation process is completed. Finally, the pellets are cooled by the intake of ambient air typically in two stages of cooling. A unique characteristic of straight grate furnaces is that approximately 30 percent of the fired pellets are recycled to the feed end of the furnace for use as the hearth layer. The remaining pellets are transported by conveyor belts to storage areas.

Waste gases from the straight grate furnace are discharged primarily through two ducts: the hood exhaust, which handles the cooling and drying gases; and the windbox exhaust, which handles the preheat, firing, and after-firing gases. For a typical straight grate furnace, the two discharge ducts are combined into one common header before the flow is divided into several ducts to be exhausted to the atmosphere after control.

The grate kiln indurating furnace system consists of a traveling grate, a rotary kiln, and an annular cooler. The grate kiln system represents a newer generation of indurating furnaces and is widely used by the taconite plants. As with the straight grate furnace system, the grate kiln system is also a counterflow heat exchanger, with the unfired pellets and indurated pellets moving in a direction opposite to that of the process gas flow. A six-inch bed of unfired pellets is laid on a continuously moving, horizontal grate. The traveling grate carries the unfired pellets into a dryer/preheater that resembles a large rectangular oven. In the first half of the traveling grate, unfired pellets are gradually dried by hot air at a temperature of 700 °F. The second half of the traveling grate is called the preheater, where the unfired pellets are heated to a temperature of 2,000 °F prior to dropping into the rotary kiln furnace.

Pellets are discharged from the traveling grate and into the rotary kiln. Final indurating of the pellets occurs in the kiln as the pellets tumble down the rotating kiln. The rotary kiln typically operates at a temperature of 2,300 to 2,400 °F to ensure that the kiln oxidizes the iron pellets from a magnetite structure into a hematite structure. The hardened pellets are then discharged to a large annular-shaped cooler, which is an integral part of an elaborate energy recuperation system. The fired pellets discharged from the kiln first enter the primary cooling zone of the annular cooler, where ambient air is brought in to cool the pellets in a counter-current flow. After the pellets heat the ambient air to approximately 2,000 °F, it is then used as preheated combustion air in the rotary kiln. As the cooled pellets enter a final cooling zone, additional ambient air is used to cool the pellets further. Air exiting the final cooling zone is heated to approximately 1,000 °F and is used to maintain the temperature in the dryer section of the traveling grate. Pellets exiting the final cooling zone are cooled to an average temperature of 175 to 225 °F. Combustion air from the rotary kiln, which is approximately 2,000 °F, is used to maintain the temperature in the preheat section of the traveling grate.

Pellet cooler vent stacks are atmospheric vents in the cooler section of a grate kiln indurating furnace. Pellet cooler vent stacks exhaust cooling air that is not returned for heat recuperation. Straight grate furnaces do not have pellet cooler vent stacks. The pellet cooler vent stack should not be confused with the cooler discharge stack, which is in the pellet loadout or dumping area. New grate kiln furnace designs eliminate the cooler vent stack by recirculating the air through the furnace.

The finished pellet handling process begins where the fired taconite pellets exit the indurating furnace cooler (*i.e.*, pellet loadout) and ends at the finished pellet stockpile. Operations include finished pellet screening, transfer, and storage.

*E. What HAP Are Emitted and How Are They Controlled?*

Ore crushing and handling, ore drying, and finished pellet handling are all potentially significant points of particulate matter (PM) emissions. In addition, because taconite ore inherently contains trace metals, such as manganese, chromium, cobalt, arsenic, and lead, they are also emitters of HAP metal compounds. Manganese compounds are the predominate metal HAP emitted from ore crushing and handling, ore drying, and finished pellet handling, accounting for 10 tons/year. All other metal HAP compounds are emitted from ore crushing and handling, ore drying, and finished pellet handling at rates of less than 0.1 tons per year.

Approximately 70 percent of the ore crushing and handling and finished pellet handling units control PM emissions with wet scrubbers, such as venturi scrubbers, marble bed scrubbers, or impingement scrubbers. The remaining units control PM emissions with baghouses, low energy scrubbers (*i.e.*, rotoclones), multiclones, and electrostatic precipitators (ESP). The two ore dryers are controlled by cyclones and impingement scrubbers in series.

The indurating furnaces are the most significant sources of HAP emissions, accounting for about 99 percent of the total HAP emissions from the taconite iron ore processing source category. Three types of HAP are emitted from the waste gas stacks of indurating furnaces. The first type of HAP is metallic HAP existing as a portion of particulate emissions from the taconite ore or fuel (such as coal) fed into the furnaces. Manganese and arsenic compounds are

the predominate metal HAP emitted by indurating furnaces (approximately 5.8 and 6.5 tons/year, respectively, for the industry); chromium, lead, and nickel compounds are emitted in smaller amounts (each approximately between 2 to 5 tons/year for the industry); and antimony, beryllium, cadmium, cobalt, mercury, and selenium compounds are emitted in yet smaller amounts (each approximately less than 1 ton/year for the industry). The second type of HAP is organic HAP resulting as products of incomplete combustion, primarily formaldehyde. Emissions test data from indurating furnaces confirm the presence of formaldehyde. The third type of HAP is acidic gases, such as hydrochloric acid and hydrofluoric acid. Fluorine and chlorine compounds in the raw materials are liberated during the indurating process and combine with moisture in the exhaust to form hydrochloric acid and hydrofluoric acid. Both formaldehyde and the acid gases are present in exhaust gas from the indurating furnace stacks at concentrations around a few parts per million (ppm). Formaldehyde emissions from the entire industry are estimated to be 181 tons/year. Total emissions of hydrogen chloride and hydrogen fluoride are approximately 349 and 308 tons/year, respectively.

Emissions from the indurating furnace stacks are typically controlled with either a venturi wet scrubber or an ESP. One indurating furnace controls emissions with a multiclone and another furnace controls emissions with a gravity collector.

F. What Are the Health Effects Associated With Emissions From Taconite Iron Ore Processing Plants?

As previously mentioned in this preamble, there are a variety of metal HAP contained in the PM emitted from taconite iron ore processing. These include primarily manganese and arsenic compounds, with smaller quantities of lead, nickel and chromium compounds. Antimony, beryllium, cadmium, cobalt, mercury, and selenium compounds are emitted in yet smaller amounts. Other HAP, such as formaldehyde, hydrochloric acid, and hydrofluoric acid, are present in the waste gas stream from the indurating furnace pelletizing stacks on the order of ppm.

Manganese and arsenic compounds comprise the majority of the metal HAP emissions. Adverse health effects in humans have been associated with manganese dietary deficiencies and excessive exposure to manganese. Chronic exposure to low levels of manganese in the diet is considered to be nutritionally essential in humans, with a recommended daily allowance of 2 to 5 milligrams per day. Chronic exposure to high levels of manganese by inhalation in humans results primarily in central nervous system effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. Manganism, characterized by feelings of weakness and lethargy, tremors, a mask-like face, and psychological disturbances, may result from chronic exposure to higher levels. Impotence and loss of libido have been noted in male workers afflicted with manganism attributed to inhalation exposures. We have classified manganese in Group D, not classifiable as to carcinogenicity in humans.

Arsenic can be toxic in humans. Acute inhalation exposure to arsenic causes gastrointestinal effects, such as nausea, diarrhea, and abdominal pain, hemolysis, and central nervous system disorders. Chronic inhalation exposure to inorganic arsenic is associated with irritation of the skin and mucous membranes and is strongly associated with lung cancer. We have classified inorganic arsenic as a Group A, a known human carcinogen of high carcinogenic hazard.

Exposure to formaldehyde can result in irritation of the skin and mucous membranes. We have classified formaldehyde as a Group B1, probable human carcinogen of medium carcinogenic hazard.

Acute exposure to the acid gases can cause severe respiratory damage in humans including severe irritation and pulmonary edema. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, and dermatitis in workers. Chronic exposure to low levels of fluoride has a beneficial effect of dental cavity prevention and may be helpful in the treatment of osteoporosis. However, exposure to higher levels of hydrochloric or hydrofluoric acid may cause dental discoloration and erosion.

In addition to HAP, the proposed rule would also reduce PM emissions, which are controlled under national ambient air quality standards. Emissions of PM have been associated with aggravation of existing respiratory and cardiovascular disease and increased risk of premature death.

We recognize that the degree of adverse effects to health experienced by exposed individuals can range from mild to severe. The extent and degree to which the health effects may be experienced depend on:

- Pollutant-specific characteristics (*e.g.*, toxicity, half-life in the environment, bioaccumulation, and persistence);
- The ambient concentrations observed in the area (*e.g.*, as influenced by emission rates, meteorological conditions, and terrain);
- The frequency and duration of exposures; and
- Characteristics of exposed individuals (*e.g.*, genetics, age, pre-existing health conditions, and lifestyle), which vary significantly within the general population.

## II. Summary of the Proposed Rule

### *A. What Are the Affected Sources and Emission Points?*

The proposed rule would affect eight plants engaged in the processing of taconite iron ore (six plants in Minnesota and two plants in Michigan). The affected sources within each plant include ore crushing and handling, ore dryers, indurating furnaces, and finished pellet handling. The ore crushing and handling affected source includes the collection of all new and existing ore crushing and handling emission units including all primary, secondary, and tertiary crushers; associated screens, conveyors, storage bins and piles; transfer points; and grate feed. The ore dryer affected source includes each new or existing individual ore dryer. The indurating furnace affected source includes each new or existing individual indurating furnace. The finished pellet handling affected source includes the collection of all new and existing pellet handling emission units including all pellet screens, conveyors, storage bins, piles, and transfer points.

An existing affected source is one constructed or reconstructed on or before December 18, 2002. A new affected source is one constructed or reconstructed after December 18, 2002.

### *B. What Are the Emission Limitations and Work Practice Standards?*

The proposed rule includes PM emission limits, work practice standards, and operating limits for control devices. Particulate matter serves as a surrogate measure of metallic HAP emissions.

The proposed PM emissions limits for ore crushing and handling and finished pellet handling operations are 0.008 grains per dry standard cubic foot (gr/dscf) for existing sources and 0.005 gr/dscf for new sources. Compliance with the proposed PM emissions limits for ore crushing and handling are determined based on the flow-weighted mean concentration of emissions for all ore crushing and handling units at the

plant. Similarly, compliance with the proposed PM emissions limits for finished pellet handling are determined based on the flow-weighted mean concentration of PM emissions for all pellet handling units at the plant.

The proposed rule would establish PM emission limits that must be achieved by each individual ore dryer. The proposed emission limit is 0.052 gr/dscf for existing dryers and 0.025 gr/dscf for new dryers. Ore dryers with multiple stacks would calculate their PM emissions as a flow-weighted mean concentration of PM emissions from all stacks.

The proposed rule would establish PM emission limits that must be achieved by each individual indurating furnace. Indurating furnaces with multiple stacks would calculate their PM emissions as a flow-weighted mean concentration of PM emissions from all stacks. For each straight grate indurating furnace processing magnetite, the proposed emissions limit is 0.010 gr/dscf for existing straight grate furnaces and 0.006 gr/dscf for new straight grate furnaces. For each grate kiln indurating furnace processing magnetite, the proposed emissions limit is 0.011 gr/dscf for existing grate kiln furnaces and 0.006 gr/dscf for new grate kiln furnaces. For each grate kiln indurating furnace processing hematite, the proposed emissions limit is 0.025 gr/dscf for existing grate kiln furnaces and 0.018 gr/dscf for new grate kiln furnaces.

The proposed rule also includes specific requirements for continuous parameter monitoring and associated operating limits for baghouses, wet scrubbers, and dry ESP. Baghouses are to be equipped with a bag leak detection system (BLDS) capable of monitoring relative changes in PM loading in the baghouse exhaust, which is to alarm whenever a predetermined set point is exceeded, indicating an increase in emissions above that allowed at the set point. The proposed rule would limit the frequency and duration of alarms to no more than 5 percent of a source's total operating time in any semiannual reporting period. In the case of wet scrubbers, sources would be required to continuously monitor scrubber pressure drop and water flow rate and operate at all times at or above specified hourly average values established during initial performance testing. For dry ESP, sources would be required to install and operate continuous opacity monitoring systems (COMS). Each source must report as a deviation any 6-minute period during which the average opacity exceeds the opacity value corresponding to the 99 percent upper confidence level established during the performance test. The proposed rule would require sources to submit information on alternative monitoring parameters and operating limits if a control device other than a baghouse, wet scrubber, or dry ESP is used.

All plants subject to the proposed rule would be required to prepare and implement a written fugitive dust emissions control plan. The plan would describe in detail the measures that will be put in place to control fugitive dust emissions from the following sources at a plant, as applicable: stockpiles, material transfer points, plant roadways, tailings basin, pellet loading areas and yard areas. Existing fugitive dust emission control plans that describe current measures to control fugitive dust emission sources that have been approved as part of a State implementation plan or title V permit would be acceptable, provided they address the prior-listed fugitive dust emission sources.

*C. What Are the Operation and Maintenance Requirements?*

All plants subject to the proposed rule would be required to prepare and implement a written startup, shutdown, and malfunction plan according to the requirements in 40 CFR 63.6(e) of the NESHAP General Provisions. In addition, a written operation and maintenance plan is also required for each control device subject to an operating limit. This plan must describe procedures for the inspection and preventative maintenance of control devices, as well as corrective action requirements specific to baghouses equipped with bag leak detection systems. In the event of a bag leak detection system alarm, the plan must include specific requirements for initiating corrective action to determine the cause of the problem within 1 hour, initiating corrective action to fix the problem within 24 hours, and completing all corrective actions needed to fix the problem as soon as practicable.

*D. What Are the Initial Compliance Requirements?*

To demonstrate initial compliance with the PM emission limit for the ore crushing and handling affected source, the flow-weighted mean concentration of PM emissions of all units within the affected source must not exceed the applicable PM emission limit. Similarly, for the finished pellet handling affected source, the flow-weighted mean concentration of PM emissions of all units within the affected source must not exceed the applicable PM emission limit. In all cases, initial compliance must be demonstrated through a performance test. The performance test must be conducted using EPA Method 5 or 17 in 40 CFR part 60, appendix A. All initial compliance tests must be completed no later than 2 years following the compliance date. In lieu of conducting performance tests for all emission units, the plant may elect to group similar emission units together and conduct initial performance tests on a representative sample of units within each group. Each plant must submit a testing plan to the permitting authority for approval. The testing plan must identify the emission units that will be grouped as similar, identify the representative unit(s) that will be tested for each group, and the proposed schedule for testing.

To demonstrate initial compliance with the PM emission limit for each indurating furnace and each ore dryer, the flow-weighted mean concentration of PM emissions of all stacks for each furnace or each ore dryer must not exceed the applicable PM emission limit. Initial compliance must be demonstrated through an initial performance test. The performance test must be conducted using EPA Method 5 or 17 in 40 CFR part 60, appendix A. The initial compliance test for each indurating furnace and each ore dryer must be completed no later than 180 calendar days after the compliance date. For indurating furnaces and ore dryers with multiple stacks, all stacks for the indurating furnace or ore dryer must be tested simultaneously.

The proposed rule would also require that certain operating limits on control devices be established during the initial compliance test to ensure that control devices operate properly on a continuing basis. All operating limits must be established during a performance test that demonstrates compliance with the applicable emission limit. During the initial compliance tests, operating limits must be established for pressure drop and scrubber water flow rate for all wet scrubbers, and opacity (using a COMS) for dry ESP.

To demonstrate initial compliance with the proposed work practice standards, plants would prepare, submit, and implement a fugitive dust emission control plan on or before the applicable compliance date as specified in § 63.9583 of the proposed rule. To demonstrate initial compliance with the proposed operation and maintenance requirements, plants would certify in their notification of compliance status that they have prepared the written

plans and will operate control devices according to the procedures in the plan.

*E. What Are the Continuous Compliance Requirements?*

For ore crushing and handling, ore dryers and finished pellet handling units, the proposed rule would require plants to conduct subsequent performance tests to demonstrate continued compliance with the PM emission limits following the schedule established in the title V permit for each plant. If a title V permit has not been issued, the plant must submit a testing plan and schedule to the permitting authority for approval.

For each indurating furnace, the proposed rule would require subsequent testing of all stacks based on the schedule established in each plant's title V operating permit, but no less frequent than twice per 5-year permit term. If a title V permit has not been issued, then the plant must submit a testing plan and schedule to the permitting authority for approval. The testing frequency in the testing plan must be no less frequent than twice per 5-year period.

Plants are required to monitor operating parameters for control devices subject to operating limits and carry out the procedures in their fugitive dust emissions control plan and their operation and maintenance plan. To demonstrate continuous compliance, plants must keep records documenting compliance with the rule requirements for monitoring, the fugitive dust emissions control plan, the operation and maintenance plan, and installation, operation, and maintenance of a continuous parameter monitoring system (CPMS).

For baghouses, plants are required to monitor the relative change in PM loading using a bag leak detection system and make inspections at specified intervals. The bag leak detection system must be installed and operated according to the EPA guidance document ''Fabric Filter Bag Leak Detection Guidance,'' EPA 454/R–98–015, September 1997. The document is available on the TTN at *http:www.epa.gov/ttnemc01/cem/tribo.pdf.* If the system does not work based on the triboelectric effect, it must be installed and operated in a manner consistent with the manufacturer's written specifications and recommendations. The basic inspection requirements include daily, weekly, monthly, or quarterly inspections of specified parameters or mechanisms with monitoring of bag cleaning cycles by an appropriate method. To demonstrate continuous compliance, the proposed rule would require records of bag leak detection system alarms and records documenting conformance with the operation and maintenance plan, as well as the inspection and maintenance procedures.

For scrubbers, plants would be required to use a CPMS to measure and record the hourly average pressure drop and scrubber water flow rate. To demonstrate continuous compliance, plants would keep records documenting conformance with the monitoring requirements and the installation, operation, and maintenance requirements for the CPMS.

For dry ESP, plants are required to use a COMS to measure and record the average hourly opacity of emissions exiting each stack of the control device. Plants must operate and maintain the COMS according to the requirements in 40 CFR 63.8 of the NESHAP General Provisions and Performance Specification 1 in 40 CFR part 60, appendix B. These requirements include a quality control program that consists of a daily calibration drift assessment, quarterly performance audit, and annual zero alignment.

*F. What are the Notification, Recordkeeping, and Reporting Requirements?*

The proposed notification, recordkeeping, and reporting requirements are based on the NESHAP General Provisions in 40 CFR part 63, subpart A. Table 2 of the proposed rule lists each of the requirements in the General Provisions (§§ 63.2 through 63.15) with an indication of whether they do or do not apply.

The plant owner or operator is required to submit each initial notification required in the NESHAP General Provisions that applies to their plant. These include an initial notification of applicability with general information about the plant and notifications of performance tests and compliance status.

Plants are required to maintain the records required by the NESHAP General Provisions that are necessary to document compliance, such as performance test results; copies of startup, shutdown, and malfunction plans and associated corrective action records; monitoring data; and inspection records. Except for the operation and maintenance plan for control devices, the fugitive dust emissions control plan, and the testing plan, all records must be kept for a total of 5 years, with the records from the most recent 2 years kept onsite. The proposed rule would require that the operation and maintenance plan for control devices subject to an operating limit, the fugitive dust emissions control plan, and the testing plan, be kept onsite and available for inspection upon request for the life of the affected source or until the affected source is no longer subject to the rule requirements.

Semiannual reports are required for any deviation from an emission limitation, including an operating limit. Each report is due no later than 30 days after the end of the reporting period. If no deviation occurred, only a summary report is required. If a deviation did occur, more detailed information is required.

An immediate report is required if there were actions taken during a startup, shutdown, or malfunction that were not consistent with the startup, shutdown, and malfunction plan and the source exceeded its emission limit. Deviations that occur during a period of startup, shutdown, or malfunction are not violations if the owner or operator demonstrates to the authority with delegation for enforcement that the source was operating in accordance with the startup, shutdown, and malfunction plan.

Plants must also submit the fugitive dust emissions control plan, testing plan, and all operation and maintenance plans on or before the applicable compliance date to the Administrator or delegated authority.

*G. What are the Compliance Deadlines?*

The owner or operator of an existing affected source must comply within [DATE 3 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. New or reconstructed sources that startup on or before the effective date of the final rule must comply by the effective date of the final rule. New or reconstructed sources that startup after the effective date of the final rule must comply upon initial startup.

## III. Rationale for Selecting the Proposed Standards

*A. How Did We Select the Affected Sources?*

An affected source is the collection of equipment, processes and activities within a source category to which an emission limitation, work practice standard, or other regulatory requirement in a MACT standard will apply. Depending on circumstance, we have adopted broader or narrower definitions of affected source. In some instances, we have adopted a definition as broad as all processes, equipment and activities at a source, while in other instances, we have defined affected source as narrowly as a single piece of equipment. The selection of affected

source is guided by the consideration of many factors including similarities and dissimilarities in emission units in terms of their size, type, and HAP emissions potential; the functional relationship of an emission unit or grouping of units within a plant or process; and the effect of an affected source definition on when and where new source MACT should apply.

We considered three different approaches for designating the affected source: the entire taconite iron ore processing plant, groups of emission points, and individual emission points. In selecting the affected sources for regulation, we identified each HAP-emitting operation, the HAP emitted, and the quantity of HAP emissions from individual or groups of emissions points. We determined that establishing the entire plant as the affected source does not take into account differences in the quantity and types of HAP emitted by different processing operations. We also determined that establishing each individual emission point as the affected source does not take advantage of similarities among certain processing operations. We concluded that the most appropriate approach is to designate the group of emission points associated with each major process area as an affected source. The resulting affected sources are ore crushing and handling operations, each indurating furnace, finished pellet handling operations, and each ore dryer.

As previously mentioned, the term affected source is used primarily as a means of specifying what equipment or activities would be affected by the proposed standards. In addition, the term affected source serves to define where new source MACT applies. Specifically, the General Provisions of 40 CFR part 63 define the terms ''construction'' and ''reconstruction'' with reference to the term affected source and provide that new source MACT applies when construction and reconstruction occur. When establishing the affected sources for these proposed standards, we recognized that selecting a narrow definition of affected source (*e.g.*, each crusher, conveyor, and bin) would cause new source MACT requirements to be triggered more frequently than if the affected source were defined as a collection of equipment (*e.g.*, all ore crushing and handling emission units). We do not believe that the replacement of an individual emission unit that is part of a larger integrated process should trigger new source MACT. Therefore, we established affected sources for ore crushing and handling and finished pellet handling that represent collections of equipment, rather than individual units.

During the development of the affected source definitions, we considered combining the two affected sources into one due to similarities in emission characteristics and controls. However, we decided not to do so due to differences in the physical location and organization of the units. Specifically, ore crushing handling units are located upstream of the indurating furnace, and the finished pellet handling units are located downstream of the indurating furnace. As a result, the grouping of units that comprised the affected sources are typically located in different buildings at different parts of the plant. In addition, ore crushing handling units are organized with respect to the crushing lines, whereas finished pellet handling units are organized with respect to the indurating furnace lines.

The ore crushing and handling affected source consists of the collection of equipment and operations needed to produce crushed ore suitable for processing into green pellets. Emission units include ore crushers (primary, secondary, and tertiary), screens, conveyors, storage bins, and transfer points. The ore crushing and handling affected source begins where crude taconite iron ore is dumped into the primary crusher and ends where the unfired (green) pellets enter the indurating furnace. We grouped all of these emission units into the one affected source based on their functional relationship, the similarity of their HAP emission characteristics, and the considerations for new source MACT stated above. The only HAP emitted from these units are metallic HAP, primarily manganese. We compared the outlet PM concentrations for the different types of emission units (*i.e.*, crushers, conveyors, bins, screens, and transfer points) and crushing stage (primary, secondary, and tertiary) and observed no discernable difference in emissions. In addition, grouping all the ore crushing and handling emission units into one affected source will allow sources more flexibility in developing control strategies for achieving compliance.

All wet process operations, including wet milling, magnetic separation, hydraulic separation, chemical flotation, and concentrate thickening in the concentrator area, and vacuum disk filters and balling drums in the pelletizing area, are excluded from the rule because the water effectively suppresses all emissions from these operations. Operations associated with the handling of limestone/dolomite and bentonite are also excluded since they produce no HAP emissions.

The finished pellet handling affected source consists of the following emission units: conveyors, storage bins, screens, and transfer points. The finished pellet handling affected source begins at the indurating furnace discharge and ends where the finished pellets are stockpiled. We grouped all of these emission units into the finished pellet handling affected source based on the similarity of their HAP emission characteristics and process equipment type. The only HAP emitted by these units are metallic HAP, primarily manganese. We compared the outlet PM concentrations for the different types of emission units (*i.e.*, conveyors, bins, screens, and transfer points) and observed no discernable difference in emissions. Therefore, we do not believe that subcategorization of the finished pellet handling affected source is warranted.

Unlike the ore crushing and handling and finished pellet handling affected sources, we have selected a narrower definition of affected source for indurating furnaces by defining the affected source as each individual furnace, rather than the collection of indurating furnaces at a particular plant. We defined each indurating furnace as a separate affected source because furnaces are independent emission units. As independent emission units, each indurating furnace has it own dedicated emission controls. In contrast, emissions from several ore crushing and handling and finished pellet handling process units are often combined and vented to a shared control device. In addition, since the indurating furnaces are the most significant source of HAP emissions, we wanted all new indurating furnaces to be subject to new source MACT.

The indurating furnace affected source includes any furnace, including both straight grate and grate kiln designs, in which green pellets are hardened by firing to a high temperature of between 2,200 to 2,500 °F. The indurating furnace begins at the point where the grate feed conveyor discharges green pellets onto the furnace traveling grate and ends where the hardened pellets exit the finished pellet cooler. Unlike ore crushing and handling and finished pellet handling units, indurating furnaces are combustion sources, and as such, emit substantially more HAP. In addition to emitting metallic HAP, indurating furnaces emit acid gases (HCl and HF) and products of incomplete combustion (primarily formaldehyde).

We are establishing subcategories within the indurating furnace affected source to distinguish between the two types of furnace designs—grate kiln and straight grate. We have determined that grate kiln furnaces are higher emitting sources than straight grate furnaces due to physical and operational differences that affect emissions and the controllability of emissions.

First, the grate kiln furnaces are larger than straight grate units with annual production rates approximately 30 percent higher than that of the straight grate furnaces. Second, the grate kiln furnaces are composed of two furnace sections, a continuous grate followed by a rotary kiln, while the straight grate furnaces include only a continuous grate.

In the grate kiln, the pellets drop off a conveyor into the kiln and then tumble in the kiln as it rotates. As a result, there is substantially more disturbance of the pellets in the grate kiln furnace which contributes to an increase in pellet breakage and in the entrainment of particles in the air stream and causing higher PM loadings and HAP emissions. In addition, the average volume of air flowing through a grate kiln furnace is more than twice the average volume of air flowing through a straight grate furnace. The greater air flow in grate kilns causes more entrainment of particles in the air stream, causing higher exhaust gas PM loadings and HAP emissions. Available test data show that, when processing magnetite ore, PM loadings for grate kilns are twice that of straight grate furnaces. Because grate kiln furnaces and straight grate furnaces have unique physical and operational differences that affect emissions and the controllability of emissions, we have subcategorized based on furnace type.

We have also concluded that, within the grate kiln furnace subcategory, higher PM emissions are observed when hematite ore is processed rather than magnetite ore. For example, PM emissions for one furnace were measured at 0.004 gr/dscf when the furnace was processing magnetite. When the same furnace was processing hematite, the PM emissions were measured at 0.018 gr/dscf. Contributing factors to the higher emissions include the fact that the hematite ore pellets are finer grained and subject to a higher breakage rate. As a result of the higher inlet PM loading, the controlled outlet PM emissions are higher when processing hematite than when processing magnetite. Therefore, to account for this difference in emissions, we are making a distinction on the basis of ore type within grate kilns. There are only two grate kiln furnaces that process hematite. Both of these indurating furnaces are located at the same plant in Michigan. These furnaces process hematite approximately eight months of the year and process magnetite the remainder of the year. There are no straight grate indurating furnaces processing hematite.

Emissions from cooler vent stacks are excluded from the indurating furnace affected source based on the large size of the particles and the relatively low concentration of particulate emissions. Test data indicate that PM emissions from cooler vent stacks are primarily coarse PM with 80 percent of the PM larger than 50 microns and only less than 1 percent smaller than 10 microns. Uncontrolled PM emissions from cooler vent stacks are typically around 0.04 gr/dscf. Cooler vent stacks are currently not controlled at any of the existing taconite plants. In Minnesota, cooler vent stacks are subject to the State's requirements that limit the PM concentrations based on volumetric flow rate. Based on typical volumetric flow rates in cooler vent stacks, the Industrial Process Equipment Rule (IPER) limit values range from 0.04 to 0.05 gr/dscf. In Michigan, cooler vent stacks are not recognized as emission points and are not addressed in operating permits.

Similar to the indurating furnace affected source, we have selected a narrow definition of affected source for ore dryers by defining the affected source as each individual ore dryer, rather than the collection of ore dryers at a particular plant. We defined each ore dryer as a separate affected source because ore dryers are independent emission units with their own dedicated emission control devices. There are only two ore dryers, and both are located at the same plant in Michigan. The concentrate from the Michigan plant contains a higher percentage of fine particles than other taconite operations and, therefore, requires additional drying. The ore dryers are located just upstream of the balling drum. Both dryers are rotary designs that tumble the wet taconite ore concentrate through a heated air stream to reduce the amount of entrained moisture in the taconite ore concentrate.

*B. How Did We Select the Pollutants?*

Pollutants emitted by plants in the taconite iron ore processing source category include metallic HAP (primarily naturally occurring compounds of manganese, arsenic, lead, nickel, and chromium, and lesser quantities of mercury), organic HAP resulting from incomplete combustion (mainly formaldehyde), and acid gases (hydrochloric acid and hydrofluoric acid).

Metallic HAP are emitted from ore crushing and handling units, indurating furnaces, finished pellet handling units, and ore dryers. We determined that it is not practical to establish individual standards for each metallic HAP that could be present in the various processes (*e.g.*, separate standards for manganese compound emissions, separate standards for lead compound emissions, and so forth for each metal compound group listed as HAP and which potentially could be present). When released, each of the metallic HAP compounds, except elemental mercury, behave as PM. As a result, strong correlations exist between PM emissions and emissions of the individual metallic HAP compounds. Control technologies used for the reduction of PM emissions achieve comparable levels of reduction of metallic HAP emissions. Standards requiring good control of PM emissions will also achieve a similar level of control of metallic HAP emissions. Therefore, we are establishing standards for total PM as a surrogate pollutant for the individual metallic HAP. Establishing separate standards for each metallic HAP would impose costly and significantly more complex compliance and monitoring requirements. In addition, establishing separate standards for each metallic HAP would achieve little, if any, HAP emissions reductions beyond what would be achieved using the total PM surrogate pollutant approach.

Products of incomplete combustion, such as formaldehyde, are released from indurating furnaces at very low concentrations as a result of the burning of fuels, such as natural gas. Formaldehyde has been measured through stack testing at concentrations that are typically less than 1 ppm.

Formaldehyde emissions are currently uncontrolled. Existing PM emission controls on indurating furnaces include ESP and wet scrubbers, neither of which are capable of controlling formaldehyde. In addition, since formaldehyde emissions are produced as a byproduct of burning fuels, generally natural gas, taconite plants cannot lower their formaldehyde emissions by switching raw materials or changing fuels.

We know of no feasible control technology for reducing formaldehyde emissions at these extremely low concentrations and at the exhaust gas temperatures typically encountered at indurating furnaces. The only known technology for the control of formaldehyde emissions at

concentrations of less than 1 ppm is thermal catalytic oxidation in which formaldehyde is contacted with a precious metal catalyst in the presence of oxygen and high temperature (650 to 1,350 °F) to yield carbon dioxide and water. Destruction efficiencies of 85 to 90 percent have been demonstrated on formaldehyde emissions contained in the exhaust gas from stationary combustion turbines at concentrations in the parts per billion range and temperatures of 1,000°F or higher. Destruction efficiencies, however, decrease exponentially at reaction temperatures below 650°F, down to eventually less than 10 percent at exhaust gas temperature of 300°F or less, which is typical of most indurating furnaces. Accordingly, the burning of large quantities of additional fuel, such as natural gas, would be needed to heat the exhaust gases to the desired temperature, which would generate additional quantities of carbon dioxide (a global warming gas) and nitrogen oxides (an ozone precursor). In addition, given the large volume of exhaust gas to be treated, on the order of several hundred thousand cubic feet per minute per furnace, and the complexity of retrofitting multiple stacks with gas burners and thermal catalytic oxidation units, the capital cost and operating cost for control would be enormous.

Since formaldehyde emissions are currently uncontrolled, we conclude that the MACT floor for formaldehyde is no emissions reduction. In addition, due to the severe technical and economic constraints of controlling formaldehyde at high volumetric flow rates, very low concentrations and relatively low temperatures, we conclude that no beyond-the-floor control is feasible. Accordingly, specific emission limitations for formaldehyde are not included in the proposed rule.

Acid gases (hydrochloric acid and hydrofluoric acid) are also emitted from indurating furnaces at very low concentrations, typically less than 3 ppm. Acid gases are formed in the indurating furnace due to the presence of chlorides and fluorides in pellet additives, such as dolomite and limestone. The taconite industry has not installed equipment to specifically control acid gases. The MACT floor for acid gases was determined to be no emissions reduction. Unlike formaldehyde, some air pollution control devices currently used by the industry to reduce PM emissions can achieve incidental control of acid gases. Due to the strong affinity of these acid gases for water, control equipment that use water, such as wet wall electrostatic precipitators and wet scrubbers, have the capability of reducing hydrochloric acid and hydrofluoric acid emissions substantially. Therefore, a specific emission limitation for acid gases is not included in today's proposal.

Indurating furnaces are also a source of mercury emissions. Mercury is a naturally occurring element in the taconite ore. As the taconite pellets are heated in the furnace, the naturally occurring mercury compounds are volatilized. The key factor affecting emissions is the mercury content of the ore. Currently, none of the plants in this industry have installed controls for mercury emissions. We also have not been able to identify any currently employed operating practices which effectively reduce mercury emissions. Since specific controls for mercury are not currently present in the industry and operating practices which effectively reduce mercury emissions have not been identified, the MACT floor for mercury was determined to be no emissions reduction. In evaluating potential above-the-floor options, we were unable to identify any viable control technologies or operating practices for achieving reductions in mercury emissions from indurating furnaces at taconite iron ore plants. As a result, a specific emission limitation for mercury has not been included in the proposed rule. We will reevaluate the feasibility of controlling mercury emissions from taconite iron ore plants as part of the assessment for residual risk standards.

Due to the nature of the taconite iron ore deposits on the Mesabi Range in Northeast Minnesota, there is some potential for the occurrence of contaminant asbestos in some taconite ore mining areas. Asbestos is the name applied to a group of six different minerals that occur naturally in the environment. These minerals are made up of long thin fibers similar to fiberglass. The concern is mainly limited to two taconite plants located at the eastern end of the Mesabi Range where acicular (needle-like) minerals may be present in the ore.

Asbestos emissions are currently regulated under NESHAP promulgated in April 1984 (40 CFR part 61, subpart M) that regulate the milling of commercial asbestos and the manufacturing and fabricating of asbestos products. The provisions of the NESHAP also apply to the demolition and renovation of buildings where asbestos-containing material is present. The NESHAP do not apply to ore or other mineral processing operations that may contain asbestos as a contaminant. A work group within EPA is currently studying the complex issues involved with asbestos emissions from beneficiation and subsequent processing of minerals where asbestos may be present as a contaminant. That study was initiated in response to the events surrounding exposures of citizens to asbestos which occurred as a contaminant in a vermiculite mine in Libby, Montana. The work group has developed an action plan which identifies steps necessary to gather the information that EPA needs to decide whether regulations for sources of contaminant asbestos are warranted. The work group has targeted vermiculite mining and processing operations as the first priority in the study. The work group also plans to study asbestos that occurs as a contaminant from other mining and processing operations, including taconite ore mining and processing. Decisions on whether to regulate asbestos that occurs as a contaminant in taconite ore mining and processing and other potential industries will be based on information gathered in the study.

*C. How Did We Determine the Bases and Levels of the Proposed Standards?*

We have taken alternative approaches to establishing the MACT floor, depending on the type, quality, and applicability of available data. The three approaches most commonly used involve reliance on the following: State and Federal regulations or permit limits, source test data that characterize actual emissions, and use of a technology floor with an accompanying demonstrated achievable emission level that accounts for process and/or air pollution control device variability. We evaluated each of these MACT floor approaches when developing the MACT floor for each of the four affected sources: Ore crushing and handling, indurating furnaces, finished pellet handling, and ore dryers. As previously discussed in this preamble, we are establishing standards for total PM as a surrogate pollutant for individual metallic HAP compounds.

1. Ore Crushing and Handling and Finished Pellet Handling

Although ore crushing handling and finished pellet handling are defined as separate affected sources, we combined the available test data on both sources for the MACT floor and MACT analyses. This is consistent with our usual practice in developing MACT standards in organizing, as appropriate, the available information for similar HAP-emitting equipment into related groups for the purpose of determining MACT floors and MACT; yet, as appropriate, maintaining separate affected source

definitions for the purpose of defining the applicability of relevant standards.

We identified 264 emission units within the ore crushing and handling affected source and 82 emission units within the finished pellet handling affected source at the eight taconite plants (346 emission units total). Particulate matter emissions from both operations are controlled primarily with medium energy wet scrubbers (*i.e.*, venturi-rod scrubbers, impingement scrubbers, and marble bed scrubbers). Baghouses, low energy wet scrubbers (*i.e.*, rotoclones), multiclones, and ESP are also used.

Relative to State and Federal regulations and permit conditions, some of the ore crushing and handling and finished pellet handling emission units in Minnesota are subject to the new source performance standards (NSPS) for metallic mineral processing plants (40 CFR part 60, subpart LL). The NSPS limit PM emissions from each affected emission unit to 0.022 gr/dscf. However, most of the ore crushing and handling and finished pellet handling emission units in Minnesota are subject to the IPER. The Minnesota IPER establishes PM concentration emission limits as a function of volumetric flow. The emission limit becomes more stringent as volumetric flow increases. Particulate matter emission limits for ore crushing and handling and finished pellet handling units under the IPER range from approximately 0.030 gr/dscf to approximately 0.095 gr/dscf. Due to its proximity to Lake Superior, one of the Minnesota plants is subject to the following more stringent limits: 0.002 gr/dscf for tertiary crushing and some storage/transfer points, 0.010 gr/dscf for cobbing and some storage/transfer points, and 0.030 gr/dscf for the rest of the emission points. The two taconite plants in Michigan are subject to a State PM emission limit of 0.1 pounds of PM per 1,000 pounds of exhaust gas, which equates to 0.052 gr/dscf.

The PM emissions tests data used in the MACT analysis covers 60 emission units, which accounts for 17 percent of the combined 346 ore crushing and handling and finished pellet handling emission units in the source category. Included are representative data on all crushing stages, screening operations, conveyor transfer points, and storage bins, as well as finished pellet screening operations and conveyor transfer points. These tests also cover the full range of control devices applied to both emission units. Each test is composed of three, 1-hour test runs expressed in PM concentration units of gr/dscf.

We compared these 60 data points on actual emissions to the State and Federal emissions limitations to determine whether the limitations provided a reasonably realistic representation of actual emissions and performance. Based on this comparison, it is clear that actual PM emissions are considerably lower than the levels allowed by the State emission limits and the metallic mineral processing NSPS, and that the State and Federal PM emission limits do not realistically represent performance achieved in practice by the best performing sources. Test results in the data pool are on the order of 0.002 to 0.010 gr/dscf, which is substantially below that generally allowed under the State and Federal emissions limitations cited above.

We evaluated the test data by process stage (*i.e.*, primary crushing, secondary crushing, tertiary crushing, grate feed, and finished pellet handling) to determine whether PM emissions varied depending on process stage. We found no discernable differences in the types of controls or the level of controlled PM emissions among the various process stages. Consequently, we concluded that distinguishing among process stages was unnecessary, and that it was feasible to establish one PM emission limit that would apply to all ore crushing and handling and finished pellet handling emission units.

An underlying presumption when setting MACT standards is that all emission limitations must be met or complied with at all times. Consequently, when establishing MACT floors and ultimately MACT standards, we must consider the long-term variability in performance expected to occur under reasonable worst-case conditions or circumstances. We must assure that ensuing standards reflect the level of emissions control determined to be MACT. We must also assure that the standards are achievable under normal and recurring worst-case circumstances.

The MACT floor and the MACT level of control were determined based on each plant's flow-weighted mean PM concentration for all emission units in both affected sources. By averaging higher emitting units with lower emitting units, each plant's flow-weighted mean PM concentration value takes into account much of the variability in emissions among different units within the two affected sources and provides what we believe to be a reasonably accurate representation of the overall level of control that is being achieved by those affected sources.

We then proceeded to establish the MACT floor based on the pool of credible data available to us for each plant. Of the eight existing taconite iron ore plants, three plants were excluded from the floor analysis due to a lack of sufficient test data. One of the plants had no PM emissions test data whatsoever, and the other two plants had only two tested units each. Each of the remaining five plants had emissions test data for 6 to 21 units.

The first step in the MACT floor analysis was to calculate a flow-weighted mean PM concentration value (in gr/dscf) for each of the five plants using the available PM emissions data for the ore crushing and handling and finished pellet handling units at each plant. For each unit with a PM emissions test, the total grains of PM emitted during the test was calculated by multiplying the test average in gr/dscf by the test average flow rate in dscf. Then, for each plant, the grains of PM emitted by all the tested units at that plant were totaled. The total grains emitted were then divided by the total air flow for the tested units (in dscf) to obtain the flow-weighted mean PM concentration in gr/dscf. The flow-weighted mean PM concentration values (in gr/dscf) for each of the five plants were 0.0047, 0.0050, 0.0059, 0.0114 and 0.0116. The resulting MACT floor for the ore crushing and handling and finished pellet handling affected sources as determined using the flow-weighted mean PM concentration for the five plants is 0.008 gr/dscf.

We then examined a beyond-the-floor alternative. The next increment of control beyond the floor is the installation of impingement scrubbers capable of meeting a concentration limit of 0.005 gr/dscf, which is equivalent to the level of control we anticipate requiring for new sources. We estimate the additional capital cost of replacing existing controls with new impingement scrubbers performing at a level of 0.005 gr/dscf to be $3.5 million and the total annual cost to be $653,000 per year. We estimate the corresponding incremental reduction in HAP metals achieved by reducing the PM concentration from 0.008 to 0.005 gr/dscf to be 0.37 tons. The cost per ton of HAP is $1.7 million. The energy increase would be expected to be 2,870 mega-watt hours per year, primarily due to the energy requirements of new scrubbers. We believe that the high cost, coupled with the small reduction in HAP emissions, does not justify this beyond-the-floor alternative at this time. We could not identify any other beyond-the-floor alternatives. Consequently, we chose the floor level of control of 0.008 gr/dscf as MACT.

For new ore crushing and handling and new finished pellet handling affected sources, we are selecting a PM outlet concentration of 0.005 gr/dscf as

new source MACT. The 0.005 gr/dscf level corresponds to the best performing source (plant) with the lowest flow-weighted mean PM concentration.

2. Indurating Furnaces Processing Magnetite

There are 21 indurating furnaces at the eight operating taconite plants. Fourteen of the furnaces are grate kiln designs and seven are straight grate designs. As discussed previously in this preamble, we are establishing subcategories within the indurating furnace affected source to accommodate differences in the two furnace designs. We have determined that these furnace design types have unique physical and operational differences which warrant their separation into two subcategories. We are also differentiating the grate kiln furnaces based on type of ore processed (*i.e.*, hematite versus magnetite ore).

We evaluated the existing State PM emission limitations as an option for establishing the MACT floor. However, a comparison of the State limits with data on actual PM emissions shows that the State limits are generally much more lenient than the actual emissions and, as such, are not appropriate for establishing the MACT floor.

Most of the indurating furnaces in Minnesota are subject to the State's IPER. Particulate matter emission limits for indurating furnaces under the IPER range from 0.025 to 0.05 gr/dscf. Due to its proximity to Lake Superior, one of the Minnesota plants, which operates straight grate furnaces, is subject to a more stringent State limit of 0.01 gr/dscf. The two Michigan plants, both of which operate grate kiln furnaces, are subject to State PM emission limits also based on air flow rates. One plant which operates two furnaces has a PM emission limit of 0.065 pounds of PM per 1,000 pounds of exhaust gas, which equates to 0.04 gr/dscf. The other plant which operates four grate kilns has a PM emission limit of 0.10 pounds of PM per 1,000 pounds of exhaust gas for two larger kilns, and 0.15 pounds of PM per 1,000 pounds of exhaust gas for two smaller kilns. The two emission limits equate to 0.06 to 0.09 gr/dscf, respectively. By contrast, the available information on actual PM emissions for 19 of 21 furnaces for which we have emissions test data indicate that the actual emissions are considerably lower than the levels allowed under the State limits. The average concentration of actual emissions measured from all 19 furnaces when processing magnetite range from 0.005 to 0.02 gr/dscf, which is about 5 times lower than the typical State limit. Therefore, we concluded that the State PM emission limits and permit conditions do not realistically represent the emission levels actually achieved in practice by the best performing sources.

We next examined the available emissions data to determine if the MACT floor could be based on actual emissions. We have credible PM test data for six of the seven straight grate furnaces and thirteen of the fourteen grate kiln furnaces. The test data for each furnace consists of a test for each furnace stack, with multiple tests for furnaces that discharge through more than one stack. Each test consists of three 1-hour test runs expressed in gr/dscf. For the furnaces with multiple stacks, the PM emissions from each indurating furnace were calculated as the flow-weighted mean concentration of PM emissions from all stacks. Given the amount and quality of available PM emissions test data, we conclude that the available information on actual emissions is more than adequate for the purpose of determining the requisite MACT floors for new and existing sources.

As a first step in our MACT floor and MACT analysis for indurating furnaces, we initially explored the appropriateness of using a plantwide average approach similar to that used for ore crushing and handling and finished pellet handling. After an assessment of the available test data, we determined that the plantwide average approach was not feasible due to insufficient data, and that an alternative approach that focuses on individual furnace emissions rather than plantwide emissions is more suitable. For plants using grate kiln furnaces, we have sufficient test data to calculate a plantwide value for only three of the five plants. For plants using straight grate furnaces, we have sufficient test data to calculate a plantwide value for only two of the three plants. Therefore, due to a lack of test data on some furnaces, it is not possible to use a plantwide approach to determine the MACT floor for indurating furnaces.

As an alternative approach, we treated each of the 21 indurating furnaces as separate emission units. As a first step, we looked at all furnaces (straight grate and grate kiln) with multiple PM emissions tests to account for the variability inherent in the performance tests. There are 12 grate kiln furnaces and three straight grate furnaces for which there were two or more emissions tests. To quantify the variability between tests for each of these furnaces, we calculated a relative standard deviation (RSD) for each furnace. The RSD is calculated by dividing the standard deviation of the data by the mean of the data and multiplying the result by 100. The RSD provides a measure of the variability of the PM test data for each furnace relative to the mean of the PM test data for each furnace. The RSD is expressed as a percentage for each furnace, and these percentages were then compared between furnaces.

The variability between tests for a given indurating furnace is due to normal variability in process operation and control device performance, as well as measurement error. These factors affect all furnaces similarly, and their affect on emissions is largely independent of furnace type and ore type. Therefore, we looked at the range of RSD values for all furnaces together (grate kilns and straight grates) when determining the overall variability. The RSD for the 15 furnaces with multiple test data ranged from 9 to 112 percent and averaged 37 percent. This indicates that on average, the PM emissions tests for each furnace are within plus or minus 37 percent of the mean of the emissions tests.

We then applied the average RSD of 37 percent to each emission test to include a measure of variability to each test. Next, we assigned a level of performance to each of the 19 furnaces for which we have actual emissions data. For furnaces for which we have two or more tests, we chose the higher of the test results as the representative value of performance for that furnace. We believe that selecting the higher of the test results provides more assurance that the inherent operational variability is fully accounted for in the selection of the representative value. For furnaces for which we have only one test, we used that single test result as the assigned value of performance.

Since there are fewer than 30 sources in the straight grate and grate kiln indurating furnace subcategories, the MACT floors were determined using the best five performing sources. Each indurating furnace was then ranked within its subcategory according to its flow-weighted mean concentration of PM emissions after application of the RSD adjustment for variability. The five furnaces in each subcategory with the lowest adjusted PM concentration were identified as the best performing sources. The MACT floor was then determined as the mean PM concentration value for the five best performing sources. The adjusted PM concentration values for the five best performing straight grate furnaces were 0.0083, 0.0090, 0.0093, 0.0105, and 0.0126. The mean of the five best performing straight grate furnaces was determined to be 0.010 gr/dscf. The

adjusted PM concentration values for the five best performing grate kiln furnaces were 0.0085, 0.0090, 0.0111, 0.0123, and 0.0123. The mean of the five best performing grate kiln furnaces was determined to be 0.011 gr/dscf.

We then examined a beyond-the-floor option. The next increment of control beyond the floor is the installation of venturi scrubbers or dry ESP capable of meeting a concentration limit of 0.006 gr/dscf, which is equivalent to the level of control required for new straight grate furnaces and new grate kiln furnaces. For straight grate furnaces, we estimate the additional capital cost of going from a level of 0.010 gr/dscf to a level of 0.006 gr/dscf to be $71.2 million and the total annual cost to be $11.4 million per year. We estimate the corresponding additional reduction in HAP achieved from straight grate furnaces to be 30 tons. The cost per ton of HAP for straight grate furnaces is $379,000/ton. The energy increase would be expected to be 17,139 mega-watt hours per year, primarily due to the energy requirements of new wet scrubbers and dry ESP. For grate kiln furnaces, we estimate the additional capital cost of going from a level of 0.011 gr/dscf to a level of 0.006 gr/dscf to be $28.5 million and the total annual cost to be $5.3 million per year. We estimate the corresponding additional reduction in HAP achieved from grate kilns to be 12.8 tons. The cost per ton of HAP for grate kiln furnaces is $414,000/ton. The energy increase would be expected to be 36,297 mega-watt hours per year, primarily due to the energy requirements of new wet scrubbers and dry ESP. We believe that the high cost, coupled with the small reduction in HAP emissions, does not justify this beyond-the-floor alternative for either furnace subcategory. We could not identify any other beyond-the-floor alternatives. Consequently, we chose the MACT floor levels of control of 0.010 gr/dscf for straight grate furnaces and 0.011 gr/dscf for grate kiln furnaces as MACT for existing indurating furnace.

For the new source MACT analysis, we did not adjust the PM emissions test results for variability. We believe that a variability adjustment is not necessary because new emission controls can be engineered to account for variability in process operation and control device performance, as well as measurement error. We ranked the representative PM concentrations for each straight grate furnace and for each grate kiln furnace from the lowest to the highest values.

We selected the furnace with the lowest PM outlet concentration of 0.006 gr/dscf as new source MACT for new straight grate indurating furnaces. We believe that this furnace, which is controlled by a venturi scrubber, represents the best controlled similar source among the seven operating straight grate furnaces.

We selected the furnace with the lowest PM outlet concentration of 0.006 gr/dscf as the new source MACT for new grate kiln indurating furnaces processing magnetite. We believe that this furnace, which is controlled by a dry ESP, represents the best controlled similar source among the 14 operating grate kiln furnaces.

3. Indurating Furnaces Processing Hematite

There are two indurating furnaces that process hematite ore. Both furnaces are grate kiln designs and are located at the same plant in Michigan. Hematite is processed approximately 8 months of the year and magnetite is processed the remainder of the year.

Both furnaces are similar in design, size, operating conditions and air pollution control. Each furnace is of the grate kiln design, which consists of a continuous traveling grate followed by a rotary kiln. The two kilns are both 25 feet in diameter and 160 feet long and have similar production rates. Exhaust gases from each furnace are controlled by three ESP, three dry units on one furnace and one wet and two dry units on the other furnace. All corresponding ESP for each furnace have similar configurations, including number of chambers and fields, and collection area; and similar operating conditions, including volumetric air flow, gas inlet temperature, primary and secondary currents, and primary and secondary voltages.

We evaluated the existing State PM emission limitations as an option for establishing the MACT floor. However, a comparison of the State limit with data on actual PM emissions shows that the State limit is much more lenient than the actual emissions and, as such, is not appropriate for establishing the MACT floor.

Both furnaces are subject to Michigan's PM emission limit of 0.065 pounds of particulate per 1,000 pounds of exhaust gas, which equates to approximately 0.04 gr/dscf. In comparison, available information on actual PM emissions for the two furnaces indicate that the actual emissions are considerably lower than the levels allowed under the State limit. The average concentration of actual emissions measured from the two furnaces when processing hematite range from 0.017 to 0.018 gr/dscf, which is about half the State limit. Therefore, we concluded that the State PM emission limit does not realistically represent the emission levels actually achieved in practice by the two furnaces when processing hematite.

We next examined the available emissions data to determine if the MACT floor could be based on actual emissions. We have credible PM test data for both furnaces while processing hematite. The test data for each furnace consists of a PM test of each furnace stack (three tests per furnace). Each test consists of three 1-hour test runs. The PM emissions from each furnace were calculated as the flow-weighted mean concentration of PM emissions in gr/dscf from all stacks. We believe that this available information on actual emissions is adequate for the purpose of determining the requisite MACT floors for new and existing sources.

A variability analysis for furnaces processing hematite could not be conducted because multiple valid PM emissions tests are not available for these furnaces. As a result, we relied on the RSD adjustment used when processing magnetite to account for process, control device, and measurement variability. As noted previously, these factors affect all furnaces similarly, and their affect on emissions is largely independent of furnace type and ore type. Therefore, we believe it is appropriate to apply the RSD calculated for furnaces processing magnetite to furnaces processing hematite. Since there are only two indurating furnaces processing hematite, and these furnaces are ostensibly identical in design, size, operation and emissions control, we selected the MACT floor based on the higher of the two PM concentration values (0.023 and 0.025 gr/dscf) after application of the RSD adjustment for variability. The resulting MACT floor for existing grate kiln indurating furnaces processing hematite is 0.025 gr/dscf.

We then examined a beyond-the-floor alternative. The next increment of control beyond the floor is the installation of a dry ESP capable of consistently meeting a concentration limit of 0.018 gr/dscf, which is equivalent to the level of control required for new grate kiln furnaces processing hematite. We estimate the additional capital cost of going from a level of 0.025 gr/dscf to a level of 0.018 gr/dscf to be $25.9 million and the total annual cost to be $4.9 million per year. We estimate the corresponding additional reduction in HAP achieved from grate kiln furnaces processing hematite to be 0.3 tons. The cost per ton of HAP for grate kiln furnaces processing hematite is $19.6 million/

ton. The energy increase would be expected to be 34,898 mega-watt hours per year, primarily due to the energy requirements of new dry ESP. We believe that the high cost, coupled with the small reduction in HAP emissions, does not justify this beyond-the-floor alternative at this time. We could not identify any other beyond-the-floor alternatives. Consequently, we chose the MACT floor level of control of 0.025 gr/dscf as MACT for existing grate kiln furnaces processing hematite.

For the new source MACT analysis, we relied on the same emission source test data used above in the existing source MACT determination. However, we did not adjust the values from the emissions tests with a RSD adjustment for the new source MACT analysis. We believe that a variability adjustment is not necessary because new emission controls can be engineered to account for variability in process operation and control device performance.

As noted previously, both furnaces are ostensibly identical in design, operation and control, with measured PM emissions based on one performance test per furnace of 0.017 and 0.018 gr/dscf. Given the similarities between the two furnaces and their demonstrated performance, we selected a PM concentration of 0.018 gr/dscf as the new source MACT for new grate kiln indurating furnaces when processing hematite.

4. Ore Dryers

There are only two ore dryers in the source category. Both are rotary designs and are located at the same plant in Michigan. The first dryer measures 10 feet in diameter and 80 feet in length and has a rated capacity of 400 tons per hour. It is equipped with two cyclones and an impingement scrubber in series for PM control. The second dryer is somewhat larger measuring 12.5 feet in diameter and 100 feet in length with a rated capacity of 650 tons per hour. The exhaust gas from the second dryer is split into two streams, with each exhaust stream controlled by two cyclones and an impingement scrubber in series and discharging through a separate stack. Both ore dryers are subject to Michigan's PM emission limit of 0.1 pound of particulate per 1,000 pounds of exhaust gas, which equates to approximately 0.052 gr/dscf.

We have one PM emission test for each dryer. Both dryers were tested in May 2002 while processing hematite. Tests were conducted at each of the three dryer stacks and included three 1-hour test runs per stack. In the case of the two stack dryer, the test results were calculated on a flow-weighted basis. The results, expressed in units of PM concentration, are 0.017 and 0.040 gr/dscf for the smaller and larger dryer, respectively.

We examined the test conditions under which each dryer was tested and have determined that the smaller dryer was tested under conditions not representative of normal long-term operations. Specifically, the dryer had been idle prior to testing and brought back on-line solely for the purpose of testing only 2 hours ahead of commencing the performance test, which was 3 hours in duration. We do not believe that a warm-up period of only a few hours is adequate to produce conditions representative of the worst-case circumstance reasonably expected to occur under normal long-term operations. We have, therefore, excluded these data from further consideration in our MACT assessment.

We evaluated the existing State PM emission limit as an option for establishing the MACT floor. A comparison of the State limit of 0.052 gr/dscf with the only credible data on actual PM emissions of 0.040 gr/dscf indicates that the State limit is a reasonable proxy of actual performance and, as such, is appropriate for establishing the MACT floor level. Consequently, the MACT floor for ore dryers is determined to be the level of control indicated by the existing State limit of 0.052 gr/dscf.

We then examined a beyond-the-floor alternative. The next increment of control beyond the floor is the installation of venturi scrubbers capable of meeting a concentration limit of 0.025 gr/dscf, which is equivalent to the level of control required for new ore dryers. We estimate the additional capital cost of going from a level of 0.052 gr/dscf to a level of 0.025 gr/dscf to be $98,000 and the total annual cost to be $256,000 per year. We estimate the corresponding additional reductions in HAP achieved from ore dryers to be 0.32 tons. The cost per ton of HAP for ore dryers is $790,000/ton. The energy increase would be expected to be 3,520 mega-watt hours per year, primarily due to the energy requirements of new wet scrubbers. We believe that the high cost, coupled with the small reduction in HAP emissions, does not justify this beyond-the-floor alternative at this time. We could not identify any other beyond the floor alternatives. Consequently, we chose the MACT floor level of control of 0.052 gr/dscf as MACT for existing ore dryers.

For new ore dryers, we are selecting a PM outlet concentration of 0.025 gr/dscf as new source MACT. The 0.025 gr/dscf level corresponds to the standard for dryers in the NSPS for calciners and dryers in mineral industries (40 CFR part 60, subpart UUU). The dryers used to develop the NSPS limit are very similar to the dryers that are used by the taconite industry. Specifically, many of the dryers studied in the NSPS were of the rotary design, were controlled by wet scrubbers, and processed material with a particle size distribution similar to that of taconite ore. Therefore, due to these similarities, we believe that the level of 0.025 gr/dscf from the NSPS for calciners and dryers in mineral industries is a reasonable proxy of the performance that can be achieved by new ore dryers in the taconite industry.

*D. How Did We Select the Initial Compliance Requirements?*

To demonstrate initial compliance with the PM emission limit for the ore crushing and handling affected source, the flow-weighted mean concentration of PM emissions of all units within the affected source must not exceed the applicable PM emission limit. Similarly, for the finished pellet handling affected source, the flow-weighted mean concentration of PM emissions of all units within the affected source must not exceed the applicable PM emission limit. For both affected sources, emission units must demonstrate their performance through initial testing. The performance test is to be conducted using EPA Method 5 or 17 in 40 CFR part 60, appendix A.

Factors that can affect the compatibility of the Method 5 and Method 17 results are stack temperature, moisture and the type and quantity of condensible material. Stack emissions from ore crushing and handling and finished pellet handling emission units are typically at ambient temperature, and are low in moisture and condensible material. Therefore, under the conditions encountered at taconite plants for both units, we consider the results from Method 5 and Method 17 to be equivalent.

There are a total of 346 ore crushing and handling and finished pellet handling emission units in the industry. Combined, these units account for only 1 percent of the total HAP emitted from the entire source category. Requiring an initial EPA Method 5 or 17 PM test for all 346 units would cost approximately $1.73 million ($5,000 per test). The ore crushing and handling and finished pellet handling operations at most taconite iron ore processing plants consist of parallel lines of crushers, screens, bins, and conveyors. In most cases, the parallel lines consist of nearly identical process units and emission control equipment. Therefore, to reduce

the burden of initial testing, we are allowing plants to group similar emission units with similar control equipment together and then conduct an initial performance test on one or more representative emission units within each group, depending on the number of similar units within the group. To ensure consistency in the grouping of similar emission units, the rule includes the following criteria: emission units must be the same type of process unit (*e.g.*, primary crushers are separate from secondary crushers); emissions from the units must be controlled by the same type of emission control device (*e.g.*, impingement scrubbers are separate from venturi scrubbers); the difference in the volumetric flow rate among similar emission units in dscf cannot vary by more than 10 percent; and the difference in the actual process throughput rate among similar emission units in long tons per hour cannot vary by more than 10 percent. Each plant must submit a testing plan to the permitting authority for approval. The testing plan must identify the emission units that will be grouped as similar and identify the representative unit that will be tested for each group.

By allowing similar emission units to be grouped together, we estimate that the total number of emission units subjected to initial compliance testing would be reduced from 346 to 176 units. This would reduce the initial compliance burden by approximately half to $880,000.

Even after grouping similar emission units, most plants would still have to test between 20 and 39 units (ore crushing and handling and finished pellet handling combined). We believe that 180 days does not allow sufficient time to schedule and test this number of emission units. In addition, plants will be conducting initial compliance tests for their indurating furnaces at the same time. Therefore, to further reduce the burden of initial compliance testing for both emission units, we are allowing plants 2 years following the compliance date to conduct all initial compliance tests for both emission units. We believe that by grouping similar units and allowing initial testing to be conducted within 2 years, the initial compliance burden will be minimized while still providing adequate assurance of initial compliance with the emission limits.

To demonstrate initial compliance with the PM emission limit for indurating furnaces, the flow-weighted mean concentration of PM emissions of all furnace stacks for each furnace must not exceed the applicable PM emission limit. Indurating furnaces must demonstrate their performance through initial testing. The performance test is to be conducted using EPA Method 5 or 17 in 40 CFR part 60, appendix A.

As mentioned above, factors that can affect the compatibility of the Method 5 and Method 17 results are stack temperature, moisture and the type and quantity of condensible material. Stack emissions from indurating furnaces typically range from 200 to 315°F, with an 8 to 14 percent moisture content, and low concentrations of condensible material. Under these conditions we consider the results from Method 5 and Method 17 to be equivalent. However, if the stack temperature is above 320°F and the furnace is burning a fuel other than natural gas, Method 5 must be used for the performance test.

The initial compliance test for each indurating furnace must be performed within 180 calendar days of the compliance date. For indurating furnaces with multiple stacks, all stacks for the indurating furnace must be tested simultaneously. The 180-day requirement is consistent with the requirements in subpart A of 40 CFR part 63. The number of indurating furnaces per plant ranges from one to five, as well as the number of stacks per furnace. Based on the relatively small number of indurating furnaces, we believe that 180 days allows sufficient time for plants to complete initial testing of all indurating furnaces.

To demonstrate initial compliance with the PM emission limit for ore dryers, the flow-weighted mean concentration of PM emissions of all stacks for each dryer must not exceed the applicable PM emission limit. Ore dryers must demonstrate their performance through initial testing. The performance test is to be conducted using EPA Method 5 or 17 in 40 CFR part 60, appendix A.

The initial compliance test for each ore dryer must be performed within 180 calendar days of the compliance date. For ore dryers with multiple stacks, all stacks for the ore dryer must be tested simultaneously. The 180-day requirement is consistent with the requirements in subpart A of 40 CFR part 63. There are only two existing ore dryers in the source category. As such, we conclude that 180 days allows sufficient time to complete initial testing.

The proposed rule would also require that certain operating limits on control devices be established during the initial compliance test to ensure that control devices operate properly on a continuing basis. All operating limits must be established during a performance test that demonstrates compliance with the applicable emission limit. During the initial compliance tests, operating limits must be established for pressure drop and scrubber water flow rate for all wet scrubbers, and opacity (using a COMS) for dry ESP.

*E. How Did We Select the Continuous Compliance Requirements?*

For continuous compliance, we chose periodic performance testing for PM, which is consistent with current permit requirements. We consulted with the two States in which taconite ore processing plants are located to determine how they were implementing title V permitting requirements for performance tests. The requirements for the frequency and number of performance tests for ore crushing and handling, and finished pellet handling and ore drying units were determined to be variable and highly site-specific. Consequently, for ore crushing and handling, and finished pellet handling and ore drying units, we decided that the schedule for conducting subsequent performance tests should be based on schedules established in each plant's title V operating permit. If a title V permit has not been issued, then the plant must submit a testing plan and schedule to the permitting authority for approval.

For each indurating furnace, the proposed rule would require subsequent testing of all stacks based on the schedule in each plant's title V operating permit, but no less frequent than twice per 5-year permit term. If a title V permit has not been issued, then the plant must submit a testing plan and schedule to the permitting authority for approval. The testing frequency in the testing plan can be no less frequent than twice per 5-year period. Since the majority of the HAP emissions from this source category result from the operation of indurating furnaces, we believe that testing twice per permit term is appropriate.

We also developed procedures to ensure that control equipment are operating properly on a continuous basis. Baghouses must be equipped with a bag leak detection system. Wet scrubbers must be monitored for pressure drop and scrubber water flow rate, and they must not fall below the parametric monitoring limits established during the performance test. Dry electrostatic precipitators must be monitored for opacity using COMS. The opacity must not exceed the operating limit established during the performance test. If a plant uses equipment other than a baghouse, scrubber, or dry ESP to control emissions from an affected source, the

owner or operator is required to send us a monitoring plan containing information on the type of device, performance test results, appropriate operating parameters to be monitored, operating limits, and operation and maintenance.

*F. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?*

We selected the notification, recordkeeping, and reporting requirements that are consistent with the NESHAP General Provisions (40 CFR part 63, subpart A). One-time notifications are required by the EPA to identify which plants are subject to the standards, if a plant has complied with the rule requirements, and when certain events such as performance tests and performance evaluations are scheduled. Semiannual compliance reports containing information on any deviation from rule requirements are also required. These reports would include information on any deviation that occurred during the reporting period; if no deviation occurred, only summary information (such as a statement of compliance) is required. Consistent with the General Provisions, we also require an immediate report of any startup, shutdown, or malfunction where the actions taken in response were not consistent with the startup, shutdown, and malfunction plan. This information is necessary to determine if changes to the plan are required. Recordkeeping requirements are limited to those records that are required to document compliance with the proposed rule. Recordkeeping requirements include: a copy of each notification and report submitted and all supporting documentation; records of startup, shutdown, and malfunction; records of performance tests, performance evaluations, and opacity observations; and records related to control device performance. These notifications, reports, and records are the minimum required to ensure initial and continuous compliance with the proposed rule.

## IV. Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts of the proposed rule are based on the replacement of poor performing controls at existing sources with new controls capable of meeting the emission limits established in the proposed rule. We estimated no impacts for new sources since we do not project any new or reconstructed affected sources becoming subject to the new source MACT requirements in the foreseeable future. Specifically, we anticipate that four plants will install new impingement scrubbers on a total of 54 out of the 264 ore crushing and handling emission units to meet the PM emission limit. We expect that four plants will install new venturi rod wet scrubbers or will upgrade existing wet scrubbers on at least one of their indurating furnaces. In total, we estimate that the existing controls will be replaced with new venturi rod wet scrubbers on 7 of the 47 indurating furnace stacks. We estimate that the existing controls will be upgraded with new components on 4 of the 47 indurating furnace stacks. We anticipate that three plants will install new impingement scrubbers on a total of 11 out of the 82 finished pellet handling units to meet the finished pellet handling PM emission limit.

*A. What are the Air Emission Impacts?*

The installation of new controls and upgrades discussed in the preceding paragraph will result in reductions in emissions of metal HAP, acid gases, and PM. Overall, the proposed standards are expected to reduce HAP emissions by a total of 370 tons/year, a reduction of about 40 percent. Metallic HAP emissions will be reduced by 14 tons/year (a 40 percent reduction) and acid gas emissions (HCl and HF) will be reduced by 356 tons/year (a 54 percent reduction). In addition, the proposed standards are expected to reduce PM emissions by 9,438 tons/year, a reduction of about 65 percent.

*B. What Are the Cost Impacts?*

The total installed capital costs to the industry for the installation of control equipment are estimated to be $47.3 million. Total annualized costs are estimated at $7.0 million/yr, which includes $4.1 million/yr in capital recovery costs, $2.8 million/yr in emission control device operation and maintenance costs, and $0.1 million/yr for monitoring, recordkeeping and reporting. These costs are based on the installation of new wet scrubbers on 54 ore crushing and handling units, seven indurating furnace stacks, and 11 finished pellet handling units. The costs are also based on upgrading four wet scrubbers for one indurating furnace. In addition, the estimate includes the cost of bag leak detection systems for baghouses, continuous parameter monitoring systems for scrubbers, and continuous opacity monitors for ESP.

*C. What Are the Economic Impacts?*

We prepared an economic analysis to evaluate the impact this proposed rule would have on the producers and consumers of taconite and society as a whole. The taconite industry consists of eight companies owning eight mining operations, concentration plants, and pelletizing plants. The total annualized social cost of the proposed rule is $7 million (in 2000 dollars). This cost is distributed among consumers (mainly steel mills) who may buy less and/or spend more on taconite iron ore as a result of the proposed NESHAP, including merchant taconite producers that sell their output on the market, integrated iron and steel plants that produce and consume the taconite captively within the company, steel producers that use electric arc furnace (EAF) technology to produce steel from scrap, and foreign producers. Consumers incur $3.4 million of the total social costs, merchant producers incur $0.7 million in costs, and integrated iron and steel producers incur $5 million in costs. The EAF producers and foreign producers enjoy a net gain in revenues of $1.2 million and $0.7 million, respectively.

Our analysis indicates that the taconite iron ore market will experience minimal changes in the price and quantity of produced, and in the prices and quantities of steel mill products (some of which are produced using taconite). Prices in the taconite iron ore market are estimated to increase by 2/100th of a percent while production may decrease by less than 1/100th of 1 percent. The price of steel mill products is projected to increase by less than 1/100th of 1 percent and the quantity produced is projected to change by less than 1/100th of 1 percent. The EAF steel producers who make steel from scrap rather than iron ore are projected to increase their output by approximately 2/100th of 1 percent in response to the slight increase in the price of steel mill products.

While the market overall shows minimal impacts associated with this proposed rule, the financial stability of the firms operating in this market is very uncertain. The past few years have been a period of tremendous change in the iron and steel industry, during which more than 27 companies in the industry have declared bankruptcy, several plants have closed, and EAF technology has secured a growing share of the market. These changes have occurred due to evolving economic conditions, both domestically and abroad, and technological developments within the industry. Conditions continue to be challenging for iron and steel producers. In an assessment of the impacts on the companies owning taconite plants, we find the estimated costs of the proposed rule are uniformly

less than 1 percent of baseline sales revenues, and typically less than 3 percent of baseline profits. However, four of the companies had negative operating income in 2000, a period of time during in which the entire nation experienced a drop in economic activity. Three of the companies owning taconite plants have filed for protection under Chapter 11 of the bankruptcy code since September 2001. Thus, there is reason to be concerned about the financial condition of companies owning taconite plants. The incremental effect of the proposed rule on firm financial stability, however, is projected to be very small.

We also prepared a sensitivity analysis that examined the regional impacts of the proposed rule. All the taconite production plants are located within four counties in Minnesota and one in Michigan. Thus, the impacts of the proposed rule are expected to be concentrated geographically. We modeled the supply and demand linkages of the various industries and households within each county to estimate changes that may occur in the region as the taconite industry complies with the proposed NESHAP. We estimate that as industries that interact with the taconite industry (such as construction and earth moving equipment industries) react to the changes in the taconite market, and as household incomes are reduced as a result of changes in all the various industries in the region, the impact of the proposed rule will add approximately $4 million in economic cost to the region. This represents approximately 2/10ths of 1 percent of total sales in those counties. Thus, even though the impacts are concentrated in only five counties, we believe that the impacts on those county economies will not be very large.

*D. What Are the Non-Air Health, Environmental, and Energy Impacts?*

We project that the implementation of the rule as proposed would increase water usage by 8.4 billion gallons per year industrywide. This increased water usage would result from the installation of new wet scrubbers needed for compliance. Much of this water will be discharged as scrubber blowdown to the tailings basin(s) located at each plant. At two or more of the affected facilities, there is the potential that this increased wastewater burden will result in new or aggravated violations of permitted wastewater discharge limits from the tailings basins unless significant measures are taken to install new or upgrade existing wastewater treatment systems. The energy increase would be expected to be 15,298 megawatt-hours per year, primarily due to the energy requirements of new wet scrubbers.

## V. Solicitation of Comments and Public Participation

We seek full public participation in arriving at final decisions and encourage comments on all aspects of this proposal from all interested parties. You need to submit full supporting data and detailed analysis with your comments to allow use to make the best use of them. Be sure to direct your comments to the EPA Docket Center (Air Docket), Docket ID No. OAR–2002–0039 (see **ADDRESSES**).

## VI. Administrative Requirements

*A. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive 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 entitlement, 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this regulatory action is not a ''significant regulatory action'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

*B. Executive Order 13132, Federalism*

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

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule is mandated by statute and, does not impose requirements on States, however, States will be required to implement the rule by incorporating the rule into permits and enforcing the rule upon delegation. States will collect permit fees that will be used to offset the resource burden of implementing the rule. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, the EPA did consult with State and local officials in developing this rule.

*C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications. No tribal governments own or operate taconite iron ore processing plants. Thus, Executive Order 13175 does not apply to this rule.

*D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. This proposed rule is not subject to Executive Order 13045 because it is technology based and not based on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Further, this proposed rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

*E. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or to the private sector in any 1 year. The maximum total annual cost of this rule for any year has been estimated to be $8.9 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

*F. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 SBREFA), 5 U.S.C. et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, ''small entity'' is defined as: (1) A small business whose parent company has fewer than 500 employees (the size standard set by the Small Business Administration for small businesses in NAICS 21221, Taconite Iron Ore Processing Facilities); (2) a small governmental jurisdiction that is a government or a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Since there are no small entities within the taconite industry, this proposed rule is not expected to impose regulatory costs on any small entities. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

*G. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (ICR No. 2050.01), and you may obtain a copy from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. You may also download a copy off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA's policies set forth in 40 CFR part 2, subpart B.

The proposed rule would require applicable one-time notifications required by the General Provisions for each affected source. As required by the NESHAP General Provisions, all plants would be required to prepare and operate by a startup, shutdown, and malfunction plan. Plants also would be required to prepare an operation and maintenance plan for control devices subject to operating limits, a fugitive emissions control plan, and a performance testing plan. Records would be required to demonstrate continuous compliance with the monitoring, operation, and maintenance requirements for control devices and monitoring systems. Semiannual compliance reports also are required. These reports would describe any deviation from the standards, any period a continuous monitoring system was ''out-of-control,'' or any startup, shutdown, or malfunction event where actions taken to respond were inconsistent with startup, shutdown, and malfunction plan. If no deviation or other event occurred, only a summary report would be required. Consistent with the General Provisions, if actions taken in response to a startup, shutdown, or malfunction event are not consistent with the plan, an immediate report must be submitted within 2 days of the event with a letter report 7 days later. Since the rule provides a 3-year compliance period, periodic reporting, initial performance testing, and

subsequent performance testing activities would be conducted beyond the 3-year period covered by the ICR. Therefore, the burden for these items is not included in the burden estimate.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to total 518 labor hours per year at a total annual cost of $29,052, including labor, capital, and operation and maintenance. This burden estimate includes the preparation of a startup, shutdown, and malfunction plan, an operating and maintenance plan, a fugitive dust emission control plan, and a performance testing plan. The total capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at $3.2 million (annualized capital/startup costs are $271,089/year) with operating and maintenance equipment costs of $101,455 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's rules are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by courier, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1301 Constitution Avenue, NW., Room 6143, Washington DC 20460 (202–566–1700); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 18, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by January 17, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed rule involves technical standards. The EPA cites the following standards in this proposed rule: EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, and 17. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 2F and 2G. The search and review results have been documented and are placed in the docket (Docket Number A–2001–14) for this proposed rule.

The voluntary consensus standard ASME PTC 19–10–1981–Part 10, ''Flue and Exhaust Gas Analyses,'' is cited in this rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19–10–1981–Part 10 is an acceptable alternative to Method 3B.

This search for emissions measurement procedures identified 14 voluntary consensus standards. The EPA determined that 12 of these 14 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in this proposed rule were impractical alternatives to EPA test methods for the purposes of this proposed rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination for the 12 methods are available in the docket.

Two of the 14 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2.

Sections 63.9621 and 63.9622 to 40 CFR part 63, subpart RRRRR, list the EPA testing methods included in the proposed rule. Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

**I. Executive Order 13211, Energy Effects**

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

**List of Subjects in 40 CFR Part 63**

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

Dated: November 26, 2002.

**Christine Todd Whitman,**

*Administrator.*

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

## PART 63—[AMENDED]

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

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

2. Part 63 is proposed to be amended by adding subpart RRRRR to read as follows:

### Subpart RRRRR—National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing

**What This Subpart Covers**

Sec.
63.9580 What is the purpose of this subpart?
63.9581 Am I subject to this subpart?
63.9582 What parts of my plant does this subpart cover?
63.9583 When do I have to comply with this subpart?

**Emission Limitations and Work Practice Standards**

63.9590 What emission limitations must I meet?
63.9591 What work practice standards must I meet?

**Operation and Maintenance Requirements**

63.9600 What are my operation and maintenance requirements?

**General Compliance Requirements**

63.9610 What are my general requirements for complying with this subpart?

**Initial Compliance Requirements**

63.9620 On which units and by what date must I conduct performance tests or other initial compliance demonstrations?
63.9621 What test methods and other procedures must I use to demonstrate initial and continuous compliance with the emission limits for particulate matter?
63.9622 What test methods and other procedures must I use to establish and demonstrate initial compliance with the operating limits?
63.9623 How do I demonstrate initial compliance with the emission limitations that apply to me?
63.9624 How do I demonstrate initial compliance with the work practice standards that apply to me?
63.9625 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

**Continuous Compliance Requirements**

63.9630 When must I conduct subsequent performance tests?
63.9631 What are my monitoring requirements?
63.9632 What are the installation, operation, and maintenance requirements for my monitoring equipment?
63.9633 How do I monitor and collect data to demonstrate continuous compliance?
63.9634 How do I demonstrate continuous compliance with the emission limitations that apply to me?
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63.9636 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?
63.9637 What other requirements must I meet to demonstrate continuous compliance?

**Notifications, Reports, and Records**

63.9640 What notifications must I submit and when?
63.9641 What reports must I submit and when?
63.9642 What records must I keep?
63.9643 In what form and how long must I keep my records?

**Other Requirements and Information**

63.9650 What parts of the General Provisions apply to me?
63.9651 Who implements and enforces this subpart?
63.9652 What definitions apply to this subpart?

**Tables to Subpart RRRRR of Part 63**

Table 1 to Subpart RRRRR of Part 63—Emission Limits
Table 2 to Subpart RRRRR of Part 63—Applicability of
General Provisions to Subpart RRRRR of Part 63

## Subpart RRRRR—National Emission Standards for Hazardous Pollutants for Taconite Iron Ore Processing

### What This Subpart Covers

#### § 63.9580 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for taconite iron ore processing. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations (emission limits and operating limits), work practice standards, and operation and maintenance requirements in this subpart.

#### § 63.9581 Am I subject to this subpart?

You are subject to this subpart if you own or operate a taconite iron ore processing plant that is (or is part of) a major source of hazardous air pollutant (HAP) emissions on the first compliance date that applies to you. Your taconite iron ore processing plant is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

#### § 63.9582 What parts of my plant does this subpart cover?

(a) This subpart applies to each new and existing affected source at your taconite iron ore processing plant.

(b) The affected sources are each new or existing ore crushing and handling operation, ore dryer, indurating furnace, and finished pellet handling operation at your taconite iron ore processing plant, as defined in § 63.9652.

(c) This subpart covers emissions from ore crushing and handling emission units; ore dryer stacks; indurating furnace stacks; finished pellet handling emission units; and fugitive dust emissions.

(d) An ore crushing and handling operation, ore dryer, indurating furnace, or finished pellet handling operation at your taconite iron ore processing plant is existing if you commenced construction or reconstruction of the affected source before December 18, 2002.

(e) An ore crushing and handling operation, ore dryer, indurating furnace, or finished pellet handling operation at your taconite iron ore processing plant is new if you commence construction or reconstruction of the affected source on or after December 18, 2002. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2.

#### § 63.9583 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than [DATE 3 YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(b) If you have a new affected source and its initial startup date is on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(c) If you have a new affected source and its initial startup date is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your taconite iron ore processing plant is an area source that becomes a major source of HAP, the compliance dates in paragraphs (d) (1) and (2) of this section apply to you.

(1) Any portion of the taconite iron ore processing plant that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the taconite iron ore processing plant must be in compliance with this subpart no later than 3 years after it becomes a major source.

(e) You must meet the notification and schedule requirements in § 63.9640. Several of these notifications must be submitted before the compliance date for your affected source.

**Emission Limitations and Work Practice Standards**

**§ 63.9590 What emission limitations must I meet?**

(a) You must meet each emission limit in Table 1 of this subpart that applies to you.

(b) You must meet each operating limit for control devices in paragraphs (b) (1) through (4) of this section that applies to you.

(1) For each negative pressure baghouse or positive pressure baghouse equipped with a stack applied to meet any particulate matter emission limit in Table 1 of this subpart, you must operate the baghouse such that the bag leak detection system does not alarm for more than 5 percent of the total operating time in any semiannual reporting period.

(2) For each scrubber applied to meet any particulate matter emission limit in Table 1 of this subpart, you must maintain the average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial performance test.

(3) For each dry electrostatic precipitator applied to meet any particulate matter emission limit in Table 1 of this subpart, you must maintain the 6-minute average opacity of emissions exiting the control device stack at or below the level established during the initial performance test.

(4) An owner or operator who uses an air pollution control device other than a baghouse, scrubber, or dry electrostatic precipitator must submit a site specific monitoring plan as described in § 63.9631(d).

**§ 63.9591 What work practice standards must I meet?**

(a) You must prepare, and at all times operate according to, a fugitive dust emissions control plan that describes in detail the measures that will be put in place to control fugitive dust emissions from the locations listed in paragraphs (a) (1) through (6) of this section.

(1) Stockpiles (includes, but is not limited to, stockpiles of uncrushed ore, crushed ore, or finished pellets);

(2) Material transfer points;

(3) Plant roadways;

(4) Tailings basin;

(5) Pellet loading areas; and

(6) Yard areas.

(b) A copy of your fugitive dust emissions control plan must be submitted for approval to the Administrator or delegated authority on or before the applicable compliance date for the affected source as specified in § 63.9583. The requirement for the plant to operate according to the fugitive dust emissions control plan must be incorporated by reference in the operating permit for the plant that is issued by the designated permitting authority under part 70 or 71 of this chapter.

(c) You can use an existing fugitive dust emissions control plan provided it meets the requirements in paragraphs (c) (1) through (3) of this section.

(1) The plan satisfies the requirements of paragraph (a) of this section.

(2) The plan describes the current measures to control fugitive dust emission sources.

(3) The plan has been approved as part of a State Implementation Plan or title V permit.

(d) You must maintain a current copy of the fugitive dust emissions control plan onsite and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

**Operation and Maintenance Requirements**

**§ 63.9600 What are my operation and maintenance requirements?**

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for each control device subject to an operating limit in § 63.9590(b). Each plan must be submitted to the Administrator or delegated authority on or before the compliance date that is specified in § 63.9583 and must address the elements in paragraphs (b) (1) and (2) of this section. You must maintain a current copy of the operation and maintenance plan onsite and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

(1) Preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

(2) In the event a bag leak detection system alarm is triggered for a baghouse, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Actions may include, but are not limited to, the actions listed in paragraphs (b)(2) (i) through (vi) of this section.

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

**General Compliance Requirements**

**§ 63.9610 What are my general requirements for complying with this subpart?**

(a) You must be in compliance with the emission limitations, work practice standards, and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction. The terms startup, shutdown, and malfunction are defined in § 63.2.

(b) During the period between the compliance date specified for your affected source in § 63.9583 and the date upon which continuous monitoring systems have been installed and certified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

**Initial Compliance Requirements**

**§ 63.9620 On which units and by what date must I conduct performance tests or other initial compliance demonstrations?**

(a) To demonstrate initial compliance with the emission limits in Table 1 of this subpart for ore crushing and handling, you must conduct an initial performance test for particulate matter as specified in paragraphs (a) (1) and (2) of this section.

(1) Except as provided in paragraph (e) of this section, an initial performance test must be performed on all stacks associated with ore crushing and handling.

(2) The initial performance tests must be conducted within 2 years of the

compliance date that is specified in § 63.9583.

(b) To demonstrate initial compliance with the emission limits in Table 1 of this subpart for each indurating furnace, you must conduct an initial performance test for all stacks associated with an indurating furnace within 180 calendar days of the compliance date that is specified in § 63.9583. For indurating furnaces with multiple stacks, all stacks for the indurating furnace must be tested simultaneously.

(c) To demonstrate initial compliance with the emission limits in Table 1 of this subpart for finished pellet handling, you must conduct an initial performance test for particulate matter as specified in paragraphs (c) (1) and (2) of this section.

(1) Except as provided in paragraph (e) of this section, an initial performance test must be performed on all stacks associated with finished pellet handling.

(2) The initial performance tests must be conducted within 2 years of the compliance date that is specified in § 63.9583.

(d) To demonstrate initial compliance with the emission limits in Table 1 of this subpart for each ore dryer, you must conduct an initial performance test for all stacks associated with an ore dryer within 180 calendar days of the compliance date that is specified in § 63.9583. For ore dryers with multiple stacks, all stacks for the ore dryer must be tested simultaneously.

(e) For ore crushing and handling and finished pellet handling, in lieu of conducting initial performance tests for particulate matter on all stacks, you may elect to group similar emission units together and conduct an initial compliance test on a representative sample of emission units within each group of similar emission units. The determination of whether emission units are similar must meet the criteria in paragraph (f) of this section. The number of units that must be tested within each group of similar units must be determined using the criteria in paragraph (g) of this section. If you decide to test representative emission units, you must prepare and submit a testing plan as described in paragraph (h) of this section.

(f) If you elect to test representative emission units as provided in paragraph (e) of this section, the units that are grouped together as similar units must meet the criteria in paragraphs (f) (1) through (4) of this section.

(1) The emission units must be of the same type, which may include, but is not limited to, primary crushers, secondary crushers, tertiary crushers, fine crushers, ore conveyors, ore bins, ore screens, grate feed, pellet loadout, hearth layer, cooling stacks, pellet conveyor, and pellet screens.

(2) The emission units must have the same type of air pollution control device, which may include, but is not limited to, venturi scrubbers, impingement scrubbers, rotoclones, multiclones, wet and dry electrostatic precipitators, and baghouses.

(3) The volumetric air flow rates discharged from the air pollution control devices, in dry standard cubic feet (dscf), must be within plus or minus 10 percent of the representative unit.

(4) The actual process throughput rate, in long tons per hour, must be within plus or minus 10 percent of the representative unit.

(g) If you elect to test representative emission units as provided in paragraph (e) of this section, the number of emission units tested within each group of similar units must be based on the criteria in paragraphs (g) (1) through (3) of this section.

(1) For each group of similar units with six or less units, you must test at least one unit.

(2) For each group of similar units with greater than six, but equal to or less than 12 units, you must test at least two units.

(3) For each group of similar units with greater than 12 units, you must test at least four units.

(h) If you are conducting initial testing on representative emission units within the ore crushing and handling or finished pellet handling, you must submit a testing plan for initial performance tests as required under paragraph (e) of this section. This testing plan must be submitted to the Administrator or delegated authority on or before the compliance date that is specified in § 63.9583. The testing plan must contain the information specified in paragraphs (h) (1) through (3) of this section.

(1) A list of all emission units. This list must clearly identify all emission units that have been grouped together as similar emission units. Within each group of emission units, you must identify the emission unit(s) that will be the representative unit(s) for that group, and subject to initial performance testing.

(2) The process type, type of emission control, the air flow rate in dscf, and the actual process throughput rate in long tons per hour for each emission unit.

(3) A schedule indicating when you will conduct initial performance tests for particulate matter for each of the representative units.

(i) For each work practice standard and operation and maintenance requirement that applies to you where initial compliance is not demonstrated using a performance test, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.9583.

(j) If you commenced construction or reconstruction between December 18, 2002, and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], you must demonstrate initial compliance with either the proposed emission limit or the promulgated emission limit no later than [DATE 180 CALENDAR DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] or no later than 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(k) If you commenced construction or reconstruction between December 18, 2002, and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by [DATE 3 YEARS AND 180 CALENDAR DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

**§ 63.9621 What test methods and other procedures must I use to demonstrate initial and continuous compliance with the emission limits for particulate matter?**

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraphs (b) and (c) of this section.

(b) To determine compliance with the applicable emission limit for particulate matter in Table 1 of this subpart for ore crushing and handling, and for finished pellet handling, you must follow the test methods and procedures in paragraphs (b) (1) through (3) of this section.

(1) Determine the concentration of particulate matter in the stack gas and the stack gas volumetric flow rate for each emission unit according to the test methods in appendix A to part 60 of this chapter. The applicable test methods are listed in paragraphs (b)(1) (i) through (v) of this section.

(i) Method 1 or 1A to select sampling port locations and the number of traverse points. Sampling ports must be

located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G, as applicable, to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5, 5D or 17 to determine the concentration of particulate matter.

(2) Collect a minimum sample volume of 60 dry standard cubic feet of gas during each particulate matter test run. Three valid test runs are needed to comprise a performance test.

(3) For each ore crushing and handling affected source, and for each finished pellet handling affected source you must determine the flow-weighted mean concentration of particulate matter emissions using the procedure in paragraph (b)(3) (i) or (ii) of this section.

(i) Compute the flow-weighted mean concentration of particulate matter emissions using Equation 1 of this section.

$$C_w = \frac{\sum_{i=1}^{n} C_i Q_i}{\sum_{i=1}^{n} Q_i} \qquad \text{(Eq. 1)}$$

Where:

$C_w$ = Flow-weighted mean concentration of particulate matter for all emission units within the affected source, grains per dry standard cubic foot (gr/dscf);

$C_i$ = Three-run average particulate matter concentration from emission unit ''i'', gr/dscf;

$Q_i$ = Three-run average volumetric flow rate of stack gas from emission unit ''i'', dscf/hr; and

n = The number of emission units in the affected source.

(ii) If you are grouping similar units as allowed under § 63.9620(d), you must meet the requirements in paragraphs (b)(3)(ii) (A) and (B) of this section.

(A) All emission units within each group of similar units must be assigned the flow-weighted mean concentration of particulate matter emissions for the representative unit.

(B) All emission units within each group of similar units must be assigned the actual average operating volumetric flow rate of exhaust gas measured for each emission unit within each group of similar units. You cannot assign the average volumetric flow rate of exhaust gas measured for a representative unit to all emission units within each group of similar units.

(c) To determine compliance with the applicable emission limit for particular matter in Table 1 of this subpart for each ore dryer and for each indurating furnace, you must follow the test methods and procedures in paragraphs (c) (1) through (5) of this section.

(1) Determine the concentration of particulate matter for each stack according to the test methods in appendix A to part 60 of this chapter. The applicable test methods are listed in paragraphs (c)(1) (i) through (v) of this section.

(i) Method 1 or 1A to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G, as applicable, to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5, 5D or 17 to determine the concentration of particulate matter.

(2) Collect a minimum sample volume of 60 dry standard cubic feet of gas during each particulate matter test run. Three valid test runs are needed to comprise a performance test.

(3) For ore dryers and indurating furnaces with multiple stacks, all stacks must be tested simultaneously.

(4) For each ore dryer and each indurating furnace, compute the flow-weighted mean concentration of particulate matter for each test run using Equation 2 of this section.

$$C_a = \frac{\sum_{i=1}^{n} C_i Q_i}{\sum_{i=1}^{n} Q_i} \qquad \text{(Eq. 2)}$$

Where:

$C_a$ = Flow-weighted mean concentration of particulate matter for run ''a'', gr/dscf;

$C_i$ = Concentration of particulate matter from stack ''i'' for run ''a'', gr/dscf;

$Q_i$ = Volumetric flow rate of stack gas from stack ''i'' for run ''a'', dscf/hr;

n = Number of stacks; and

a = Run number: 1, 2, or 3.

(5) For each ore dryer and each indurating furnace, compute the flow-weighted mean particulate matter concentration for the three test runs using Equation 3 of this section.

$$C = \frac{C_1 + C_2 + C_3}{3} \qquad \text{(Eq. 3)}$$

Where:

C = Flow-weighted mean particulate matter concentration, gr/dscf;

$C_1$ = Flow-weighted particulate matter concentration for run 1, gr/dscf;

$C_2$ = Flow-weighted particulate matter concentration for run 2, gr/dscf; and

$C_3$ = Flow-weighted particulate matter concentration for run 3, gr/dscf.

**§ 63.9622 What test methods and other procedures must I use to establish and demonstrate initial compliance with the operating limits?**

(a) For a wet scrubber subject to operating limits for pressure drop and scrubber water flow rate in § 63.9590(b)(2), you must establish site-specific operating limits according to the procedures in paragraphs (a) (1) and (2) of this section.

(1) Using the continuous parameter monitoring system (CPMS) required in § 63.9631(b), measure and record the pressure drop and scrubber water flow rate every 15 minutes during each run of the particulate matter performance test.

(2) Compute and record the average pressure drop and scrubber water flow rate for each individual test run. Your operating limits are the lowest average pressure drop and scrubber water flow rate value in any of the three runs that meet the applicable emission limit.

(b) For a dry electrostatic precipitator subject to the operating limit in § 63.9590(b)(3) for opacity, you must establish a site-specific operating limit according to the procedures in paragraphs (b) (1) and (4) of this section.

(1) Using the continuous opacity monitoring system (COMS) required in § 63.9631(c), measure and record the opacity of emissions from each control device stack during the particulate matter performance test.

(2) Compute and record the 6-minute opacity averages from 24 or more data points equally spaced over each 6-minute period (*e.g.*, at 15-second intervals) during the test runs.

(3) Using the opacity measurements from a performance test that meets the emission limit, determine the opacity value corresponding to the 99 percent upper confidence level of a normal distribution of the 6-minute opacity averages.

(4) In your semiannual compliance report required by 63.9641(b), report as a deviation any 6-minute period during which the average opacity, as measured by the COMS, exceeds the opacity value corresponding to the 99 percent upper confidence level determined under paragraph (b)(3) of this section.

(c) You may change the operating limits for a wet scrubber, or dry

electrostatic precipitator if you meet the requirements in paragraphs (c) (1) through (3) of this section.

(1) Submit a written notification to the Administrator of your request to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate compliance with the applicable emission limitation in Table 1 of this subpart.

(3) Establish revised operating limits according to the applicable procedures n paragraphs (a) and (b) of this section.

#### § 63.9623 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission limit in Table 1 of this subpart, you must demonstrate initial compliance by meeting the requirements in paragraphs (a) (1) through (6) of this section.

(1) For ore crushing and handling, the flow-weighted mean concentration of particulate matter, determined according to the procedures in § 63.9620(a) and § 63.9621(b), must not exceed the emission limits in Table 1 of this subpart.

(2) For indurating furnaces, the flow-weighted mean concentration of particulate matter, determined according to the procedures in § 63.9620(b) and § 63.9621(c), must not exceed the emission limits in Table 1 of this subpart.

(3) For finished pellet handling, the flow-weighted mean concentration of particulate matter, determined according to the procedures in § 63.9620(c) and § 63.9621(b), must not exceed the emission limits in Table 1 of this subpart.

(4) For ore dryers, the flow-weighted mean concentration of particulate matter, determined according to the procedures in § 63.9620(d) and § 63.9621(c), must not exceed the emission limits in Table 1 of this subpart.

(5) For each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.9590(b)(2), you must meet the requirements in paragraphs (a)(5) (i) and (ii) of this section.

(i) Measure and record the pressure drop and scrubber water flow rate during the performance test in accordance with § 63.9622(a).

(ii) Establish appropriate site-specific operating limits.

(6) For each dry electrostatic precipitator subject to the opacity operating limit in § 63.9590(b)(3), you must meet the requirements in paragraphs (a)(6)(i) and (ii) of this section.

(i) Measure and record the opacity during the performance test in accordance with § 63.9622(b).

(ii) Establish an appropriate site-specific operating limit.

(b) For each emission limitation that applies to you, you must submit a notification of compliance status according to § 63.9640(e).

#### § 63.9624 How do I demonstrate initial compliance with the work practice standards that apply to me?

(a) You must demonstrate initial compliance with the work practice standards by meeting the requirements in paragraphs (a)(1) through (3) of this section.

(1) You must prepare a fugitive dust emissions control plan in accordance with the requirements in § 63.9591.

(2) You must submit to the Administrator or delegated authority the fugitive dust emissions control plan in accordance with the requirements in § 63.9591.

(3) You must implement each control practice according to the procedures specified in your fugitive dust emissions control plan.

(b) [Reserved]

#### § 63.9625 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

You must demonstrate initial compliance by certifying in your notification of compliance status that you have met the requirements in paragraphs (a) through (c) of this section.

(a) You have prepared the operation and maintenance plan according to the requirements in § 63.9600(b).

(b) You operate each control device according to the procedures in the operation and maintenance plan.

(c) You submit a notification of compliance status according to the requirements in § 63.9640(e).

### Continuous Compliance Requirements

#### § 63.9630 When must I conduct subsequent performance tests?

(a) You must conduct subsequent performance tests to demonstrate continued compliance with the ore crushing and handling emission limit in Table 1 of this subpart according to the schedule developed by your permitting authority and shown in your title V permit. If a title V permit has not been issued, you must submit a testing plan and schedule, containing the information specified in paragraph (e) of this section, to the permitting authority for approval.

(b) You must conduct subsequent performance tests on all stacks from indurating furnaces to demonstrate continued compliance with the indurating furnace limits in Table 1 of this subpart according to the schedule developed by your permitting authority and shown in your title V permit, but no less frequent than twice per 5-year permit term. If a title V permit has not been issued, you must submit a testing plan and schedule, containing the information specified in paragraph (e) of this section, to the permitting authority for approval. For indurating furnaces with multiple stacks, all stacks for the indurating furnace must be tested simultaneously.

(c) You must conduct subsequent performance tests to demonstrate compliance with the finished pellet handling emission limit in Table 1 of this subpart according to the schedule developed by your permitting authority and shown in your title V permit. If a title V permit has not been issued, you must submit a testing plan and schedule, containing the information specified in paragraph (e) of this section, to the permitting authority for approval.

(d) You must conduct subsequent performance tests on all stacks from ore dryers to demonstrate continued compliance with the ore dryer limits in Table 1 of this subpart according to the schedule developed by your permitting authority and shown in your title V permit. If a title V permit has not been issued, you must submit a testing plan and schedule, containing the information specified in paragraph (e) of this section, to the permitting authority for approval. For ore dryers with multiple stacks, all stacks for the ore dryer must be tested simultaneously.

(e) If your plant does not have a title V permit, you must submit a testing plan for subsequent performance tests as required in paragraphs (a) through (d) of this section. This testing plan must be submitted to the Administrator or delegated authority on or before the compliance date that is specified in § 63.9583. The testing plan must contain the information specified in paragraphs (e) (1) and (2) of this section. You must maintain a current copy of the testing plan onsite and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

(1) A list of all emission units.

(2) A schedule indicating when you will conduct subsequent performance tests for particulate matter for each of the emission units.

**§ 63.9631 What are my monitoring requirements?**

(a) For each baghouse subject to the operating limit in § 63.9590(b)(1) for the bag leak detection system alarm, you must at all times monitor the relative change in particulate matter loadings using a bag leak detection system according to the requirements in § 63.9632(a) and conduct inspections at their specified frequencies according to the requirements in paragraphs (a) (1) through (8) of this section.

(1) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range identified in the manual.

(2) Confirm that dust is being removed from hoppers through weekly visual inspections or other means of ensuring the proper functioning of removal mechanisms.

(3) Check the compressed air supply for pulse-jet baghouses each day.

(4) Monitor cleaning cycles to ensure proper operation using an appropriate methodology.

(5) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means.

(6) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or laying on their sides. You do not have to make this check for shaker-type baghouses using self-tensioning (spring-loaded) devices.

(7) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks.

(8) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

(b) For each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.9590(b)(2), you must at all times monitor the average pressure drop and water flow rate using a CPMS according to the requirements in § 63.9632(b) and (c).

(c) For each dry electrostatic precipitator subject to the opacity operating limit in § 63.9590(b)(3), you must at all times monitor the 6-minute average opacity of emissions exiting each control device stack using a COMS according to the requirements in § 63.9632(d).

(d) An owner or operator who uses an air pollution control device other than a baghouse, scrubber, or dry electrostatic precipitator must submit a site specific monitoring plan that includes the information in paragraphs (d) (1) through (4) of this section. The monitoring plan is subject to approval by the Administrator. You must maintain a current copy of the monitoring plan onsite and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

(1) A description of the device;

(2) Test results collected in accordance with § 63.9621 verifying the performance of the device for reducing emissions of particulate matter to the atmosphere to the levels required by this subpart;

(3) A copy of the operation and maintenance plan required in § 63.9600(b); and

(4) Appropriate operating parameters that will be monitored to maintain continuous compliance with the applicable emission limitation(s).

**§ 63.9632 What are the installation, operation, and maintenance requirements for my monitoring equipment?**

(a) For each baghouse subject to the operating limit in § 63.9590(b)(1) for the bag leak detection system alarm, you must install, operate, and maintain each bag leak detection system according to the requirements in paragraphs (a) (1) through (7) of this section.

(1) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The system must provide output of relative changes in particulate matter loadings.

(3) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings is detected over a preset level. The alarm must be located such that it can be heard by the appropriate plant personnel.

(4) Each system that works based on the triboelectric effect must be installed, operated, and maintained in a manner consistent with the guidance document, ''Fabric Filter Bag Leak Detection Guidance,'' EPA–454/R–98–015, September 1997. This document is available on the EPA's Technology Transfer Network at *http://www.epa.gov/ttn/emc/cem/tribo.pdf* (Adobe Acrobat version) or *http://www.epa.gov/ttn/emc/cem/tribo.wpd* (WordPerfect version). You may install, operate, and maintain other types of bag leak detection systems in a manner consistent with the manufacturer's written specifications and recommendations.

(5) To make the initial adjustment of the system, establish the baseline output by adjusting the sensitivity (range) and the averaging period of the device. Then, establish the alarm set points and the alarm delay time.

(6) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in your operation and maintenance plan. Do not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365-day period unless a responsible official certifies, in writing, that the baghouse has been inspected and found to be in good operating condition.

(7) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(b) For each wet scrubber subject to the operating limits in § 63.9590(b)(2) for pressure drop and scrubber water flow rate, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (b)(1) and (2) of this section.

(1) For the pressure drop CPMS, you must follow the procedures in paragraphs (b)(1)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure and that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 5 percent of the pressure range.

(iii) Check the pressure tap for pluggage daily.

(iv) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(vi) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) For the scrubber water flow rate CPMS, you must follow the procedures in paragraphs (b)(2) (i) through (iv) of this section.

(i) Locate the flow sensor and other necessary equipment in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(ii) Use a flow sensor with a minimum measurement sensitivity of 5 percent of the flow rate.

(iii) Conduct a flow sensor calibration check at least semiannually according to the manufacturer's instructions.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(c) You must install, operate, and maintain each CPMS for a wet scrubber according to the requirements in paragraphs (c) (1) through (3) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 5-minute period.

(2) Each CPMS must have valid data for at least 95 percent of every averaging period.

(3) Each CPMS must determine and record the average of all recorded readings.

(d) For each dry electrostatic precipitator subject to the opacity operating limit in § 63.9590(b)(3), you must install, operate, and maintain each COMS according to the requirements in paragraphs (d) (1) through (4) of this section.

(1) You must install each COMS and conduct a performance evaluation of each COMS according to § 63.8 and Performance Specification 1 in appendix B to 40 CFR part 60.

(2) You must develop and implement a quality control program for operating and maintaining each COMS according to § 63.8. At a minimum, the quality control program must include a daily calibration drift assessment, quarterly performance audit, and annual zero alignment of each COMS.

(3) You must operate and maintain each COMS according to § 63.8(e) and your quality control program. Identify periods the COMS is out of control, including any periods that the COMS fails to pass a daily calibration drift assessment, quarterly performance audit, or annual zero alignment audit.

(4) You must determine and record the 6-minute average opacity collected for periods during which the COMS is not out of control.

### § 63.9633 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times an affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, or to fulfill a minimum data availability requirement. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not considered malfunctions.

### § 63.9634 How do I demonstrate continuous compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission limit in Table 1 of this subpart, you must demonstrate continuous compliance by meeting the requirements in paragraphs (b) through (f) of this section.

(b) For ore crushing and handling and for finished pellet handling, you must demonstrate continuous compliance by meeting the requirements in paragraphs (b)(1) and (2) of this section.

(1) The flow-weighted mean concentration of particulate matter for all ore crushing and handling emission units and for all finished pellet handling emission units must be maintained at or below the emission limits in Table 1 of this subpart.

(2) You must conduct subsequent performance tests for emission units in the ore crushing and handling and finished pellet handling affected sources following the schedule in your title V permit. If a title V permit has not been issued, you must conduct subsequent performance tests according to a testing plan approved by the Administrator or delegated authority.

(c) For ore dryers and indurating furnaces, you must demonstrate continuous compliance by meeting the requirements in paragraphs (c) (1) and (2) of this section.

(1) The flow-weighted mean concentration of particulate matter for all stacks from the ore dryer or indurating furnace must be maintained at or below the emission limits in Table 1 of this subpart.

(2) For ore dryers, you must conduct subsequent performance tests following the schedule in your title V permit. For indurating furnaces, you must conduct subsequent performance tests following the schedule in your title V permit, but no less frequent than twice per 5-year permit term. If a title V permit has not been issued, you must conduct subsequent performance tests according to a testing plan approved by the Administrator or delegated authority.

(d) For each baghouse subject to the operating limit for the bag leak detection system alarm in § 63.9590(b)(1), you must demonstrate continuous compliance by completing the requirements in paragraphs (d) (1) through (3) of this section.

(1) Maintaining each baghouse such that the bag leak detection system alarm does not sound for more than 5 percent of the operating time during any semiannual reporting period. To determine the percent of time the alarm sounded you must follow the procedure in paragraphs (d)(1) (i) through (v) of this section.

(i) Alarms that occur due solely to a malfunction of the bag leak detection system are not included in the calculation.

(ii) Alarms that occur during startup, shutdown, or malfunction are not included in the calculation if the condition is described in the startup, shutdown, and malfunction plan and all the actions you took during the startup, shutdown, or malfunction were consistent with the procedures in the startup, shutdown, and malfunction plan.

(iii) Count 1 hour of alarm time for each alarm when you initiated procedures to determine the cause of the alarm within 1 hour.

(iv) Count the actual amount of time you took to initiate procedures to determine the cause of the alarm if you did not initiate procedures to determine the cause of the alarm within 1 hour of the alarm.

(v) Calculate the percentage of time the alarm on the bag leak detection system sounds as the ratio of the sum of alarm times to the total operating time multiplied by 100.

(2) Maintaining records of the times the bag leak detection system alarm sounded, and for each valid alarm, the time you initiated corrective action, the corrective action(s) taken, and the date on which corrective action was completed.

(3) Inspecting and maintaining each baghouse according to the requirements in § 63.9631(a) (1) through (8) and recording all information needed to document conformance with these requirements. If you increase or decrease the sensitivity of the bag leak detection system beyond the limits specified in § 63.9632(a)(6), you must include a copy of the required written certification by a responsible official in the next semiannual compliance report.

(e) For each wet scrubber subject to the operating limits for pressure drop

and scrubber water flow rate in § 63.9590(b)(2), you must demonstrate continuous compliance by completing the requirements of paragraphs (e)(1) through (3) of this section.

(1) Maintaining the average pressure drop and scrubber water flow rate at levels no lower than those established during the initial or subsequent performance test.

(2) Inspecting and maintaining each scrubber CPMS according to § 63.9632(b) and recording all information needed to document conformance with these requirements.

(3) Collecting and reducing monitoring data for pressure drop and scrubber water flow rate according to § 63.9632(c) and recording all information needed to document conformance with these requirements.

(f) For each dry electrostatic precipitator subject to the site-specific opacity operating limit in § 63.9590(b)(3), you must demonstrate continuous compliance by completing the requirements of paragraphs (f)(1) and (2) of this section.

(1) Maintaining the 6-minute average opacity of emissions no higher than the site-specific limit established during the initial or subsequent performance test.

(2) Operating and maintaining each COMS and reducing the COMS data according to § 63.9632(d).

#### § 63.9635 How do I demonstrate continuous compliance with the work practice standards that apply to me?

(a) You must demonstrate continuous compliance with the work practice standard requirements in § 63.9591 by operating in accordance with your fugitive dust emissions control plan at all times.

(b) You must maintain a current copy of the fugitive dust emissions control plan required in § 63.9591 onsite and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

#### § 63.9636 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each control device subject to an operating limit in § 63.9590(b), you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.9600(b) by completing the requirements of paragraphs (a)(1) and (2) of this section.

(1) Performing preventative maintenance for each control device according to § 63.9600(b)(1) and recording all information needed to document conformance with these requirements; and

(2) Initiating and completing corrective action for a bag leak detection system alarm according to § 63.9600(b)(2) and recording all information needed to document conformance with these requirements.

(b) You must maintain a current copy of the operation and maintenance plan required in § 63.9600(b) onsite and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

#### § 63.9637 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* You must report each instance in which you did not meet each emission limitation in Table 1 of this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. You also must report each instance in which you did not meet the work practice standards in § 63.9591 and each instance in which you did not meet each operation and maintenance requirement in § 63.9600 that applies to you. These instances are deviations from the emission limitations, work practice standards, and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements in § 63.9641.

(b) *Startups, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

### Notifications, Reports, and Records

#### § 63.9640 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (h) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you start up your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than [DATE 120 CALENDAR DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start up your new affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii). The initial notification of compliance status must be submitted by the dates specified in paragraphs (e)(1) and (2) of this section.

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

#### § 63.9641 What reports must I submit and when?

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.9583 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your source in § 63.9583.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(3) Each subsequent compliance report must cover the semiannual

reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) *Compliance report contents.* Each compliance report must include the information in paragraphs (b)(1) through (3) of this section and, as applicable, in paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with the official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in §§ 63.9634 through 63.9636 that apply to you, then provide a statement that there were no deviations from the emission limitations, work practice standards, or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a continuous monitoring system (including a CPMS or COMS) was out-of-control as specified in § 63.8(c)(7), then provide a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(7) For each deviation from an emission limitation in Table 1 of this subpart that occurs at an affected source where you are not using a continuous monitoring system (including a CPMS or COMS) to comply with an emission limitation in this subpart, the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) as applicable and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a continuous monitoring system (including a CPMS or COMS) to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(8)(i) through (xi) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(c) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emission limitation or operation and maintenance requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

**§ 63.9642 What records must I keep?**

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, performance evaluations as required in § 63.10(b)(2)(viii).

(b) For each COMS, you must keep the records specified in paragraphs (b)(1) through (4) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Monitoring data for COMS during a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(3) Previous (that is, superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a

period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records required in §§ 63.9634 through 63.9636 to show continuous compliance with each emission limitation, work practice standard, and operation and maintenance requirement that applies to you.

#### § 63.9643 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

### Other Requirements and Information

#### § 63.9650 What parts of the General Provisions apply to me?

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

#### § 63.9651 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (3) of this section.

(1) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(2) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(3) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

#### § 63.9652 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows.

*Affected source* means each new or existing ore crushing and handling operation, ore dryer, indurating furnace, or finished pellet handling operation, at your taconite iron ore processing plant.

*Bag leak detection system* means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on tribroelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

*Conveyor belt transfer point* means a point in the conveying operation where the taconite ore or taconite pellets are transferred to or from a conveyor belt, except where the taconite ore or taconite pellets are being transferred to a bin or stockpile.

*Crusher* means a machine used to crush taconite ore and includes feeders or conveyors located immediately below the crushing surfaces. Crushers include, but are not limited to, gyratory crushers and cone crushers.

*Deviation* means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including operating limits) or operation and maintenance requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

*Emission limitation* means any emission limit, opacity limit, or operating limit.

*Finished pellet handling* means the transfer of fired taconite pellets from the indurating furnace to the finished pellet stockpiles at the plant. Finished pellet handling includes, but is not limited to, furnace discharge or grate discharge, and finished pellet screening, transfer, and storage.

*Fugitive dust emission source* means a stationary source from which particles are discharged to the atmosphere due to wind or mechanical inducement such as vehicle traffic. Fugitive dust sources include, but are not limited to:

(1) Stockpiles (includes, but is not limited to, stockpiles of uncrushed ore, crushed ore, or finished pellets);

(2) Material transfer points;

(3) Plant roadways;

(4) Tailings basins;

(5) Pellet loading areas; and

(6) Yard areas.

*Grate feed* means the transfer of unfired taconite pellets from the pelletizer into the indurating furnace.

*Grate kiln indurating furnace* means a furnace system that consists of a traveling grate, a rotary kiln, and an annular cooler. The grate kiln indurating furnace begins at the point where the grate feed conveyor discharges the green balls onto the furnace traveling grate and ends where the hardened pellets exit the cooler. The atmospheric pellet cooler vent stack is not included as part of the grate kiln indurating furnace.

*Indurating* means the process whereby unfired taconite pellets, called green balls, are hardened at high temperature in an indurating furnace. Types of indurating furnaces include straight grate indurating furnaces and grate kiln indurating furnaces.

*Ore crushing and handling* means the process whereby dry taconite ore is crushed and screened. Ore crushing and handling includes, but is not limited to, all dry crushing operations (*e.g.*, primary, secondary, and tertiary crushing), dry ore conveyance and transfer points, dry ore classification and screening, dry ore storage and stockpiling, dry milling, dry cobbing (*i.e.*, dry magnetic separation), and the grate feed. Ore crushing and handling specifically excludes any operations where the dry crushed ore is saturated with water, such as, wet milling and wet magnetic separation.

*Ore dryer* means a rotary dryer that repeatedly tumbles wet taconite ore concentrate through a heated air stream to reduce the amount of entrained moisture in the taconite ore concentrate.

*Pellet cooler vent stacks* means atmospheric vents in the cooler section of the grate kiln indurating furnace that exhaust cooling air that is not returned for recuperation. Pellet cooler vent stacks are not to be confused with the cooler discharge stack, which is in the pellet loadout or dumping area.

*Pellet loading area* means that portion of a taconite iron ore processing plant

where taconite pellets are loaded into trucks or railcars.

*Responsible official* means responsible official as defined in § 63.2.

*Screen* means a device for separating material according to size by passing undersize material through one or more mesh surfaces (screens) in series and retaining oversize material on the mesh surfaces (screens).

*Storage bin* means a facility for storage (including surge bins and hoppers) of taconite ore or taconite pellets prior to further processing or loading.

*Straight grate indurating furnace* means a furnace system that consists of a traveling grate that carries the taconite pellets through different furnace temperature zones. In the straight grate indurating furnace a layer of fired pellets, called the hearth layer, is placed on the traveling grate prior to the addition of unfired pellets. The straight grate indurating furnace begins at the point where the grate feed conveyor discharges the green balls onto the furnace traveling grate and ends where the hardened pellets drop off of the traveling grate.

*Taconite iron ore processing* means the separation and concentration of iron ore from taconite, a low-grade iron ore, to produce taconite pellets.

*Taconite ore* means a low-grade iron ore suitable for concentration of magnetite or hematite by fine grinding and magnetic or flotation treatment, from which pellets containing iron can be produced.

*Tailings basin* means a natural or artificial impoundment in which gangue or other refuse material resulting from the washing, concentration or treatment of ground taconite iron ore is confined.

*Wet grinding and milling* means the process where wet taconite ore is finely ground using rod and/or ball mills.

**Tables to Subpart RRRRR of Part 63**

As required in § 63.9590(a), you must comply with each applicable emission limit in the following table:

TABLE 1 TO SUBPART RRRRR OF PART 63.—EMISSION LIMITS

| For . . . | You must comply with each of the following . . . |
|---|---|
| 1. Existing ore crushing and handling emission units. | The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all ore crushing and handling emission units, as determined using the procedures in § 63.9621(b), must not exceed 0.008 grains per dry standard cubic foot (gr/dscf). |
| 2. New ore crushing and handling emission units. | The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all ore crushing and handling emission units, as determined using the procedures in § 63.9621(b), must not exceed 0.005 gr/dscf. |
| 3. Each existing straight grate indurating furnace processing magnetite. | The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.010 gr/dscf. |
| 4. Each new straight grate indurating furnace processing magnetite. | The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.006 gr/dscf. |
| 5. Each existing grate kiln indurating furnace processing magnetite. | The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.011 gr/dscf. |
| 6. Each new grate kiln indurating furnace processing magnetite. | The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.006 gr/dscf. |
| 7. Each existing grate kiln indurating furnace processing hematite. | The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.025 gr/dscf. |
| 8. Each new grate kiln indurating furnace processing hematite. | The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.018 gr/dscf. |
| 9. Existing finished pellet handling emission units. | The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all finished pellet handling emission units, as determined using the procedures in § 63.9621(b), must not exceed 0.008 gr/dscf. |
| 10. New finished pellet handling emission units | The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all finished pellet handling emission units, as determined using the procedures in § 63.9621(b), must not exceed 0.005 gr/dscf. |
| 11. Each existing ore dryer | The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.052 gr/dscf. |
| 12. Each new ore dryer | The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.025 gr/dscf. |

As required in § 63.9650, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

TABLE 2 TO SUBPART RRRRR OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART RRRRR OF PART 63

| Citation | Subject | Applies to Subpart RRRRR | Explanation |
|---|---|---|---|
| § 63.1 | Applicability | Yes. | |
| § 63.2 | Definitions | Yes. | |
| § 63.3 | Units and Abbreviations | Yes. | |
| § 63.4 | Prohibited Activities | Yes. | |

TABLE 2 TO SUBPART RRRRR OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART RRRRR OF PART 63—Continued

| Citation | Subject | Applies to Subpart RRRRR | Explanation |
|---|---|---|---|
| § 63.5 | Construction/Reconstruction | Yes. | |
| § 63.6(a)–(g) | Compliance with Standards and Maintenance Requirements. | Yes. | |
| § 63.6(h) | Compliance with Opacity and Visible Emission (VE) Standards. | No | Subpart RRRRR does not contain opacity and VE standards. |
| § 63.6(i),(j) | Extension of Compliance and Presidential Compliance Extension. | Yes. | |
| § 63.7(a)(1)–(2) | Applicability and Performance Test Dates. | No | Subpart RRRRR specifies performance test applicability and dates. |
| § 63.7(a)(3), (b)–(h) | Performance Testing Requirements | Yes. | |
| § 63.8(a)(1)–(a)(3), (b), (c)(1)–(3), (c)(5)–(8), (d),(e), (f)(1)–(5), (g)(1)–(4). | Monitoring Requirements | Yes | Continuous monitoring system (CMS) requirements in § 63.8(c)(5) and (6) apply only to COMS for dry electrostatic precipitators. |
| § 63.8(a)(4) | Additional Monitoring Requirements for Control Devices in § 63.11. | No | Subpart RRRRR does not require flares. |
| § 63.8(c)(4) | Continuous Monitoring System Requirements. | No | Subpart RRRRR specifies requirements for operation of CMS. |
| § 63.8(f)(6) | Relative Accuracy Test Alternative (RATA). | No | Subpart RRRRR does not require continuous emission monitoring systems. |
| § 63.8(g)(5) | Data Reduction | No | Subpart RRRRR specifies data reduction requirements. |
| § 63.9 | Notification Requirements | Yes | Additional notifications for CMS in § 63.9(g) apply to COMS for dry electrostatic precipitators. |
| § 63.10(a), (b)(1)–(2)(xii), (b)(2)(xiv), (b)(3),(c)(1)–(6) (c)(9)–(15), (d)(1)–(2), (d)(4)–(5), (e), (f). | Recordkeeping and Reporting Requirements. | Yes | Additional records for CMS § 63.10(c)(1)–(6),(9)–(15), and reports in § 63.10(d)(1)–(2) apply only to COMS for dry electrostatic precipitators. |
| § 63.10(b)(2)(xiii) | CMS Records for RATA Alternative | No | Subpart RRRRR doesn't require continuous emission monitoring systems |
| § 63.10(c)(7)–(8) | Records of Excess Emissions and Parameter Monitoring Exceedances for CMS. | No | Subpart RRRRR specifies record requirements. |
| § 63.10(d)(3) | Reporting opacity or VE observations | No | Subpart RRRRR does not have opacity and VE standards |
| § 63.11 | Control Device Requirements | No | Subpart RRRRR does not require flares. |
| § 63.12 | State Authority and Delegations | Yes | |
| § 63.13–-§ 63.15 | Addresses, Incorporation by Reference, Availability of Information. | Yes | |

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**Wednesday,**
**December 18, 2002**

## Part III

# Securities and Exchange Commission

**17 CFR Parts 228, et al.**
**Rule 10b–18 and Purchases of Certain Equity Securities by the Issuer and Others; Proposed Rule**

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 228, 229, 240, and 274

**[Release Nos. 33–8160; 34–46980; IC–25845; File No. S7–50–02]**

**RIN 3235–AH37**

## Rule 10b–18 and Purchases of Certain Equity Securities by the Issuer and Others

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (Commission) is proposing amendments to its rule that provides issuers with a ''safe harbor'' from liability for manipulation when they repurchase their common stock in the market in accordance with the rule's manner, timing, price, and volume conditions. The proposed amendments are intended to simplify and update the safe harbor provisions in light of market developments since the rule's adoption. To enhance the transparency of issuer repurchases, the Commission also is proposing amendments to a number of regulations and forms that would require disclosure of all issuer repurchases (open market and private transactions), regardless of whether the repurchases are effected in accordance with the safe harbor rule.

**DATES:** Comments must be received on or before February 18, 2003.

**ADDRESSES:** Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–50–02. Comments submitted by e-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (*http://www.sec.gov*). To help us process your comments more efficiently, comments should be sent by one method only. The Commission does not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only the information you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** James Brigagliano, Assistant Director, Joan Collopy, Special Counsel, or Elizabeth Sandoe, Special Counsel, Office of Risk Management and Control, Division of Market Regulation, at (202) 942–0772, or, with respect to the proposed disclosure amendments, David Lee, Special Counsel, Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2900, or, John Faust, Attorney Adviser, Office of Disclosure Regulation, Division of Investment Management, at (202) 942–0721, at the Securities Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is requesting public comment on proposed amendments to Rule 10b–18 (the safe harbor rule for issuer repurchases) [17 CFR 240.10b–18] under the Securities Exchange Act of 1934 (Exchange Act). The Commission also is requesting comment on proposed disclosure amendments to Regulations S–K and S–B [17 CFR 229.703 and 228.703] under the Exchange Act, Exchange Act Forms 10–Q [17 CFR 249.308a], 10–QSB [17 CFR 249.308b], 10–K [17 CFR 249.310], 10–KSB [17 CFR 310b], 20–F [17 CFR 249.220f], and proposed Form N–CSR under the Exchange Act and the Investment Company Act of 1940 (Investment Company Act) [17 CFR 249.331 and 274.128].

### I. Introduction

Issuers repurchase their securities for many legitimate business reasons.[1] For example, issuers may repurchase their stock in order to have shares available for dividend reinvestment, stock option and employee stock ownership plans, or to reduce the outstanding capital stock following the cash sale of operating divisions or subsidiaries. Issuers may believe that a repurchase program is preferable to paying dividends as a way of returning capital to shareholders. Issuer repurchases also provide liquidity in the marketplace, which benefits all shareholders.

At the same time, an issuer has a strong interest in the market performance of its securities. Among other things, its securities may be the consideration in an acquisition, or serve as collateral for financing. The market price also determines the price of offerings of additional securities. Therefore, at various times, the issuer may have an incentive to manipulate the price of its securities. One way to positively affect the price is to purchase the securities in the open market. Because repurchases of its securities could affect the market price of an issuer's stock, this may expose the issuer to claims that the repurchases were made in a manipulative manner even when they were done in a manner not intended to move market prices.

Rule 10b–18 addresses this problem. In 1982, the Commission adopted Rule 10b–18,[2] which provides issuers [3] with a safe harbor from liability for manipulation under Sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b–5 under the Exchange Act, when they repurchase their common stock in the market in accordance with the rule's manner, timing, price, and volume conditions.[4] Rule 10b–18's safe harbor conditions are designed to minimize the market impact of the issuer's repurchases, thereby allowing the market to establish a security's price based on independent market forces without undue influence by the issuer.[5]

Although the safe harbor conditions are intended to offer issuers guidance

[1] Securities Exchange Act Release No. 19244 (Nov. 17, 1982), 47 FR 53333, 53334 (Nov. 26, 1982) (1982 Adopting Release). *See also* Clifford P. Stephens and Michael S. Weisbach, ''Actual Share Reacquisitions in Open-Market Repurchase Programs,'' *Journal of Finance,* February 1998 (observing that firms increase their repurchasing depending on the degree of perceived undervaluation of its stock and on expected cash flow).

[2] 1982 Adopting Release, *supra* note 1. Since 1967, the Commission has considered on several occasions the issue of whether to regulate an issuer's market repurchases of its own securities. The Commission first proposed Rule 10b–10 to govern issuer repurchases in connection with proposed legislation that became the Williams Act Amendments of 1968. Pub. L. No. 90–439, 82 Stat. 454 (July 29, 1968), reprinted in Hearings on S. 510 before Senate Committee on Banking and Currency, 90th Cong., 1st Sess. 214–216 (1967). The Commission then published for public comment proposed Rule 13e–2 in 1970, 1973, and 1980. Rule 13e–2, which was later withdrawn with the adoption of Rule 10b–18, would have been a prescriptive rule with mandatory disclosure requirements, substantive purchasing limitations, and general anti-fraud liability. Securities Exchange Act Release Nos. 8930 (July 13, 1970), 35 FR 11410 (July 16, 1970); 10539 (Dec. 6, 1973), 38 FR 34341 (Dec. 13, 1973); and 17222 (Oct. 17, 1980), 45 FR 70890 (Oct. 27, 1980) (1980 Proposing Release).

[3] The safe harbor is also available for ''affiliated purchasers'' of the issuer. In this Release, the term ''issuer'' includes affiliated purchasers.

[4] In other words, an issuer will not be deemed to have violated Section 9(a)(2) of the Exchange Act or Rule 10b–5 under the Exchange Act, solely by reason of the timing, price, volume, or manner of its repurchases, if the repurchases are made within the limitations of the rule. However, some repurchase activity that meets the safe harbor conditions may still violate the anti-fraud provisions of the Exchange Act. For example, as the Commission noted in 1982 when adopting Rule 10b–18, ''Rule 10b–18 confers no immunity from possible Rule 10b–5 liability where the issuer engages in repurchases while in possession of favorable, material nonpublic information concerning its securities.'' 1982 Adopting Release, *supra* note 1, at 47 FR 53333.

[5] *Id.*

when repurchasing their securities in the open market, Rule 10b–18 is not the exclusive means of making non-manipulative issuer repurchases. As the Rule states, there is no presumption that purchases outside of the safe harbor violate Sections 9(a)(2) or 10(b) of the Exchange Act or Rule 10b–5 under the Exchange Act.[6] Given the widely varying characteristics in the market for the stock of different issuers, it is possible for issuer repurchases to be made outside of the safe harbor conditions and not be manipulative. Nevertheless, we understand that issuers generally are reluctant to undertake any repurchases without the certainty that their repurchases come within the Rule's safe harbor.

Based on our experience with the operation of Rule 10b–18 and to reflect market developments since the Rule's adoption, we propose to revise Rule 10b–18 as described below. Our proposals would allow issuers whose securities are less susceptible to manipulation to stay in the market longer and to repurchase a greater number of shares during periods of severe market decline. At the same time, our proposals to modify the volume and price provisions are intended to maintain reasonable limits on the safe harbor while furthering the objectives of the Rule. Moreover, the proposed amendments to Regulations S–K and S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and proposed Form N–CSR seek to enhance the transparency of issuer repurchases.[7] Our proposals also are intended to continue to allow issuer repurchases (under conditions that are unlikely to create manipulative effects on the issuer's security's price or market activity) without imposing undue restrictions on the operation of issuer repurchases or undermining the economic benefit such purchases provide investors, issuers, and the marketplace.

[6] *See* 17 CFR 240.10b–18(d). Moreover, the safe harbor is not intended to define the appropriate limits to be observed by those persons not covered by the safe harbor nor the appropriate limits to be observed when purchasing securities other than common stock.

[7] Regulations S–K and S–B set forth the standard filing instructions for forms under the Securities Act and the Exchange Act. Forms 10–K (KSB) and 20–F are filed by issuers (small business issuers) and foreign private issuers respectively to satisfy annual reporting obligations and Form 10–Q (QSB) is filed by issuers (small business issuers) to satisfy quarterly reporting obligations. Proposed Form N–CSR would be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002. *See* Investment Company Act Release No. 25723 (August 30, 2002) [67 FR 57298 (September 9, 2002)]; Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, 116 Stat. 745 (2002).

## II. Overview of Current Rule 10b–18

### *A. Scope of the Rule*

Rule 10b–18 applies to bids for and purchases of an issuer's common stock by or for an issuer.[8] Purchases of any other type of security are not covered. Because Rule 10b–18 assumes normal market conditions, the definition of the term ''Rule 10b–18 purchase'' excludes issuer bids and purchases made during certain corporate events, for example, mergers, tender offers, and distributions that involve the issuer.[9] The safe harbor also does not confer absolute protection from all liability for purchases (*e.g.*, purchases that are part of a plan or scheme to evade the federal securities laws)—even if made in technical compliance with the Rule.[10] Rather, the safe harbor provides only that certain, specific provisions of the securities laws will not be considered to have been violated solely by reason of the manner, timing, price, or volume of such repurchases, provided the repurchases are made within the limitations of the Rule.

### *B. Conditions of the Rule*

Rule 10b–18 provides a safe harbor for purchases on a given day. To come within the safe harbor for that day, an issuer must satisfy the Rule's *manner*, *timing*, *price*, and *volume* conditions when purchasing its own common stock in the market.[11] Failure to meet any one of the four conditions will disqualify the issuer's purchases from the safe harbor for that day.

#### 1. Manner of Purchase Condition

The manner of purchase condition requires an issuer to use a single broker or dealer per day to bid for or purchase its common stock. This requirement is intended to avoid the appearance of widespread trading in a security that could result if the issuer uses many brokers or dealers to repurchase its stock.[12] The ''single broker or dealer'' condition, however, applies only to Rule 10b–18 purchases that are ''solicited'' by or on behalf of the issuer. Accordingly, the issuer may purchase shares from more than one broker-dealer if the issuer does not solicit the transactions. An issuer must evaluate whether a transaction is ''solicited'' by or on behalf of an issuer, depending on the facts and circumstances of each case.[13]

Moreover, where an issuer engages a single coordinating broker-dealer to make its Rule 10b–18 purchases, the broker-dealer can make (consistent with the single broker or dealer condition) appropriate and customary arrangements with other broker-dealers, including exchange specialists and ''two-dollar'' brokers on exchange floors, to execute repurchases.[14]

#### 2. Timing Condition

The timing condition restricts the periods during which the issuer may bid for or purchase its common stock. This condition excludes from the safe harbor purchases at the opening and during the last half hour of trading because market activity at such times is considered to be a significant indicator of the direction of trading, the strength of demand, and the current market value of the security.[15] Therefore, where there is no independent opening transaction on a given trading day, the issuer is precluded from making purchases under the safe harbor for that day.

#### 3. Price Condition

The price condition specifies the highest price an issuer may bid or pay for its common stock.[16] Rule 10b–18's current price limitations vary depending on whether the security is a reported, exchange-traded, Nasdaq, or other security, and whether the bid or purchase is effected on an exchange.[17] The price condition is intended to prevent the issuer from leading the market for the security through its repurchases by limiting the issuer to bidding for or buying its security at a price that is no higher than the highest independent published bid or last independent transaction price. As such, the price condition uses an *independent* reference price that has not been set or

[8] 17 CFR 240.10b–18(a)(3).

[9] 17 CFR 240.10b–18(a)(3)(i)–(vii). Because these transactions involve valuation periods for the issuer's security, they also present a greater incentive for the issuer to manipulate its stock price. Moreover, most of these non-covered transactions are regulated under other rules (*e.g.,* Exchange Act Rules 13e–1 and 13e–4 concerning tender offers, and Rule 102 of Regulation M regarding purchases during a distribution of the issuer's stock).

[10] *See* note 4, *supra.*

[11] 17 CFR 240.10b–18(b)(1)–(4).

[12] 1980 Proposing Release, *supra* note 2, 45 FR at 70891.

[13] Although Rule 10b–18 does not define ''solicitation,'' we would not consider the issuer's disclosure and announcement of a repurchase program alone as necessarily causing a subsequent purchase to be deemed ''solicited'' by or on behalf on an issuer. *See* 1982 Adopting Release, *supra* note 1, 47 FR at 53337.

[14] *See* 1980 Proposing Release, *supra* note 2, 45 FR at 70898.

[15] 17 CFR 240.10b–18(b)(2). The prohibition of Rule 10b–18 bids and purchases near the close of trading is to prevent the issuer from creating or sustaining a high bid or transaction price at or near the close of trading.

[16] 17 CFR 240.10b–18(b)(3)

[17] *Id.*

influenced by the issuer but, instead, is based on independent market forces.

4. Volume Condition

The volume condition limits the amount of securities an issuer may repurchase in the market in a single day. The volume condition is designed to prevent an issuer from dominating the market for its securities through substantial purchasing activity.[18] An issuer dominating the market for its securities in this way can mislead investors about the integrity of the securities market as an independent pricing mechanism.[19]

Under the current volume condition, an issuer may effect daily purchases in an amount up to 25 percent of the average daily trading volume in its shares (the ''25% volume limitation'').[20] However, the volume limitation does not include an issuer's block purchases. Moreover, an issuer's block purchases are not included in determining a security's average daily trading volume (ADTV).[21] The Rule defines a ''block'' as a quantity of stock that either: (i) Has a purchase price of $200,000 or more; or (ii) is at least 5,000 shares and has a purchase price of at least $50,000; or (iii) is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate.[22]

The definition further provides that a block does not include any amount a broker or dealer, acting for its own account, has accumulated for the purpose of selling to the issuer or affiliated purchaser, if the issuer knows or has reason to know that such amount was accumulated for such purpose. The definition also excludes any amount that a broker or dealer has sold short to the issuer, if the issuer knows or has reason to know that the sale was a short sale.[23]

## III. Proposed Amendments to Rule 10b–18

In this release, we are proposing broad revisions to the safe harbor rule. In particular, we propose to:

- Modify the definition of a ''Rule 10b–18 purchase'' to incorporate the current ''Rule 10b–18 bid'' definition and to clarify the scope of the safe harbor;
- Modify the timing condition by applying an ADTV value and public float value test to determine when an issuer must be out of the market before the scheduled close of trading in order to qualify for the safe harbor;
- Apply a uniform price condition that limits issuers to purchasing their securities at a price that is no higher than the highest independent bid[24] or the last independent transaction price,[25] whichever is higher, quoted or reported in the consolidated system;[26]
- Modify the volume condition's treatment of block purchases by including block purchases in calculating a security's ADTV and the 25% volume limitation;
- Modify the volume condition by allowing issuers to purchase up to a daily aggregate amount of 500 shares, as an alternative to the 25% volume limitation; and
- Apply an alternative volume condition (applicable only in the trading session immediately following a market-wide trading suspension), which would increase the 25% volume limitation to 100%.

In addition, we are proposing to amend Regulations S–K and S–B, and Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F under the Exchange Act, and proposed Form N–CSR under the Exchange Act and the Investment Company Act, to require disclosure of all issuer repurchases (open market and private transactions) of equity securities, regardless of whether the repurchases are effected in accordance with Rule 10b–18. New Item 703 of Regulations S–K and S–B and new Item 15(e) would require issuers to disclose in their Forms 10–Q (10–QSB), 10–K (10–KSB), and 20–F the total number of shares (or units) purchased for the previous quarter, the average price paid per share, the identity of broker-dealer(s) used to effect the purchases (except in the case of Form 20–F), the number of shares (or units) purchased as part of a publicly announced plan or program, and the maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs. New Item 6 of proposed Form N–CSR would require closed-end management investment companies that are registered under the Investment Company Act (''closed-end funds'') to provide similar disclosure.[27]

We solicit comment on our approach and the specific proposals. We also encourage commenters to present data in support of their positions.

### *A. Amendments Concerning the Scope of the Safe Harbor*

1. Eligible Securities

Under the proposal, the safe harbor would continue to apply to bids for and purchases of an issuer's common stock by or for an issuer. Specifically, the proposal would amend the definition of a ''Rule 10b–18 purchase'' to include any ''bid or limit order that would effect such purchase'' and to codify the staff's position that the safe harbor is available for repurchases of all common equity

[18] 1980 Proposing Release, *supra* note 2, 45 FR 70890.

[19] *Id.* A market can be manipulated even in the absence of price leadership. Following the market closely with purcahses or bids essentially places a floor underneath the market at each independent purchase or bid. This may exhaust the available supply of securities that may be offered at that price, which ultimately forces others to raise their bids. *See* L. Loss and J. Seligman, *Securities Regulation, 3d Edition,* at 10–E–10 (1999); Kidder, Peabody & Co., 18 SEC 559, 570 (1945); *Halsey, Stuart & Co., Inc.,* 30 SEC 106, 129 (1949) (describing over-the-counter (''OTC'') manipulation).

[20] This applies to reported securities, exchange-traded securities, and Nasdaq securities. 17 CFR 240.10b–18(b)(4). For any other security (*e.g.*, OTC Bulletin Board (''OTCBB'') and Pink Sheet securities), volume of purchases on a single day may not exceed one round lot or, on that day plus the preceding five business days, 1/20th of one percent (0.0005) of outstanding shares of the security. *Id.* Trading volume is defined generally as the average daily trading volume reported to the consolidated transaction reporting system or to the NASD for the security in the four calendar weeks preceding the week that the Rule 10b–18 purchase or bid is to be effected. 17 CFR 240.10b–18(a)(11).

[21] 17 CFR 240.10b–18(b)(4). Although the rule's current volume condition does not apply to block purchases, an issuer must satisfy the other three conditions in order for the block purchases to come within the safe harbor.

[22] 17 CFR 240.10b–18(a)(14).

[23] *Id.*

[24] Proposed Rule 10b–18(a)(6) would define ''highest independent bid'' to mean ''the highest published bid for a regular way trade (other than a bid by or for the issuer or any affiliated purchaser of the issuer) at the time the Rule 10b–18 purchase is effected.''

[25] Proposed Rule 10b–18(a)(7) would define ''last independent transaction price'' as ''the price at which the last regular way trade (other than a trade by or for the issuer or any affiliated purchaser of the issuer) was reported at the time the Rule 10b–18 purchase is effected.''

[26] For purposes of Rule 10b–18's timing and price conditions, proposed Rule 10b–18(a)(5) would define ''consolidated system'' to mean ''a consolidated transaction (or quotation) reporting system that collects and publicly disseminates on a current and continuous basis transaction (or quotation) information in equity securities pursuant to an effective transaction reporting plan (as defined in 17 CFR 240.11Aa3–1), the rules of a national securities exchange, or the rules of a national securities association.''

[27] *See* Sections 4(3) and 5(a)(2) of the Investment Company Act [15 U.S.C. 80a–4(3) and 80a–5(a)(2)] (defining ''management company'' and ''closed-end company''). Section 23(c) of, and Rules 23c–1, –2, and –3 under, the Investment Company Act also apply to closed-end fund repurchases of their own securities. Because the shares of closed-end funds frequently trade at a discount to net asset value (NAV), historically, closed-end funds have sometimes engaged in issuer repurchases in an attempt to reduce the discount.

securities (*i.e.*, an issuer's common stock or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share).[28] However, the Rule 10b–18 safe harbor would continue not to apply to any other type of security—even if related to the common stock (*e.g.*, warrants, options, or security futures products that are physically-settled). The proposal would also amend the definition of a ''Rule 10b–18 purchase'' to make it clear that the exception for purchases effected pursuant to a merger includes purchases effected ''during the period from the time of public announcement of the merger, acquisition, or similar transaction, until the completion of such transaction.'' [29] Once a merger or acquisition is announced, an issuer has considerable incentive to support or raise the price of its stock. Thus, the safe harbor should not apply to purchases made during this period.

Q. Should the safe harbor be made available to securities other than common equity, such as preferred stock, warrants, rights, convertible debt securities, options, or security futures products? If the safe harbor were to include such securities, what price, volume, and time of purchase conditions should apply? We seek specific comment concerning the potential for manipulative abuse that transactions in such securities may present.

Q. Should the safe harbor continue to apply to less liquid, less transparent securities (*e.g.*, OTCBB and Pink Sheet securities)? If so, should the price, volume, and time of purchase conditions be modified in order to minimize the risk of manipulation by an issuer making market repurchases in these less liquid, less transparent securities? If so, how? For example, should these securities be subject to a more restrictive volume limitation? Please provide specific examples.

Q. Should the Rule require than an issuer have current financial disclosures as a prerequisite to receiving the protection of the safe harbor? For example, should it be available to companies that do not make public filings of financial information, or are not current in required filings?

Q. Should the safe harbor apply to an issuer's repurchases of its common stock effected outside of the United States (*e.g.*, on foreign exchanges)? If so, how should the safe harbor conditions apply to such purchases (*e.g.*, should a security's ADTV include *worldwide* trading volume)?

Q. Should the safe harbor only be available outside of the United States to foreign private issuers, or to foreign companies whose principal market is outside the United States? If so, are there certain conditions of Rule 10b–18 that should be modified or that should not apply at all with respect to purchases outside the United States and, if so, why?

Q. Are there different conditions under Rule 10b–18 that should apply with respect to purchases outside the United States and, if so, why are those conditions more appropriate than the conditions currently proposed for Rule 10b–18?

Q. Should the merger exception to the definition of a ''Rule 10b–18 purchase'' include purchases effected after the time of the shareholder vote and/or the end of the valuation period? We seek specific comment concerning the potential for manipulative abuse that transactions during this period may present.

2. Purchases by or for Issuers and Affiliated Purchasers

Under the Proposal, the safe harbor would continue to apply to Rule 10b–18 purchases made by an ''affiliated purchaser'' of the issuer. The current Rule defines an affiliated purchaser of the issuer as a person acting, directly or indirectly, in concert [30] with the issuer for the purpose of acquiring the issuer's securities, and any affiliate [31] that, directly or indirectly, controls the issuer's Rule 10b–18 purchases, or whose purchases are controlled by, or are under common control with, those of the issuer.[32] Under the current Rule, the term ''affiliated purchaser'' does not include a broker, dealer, or other person solely by his effecting Rule 10b–18 purchases on behalf of the issuer (and for its account), or an officer or director of the issuer solely by his participating in the decision to authorize the issuer to effect Rule 10b–18 purchases.

Q. Does the current definition of ''affiliated purchaser'' provide the proper scope or are there other persons that should be covered by or excluded from the safe harbor? For example, should the current definition of ''affiliated purchaser'' be revised to have the same meaning as contained in § 242.100 of Regulation M under the Exchange Act?

*B. Amendments to the Purchasing Conditions*

1. Manner of Rule 10b–18 Purchases

We are not proposing to amend the single broker or dealer condition. This condition would continue to require an issuer to use a single broker or dealer per day to bid for or purchase its common stock. Purchases by or on behalf of several affiliated purchasers of the issuer, or the issuer and at least one affiliated purchaser, would continue to be subject to the one broker or dealer condition (*i.e.*, requiring the issuer and any of its affiliated purchasers to use the same broker-dealer on any single day in effecting Rule 10b–18 purchases). The Proposal also would retain the exception for purchases that are not solicited by or made on behalf of the issuer (*i.e.*, such purchases could continue to be made from or through several brokers or dealers on a single day).[33]

Q. The Commission seeks specific comment concerning whether the single broker or dealer condition needs to be amended in order to accommodate issuer repurchases effected through ATSs (*i.e.*, which are registered as broker-dealers) or on electronic communication networks (ECNs)? If so, in what way should the condition be modified?

2. Time of Purchases

We propose to modify Rule 10b–18's timing condition by using an ADTV value and public float value test to determine the time when an issuer must be out of the market before the scheduled close of trading in order to qualify for the safe harbor. Currently, an issuer's purchase may not be the opening transaction reported to the

[28] Proposed Rule 10b–18(a)(13). Rule 10b–18 currently defines ''Rule 10b–18 purchase'' as ''a purchase of common stock of an issuer by or for an issuer or any affiliated purchaser of the issuer.'' 17 CFR 240.10b–18(a)(3). The current rule separately defines ''Rule 10b–18 bid'' as a bid for securities that, if accepted, or a limit order that, if executed, would result in a Rule 10b–18 purchase. 17 CFR 240.10b–18(a)(4). The definition of ''common equity'' for purposes of Rule 10b–18 is similar to that in Rule 405 under the Securities Act.

[29] Proposed Rule 10b–18(a)(13)(iv). This would include during any period where the market price of a security will be a factor in determining the consideration to be paid pursuant to a merger, acquisition, or similar transaction.

[30] 17 CFR 240.10b–18(a)(2)(i). The ''acting in concert'' standard includes persons acting with the issuer in purchasing the issuer's securities, regardless of whether the purchases are made for the account of the issuer itself. 1980 Proposing Release, *supra* note 2, 45 FR at 70895, n. 30. The proposal would amend the language of the ''acting in concert'' standard to include the words ''directly or indirectly'' in order to be consistent with the ''acting in concert'' standard in Rule 100 of Regulation M (17 CFR 242.100).

[31] ''Affiliate'' is defined to mean any person that directly or indirectly controls, is controlled by, or is under common control with, the issuer. 17 CFR 240.10b–18(a)(1).

[32] 17 CFR 240.10b–18(a)(2)(ii).

[33] 17 CFR 240.10b–18(b)(1)(i). 1982 Adopting Release, *supra* note 1, 47 FR at 53337. *See* also discussion in Section II.B.1 and text accompanying note 13 *supra.*

consolidated system, nor may the issuer purchase during the last half hour before the scheduled close of trading in the principal market (including during the last half hour before the scheduled close of trading on the exchange on which the purchase is to be made) or the last half-hour before termination of the period in which last sale prices are reported to the consolidated system (whichever is applicable).[34] These limitations apply regardless of a security's trading characteristics (*e.g.*, liquidity or daily trading volume).[35]

The proposed amendments would continue to limit an issuer from effecting a Rule 10b–18 purchase as the opening transaction for the day.[36] However, limitations on purchases at the close would vary (*i.e.*, either 10 to 30 minutes before the scheduled close of trading) depending on the security's ADTV value and public float value (as defined in 17 CFR 242.100). The timing modifications are designed to reflect the relative liquidity of the security and, therefore, the likelihood of an issuer affecting the closing price.[37] As such, the proposed modifications recognize that the current Rule's last half-hour restriction may be unnecessarily long to prevent issuers of highly liquid securities from influencing market prices and volume near the close of trading. At the same time, the proposed modifications would continue to provide a clear standard whereby issuers and their affiliates would know when they must be out of the market in order to qualify for the safe harbor.[38]

The proposed modifications to the timing condition would work as follows: To qualify for the safe harbor, issuers of more liquid securities (*i.e.*, those having an ADTV value of $1 million or more and a public float value of $150 million or more),[39] could not bid for or purchase their securities during any of the following periods: (1) In the ten minutes before the scheduled close of the primary (regular) trading session in the principal market for the security, (2) the ten minutes before the scheduled close of the primary (regular) trading session in the market where the purchase is made, or (3) after the termination of the period in which last sale prices are reported in the consolidated system (*i.e.*, after the consolidated tape stops running). Thus, the proposed modification would allow issuers of more actively traded securities, which are less susceptible to manipulation, to stay in the market longer.

Issuers of all other eligible securities (*i.e.*, those having an ADTV value of less than $1 million or a public float value of less than $150 million) could not bid for or purchase their securities during any of the following periods: (1) The 30 minutes before the scheduled close of the primary (regular) trading session in the principal market for the security, (2) the 30 minutes before the scheduled close of the primary (regular) trading session in the market where the purchase is made, or (3) after the termination of the period in which last sale prices are reported in the consolidated system (*i.e.*, after the consolidated tape stops running).[40]

Q. Should eligibility for the modified timing limitation (*i.e.*, 10 minutes before the scheduled close of trading) be based on a security's ADTV and an issuer's public float? Do the proposed ADTV and public float levels need to be raised (or lowered)? Are there alternative tests we should consider?

Q. Do the proposed timing limitations for issuer bids and purchases near the scheduled close of trading adequately protect against an issuer affecting the closing price?

Q. Should the Rule's timing limitations be modified to allow issuers of more liquid securities (*i.e.*, those having an ADTV value of $1 million or more and public float value of $150 million or more) to effect a Rule 10b–18 purchase as the opening (first) transaction?

3. Price of Purchases

Rule 10b–18's current price limitations vary depending on the market for the security.[41] We propose to apply a uniform price condition that limits issuers to purchasing their securities at a purchase price that does not exceed the highest independent bid or the last independent transaction price, whichever is higher, quoted or reported in the consolidated system (*i.e.*, regardless of where the securities are traded).[42] For securities that are not quoted or reported in the consolidated system, the proposed Rule provides that an issuer's Rule 10b–18 purchases must be effected at a purchase price that does not exceed the highest independent bid or the last independent transaction price, whichever is higher, displayed and disseminated on any national securities exchange or on any inter-dealer quotation system (as defined in Exchange Act Rule 15c2–11) that displays at least two priced quotations for the security. For all other securities, Rule 10b–18 purchases must be effected at a price no higher than the highest independent bid obtained from three dealers.

We are considering whether to eliminate the ''last independent transaction price'' alternative (*i.e.*, and have only the ''bid test''). We are concerned that permitting purchases at

[34] Under the current version of Rule 10b–18(b)(2), ''other'' securities (*i.e.,* securities that do not meet the definition of ''reported securities'' under the rule) do not have timing restrictions under the safe harbor. At this time, we are not proposing to change this.

[35] 17 CFR 240.10b–18(b)(2)(i)–(iii).

[36] Specifically, proposed Rule 10b–18(b)(2) would prohibit a Rule 10b–18 purchase from being the first (opening) regular way purchase reported in the consolidated system.

[37] One concern is that the issuer may attempt to ''mark the close'' (*i.e.*, determine the final transaction price reported in the market). *See* 1980 Proposing Release, *supra* note 2, 45 FR at 70899. The Commission has brought several marking the close cases. See, *e.g.*, *S.E.C.* v. *Schiffer*, 1998 U.S. Dist. LEXIS 8579, Fed. Sec. L. Rep. (CCH) p. 90247 (S.D.N.Y. 1998) (issuer orchestrated over several months purchases effected at or shortly before the close of trading in order to increase the issuer's stock price); *Thomas C. Kocherhans*, Securities Exchange Act Rel. No. 36556 (Dec. 6, 1995), 60 SEC Docket 2589; *Myron S. Levin*, Securities Exchange Act Rel. No. 31124 (Sept. 1, 1992); *S.E.C.* v. *John G. Broumas,* Civil Action No. 91–2449 (D.D.C.), Litigation Rel. No. 12999 (Sept. 27, 1991).

[38] *See* proposed Rule 10b–18(b)(2). This means that an issuer may not purchase in *any* market during the specified periods.

[39] Proposed Rule 10b–18(b)(2)(ii)(A). The proposed timing amendment would incorporate Regulation M's standards and methods of calculating ADTV and public float value. Under Regulation M, issuers with a security that has an ADTV value of $1 million or more and a public float value of $150 million or more are excluded from Rule 101 of Regulation M under its ''actively–traded securities'' exception. See 17 CFR 242.101(c)(1). The Commission selected $150 million for the public float value test because it believes that the securities of issuers with a public float value at or above this threshold, and that also have an ADTV value of at least $1 million, have a sufficient market presence to make them less likely to be manipulated. See Securities Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520. Moreover, the public float value test is intended in part to exclude issuers from the ''actively-traded securities'' exception where a high trading volume level is an aberration. Id.

In calculating the dollar value of ADTV, any reasonable and verifiable method may be used. For example, it may be derived from multiplying the number of shares by the price in each trade, or from multiplying each day's total volume of shares by the closing price on that day. Public float value (*i.e.*, the aggregate market value of common equity securities held by non-affiliates of the issuer) is to be determined in the manner set forth on the front page of Form 10–K, even if the issuer of such securities is not required to file Form 10–K. For reporting issuers, the public float value should be taken from the issuer's most recent Form 10–K or based upon more recent information made available by the issuer.

[40] Proposed Rule 10–18(b)(2)(ii)(B) & (C).

[41] 17 CFR 240.10b–18(b)(3).

[42] Proposed Rule 10b–18(b)(3). *See also* notes 24–26, *supra*. The proposed amendments would simplify and update the rule by removing the outdated definitions and price provisions that depend on whether the security is a ''reported security,'' ''exchange traded security,'' ''Nasdaq security,'' or ''other security'' and whether the bid or purchase is effected on an exchange.

the last independent transaction price may allow issuers to create a floor for their security on the offer side of the market. Specifically, issuers could reach across the market to buy at the offer side, which could cause the price of their securities to move up to higher price levels—especially if done as block-size trades—or could allow issuers to purchase their stock at ''stale'' transaction prices (*e.g.*, in a declining market where the bid has moved down). Such activities would undermine the objectives of Rule 10b–18 by allowing the issuer to influence the market, thereby making the market less reliable for investors.

Q. We seek specific comment concerning whether the current ''last independent transaction price'' alternative should be eliminated.

Q. Please provide specific examples of transactions where eliminating the ''last independent transaction price'' alternative would significantly limit an issuer's ability to purchase its securities within the safe harbor.

Q. Has the conversion to decimal pricing, particularly where a one-cent minimum price variation could result in frequent quote changes (so-called ''quote flickering''), made the Rule's ''bid test'' difficult to satisfy? Has decimal pricing similarly affected use of the ''last independent transaction price'' alternative (*e.g.*, if transaction rates substantially increase)? Please provide specific examples concerning the impact of decimalization with respect to the Rule's price condition, including specific suggestions to address these concerns.

Q. Should Rule 10b–18's price condition be based on prices quoted or reported for the security in the ''consolidated system'' as we propose, or should the price condition be based solely on prices reported (or quoted) in the ''principal market'' for the security?

Q. Should Rule 10b–18's price condition apply where the issuer or its affiliated purchaser has no control, directly or indirectly, over the price at which a Rule 10b–18 purchase will be effected, for example, automated trading systems that utilize ''passive'' (independently-derived) pricing, such as the volume weighted average price (VWAP) or the mid-point of the NBBO? Please provide specific examples of transactions where modifying the Rule's price condition would be appropriate. We also seek comment concerning the potential for manipulative abuse that permitting such transactions may present.

4. Riskless Principal Transactions

Rule 10b–18 covers purchases of an issuer's common stock made by or for the issuer.[43] We understand that some broker-dealers purchase shares through their market making desks when working an issuer order to repurchase shares. These shares are then sold in ''riskless principal'' transactions to the issuer.[44]

Riskless principal transactions raise the issue of how to apply the safe harbor to the two ''legs'' of the transaction: the broker-dealer's purchase in the market for its own account; and the issuer's purchase of the shares from the broker-dealer. The issuer and the broker-dealer (buying on behalf of the issuer), may seek to claim the protection of the safe harbor for both legs of the transaction.[45] This appears to contemplate one transaction by which the issuer effects its purchase, and which will result in one reported trade.

Q. How should Rule 10b–18 apply to issuer purchases from a broker-dealer engaged in a riskless principal transaction? If riskless principal trades should be eligible for the safe harbor, is it appropriate to limit the Rule's application to riskless principal trades where both legs are transacted at the same price and only one leg is reported to the market?[46]

5. Volume of Purchases

We propose to modify the volume condition's treatment of block purchases. Under the current volume condition, an issuer may effect daily purchases in an amount up to 25% of the ADTV in its shares. Block purchases by an issuer, however, are not subject to the 25% volume limitation, nor are the shares purchased by the issuer in block transactions included when calculating a security's ADTV. Because market conditions no longer appear to justify excluding block purchases from the volume limitation, the proposed amendments would eliminate the special treatment of block purchases. To qualify for the safe harbor, therefore, issuers would have to include block purchases in applying the 25% volume limitation. However, issuers would be able to include their block purchases in calculating the ADTV for the security, thereby increasing the amount of stock that some issuers would be able to purchase within the safe harbor.[47]

When Rule 10b–18 was adopted, block purchases were conducted less frequently than today. The Commission viewed the market impact of block purchases as being less than that of a series of smaller purchases that, in the aggregate, are equal in size to a block but are accomplished over a period of time and so could give the impression to the market of multiple investment decisions to buy and more likely affect the market price.[48] As such, it appeared to be reasonable to exclude blocks from the volume limitation.

Since the Rule's adoption, however, the frequency of block purchases has significantly increased. Today, block purchases comprise a substantial portion of trades on the exchanges and Nasdaq.[49] The size of a block purchase under Rule 10b–18 (*e.g.*, 5,000 or more shares) is also substantially lower than that used by the exchanges or Nasdaq (*e.g.*, 10,000 or more shares). This suggests that block purchases under Rule 10b–18 account for an even greater percentage of the overall trading in these markets.[50] Moreover, because

[43] *See* 17 CFR 240.10b–18(a)(3).

[44] A ''riskless principal'' purchase transaction is one in which the broker-dealer has a buyer for the shares before he purchases shares as principal from the seller, and contemporaneously resells the shares to the buyer.

[45] Under the NASD's trade-reporting rules, for certain riskless principal trades, the broker-dealer reports only one leg of the transaction (*i.e.,* the first leg of the transaction when the broker-dealer purchases the shares in the open market, rather than the offsetting transaction to the buyer) to ACT. In order to qualify for riskless principal trade reporting, the trades must be executed at the ''same price'' (exclusive of a markup or markdown, commission equivalent, or other fee). *See* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999), NASD Notice to Members 99–65 (March 1999) and NASD Notice to Members 00–79 (November 2000).

[46] *See* NASD Rules 4632(d)(3)(B), 4642(d)(3)(B), and 6620(d)(3)(B).

[47] Some issuers have noted that the utility of effecting purchases in blocks (and thereby avoiding the 25% volume limitation) is largely deiminished by the inability to include such block purchases in calculatiing a security's four weeks' trading volume. *See, e.g.,* Letter regardinig Rule 10b–18: Interpretation of ''Trading Volume'' (October 21, 1991). Issuers also have noted the practical difficulty and burden of recording all block purchases and subtracting them from the security's overall trading volume, to calculate trading volume under the Rule.

We understand that the 25% volume limitation generally does not present a problem for the higher float issuers with large repurchase programs (*i.e.*, these issuers do not have substantial need for the block exception). However, even with the availability of a block exception, the 25% volume limitation is problematic for issuers with lower float, because it is harder for smaller issuers to execute block trades.

[48] *See* 1980 Proposing Release, *supra* note 2, 45 FR 17222.

[49] For example, block trades (which the NYSE defines as a trade of 10,000 shares or greater) accounted for approximately 50% of the total trading volume on the NYSE in 2001. *See NYSE Factbook—2001 Data*, at p. 99.

[50] In contrast to Rule 10b–18's definition of ''block'' (which is defined as the purchase of: (a) a quantity of stock that has a purchase price of $200,000 or more; or (b) at least 5,000 shares of stock that has a purchase price of $50,000 or more),

Continued

there is no limit on the number of block purchases an issuer can make on a single day, the block exception essentially allows issuers to avoid any volume limitation simply by effecting their Rule 10b–18 purchases in block size.[51] Thus, the block exception may allow issuers to dominate the market for their securities in a way not originally contemplated by the safe harbor. This raises the possibility that investors could be misled about the integrity of the securities trading market as an independent pricing mechanism.[52] As a result, the block exception essentially negates the volume limitation (and undermines its purpose) for many securities.[53]

Issuers also currently may attempt to take advantage of the block exception to facilitate corporate transactions. For example, in contested takeovers, bidders may purchase significant blocks of their securities, thus raising their share price and widening the spread between their offer and that of their competitors.[54] Accordingly, we would propose that block size transactions be treated as any other purchase under the Rule.

The proposed amendments would continue to limit Rule 10b–18 purchases to 25% of the ADTV for the security per day.[55] However, in contrast to the Rule's current ADTV calculation (which is based on the average daily trading volume for the security for the four calendar weeks preceding the week in which the Rule 10b–18 bid or purchase is to be made, excluding issuer block purchases during that period), the proposed amendments would define ADTV as the average daily trading volume, *including* block purchases made by or on behalf of the issuer, reported for the security during the four calendar weeks preceding the week in which the Rule 10b–18 purchase is effected.[56] Including issuer block-size purchases in the ADTV calculation would increase many issuers' volume limit. It also would substantially reduce the burden and potential error associated with issuers' having to subtract out their block-size purchases when calculating ADTV, as is required under the current Rule.

In addition, we would propose to modify the volume condition to allow issuers to purchase up to a daily aggregate amount of 500 shares, as an alternative to the 25% volume limitation. Thus, under the proposed amendments, an issuer's Rule 10b–18 purchases, on any single day, may not exceed the higher of 25 percent of the ADTV for that security or a daily aggregate amount of 500 shares.[57] This would increase the amount that issuers of thinly traded securities could repurchase under the safe harbor.

Q. Does the current four calendar-week period provide a sufficient length of time to measure a security's ADTV, or should an alternative period be used (for example, two full calendar months, or 60-day rolling period)?

Q. Should we retain the current block transaction exception, but raise the amount of shares constituting a block (for example, use the NYSE's definition)?

Q. We encourage commenters to submit data regarding what percentage of individual issuer repurchase trading volume over the past five years has been effected through block purchases. In particular, the Commission requests data and analysis on what effect eliminating the block exception would have had on such issuer's repurchasing activity during that period.

Q. Is a volume limitation based on an ADTV calculation feasible with respect to Rule 10b–18 purchases of thinly traded securities? Should we raise (or lower) the volume limit for these securities? Should the proposed 500 shares alternative (to the 25% volume limitation) be increased (or decreased)? Please provide specific examples of where modifying the Rule's volume condition (with respect to these securities) would be appropriate. We also seek comment concerning the potential for manipulative abuse that such transactions may present.

Q. Should the safe harbor be available for issuer repurchases involving security futures or option contracts (including the receipt or purchase for delivery of securities underlying such contracts)? Should the number of shares underlying an option or security futures contract (or other derivative security) entered into by an issuer count against an issuer's 25% daily volume limitation? What effect, if any, should taking delivery of common stock pursuant to a security futures contract or upon exercise of an option have regarding the Rule's other conditions (*e.g.*, price, timing, and manner of purchase) with respect to the availability of the safe harbor for purchases effected in accordance with Rule 10b–18?

## IV. After-Hours Trading

### *A. Applicability of the Safe Harbor During After-Hours Trading Sessions*

Since the adoption of Rule 10b–18, the opportunity for investors to trade securities after the markets' regular trading sessions (''after-hours trading'') has increased. To date, the Division has interpreted Rule 10b–18 to be available to purchases effected during limited off-hours trading (OHT) sessions at the primary market's closing price.[58] Specifically, the Division interpreted Rule 10b–18's ''one-half hour before the scheduled close of trading'' language to

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both the NYSE and the NASD define ''block'' purchases in terms of the following criteria: (a) the purchase of a quantity of stock that has a purchase price of $500,000 or more; or (b) the purchase of at least 10,000 shares of stock with a purchase price of $200,000 or more. The AMEX defines a block as 10,000 or more shares. Moreover, we understand that the average size of a block purchase on the NYSE is 24,735 shares. Thus, a purchase satisfying the definition of a ''block'' under Rule 10b–18 is extremely small by current market standards.

[51] Under the current rule, an issuer may purchase up to the 25% volume limitation, and, in addition, may purchase one or more blocks, as defined. *See* 1982 Adopting Release, *supra* note 1. *See also* L. Loss and J. Seligman, *Securities Regulation, 3d Edition*, at 10–E–10 (1999) (noting that ''[g]iven the exception of blocks from the volume limitation, this [25% volume limitation] restriction can be illusory''). It is important to note that, under the current rule, the term ''block'' does not include any amount of securities that a broker or dealer, acting as principal, has accumulated for the purpose of selling to the issuer, if the issuer knows or has reason to know that such amount was accumulated for such purpose. Rule 10b–18(a)(14).

[52] Economic studies have shown that block trades effected in the normal course of trading can affect a security's price. *See, e.g.*, Robert W. Holthausen, *et al.*, ''Large-Block Transactions, the Speed of Response, and Temporary and Permanent Stock-price Effects,'' 26 *Journal of Financial Economics* 71–95 (1990) (presenting evidence of a permanent price effect that increases with block size, whether the block is ''buyer-initiated'' [*i.e.*, blocks that trade on an uptick] or seller-initiated'' [*i.e.*, blocks that trade on a downtick]); Jonathan R. Macey, *et al.*, ''Symposium on the Regulation of Secondary Trading Markets: Program Trading, Volatility, Portfolio Insurance, and the Role of Specialists and Market Makers'' 74 *Cornell L. Rev.* 799, at 819 (July 1989) (stating that empirical evidence confirms that block transactions do affect stock prices); Robert W. Holthausen, *et al.*, ''The Effect of Large Block Transactions on Security Prices: A Cross-Sectional Analysis,'' 19 *Journal of Financial Economics* 237 (1987) (finding that for buyer-initiated transactions [*i.e.*, blocks that trade on an uptick], a permanent price effect results that increases with block size).

[53] *See, e.g.*, The October 1987 Market Break: A Report by the Division of Market Regulation, U.S. Securities and Exhange Commission (February 1988) (The October 1987 Market Break) at p. 6:11 (noting that the treatment of blocks under the rule may effectively negate the volume restriction for many securities).

[54] As discussed above, the proposal would also amend the definition of a ''Rule 10b–18 purchase'' to make it clear that the exclusion of purchases made ''pursuant to a merger, acquisition, or similar transaction involving a recapitalization'' under the current definition, includes purchases effected ''during the period from the time of public announcement of the merger * * * until the completion of such transaction.''

[55] Proposed Rule 10b–18(b)(4).

[56] Rule 10b–18 would continue to include only U.S. market trading volume data in calculating a security's ADTV.

[57] Proposed Rule 10b–18(b)(4).

[58] For example, both the New York Stock Exchange, Inc. (NYSE) and the American Stock Exchange provide crossing sessions in which matching buy and sell orders can be executed at 5:00 p.m. at the exchanges' 4:00 p.m. closing prices.

refer to an exchange's primary trading session (*i.e.*, 9:30–4 p.m. price discovery auction session), rather than OHT trading sessions.[59] As such, Rule 10b–18 safe harbor would be available for Rule 10b–18 purchases effected during these limited OHT sessions (*e.g.*, the NYSE's Crossing Session I), provided that all the Rule's conditions are satisfied.[60]

We are not proposing any amendments to Rule 10b–18 to address after-hours trading. Comment is requested about the need for rulemaking or guidance in this area.

Q. Should the Rule 10b–18 safe harbor be available to issuer purchases effected in after-hours trading sessions?

Q. Should the safe harbor be available only if the after-hours trades are reported on a ''real-time'' basis, *e.g.*, to the consolidated tape?

Q. Do issuer repurchases made in after-hours trading sessions present a greater potential for manipulation?

Q. Should the safe harbor conditions be applied separately to each session or should they carry over from the regular trading session for that day? Should any of the present safe harbor conditions be further modified (*e.g.*, should the volume in an issuer's security in an after-hours trading session be included in calculating the issuer's volume limitation for that day)?

### *B. Guzman & Company Petition for Rulemaking*

On May 21, 1999, Guzman & Company, a registered broker-dealer, filed a petition for rulemaking, requesting that the Commission amend Rule 10b–18 to apply to after-hours trading.[61] Specifically, Guzman & Company seeks the amendment of Rule 10b–18's timing and pricing conditions to permit an issuer or an affiliated purchaser of an issuer to effect purchases or make bids during ''after-hours'' trading sessions subject to the present conditions but with the additional proviso that trades and bids must be at prices lower than the last reported price on the primary exchange or market on which the security of the issuer is traded. The petition also seeks an amendment of the single broker or dealer condition to permit an issuer or an affiliated purchaser of an issuer to utilize a different broker or dealer for ''after-hours'' Rule 10b–18 purchases or bids than is used for Rule 10b–18 purchases or bids during normal trading hours.

Q. We seek specific comment concerning Guzman & Company's proposals.

## V. Rule 10b–18 Alternative Conditions

### *A. Proposed Amendment to Rule 10b–18 Alternative Conditions*

On September 23, 1999, we adopted an amendment to the safe harbor conditions in order to facilitate liquidity in the trading session following a market-wide trading suspension, or circuit breaker.[62] Specifically, we modified the timing condition to include in the safe harbor issuer purchases made at the reopening and during the last half-hour prior to the scheduled close of trading or at the next day's opening if a market-wide trading suspension was in effect at the scheduled close of trading.[63] During such trading session, all other Rule 10b–18 conditions apply to issuer purchases.

In view of the extreme market volatility that would trigger a circuit breaker and the desirability of facilitating liquidity in that context, we propose to further modify the safe harbor alternative conditions (which are applicable only in the trading session immediately after a market-wide trading suspension) by increasing the current 25% volume limitation to 100% of the ADTV for that security.[64] The proposed volume modification would permit issuers to purchase more securities within the safe harbor during these rare periods of severe market decline.[65]

Q. Following a market-wide trading suspension, could sufficient liquidity be facilitated by increasing the volume limitation to something less than 100%? If so, what level is appropriate? Should the level be greater than 100%?

Q. Should Rule 10b–18's ''alternative conditions'' be further modified during periods of severe market decline? For example, do Rule 10b–18's pricing or manner conditions need to be modified during such periods or does the definition ''market-wide trading suspension'' need to be expanded to cover additional situations? If so, please provide specific suggestions.

### *B. NYSE Petition for Rulemaking*

On June 13, 2001, the NYSE filed a petition for rulemaking, which seeks an amendment to Rule 10b–18 to make the Rule 10b-18 ''safe harbor'' available to an issuer for a category of ''special purchases'' effected by an independent trustee during a period of unusual volatility in the issuer's stock.[66] Specifically, the NYSE seeks the amendment of Rule 10b–18 to include in the Rule's safe harbor a new category of ''special purchases'' that:

(i) Are effected by a trustee that is not in any control or affiliate relationship with the issuer, and, once instructed by the issuer to conduct the ''special purchase'' program, makes all decisions with respect to the program independent of any influence or control by the issuer (''independent trustee'');

(ii) Are effected on a day when NYSE Rule 80B is put into effect, or, with respect to an individual stock, the price of such stock has declined by $2 or more (in the case of a security whose previous closing price on the NYSE was under $10), the lesser of twenty percent or $5 (in the case of a security whose previous closing price on the NYSE was between $10 and $99.99), or $10 (in the case of a security whose previous closing price on the NYSE was $100 or more); and

(iii) Are limited in volume to no more than a quantity of stock having a market value that does not exceed one-half of one percent of the average market value of the issuer's stock during the four calendar weeks preceding the week in which the ''special purchase'' is made.

The NYSE petitions that ''special purchases'' be subject to the price and single broker or dealer provisions of Rule 10b–18, but that such purchases should be allowed to be effected for the remainder of the trading day. The NYSE also asks that, if a regular Rule 10b–18 program were being conducted by an issuer on a day that a ''special

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[59] *See* Letter Regarding Operation of Off-Hours Trading (OHT) Sessions by the NYSE (June 13, 1991); Letter Regarding Operation of OHT Session by the AMEX (August 5, 1991); and Letter Regarding AMEX After-Hours Trading Facility (May 6, 1997) (the ''OHT Session letters''.

[60] *Id.*

[61] Guzman & Company's Petition for Rule-Making (filed on May 21, 1999) is publicly available in File No. 4–424 in the Commission's Public Reference Room.

[62] Securities Exchange Act Release No. 41905 (September 23, 1999), 64 FR 52428 (September 29, 1999).

[63] 17 CFR 240.10b–18(c).

[64] Proposed Rule 10b–18(c)(5). *See, e.g.*, Comment letters, on the 1999 amendment to Rule 10b–18, from Morgan Stanley & Co. (December 10, 1998) (urging us to eliminate the current volume limitation during the period following a market-wide trading suspension condition or, as an alternative, increase the current 25% volume limitation), and Intel Corporation (December 1, 1998) (suggesting we amend the present volume condition to permit additional issuer repurchases, based on either a higher or scaled percentage, following a severe market break). Both letters are available for public inspection in the Commission's Public Reference Room, Public File No. S7–27–98. *See* also text accompanying note 79, *infra*, regarding the Commission's emergency orders where the volume limitation was temporarily increased from 25% to 100% of a security's ADTV following the events of September 11, 2001.

[65] *See generally* The October 1987 Market Break, *supra* note 53, at pp. 6:1–6:15 (noting the increase in trading volume and the impact of issuer repurchases following the October 1987 market break).

[66] The NYSE's Petition for Rule-Making is publicly available in File No. 4–446 in the Commission's Public Reference Room.

purchase'' is to be effected, Rule 10b–18 be amended to provide that:

(i) The regular Rule 10b–18 program must be cancelled before the ''special purchase'' program can begin;

(ii) The ''single broker or dealer'' requirement applies separately to the regular program and the ''special purchase'' program; and

(iii) Any securities acquired in the regular Rule 10b–18 program would not be included in the new volume limitation applicable to the ''special purchase'' program.[67]

Q. Should Rule 10b–18's ''alternative conditions'' apply where there is a significant decline in the market price of an *individual* stock (*i.e.*, in the absence of a market-wide trading suspension), as suggested by the NYSE in its petition? If so, what conditions should apply to these purchases? Please provide specific examples of where modifying the Rule's ''alternative conditions'' would be appropriate.

Q. We seek specific comment concerning the NYSE's petition for rulemaking, including the feasibility of monitoring compliance with such a program (*i.e.*, especially in cases where there is a severe market decline in the price of an individual stock).

## VI. Disclosure

We propose that Regulations S–K and S–B, and Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and proposed Form N–CSR be amended to require periodic disclosure of all issuer repurchases of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to Section 12 of the Exchange Act.[68] This disclosure requirement would be independent of the Rule 10b–18 safe harbor.

Under the proposal, an issuer would be required to disclose information concerning its repurchases in a new table in its Forms 10–Q/10–QSB (new Item 2(b)), 10–K/10–KSB (new Item 5(c)), 20–F (new Item 15(e)), and, for registered closed-end funds, proposed Form N–CSR.[69] The table in Forms 10–K/10–KSB, 10–Q/10–QSB, and proposed Form N–CSR would include disclosure of all issuer repurchases of its Section 12 registered equity securities (both open market and private transactions) for that quarter (or, in the case of closed-end funds, semi-annual period), including the total number of shares (or units) purchased (reported on a rolling-month basis), the average price paid per share, the identity of any broker-dealer(s) used to effect the purchases, the number of shares (or units) purchased as part of a publicly announced repurchase plan or program, and the maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs.[70]

New Item 15(e) to Form 20–F would require the same tabular presentation of information, with the exception of the identity of the broker-dealer effecting the transactions, which would not be required in the table included in Form 20–F. Thus, a foreign private issuer that has securities registered under Section 12 of the Exchange Act would be required to disclose on a yearly basis in its annual report on Form 20–F its repurchases of its securities. The disclosure provided should relate to the issuer's securities in ordinary share form, whether the issuer has repurchased the shares themselves or depositary receipts that represent the shares. The price data and other data should be based on the currency used in the issuer's primary financial statements.

We also propose footnote disclosure of the principal terms of publicly announced repurchase plans or programs, including (1) the date of announcement, (2) the share or dollar amount approved, (3) the expiration date (if any) of the plans or programs, (4) each plan or program that has expired during the period covered by the table, (5) each plan or program that the issuer has determined to terminate prior to expiration, and (6) each plan or program that the issuer has not purchased under during the period covered by the table and whether the issuer still intends to purchase under that plan or program.

The table also would have to include footnotes that briefly disclose the nature of the transaction for purchases made other than pursuant to a publicly announced repurchase plan or program. These would include, for example, open market and privately negotiated purchases, issuer tender offers, purchases made by the issuer upon another person's exercise of outstanding put rights, and in other transactions through which the company purchases its Section 12 registered equity securities.

In the past, we had proposed requiring issuers that intended to repurchase more than 2% of their stock in a twelve-month period to disclose specified information prior to effecting any repurchases.[71] Issuers also would have been required to disclose this information to the exchange on which the stock was listed for trading or to the NASD if the stock was authorized for quotation on Nasdaq.[72] After receiving comment, we determined that an issuer's obligation to disclose information concerning repurchases of its stock should depend on whether the information is material.[73] Therefore, at the time we adopted Rule 10b–18, we considered the relevant provisions of the federal securities laws and existing policies and procedures of the various self-regulatory organizations as generally sufficient to provide investors and the market with adequate information about issuer repurchases.

Information about how much common stock the issuer has repurchased may be important to investors. Studies have shown that the public announcement by an issuer of a repurchase program is often followed by a rise in the issuer's stock price.[74] Studies have also shown that some issuers publicly announce repurchase programs, but do not purchase any shares or purchase only a small portion of the publicly disclosed amount.[75] Thus, disclosure of an issuer's actual repurchases would inform investors whether the issuer had followed through on its original plan.[76] Investors

[67] With respect to resales of any securities acquired pursuant to a Rule 10b–18 ''special purchase,'' the NYSE petitions the Commission to exercise its exemptive authority to provide that such securities are not subject to re-registration under the Securities Act of 1933, and are not deemed to be ''restricted securities'' in any way, provided that such securities have been held by the independent trustee for a minimum of two weeks, and are sold by the independent trustee in a manner free of any influence or control by the issuer.

[68] For purposes of Item 703 of Regulations S–K and S–B, the term ''equity securities'' is defined in Section 3(a)(11) of the Exchange Act. For purposes of Form 20–F, the term ''equity securities'' is defined in General Instruction F to Form 20–F.

[69] *See* proposed Item 703 of Regulations S–K and S–B (17 CFR 229.703 and 228.703), Item 2(b) to Forms 10–Q and 10–QSB, Item 5(c) to Forms 10–K and 10–KSB, Item 15(e) to Form 20–F, and Item 6 to proposed Form N–CSR.

[70] *Id.*

[71] Proposed Rule 13e–2(d)(1). *See* 1980 Proposing Release, *supra* note 2, 45 FR at 70897.

[72] Proposed Rule 13e–2(d)(2).

[73] 1982 Adopting Release, *supra* note 1, 47 FR at 53335.

[74] *See* Comment, R. and Jarrell, G., ''The Relative Signaling Power of Dutch-Auction and Fixed-Price Self-Tender Offers and Open-Market Share Repurchases,'' *Journal of Finance* 46 (1991), pp. 1243–71; Asquith, P. and Mullins, D., ''Signaling with Dividends, Stock Repurchases and Equity Issues,'' *Financial Management* 15 (1986), pp. 27–44; Vermaelen, T., ''Common Stock Repurchases and Market Signaling,'' *Journal of Financial Economics* 9 (1981), pp. 139–83; and Dann, L., ''The Effects of Common Stock Repurchase on Security Holder's Returns,'' *Journal of Financial Economics* 9 (1981), pp. 101–138.

[75] If an issuer announced a repurchase program, but had no intention to make purchases, it may violate the anti-fraud and anti-manipulation provisions of the federal securities laws.

[76] *See* Stephens and Weisbach, *supra* note 1. *See also* Ikenberry, David, *et al.,* ''Stock Repurchases in Canada: Performance and Strategic Trading,''

also would have information regarding an issuer's repurchase activity in order to assess its possible impact on the issuer's stock price, similar to periodic disclosure of issuer earnings and dividend payouts.[77] Finally, investors should also be apprised when an issuer repurchase plan has expired, has been terminated, and where no repurchase activity has occurred for some period whether the issuer nevertheless intends to continue the repurchase program.[78]

The importance of requiring disclosure of issuer repurchases was made more apparent when the Commission temporarily afforded emergency relief regarding Rule 10b–18 following the September 11, 2001 attacks on the World Trade Center and the Pentagon.[79] The Commission's emergency action (which temporarily eased Rule's 10b–18's timing and volume limitations) was designed to provide for potential additional liquidity in order to facilitate the reopening of the U.S. equities markets on September 17, 2001, and the continued orderly operation of the markets during the weeks following. However, because Rule 10b–18 does not require disclosure, it is difficult to assess precisely how much of the purchasing activity was attributable to issuer repurchases and how much was attributable to non-issuer trading activity. Requiring issuers to disclose their repurchases in their periodic reports would provide investors with important information regarding the company's purchasing activity. It also would provide the Commission with useful information in assessing the level and market impact of issuer repurchases, as well as in responding to future market emergencies.

We also are seeking comment on whether the Commission should require issuers to disclose information about their repurchase activity on a more frequent basis (*e.g.*, on a monthly basis or within 10 days of the transaction). In cases, for example, in which an issuer makes repurchases only at the beginning of the quarter, a shareholder would not have any information about the issuer's repurchases activity until three or four months later when the issuer's Form 10–Q is filed. Thus, requiring issuers to disclose on a more-timely basis might be more helpful to investors than requiring disclosure on a quarterly basis, as is currently proposed. More frequent disclosure also would allow the Commission to monitor more effectively the level and market impact of an issuer's repurchase activity.

Q. Does the proposed disclosure requirement in new Item 703 of Regulation S–K and Regulation S–B) provide useful information to the market? Is there other information in addition to that which we are proposing that would be useful to include in Item 703 (*e.g.*, the company's intended use for the repurchased shares or the purpose for making the specific purchase, the date and price of each purchase, the source of funds for the repurchase, the average number of shares purchased per day—based on the number of days on which the issuer purchased shares—and the specific days the repurchases were made)?

Q. Should we require the information to be disclosed in ''tabular'' format as we propose?

Q. Should there be different treatment of purchases that exceed a specified threshold (number of shares, dollar amount, percentage of shares outstanding, etc.)? For example, should trade-by-trade information be provided for trades over a certain size? If so, what is an appropriate measure to trigger the more specific information?

Q. Should there be different treatment of small or *de minimis* repurchases? For example, if the repurchases in a quarter are below a specified dollar or share threshold, should issuers be permitted to omit the specific information provided in Item 703 and instead make summary disclosure of the *de minimis* repurchases? Similarly, if repurchases fall below a specified threshold, should issuers be permitted to aggregate the disclosure for the quarter rather than disclose information on a monthly basis? If so, what would be an appropriate threshold? Should the threshold be a fixed share or dollar amount or should it vary depending on the company's public float, average daily trading volume, or other measure?

Q. We propose brief footnote disclosure of the general nature of repurchases made outside of publicly announced repurchase plans or programs in order to provide investors with a more complete picture regarding an issuer's repurchase activity. Does such disclosure serve a useful purpose? Should we require more detailed information with respect to those transactions, such as date of purchase, price, terms of the transaction, and relationship of the seller to the company? If so, what additional details should Item 703 require with respect to those transactions? Should we require this disclosure for all repurchases made outside of publicly announced plans or programs or only for specified categories of transactions, such as privately negotiated transactions? Should we require additional disclosure with regard to repurchases made outside of publicly announced plans or programs for transactions that exceed a specified threshold in magnitude? If so, what is an appropriate threshold?

Q. Our proposal would only require disclosure of issuer purchases of equity securities of a class registered by the issuer under Section 12 of the Exchange Act. This would include disclosure of issuer purchases of securities convertible into the issuer's equity securities or options to purchase the issuer's equity securities if those convertible securities and options are themselves equity securities of a class

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*Journal of Finance,* 55 (October 2000), pp. 2373–97 (noting that the fraction of shares actually repurchased in connection with Canadian stock repurchase programs is surprisingly low, for example, at termination of the program, roughly a quarter of the firms did not repurchase any shares). Under Canadian law, issuers must report each month the number of shares they actually repurchase. *Id.*

[77] *See, e.g.*, Grullon, G. and Ikenberry, D., ''What Do We Know About Stock Repurchases,'' *Journal of Applied Corporate Finance* 13 (2000), pp. 31, 40–41 (discussing how corporations have been substituting repurchases for dividends, as economic equivalent means of returning excess capital to shareholders). Moreover, requiring such disclosure would be analogous to the requirement that corporate insiders disclose their own transactions involving the company's stock. *See, e.g., id.,* at 48 (emphasizing the need to regulate consistently economically equivalent practices, the authors note that ''[a]lthough firms repurchasing stock are not required to disclose any of their trades, if management makes the same decision on a personal account, details about the trades must be promptly disclosed to the SEC and then made public in short order''). *See also* Cook, Douglas et al., ''Safe Harbor or Smoke Screen? SEC Guidelines for Executing Open Market Repurchases,'' (Working Paper) (May 1999, revised April 9, 2001) (forthcoming in *The Journal of Business*) (questioning the regulatory effectiveness of safe harbors without mandatory disclosure).

[78] Disclosure to this effect would be required in the proposed disclosure forms.

[79] On September 14, 2001, the Commission issued an ''Emergency Order Pursuant to Section 12(k)(2) of the Exchange Act Taking Temporary Action to Respond to Market Developments.'' Securities Exchange Act Release No. 44791 (September 14, 2001). This Emergency Order temporarily modified certain Commission rules and regulations governing issuer stock repurchases for an initial five-day period beginning September 17, 2001 and ending September 21, 2001. The Commission extended the period for an additional five days, ending on September 28. Securities Exchange Act Release No. 44827 (September 21, 2001). On September 28, the Commission used an exemptive authority under Section 36 of the Exchange Act to temporarily modify certain conditions of Rule 10b–18 for issuers that repurchase their own common stock during the period October 1–12, 2001. Securities Exchange Act Release No. 44874 (September 28, 2001).

In the event that there is another ''market emergency'' that does not fit within the meaning of a ''market-wide trading suspension'' (as defined under the rule), as was the case with the events following September 11, the Commission would have the same emergency and exemptive authority as above (*i.e.*, under Sections 12(k)(2) and 36(a)(1) of the Exchange Act) to modify the safe harbor conditions, as it deems necessary.

registered under Section 12 of the Exchange Act. Should this disclosure be limited to securities that are presently convertible into the issuer's equity securities and options that are in the money or should it cover all purchases of registered convertible securities and options? Should this disclosure encompass security futures products? Should we limit the disclosure requirement to common stock of a class registered under Section 12 and exclude convertible securities and options?

Q. Should we require disclosure of equity securities as defined in Section 3(a)(11) of the Exchange Act, as we propose? Is this definition too narrow or too broad? Should we limit the disclosure requirement to equity securities listed on a national securities exchange or quoted on an inter-dealer quotation system?

Q. We propose to require disclosure in the table of purchases on a rolling-month basis, beginning with the first day of the quarter covered by the report. For example, if the quarter begins on January 15 and ends on April 15, the chart would show repurchases for the months from January 15 through February 14, February 15 through March 14, and March 15 through April 15. Is this an appropriate approach? If not, what approach should we take?

Q. Should we require disclosure of the broker-dealer that effected the purchases as we propose? Should this information be reported solely for the Commission's use, and kept confidential at the issuer's request, or should it be publicly disclosed? What if any value is there in the public disclosure of this information? Is it unduly burdensome to companies to make this disclosure?

Q. Should compliance with the proposed disclosure requirement be made a condition of using the safe harbor or should issuers be required to disclose their repurchases regardless of whether they rely on the safe harbor? If the latter, should Rule 10b–18 contain a specific disclosure requirement as a condition of the safe harbor, similar to other Commission regulations that link a safe harbor with disclosure (*e.g.*, Regulation D with Form D and Rule 144 with Form 144)? What specific types of information would be useful to investors regarding an issuer's repurchase activity?

Q. Would requiring specific disclosure as a condition of the safe harbor provide a useful way to monitor the operation of (or verify compliance with) the safe harbor? Would it provide useful information in assessing the level and market impact of issuer repurchases?

Q. Is our proposal to require disclosure on a quarterly basis sufficient, or would more frequent disclosure (*e.g.*, monthly or on a ''real time'' basis) be more meaningful to investors? If so, how should the disclosure be made (*e.g.*, issuing monthly press releases or reporting such purchases to the tape using a special trade indicator)? Please provide specific suggestions.

Q. Should issuer repurchases be reported on Form 8–K or otherwise on a more current basis than proposed?

Q. In addition to the proposed required quarterly disclosure of aggregate volume and average price information, should an issuer also be required to maintain (and provide to the Commission, upon request) separately retrievable written records concerning the trade details (trade-by-trade information) about the manner, timing, price, and volume of its repurchases?

Q. Would disclosure regarding an issuer's transactions involving derivatives (*e.g.*, short put-options, forward contracts, or synthetic forward contracts) written on the issuer's own stock provide useful information to the market?

Q. If so, what additional details should Item 703 require with respect to put options and other derivative transactions?

Q. If the information called for by Item 703 is disclosed elsewhere in filings made with the Commission, should the issuer be permitted to cross reference to the other disclosure rather than repeat the information in the table or should all information be provided in the table?

Q. Should Item 703 require separate columnar disclosure only of repurchase programs or plans that have been *publicly announced* by the issuer, as we propose? Should we instead require separate columnar disclosure of all repurchase plans or programs that have been approved by the issuer's board of directors?

Q. Should the Commission require issuers to disclose their plans before making any purchases? Would prospective disclosure of anticipated repurchases be useful to investors? If so, should this requirement apply to all repurchases or only to anticipated purchases above a prescribed dollar, share, or percentage threshold? Should any other criteria apply to the determination whether repurchases are required to be disclosed prospectively? Should this information be disclosed on Form 8–K or Form 10–Q?

Q. Should the disclosure in the table under Item 703 be segregated to identify open market purchases (made within the safe harbor), privately negotiated transactions, purchases made pursuant to an issuer tender offer, or other specific types of transactions?

Q. When an affiliated purchaser makes purchases should these purchases be disclosed separately in the table? Should we require disclosure of the identity of the purchaser and its relationship to the issuer? Should disclosure be required of any agreements or arrangements that exist between the purchaser and the issuer related to the purchase?

Q. We propose to amend Form 20–F to require tabular disclosure of issuer repurchases by foreign private issuers. Should the new disclosure requirement apply to foreign private issuers as proposed? Some foreign jurisdictions already have requirements to disclose issuer repurchases of their securities. Should our disclosure requirement mirror the requirements in the issuer's home country?

Q. Foreign private issuers file one prescribed periodic report per year on Form 20–F. Would this annual disclosure of an issuer's repurchase activity be useful to investors? Should the repurchases be broken out on a monthly basis as we propose? Alternatively, should they be aggregated on a quarterly basis or for the entire year?

Q. Our proposal would require disclosure of repurchases of all shares of a company's equity securities of a class registered under Section 12 of the Exchange Act. Should we limit the disclosure requirement to exclude purchases made outside the United States? Would information about domestic repurchases, on its own, be meaningful to investors?

Q. In our proposed amendment to Form 20–F, we propose to apply the definition of ''equity securities'' in General Instruction F to Form 20–F. Is this an appropriate definition of the securities to which the disclosure requirement should apply? Should we use the statutory definition of equity securities as we do in proposed Item 703?

Q. We propose to require companies filing Forms 10–K and 10–Q to disclose the identities of brokers executing the transactions, which would provide the Commission with access to information regarding an issuer's repurchase activity (*i.e.*, in order to monitor more effectively the level and market impact of an issuer's repurchase activity). However, because we are not the primary regulators of private foreign issuers, we do not propose to require disclosure of the broker executing purchases for foreign private issuers

filing reports on Form 20–F. Should we require disclosure of the brokers that execute the purchases on behalf of foreign private issuers? Should we require disclosure of the brokers only when the purchases are made in reliance on Rule 10b–18?

Q. We propose to require separate disclosure of repurchases pursuant to publicly announced programs. Would this separate disclosure be helpful to investors? Do foreign private issuers typically announce their programs? If not, should we remove this column from the table in proposed Item 15(e) of Form 20–F?

Q. The securities of some foreign companies trade in the United States in the form of depositary receipts. Would it be useful to require disclosure of repurchases of the receipts and the shares separately?

Q. The securities of many U.S. and foreign companies trade in markets outside the United States in currencies other than the U.S. dollar. What currency should issuers use in reporting their repurchases? Should foreign companies be given the flexibility to choose the appropriate currency to report their repurchases, based upon management's assessment of the most appropriate disclosure?

Q. To the extent a foreign or a U.S. company repurchases securities outside the United States, should there be disclosure of the markets on which such repurchases took place? Would investors find it useful for issuers to disclose information as to the amount of securities repurchased in any particular market?

Closed-End Funds

Closed-end funds would provide the required disclosure semi-annually on proposed Form N–CSR. Currently, closed-end funds are required to disclose information regarding privately negotiated repurchases of their securities on Form N–23C–1 not later than the tenth day of the calendar month following the month in which the purchase occurs.[80] This information includes the date of the transaction, identification of the security purchased, number of shares purchased, price per share, approximate asset value per share at the time of purchase, and name of the seller or the seller's broker. In addition, Form N–SAR, the semi-annual reporting form for registered investment companies, requires closed-end funds to disclose the aggregate number of shares and net consideration paid for all repurchases and redemptions of their common and preferred stock during the semi-annual reporting period.[81]

We believe that, as with other issuers, additional information regarding repurchase offers by closed-end funds would be useful to investors.[82] We are not currently proposing to eliminate or amend the reporting requirements of Form N–23C–1, which apply on a transaction-by-transaction basis only to privately negotiated repurchases, or the requirements of Form N–SAR, which provide the Commission with aggregate data on sales, repurchases, and redemptions of closed-end fund shares over a semi-annual period.

Q. Should closed-end funds be subject to the additional disclosure requirements that we are proposing, or are the disclosures that they are currently required to provide adequate? Is proposed Form N–CSR the appropriate location for closed-end funds to disclose additional information regarding their repurchases? Should we instead require closed-end funds to provide this information on Form N–23C–1 or Form N–SAR?

Q. Should we eliminate Form N–23C–1, and modify Rule 23c–1 to eliminate the requirement in paragraph (a)(11) that privately negotiated repurchases of closed-end fund shares be reported in the month following the transaction? How is the information on Form N–23C–1 used by investors? Would the semi-annual disclosure that we are proposing adequately fulfill investors' needs for information regarding repurchases? Should we eliminate the line items in Item 86 of Form N–SAR that require semi-annual disclosure by a closed-end fund regarding repurchases of its common and preferred stock?

Q. How frequently should we require closed-end funds to disclose information regarding repurchases of equity securities? Should we require quarterly disclosure of repurchases by closed-end funds as we propose to do for operating companies? If disclosure should be made more frequently than semi-annually, how should more frequent disclosure be provided?

## VII. General Request for Comment

We request and encourage any interested person to comment generally on these proposals. In addition to the specific requests for comment, the Commission invites interested persons to submit written comments on all aspects of the proposed amendments. The Commission also requests commenters to address whether the proposed Rule 10b–18 amendments provide appropriate safe harbor conditions in light of market developments since Rule 10b–18's adoption in 1982. The Commission seeks comment on whether the safe harbor proposals raise any manipulation risks. Commenters may also discuss whether there are legal or policy reasons why the Commission should consider a different approach. For instance, should the Rule 10b–18 volume condition be further restrained or relaxed? Should the safe harbor's time of purchase condition be broader, narrower, or include different parameters? Additionally, the Commission seeks comment about whether the proposed disclosure amendments to Regulations S–K and S–B, Forms 10–K(KSB), 10–Q(QSB) and 20–F, and proposed Form N–CSR provide meaningful and timely information to investors.

The Commission encourages commenters to provide information regarding the advantages and disadvantages of each proposed amendment. The Commission invites commenters to provide views and data as to the costs and benefits associated with the proposed amendments. We also seek comment regarding other matters that may have an effect on the proposed amendments.

## VIII. Paperwork Reduction Act

### *A. Collection of Information Under These Amendments*

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA);[83] the Commission has submitted information to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission is revising the several currently approved collections of

[80] Rule 23c–1(a)(11) under the Investment Company Act [17 CFR 270.23c–1(a)(11)]; Form N–23C–1 [17 CFR 274.201]. Of 125 Form N–23C–1 filings made during the year ending September 30, 2002, it appears that at least 37 of these filings were not required under Rule 23c–1 (no repurchases occurred in the prior month or repurchases on the open market).

[81] Lines B and D of Item 86 of Form N–SAR [17 CFR 249.330; 17 CFR 274.101]. Item 86 also requires disclosure of the aggregate number of shares and net consideration received for sales of a closed-end fund's common and preferred stock during the reporting period, as well as aggregate sale and repurchase and redemption information for debt securities.

[82] *See generally* Thomas J. Herzfeld, *Market Shakeout Leads to Unprecedented Number of Share Buyback Announcements*, Investor's Guide to Closed-End Funds (Oct. 1998) (discussing actual buybacks after announcements and the use of buybacks to reduce closed-end fund discounts and noting that ''many funds maintain the authorization to repurchase their own shares in the open market, but only a handful buy back significant numbers of shares'').

[83] 44 U.S.C. 3501 *et seq.*

information titled ''Regulation S–K,'' ''Regulation S–B,'' ''Form 10–Q,'' ''Form 10–QSB,'' ''Form 10–K,'' ''Form 10–KSB'' and ''Form 20–F'' under OMB control numbers 3235–0071, 3235–0417, 3235–0070, 3235–0416, 3235–0063, 3235–0420, and 3235–0288 respectively. The Commission also is revising the collection of information titled ''Form N–CSR'' under OMB control number 3235–0570. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

*B. Need for and Proposed Use of the Collection of Information*

We believe that the proposed amendments to Regulations S–K, S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and proposed Form N–CSR are necessary (1) to facilitate the transparency of registrants' repurchases, (2) to bolster investor confidence in the integrity of the securities trading markets, and (3) to monitor and assess the level and market impact of registrants' repurchases.

*C. Respondents*

The proposed amendments to Regulations S–K, S–B, and Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, and proposed Form N–CSR would require disclosure of all repurchasing activity (*e.g.*, open market purchases, tender offers, and other transactions). Approximately 708 issuers announced 796 new or expanded repurchase programs in 2000.[84]

The degree to which the proposed amendments will affect registrants and other issuers will vary from year to year. A registrant's decision to conduct open market or privately negotiated repurchases is a discretionary decision. These decisions are based on the entity's assessment of its current needs and other continually changing factors. Thus, the number of registrants who would make the proposed disclosures would vary from quarter to quarter and year to year.

*D. Total Annual Reporting and Recordkeeping Burden*

1. Proposed Amendments to Regulations S–K and S–B, and Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and N–CSR

We estimate that the average amount of time it would take to prepare the tabular disclosure required by proposed new Item 703 of Regulations S–K, S–B, Form 20–F, and proposed Form N–CSR would be approximately one hour per annual, semi-annual, or quarterly report filing.[85] To determine the average total number of hours each entity would spend completing Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, and Form N–CSR if we adopt the proposed disclosure, we added the one-hour increment to the current burden hours estimated for each form.

With respect to Forms 10–K, 10–KSB, 10–Q and 10–QSB, we estimate that the company bears 75% of the burden of preparation internally and that 25% of the burden of preparation is borne by outside professionals retained by the company at an average cost of $300 per hour.[86] With respect to Form 20–F, we estimate that 25% of the burden of preparation is borne by the company internally and that 75% of the burden of preparation is borne by outside professionals retained by the company at an average cost of $300 per hour.[87] The portion of the burden borne by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

Next, we base our estimates on the actual number of filings in the fiscal year 2002 (8,484 10–K filings, 3,820 10–KSB filings, 23,743 10–Q filings, 11,299 10–QSB filings, and 1,194 20–F filings). We also estimate, based on data indicating that approximately 708 companies announced repurchase programs in 2000, that approximately 1,000 would include the proposed repurchase disclosure in their filings.[88] We further estimate that each of the 1,000 companies would include the proposed disclosure in each of its periodic reports filed during the fiscal year on the assumption that a typical open market repurchase program lasts two to three years.[89] Because we do not have specific data indicating the number of repurchases conducted by type of issuer (*e.g.* large issuers, small business issuers, foreign private issuers), we estimate that the number of repurchases made by a given type of issuer was proportionate to the number of filings made by that type of issuer.

We estimate that an incremental burden of 472.5 hours ($630 \times 75$) and an incremental cost of $47,250 ($630 \times .25 \times \$300$) would be imposed on companies filing Form 10–K if we adopt the proposals. The estimated incremental burden for Form 10–KSB would be 210 hours ($280 \times .75$) and the incremental cost would be approximately $21,000 ($280 \times .25 \times \$300$). The estimated incremental burden for Form 10–Q would be 1,417.5 hours ($1,890 \times .75$) and the incremental cost would be approximately $141,750 ($1,890 \times .25 \times \$300$). The estimated incremental burden for Form 10–QSB would be 630 hours ($840 \times .75$) and the incremental cost would be approximately $63,000 ($840 \times .25 \times \$300$). The estimated incremental burden for Form 20–F would be 22.5 hours ($90 \times .25$) and the estimated cost would be approximately $20,250 ($90 \times .75 \times \$300$).

The table below illustrates the estimated incremental annual compliance burden in hours and in cost for annual and quarterly reports if we adopt the proposals.

[84] The data source is Securities Data Corp. For purposes of this paragraph and those that follow, we use repurchasing information from the year 2000 rather than 2001. Repurchasing information for the year 2001 is distorted in light of the issuer repurchases effected pursuant to the emergency and exemptive relief issued following September 11th. *See* note 79, *supra*. Repurchasing information for the year 2002 was not used because repurchasing data for the year would be incomplete since 12 calendar months have not yet elapsed. However, we note that 206 issuers announced 217 new or expanded repurchase programs during the period January 1, 2002 through July 31, 2002. The data source is Securities Data Corp.

[85] The information required to be disclosed in proposed new Item 703 would be readily available to the company.

[86] The 75% internal/25% outside professional burden allocation is based on information that we have received from registrants indicating that most of the burden of preparing annual and quarterly reports is borne internally by the company. The $300 hourly cost estimate for outside professionals is based on consultations with several outside law firms and other persons who regularly assist companies in preparing and filing annual and quarterly reports with the Commission.

[87] We estimate that outside professionals carry the greater burden of preparation of Form 20–F because that Form requires the financial statements and schedules that must be included in the Form 20–F filing to disclose an information content substantially similar to financial statements that comply with United States generally accepted accounting principles and Regulation S–X.

[88] We estimate that 1,000, rather than 708, issuers would include the proposed disclosure in their filings because the 708 estimate includes only announced repurchase programs. We have no data regarding the number of unannounced repurchase programs conducted in 2000 but estimate the number to be 300 for purposes of the PRA burden analysis. We solicit comment on the accuracy of this estimate.

[89] *See,* Gustavo Grullon and David Ikenberry, ''What Do We Know About Stock Repurchases,'' *Journal of Applied Corporate Finance,* at p. 33 (2000).

INCREMENTAL BURDEN ESTIMATES

| | Annual responses | Incremental burden response hours/ form | 75% company | 25% professional | $300 professional cost |
|---|---|---|---|---|---|
| | (A) | (B) | (C)=(A)*(B)*.75 | (D)=(A)*(B)*.25 | (E)=(D)*300 |
| 10–K | 630 | 1 | 472.5 | 157.5 | 47,250 |
| 10–KSB | 280 | 1 | 210 | 70 | 21,000 |
| 10–Q | 1,890 | 1 | 1,417.5 | 472.5 | 141,750 |
| 10–QSB | 840 | 1 | 630 | 210 | 63,000 |
| | | | 25% Company | 75% Professional | $300 Prof. Cost |
| Form 20–F | 90 | 1 | (C)=(A)*(B)*.25 22.5 | (D)=(A)*(B)*.75 67.5 | (E)=(D)*300 20,250 |

Proposed new Item 703 of Regulations S–K and S–B, proposed new Item 15(e) of Form 20–F, and proposed new Item 6 of proposed Form N–CSR would require disclosure of all issuer repurchases of shares (or other units) of any class of the issuer's equity securities that is registered under Section 12 of the Exchange Act. The issuer would have to present this disclosure in tabular format. Specifically, the issuer would have to disclose all repurchases of its registered equity securities (both open market and private transactions) for that quarter, including the total number of shares (or units) purchased (which would be reported on a rolling basis), the average price paid per share, the identity of the broker dealer(s) used to effect the purchases, the number of shares (or units) purchased as part of a publicly announced plan or program, and the maximum number (or approximate dollar value) of shares that may yet be purchased under the plans or programs. The table would also have to include footnotes that briefly disclose the nature of the transaction for purchases made other than pursuant to a publicly announced repurchase plan or program. These would include for example, open market and privately negotiated purchases, issuer tender offers, purchases made by the issuer upon another person's exercise of outstanding put rights, and in other transactions through which the company purchases its registered equity securities. We also propose footnote disclosure of the principal terms of publicly announced repurchase plans or programs, including the date of announcement, the share or dollar amount approved, and the expiration date (if any) of the plans or programs. Additionally, the proposed footnote disclosure would indicate for each plan or program during the period covered by the table, plan or program expirations, plan or program terminations, and if there has been no repurchasing but the issuer still intends to repurchase pursuant to the plan or program.

Closed-end funds would be required to provide similar disclosure on new Item 6 of proposed Form N–CSR. With respect to proposed Form N–CSR, we estimate that 75% of the burden of preparation is carried by the company internally and 25% of the burden of preparation is born by outside professionals retained by the company at an average cost of $300 per hour. Of the 3,700 registered management investment companies required to file reports on proposed Form N–CSR, 630 of those companies are closed-end funds that would be required to comply with new Item 6, resulting in 1,260 filings per year (630 closed-end funds × 2 filings per year) by closed-end funds. We estimate that an incremental burden for proposed Form N–CSR would be 945 hours annually (1 hour × 1,260 filings × .75) and the incremental costs would be approximately $94,500 (1 hour × 1,260 filings × .25 × $300).

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–50-02. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–50–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

## IX. Costs and Benefits of the Proposed Amendments

The Commission is considering the costs and the benefits of the proposed amendments to Regulations S–K, S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and N–CSR, and Rule 10b–18. The Commission encourages commenters to discuss any additional costs or benefits. In particular, the Commission requests comment on the potential costs for any modifications to information gathering, management, and recordkeeping systems or procedures, as well as any potential benefits resulting from the proposals for registrants, issuers, investors, broker-dealers, other securities industry professionals, regulators, and others. Commenters should provide analysis and data to support their views on the costs and benefits associated with the proposed amendments.

### *A. Costs and Benefits of the Proposed Amendments to Rule 10b–18*

1. Costs

As an aid in evaluating costs and reductions in costs associated with the proposed Rule 10b–18 modifications, the Commission requests the public's views and any supporting information. The Commission believes that the

proposed amendments would impose negligible costs, if any, on issuers and would not compromise investor protection. The Commission notes that any costs related to complying with the proposed amendments to Rule 10b–18 are assumed voluntarily because the Rule provides an optional safe harbor. The Commission solicits comments as to whether the proposed amendments impose greater costs on issuers than the current Rule.

2. Benefits

We believe that the proposed amendments to Rule 10b–18 would simplify, clarify, and update its provisions in light of market developments since its adoption in 1982. These proposed amendments provide clarity as to the scope of permissible market activity for issuers and the broker-dealers that assist them in their repurchasing. Many issuers might be reluctant to repurchase without the certainty that their activity comes within the safe harbor. If an issuer effects repurchases in compliance with Rule 10b–18, it will avoid what might otherwise be substantial and unpredictable risks of liability under the anti-manipulative provisions of the Exchange Act. If adopted, the amendments would continue to facilitate corporate goals, such as ensuring the availability of common stock to complete potential transactions, substituting share repurchases for dividend payments, and other corporate objectives.

The inclusion of block purchases in the volume condition would establish a reasonable limit on the amount of repurchasing activity that is protected by the safe harbor, which, in turn, prevents issuers from dominating the market in their securities. Pricing established by independent market forces rather than by an issuer's substantial repurchasing activity would promote investor confidence and enhance the integrity of the securities markets. Additionally, eliminating the block exception would not impede an issuer's ability to repurchase within the safe harbor as there is no limit on the number of days over which repurchasing can be conducted. An issuer that reaches the 25% limit on one day has the option of repurchasing additional shares on a subsequent day. Also, the inclusion of block purchases in an issuer's trading volume creates a greater base figure on which the issuer would calculate its 25% volume. This would increase the amount of stock that some issuers can repurchase within the safe harbor to facilitate an issuer's goals such as having shares available for dividend reinvestment, stock options, or employee stock ownership plans. Further, eliminating the block exception simplifies an issuer's volume calculation because block purchases would no longer be subtracted from volume. The simplified calculation eases an issuer's burden and reduces the chance for errors in the volume calculation.

The proposed option for an issuer to purchase either 25% of ADTV or a daily aggregate amount of 500 shares, whichever is higher, may provide thinly traded issuers with an increased amount of common stock that may be repurchased within the safe harbor. Moreover, the proposed alternative volume condition applicable following market-wide trading suspensions should provide an infusion of liquidity by allowing issuers to purchase up to 100% of ADTV. This proposed alternative should also prevent sell side order imbalances by reducing issuer reluctance to repurchase in response to order imbalances that may occur in severe market declines.

Next, the proposed 10-minute timing modification would allow issuers whose securities are less susceptible to manipulation to remain in the market for a longer period and implement a trading strategy in an orderly manner throughout the day. This can also result in issuers providing additional liquidity to the market for more of the day. The safe harbor eases issuer reluctance to repurchase. Some issuers might be hesitant to repurchase without the certainty of the safe harbor protection. If these issuers repurchase, their safe harbor repurchases provide liquidity to the marketplace.

Although the proposed 10-minute timing modification allows issuers less susceptible to manipulation to stay in the market for a longer time period, it retains a reasonable limit on issuer activity that may influence market prices at or near the close. Approximately 362 out of the 708 issuers that announced repurchase programs in 2000 had a public float that would satisfy the 10-minute timing modification.[90]

Lastly, the uniform price condition for all issuers makes use of the safe harbor easier for broker-dealers repurchasing for numerous issuers. This condition also prevents issuers from setting or influencing the price of their common stock.

These benefits are difficult to quantify. The Commission encourages commenters to provide empirical data or other facts to support their views concerning these and any other benefits not mentioned here. In particular, the Commission requests data and analysis on what effect the proposed changes may have on market liquidity.

*B. Costs and Benefits of the Proposed Amendments to Regulations S–K and S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB and 20–F, and Form N–CSR*

1. Costs

To assist the Commission in its evaluation of the costs that may result from the proposals, commenters are requested to provide views, analysis, and empirical data relating to any costs associated with these proposals and any costs, not already identified, should the amendments be adopted as proposed. The Commission expects that any costs would be reduced significantly as registrants become more familiar with the proposed disclosure.

Registrants would be required to disclose, with respect to their repurchases, the total number of shares repurchased, the average price per share, the amount of shares that were repurchased pursuant to a publicly announced plan or program, the maximum number (or approximate dollar value) of shares (or units) that may yet be repurchased under the plans or programs, and in Item 703 and Form N–CSR disclosures the identity of the broker-dealer(s) used to make the repurchases. Many registrants currently collect and publish repurchase information concerning the number of shares repurchased, the total dollar amount paid for the repurchases or the average price paid per share, and/or the number of shares or dollar amount available for repurchase under a particular repurchase program.[91] We

[90] Based on data from Compustat, we identified that 362 of the 708 issuers of repurchase programs had a market value of $150 million or greater. Market value is a proxy for public float.

[91] *See CGS Systems International, Inc. Reports First Quarter 2002 Results,* PR Newswire (April 29, 2002) (publishing the number of shares repurchased, the average price paid per share, and the remaining number of shares available for repurchase under the repurchase program); *Republic Services, Inc. Reports First Quarter Earnings per Shares of $0.32,* PR Newswire (April 29, 2002) (publishing the number of shares repurchased, the total dollar amount paid for the repurchases, and the dollar amount remaining under the repurchase program); *Quotesmith.com 1Q Loss 14 Cents a Share,* Dow Jones News Service (April 29, 2002) (publishing the number of shares repurchased and the average price paid per share); *Gartner Reports Profitability Improvement for Fourth Consecutive Quarter,* Business Wire (April 24, 2002) (publishing the number of shares repurchased and the average price paid per share); *Datascope Third Quarter Results,* PR Newswire (April 24, 2002) (publishing the number of shares repurchased and the total dollar amount paid); and *DST Systems, Inc. Announces First Quarter 2002 Financial Results,* PR Newswire (April 24, 2002) (publishing the number of shares repurchased, the

request comment as to whether registrants would incur new costs to establish systems to collect and publish repurchase information that they would need to satisfy the proposed disclosure requirements. If so, please provide data regarding the estimated costs that registrants would incur. As mentioned in section VIII.D.1., we estimate that the average amount of time it would take to prepare the proposed disclosure would be approximately one hour per annual, semi-annual, or quarterly filing. The incremental burden in terms of internal hours (not monetized) and external monetized costs for each form is explained in section VIII.D.1. above. We request specific comment as to whether the proposed repurchase disclosure could discourage share repurchases by registrants.

2. Benefits

The proposed disclosures may prevent undetected manipulation by deterring repurchase program announcements by registrants that do not intend to effect repurchases but would benefit from a post announcement increase in the price of their common stock. The proposed disclosure requirement would increase market efficiency due to improved information dissemination that otherwise has not been readily available to investors. Presently, investors and market participants have little way of knowing the amount of repurchasing effected by a registrant in any given time period. This disclosure would provide more complete information to investors in order to better assess an issuer, its activities, and its stock price. Registrants use their discretion in deciding whether and when to effect repurchases. Moreover, registrants may not repurchase all, or even any, of the shares they are authorized to repurchase. The proposed disclosure requirement should increase efficiency by providing investors with information regarding the company's stated repurchasing intentions and subsequent repurchases.

The proposed amendments would provide a uniform disclosure system concerning repurchases. This proposed system would benefit investors and other market participants by providing repurchasing information in a readily accessible venue and in a timely manner. The amendments will also provide investors with useful information concerning the manner in which a company makes repurchases (*e.g.*, through open market purchases, tender offers, in satisfaction of a company's obligations upon exercise of outstanding put options, or other transactions).

If adopted, the proposed amendments would shed light on currently undisclosed repurchases. Presently, only certain repurchasing activity must be disclosed, such as repurchases from company insiders and certain repurchases by closed-end funds. This proposal would require comprehensive repurchasing disclosure. For example, the amendments would require disclosure of currently undisclosed activity, such as an issuer repurchasing its stock from put option holders who exercised options issued by the company.

Additionally, the disclosure would provide investors and the marketplace with signaling information. A registrant's repurchases may signal information to investors such as a registrant's belief that its stock is undervalued. In the same way, the proposed disclosure could signal information about market trends.

The proposed disclosure requirement would also provide information about a registrant's use of capital. When registering an offering, a registrant may state various uses of the offering proceeds, including repurchasing. The proposed disclosures would provide follow-up information to such a registration statement disclosure. It is also a valuable way to confirm if any or a portion of the offering proceeds were used for repurchases.

The Commission does not have data to quantify the value of the benefits described above. The Commission seeks comments on how it may quantify these benefits and any other benefits, not already identified, which may result from the adoption of these proposed amendments.

## X. Consideration of Impact on the Economy, Effect on Competition and Promotion of Efficiency, Competition and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[92] the Commission requests information regarding the potential impact of the proposed amendments on the economy on an annual basis. With regard to any comments, we note that such comments are of greatest assistance if they are accompanied by supporting data and analysis of the issues addressed in those comments. Section 23(a)(2) of the Exchange Act [93] requires the Commission to consider the impact any new rule would have on competition. Further, the law requires that the Commission not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission has considered the proposed rules in light of the standards cited in Section 23(a)(2) and believes preliminarily that, if adopted, they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. Rule 10b–18 is a safe harbor rather than a mandatory rule and as such issuers choose whether or not to use it. Many issuers might be reluctant to repurchase without the safe harbor. Therefore, the safe harbor may provide increased liquidity to the marketplace from issuers that would not repurchase but for the safe harbor. Issuers also have the option to repurchase securities outside the Rule 10b–18 safe harbor conditions without raising a presumption of manipulation. Moreover, the proposed version of the Rule 10b–18 safe harbor, like the current Rule, would apply to all issuers. Thus, we do not believe the Rule 10b–18 amendments would have a significant effect on competition because all issuers have the option of complying with the manner, volume, time and price conditions.

Additionally, the proposed amendments to Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, and proposed Form N–CSR would apply equally to all filers who make repurchases. Thus, we do not believe that these proposals will have a significant anti-competitive effect.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 3(f) of the Exchange Act [94] requires the Commission, when engaged in rulemaking that requires us to consider whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation.

The Commission preliminarily believes that the proposed amendments should improve market efficiency by providing greater clarity in terms of guidance and certainty to issuers (and broker-dealers that assist issuers with

average price paid per share, as well as the fact that the repurchasing was done through a private transaction).

[92] Pub. L. No. 104–121, tit. II, 110 Stat. 857 (1996).

[93] 15 U.S.C. 78w(a)(2).

[94] 15 U.S.C. 78c(f).

their repurchase programs) as to the scope of non-manipulative market activity when repurchasing their stock. The proposed amendments would also enhance market liquidity following a market-wide trading suspension by helping to ensure a deep market and reducing sell side order imbalances. For many issuers, the proposed amendments may result in enhanced liquidity by allowing for repurchase activity within the safe harbor up to 10 minutes prior to the market close. Moreover, we believe the benefits of the proposed disclosure requirements would include increased market efficiency due to improved information and transparency concerning issuer repurchases. If adopted, the disclosures should bolster investor confidence in the markets and make repurchasing information readily accessible to investors. Additionally, the proposed amendments to Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, and N–CSR are intended to improve the amount of current information available to investors and the financial markets. We anticipate that the proposals should improve investors' ability to make informed investment decisions concerning registrants. Informed investor decisions generally promote market efficiency and capital formation.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

## XI. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) [95] regarding the proposed amendments to Regulations S–K, S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, N–CSR, and Rule 10b–18.

### *A. Reasons for the Proposed Action*

Based on our experience with the operation of Rule 10b–18, and to reflect market developments since the Rule's adoption, we propose to revise Rule 10b–18's provisions. In addition, we propose to provide investors and the marketplace with important information concerning a registrant's repurchases (*e.g.*, the total number of shares purchased, the average price per share, the identity of the broker-dealer for Item 703 and proposed Form N–CSR disclosures, the number of shares purchased as part of a publicly announced plan or program, and the maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs). We believe the increased transparency concerning registrants' repurchases will promote enhanced evaluation of registrants, their repurchases, and the effects of those repurchases on the registrants' common stock price and the market place generally.

### *B. Objectives*

The proposed Rule 10b–18 amendments are designed to fulfill several objectives. A prime objective of the proposed amendments is to foster investor confidence in the integrity of our securities markets. Second, the proposed amendments are designed to maintain reasonable limits on issuer repurchasing activity within the safe harbor. Third, the proposed amendments would facilitate pricing established by independent market forces. Next, the amendments would allow corporations to provide enhanced market liquidity following market wide trading suspensions. These proposals should ease market stress during periods of severe market decline and promote orderly markets throughout those times. Lastly, the Rule 10b–18 amendments should provide issuers with a tool to help manage the risks of liability under the anti-manipulation rules of the Exchange Act. The proposals are intended to update Rule 10b–18 and provide greater clarity in terms of guidance and certainty to issuers and broker-dealers that assist issuers with their repurchase programs as to the scope of permissible market activity when repurchasing their stock.

The central objective of the proposed disclosure amendments is to provide investors with useful, easy to access information about issuer repurchases. The proposed disclosure amendments are intended to increase market efficiency through improved disclosure. The proposals would provide investors with important information in order to better evaluate registrants. The proposed amendments would shed light on currently undisclosed registrant repurchases providing investors with useful information in order to better assess a registrant and its stock price. Moreover, the disclosures would prevent undetected manipulation by deterring repurchase announcements by registrants that have no intention of repurchasing. They would also provide a means to monitor the level and impact of registrants' repurchases.

### *C. Legal Basis*

The amendments to Rule 10b–18 are proposed pursuant to the authority set forth in Sections 9(a)(2) and 10(b) of the Exchange Act.[96] The amendments to Regulations S–K, S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and N–CSR are proposed pursuant to the authority set forth in Sections 12, 13, 15(d), and 23(a) of the Exchange Act and Sections 8, 23, 24(a), 30,31, and 38 of the Investment Company Act.

### *D. Small Entities Subject to the Rule*

The proposed amendments may affect small entity issuers and affiliated purchasers that wish to avail themselves of the safe harbor provisions. Based on Exchange Act Rule 0–10(a), a small issuer is one that on the last day of its most recent fiscal year had total assets of $5,000,000 or less. We estimate that approximately 3 issuers that conducted repurchases in 2000 had assets of less than $5,000,000.[97] The Commission seeks comment on the number of issuers that rely on Rule 10b–18 when engaged in open market repurchases of its stock, and the number of such issuers that are small entities.

The Commission seeks comment on the number of registrants that would make the proposed disclosures following open market and privately negotiated purchases each quarter, and the number of those registrants that are small entities.

### *E. Reporting, Recordkeeping and Other Compliance Requirements*

The proposed Rule 10b–18 amendments would not impose any new reporting, recordkeeping or other compliance requirements. The proposed amendments to Regulations S–K, S–B, Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, and proposed Form N–CSR would add a new disclosure item for issuer purchases of equity securities. As stated in Section XI.D above, approximately 3 issuers who conducted repurchase programs in 2000 were small entities. We believe no additional professional skills beyond those currently possessed by issuers (and broker-dealers) would be necessary to prepare the forms in accordance with the proposed disclosure amendments or to comply with the proposed Rule 10b–18 amendments.

### *F. Duplicative, Overlapping or Conflicting Federal Rules*

The Commission believes that there are no rules that duplicate, overlap, or

[95] This analysis is required by the Regulatory Flexibility Act, 5 U.S.C. 603.

[96] 15 U.S.C. 78i(a)(2), 78j(b).

[97] The source of this data is Compusat.

conflict with, the proposed amendments.

*G. Significant Alternatives*

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small issuers and broker-dealers. In connection with the proposals, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

With respect to the proposed Rule 10b–18 amendments, the Commission believes that the establishment of different requirements for small entities is neither necessary nor practicable, because the proposal provides a voluntary safe harbor from liability for manipulation under the Exchange Act. The Commission believes that the majority of issuers effecting repurchase programs are not small entities.

With respect to the proposed amendments to Regulations S–K, S–B, Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, and proposed Form N–CSR, the Commission believes that any affect on small entities would be minimal. Therefore, it is not feasible to further clarify, consolidate or simplify the proposals for small entities.

*H. Solicitation of Comments*

The Commission encourages written comments on matters discussed in the IRFA. In particular, the Commission requests comments on (i) the number of issuers conducting repurchase programs and the number of such issuers that are small entities; (ii) the nature of any impact the proposed amendments would have on small entities and empirical data supporting the extent of the impact; and (iii) how to quantify the number of small entities that would be affected by and/or how to quantify the impact of the proposed amendments. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. As discussed above, for purposes of the SBREFA, the Commission is also requesting information regarding the potential impact of the proposed amendments on the economy on an annual basis. Commentators should provide empirical data to support their views.

Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–50–02. Comments submitted by e-mail should include this file number in the subject line. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted letters also will be posted on the Commission's Internet web site (*http://www.sec.gov*).

## XII. Statutory Basis and Text of Proposed Amendment

The Rule amendments are being proposed pursuant to Sections 2, 3, 9(a)(6), 10(b), 12, 13(e), 15, 15(c), 23(a) of the Exchange Act, 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(b), 78m(e), 78o(c), 78o(d) and 78w(a), and Sections 8, 23, 24(a), 30, 31, and 38 of the Investment Company Act, 15 U.S.C. 80a–8, 80a–23, 80a–24(a), 80a–29, 80a–30, and 80a–37.

## List of Subjects

*17 CFR Part 228*

Reporting and recordkeeping requirements, Securities, Small businesses.

*17 CFR Part 229*

Reporting and recordkeeping requirements, Securities.

*17 CFR Part 240*

Brokers, Dealers, Issuers, Securities.

*17 CFR Part 274*

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 is revised to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

Section 228.307 is also issued under secs. 3(a), 302 and 404, Pub. L. No. 107–204, 116 Stat. 745.

Section 228.309 is also issued under secs. 3(a) and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 228.406 is also issued under secs. 3(a) and 406, Pub. L. No. 107–204, 116 Stat. 745.

2. Section 228.703 is added to read as follows:

### § 228.703 (Item 703) Purchases of equity securities by the small business issuer and affiliated purchasers.

(a) In the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the small business issuer or any ''affiliated purchaser,'' as defined in § 240.10b–18(a)(3) of this chapter, of shares or other units of any class of the small business issuer's equity securities that is registered by the small business issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*).

ISSUER PURCHASES OF EQUITY SECURITIES

| Period | (a) Total number of shares (or units) purchased | (b) Average price paid per share | (c) Identity of broker-dealer(s) used to effect purchases | (d) Number of shares (or units) purchased as part of publicly announced plans or programs | (e) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs |
|---|---|---|---|---|---|
| Month #1 (Identify beginning and ending dates) | | | | | |

ISSUER PURCHASES OF EQUITY SECURITIES—Continued

| Period | (a) Total number of shares (or units) purchased | (b) Average price paid per share | (c) Identity of broker-dealer(s) used to effect purchases | (d) Number of shares (or units) purchased as part of publicly announced plans or programs | (e) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs |
|---|---|---|---|---|---|
| Month #2 (Identify beginning and ending dates) | | | | | |
| Month #3 (Identify beginning and ending dates) | | | | | |
| Total | | | | | |

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(1) The total number of shares purchased (column (a));

*Instruction to Paragraph (b)(1) of Item 703*

Include in this column all small business issuer repurchases, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction. (*e.g.*, whether the purchases were made in open-market transactions, tender offers, in satisfaction of the company's obligations upon exercise of outstanding put options issued by the company, or other transactions.)

(2) The average price paid per share (column (b));

(3) The identity of any broker-dealer(s) that effected the purchases (column (c));

(4) The number of shares purchased as part of a publicly announced repurchase plan or program (column (d)); and

(5) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (e)).

*Instruction to Paragraphs (b)(4) and (b)(5) of Item 703*

(1) In the table, disclose this information in the aggregate for all plans or programs publicly announced.

(2) By footnote to the table, indicate:

(a) The date each plan or program was announced;

(b) The dollar amount (or share amount) approved;

(c) The expiration date (if any) of each plan or program;

(d) Each plan or program that has expired during the period covered by the table:

(e) Each plan or program the small business issuer has determined to terminate prior to expiration; and

(f) Each plan or program the small business issuer has not purchased under during the period covered by the table and whether the small business issuer still intends to purchase under that plan or program.

*Instruction to Item 703*

Disclose all purchases covered by this Item, including purchases that do not satisfy the conditions of the safe harbor of § 240.10b–18 of this chapter.

## PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation to Part 229 is revised to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78ll(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31, 80a–37, 80a–38(a), 80b–11, unless otherwise noted.

Section 229.307 is also issued under secs. 3(a), 302 and 404, Pub. L. No. 107–204, 116 Stat. 745.

Section 229.309 is also issued under secs. 3(a) and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 229.406 is also issued under secs. 3(a) and 406, Pub. L. No. 107–204, 116 Stat. 745.

Section 229.601 is also issued under secs. 3(a) and 406, Pub. L. No. 107–204, 116 Stat. 745.

4. Section 229.703 is added to read as follows:

**§ 229.703 (Item 703) Purchases of equity securities by the issuer and affiliated purchasers.**

(a) In the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the issuer or any ''affiliated purchaser,'' as defined in § 240.10b–18(a)(3) of this chapter, of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*).

ISSUER PURCHASES OF EQUITY SECURITIES

| Period | (a) Total number of shares (or units) purchased | (b) Average price paid per share | (c) Identity of broker-dealer(s) used to effect purchases | (d) Number of shares (or units) purchased as part of publicly announced plans or programs | (e) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs |
|---|---|---|---|---|---|
| Month #1 (Identify beginning and ending dates) | | | | | |

ISSUER PURCHASES OF EQUITY SECURITIES—Continued

| Period | (a) Total number of shares (or units) purchased | (b) Average price paid per share | (c) Identity of broker-dealer(s) used to effect purchases | (d) Number of shares (or units) purchased as part of publicly announced plans or programs | (e) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs |
|---|---|---|---|---|---|
| Month #2 (Identify beginning and ending dates) | | | | | |
| Month #3 (Identify beginning and ending dates) | | | | | |
| Total | | | | | |

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(1) The total number of shares purchased (column (a));

*Instructions to Paragraph (b)(1) of Item 703*

Include in this column all issuer repurchases, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction. (*e.g.*, whether the purchases were made in open-market transactions, tender offers, in satisfaction of the company's obligations upon exercise of outstanding put options issued by the company, or other transactions).

(2) The average price paid per share (column (b));

(3) The identity of any broker-dealer(s) that effected the purchases (column (c));

(4) The number of shares purchased as part of a publicly announced repurchase plan or program (column (d)); and

(5) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (e)).

*Instructions to Paragraphs (b)(4) and (b)(5) of Item 703*

(1) In the table, disclose this information in the aggregate for all plans or programs publicly announced.

(2) By footnote to the table, indicate:

(a) The date each plan or program was announced;

(b) The dollar amount (or share amount) approved;

(c) The expiration date (if any) of each plan or program;

(d) Each plan or program that has expired during the period covered by the table;

(e) Each plan or program the issuer has determined to terminate prior to expiration; and

(f) Each plan or program the issuer has not purchased under during the period covered by the table and whether the issuer still intends to purchase under that plan or program.

*Instruction to Item 703*

Disclose all purchases covered by this item, including purchases that do not satisfy the conditions of the safe harbor of § 240.10b–18 of this chapter.

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

6. Section 240.10b–18 is revised to read as follows:

### § 240.10b–18 Purchases of certain equity securities by the issuer and others.

*Preliminary Notes to § 240.10b–18*

1. Section 240.10b–18 provides issuers (and their affiliated purchasers) with a ''safe harbor'' from liability for manipulation under the Act when they repurchase shares of the issuer's common stock in the market in accordance with the section's manner, timing, price, and volume conditions. As a safe harbor, compliance with § 240.10b–18 is voluntary. To come within the safe harbor, however, an issuer's repurchases must satisfy (on a daily basis) each of the section's four conditions. Failure to meet any one of the four conditions will remove all of the issuer's repurchases from the safe harbor for that day. The safe harbor, however, is not available for repurchases that, although made in technical compliance with the section, are part of a plan or scheme to evade the federal securities laws.

2. Regardless of whether the repurchases are effected in accordance with § 240.10b–18, reporting issuers must comply with Item 703 of Regulations S–K and S–B (17 CFR 229.703 and 228.703) and Item 15(e) of Form 20–F (17 CFR 249.220f) (regarding foreign private issuers), and closed-end management investment companies that are registered under the Investment Company Act of 1940 must comply with Item 6 of Form N–CSR (17 CFR 249.331; 17 CFR 274.128). Items 703, 15(e), and 6 require issuers to disclose, on Forms 10–Q/10–QSB, 10–K/10–KSB, 20–F, and Form N–CSR, all repurchases (open market and private transactions) of their equity securities during the previous quarter, including the total number of shares (or units) purchased (sorted by month), the average price paid per share, the identity of broker-dealer(s) used to effect the purchases (except in the case of Form 20–F), the number of shares (or units) purchased as part of a publicly announced repurchase plan or program, and the maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs.

(a) *Definitions.* Unless the context otherwise requires, all terms used in this section shall have the same meaning as in the Act. In addition, the following definitions shall apply:

(1) *ADTV* means the average daily trading volume reported for the security during the four calendar weeks preceding the week in which the Rule 10b–18 purchase is to be effected.

(2) *Affiliate* means any person that directly or indirectly controls, is controlled by, or is under common control with, the issuer.

(3) *Affiliated purchaser* means:

(i) A person acting, directly or indirectly, in concert with the issuer for the purpose of acquiring the issuer's securities; or

(ii) An affiliate who, directly or indirectly, controls the issuer's purchases of such securities, whose purchases are controlled by the issuer, or whose purchases are under common control with those of the issuer; *Provided*, *however*, that ''affiliated purchaser'' shall not include a broker, dealer, or other person solely by reason of such broker, dealer, or other person

effecting rule 10b–18 purchases on behalf of the issuer or for its account, and shall not include an officer or director of the issuer solely by reason of that officer or director's participation in the decision to authorize Rule 10b–18 purchases by or on behalf of the issuer.

(4) *Agent independent of the issuer* has the meaning contained in § 242.100 of this chapter.

(5) *Consolidated system* means a consolidated transaction (or quotation) reporting system that collects and publicly disseminates on a current and continuous basis transaction (or quotation) information in common equity securities pursuant to an effective transaction reporting plan (as defined in § 240.11Aa3–1 of this chapter), the rules of a national securities exchange, or the rules of a national securities association.

(6) *Highest independent bid* means the highest published bid for a regular way trade (other than a bid by or for the issuer or any affiliated purchaser of the issuer) at the time the Rule 10b–18 purchase is effected.

(7) *Last independent transaction price* means the price at which the last regular way trade (other than a trade by or for the issuer or any affiliated purchaser of the issuer) was reported at the time the Rule 10b–18 purchase is effected.

(8) *Market-wide trading suspension* means a market-wide trading halt of 30 minutes or more that is:

(i) Imposed pursuant to the rules of a national securities exchange or a national securities association in response to a market-wide decline during a single trading session; or

(ii) Declared by the Commission pursuant to its authority under section 12(k) of the Act (15 U.S.C. 78(k)).

(9) *Plan* has the meaning contained in § 242.100 of this chapter.

(10) *Principal market* for a security means the single securities market with the largest reported trading volume for the security during the 6 full calendar months preceding the week in which the Rule 10b–18 purchase is to be effected.

(11) *Public float value* has the meaning contained in § 242.100 of this chapter.

(12) *Purchase price* means the price paid per share as reported (exclusive of any commission paid to a broker acting as agent, or commission equivalent, mark-up, or differential paid to a dealer).

(13) *Rule 10b–18 purchase* means a purchase (or any bid or limit order that would effect such purchase) of an issuer's common stock (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) by or for the issuer or any affiliated purchaser. However, it does *not* include any purchase of such security:

(i) Effected during the restricted period (as specified in § 242.102 of this chapter) when the issuer or any affiliated purchaser is distributing (as defined in § 242.100 of this chapter) the issuer's common stock or any other security for which the common stock is a reference security;

(ii) Effected by or for an issuer plan by an agent independent of the issuer;

(iii) Effected as a fractional share purchase (a fractional interest in a security) evidenced by a script certificate, order form, or similar document;

(iv) Effected during the period from the time of public announcement of a merger, acquisition, or similar transaction involving a recapitalization, until the completion of such transaction;

(v) Effected pursuant to § 240.13e–1;

(vi) Effected pursuant to a tender offer that is subject to § 240.13e–4 or specifically excepted from § 240.13e–4; or

(vii) Effected pursuant to a tender offer that is subject to section 14(d) of the Act (15 U.S.C. 78n(d)) and the rules and regulations thereunder.

(b) *Conditions to be met.* Rule 10b–18 purchases shall not be deemed to have violated the anti-manipulation provisions of sections 9(a)(2) or 10(b) of the Act (15 U.S.C. 78i(a)(2) or 78j(b)), or § 240.10b–5 under the Act, solely by reason of the time, price, or amount of the Rule 10b–18 purchases, or the number of brokers or dealers used in connection with such purchases, if the issuer or affiliated purchaser of the issuer effects the Rule 10b–18 purchases according to each of the following conditions:

(1) *One broker or dealer.* Rule 10b–18 purchases must be made from or through only one broker or dealer on any single day; *Provided*, *however*, that:

(i) The ''one broker or dealer'' condition shall not apply to Rule 10b–18 purchases that are not solicited by or on behalf of the issuer or its affiliated purchaser(s); and

(ii) Where Rule 10b–18 purchases are made by or on behalf of more than one affiliated purchaser of the issuer (or the issuer and one or more of its affiliated purchasers) on a single day, the issuer and all affiliated purchasers must use the same broker or dealer.

(2) *Time of purchases.* (i) Rule 10b–18 purchases must not be the first (opening regular way purchase reported in the consolidated system; and

(ii) Rule 10b–18 purchases of an issuer's security that has an ADTV value of $1 million or more and a public float value of $150 million or more must not be effected during any of the following periods:

(A) The 10 minutes before the scheduled close of the primary trading session in the principal market for the security;

(B) The 10 minutes before the scheduled close of the primary trading session in the market where the purchase is made; or

(C) After the termination of the period in which last sale prices are reported in the consolidated system; and

(iii) Rule 10b–18 purchases of an issuer's security that does not meet the criteria described in paragraph (b)(2)(ii) of this section must not be effected during any of the following periods:

(A) The 30 minutes before the scheduled close of the primary trading session in the principal market for the security;

(B) The 30 minutes before the scheduled close of the primary trading session in the market where the purchase is made, or

(C) After the termination of the period in which last sale prices are reported in the consolidated system.

(3) *Price of purchases.* (i) Rule 10b–18 purchases must be effected at a purchase price that does not exceed the highest independent bid or the last independent transaction price, whichever is higher, quoted or reported in the consolidated system; and

(ii) For securities as to which bids and transaction prices are not quoted or reported in the consolidated system, Rule 10b–18 purchases must be effected at a purchase price that does not exceed the highest independent bid or the last independent transaction price, whichever is higher, displayed and disseminated on any national securities exchange or on any inter-dealer quotation system (as defined in § 240.15c2–11) that displays at least two priced quotations for the security. For all other securities, Rule 10b–18 purchases must be effected at a price no higher than the highest independent bid obtained from three dealers.

(4) *Volume of purchases.* The total volume of Rule 10b–18 purchases (combining all Rule 10b–18 purchases by or for the issuer or any affiliated purchaser of the issuer for that day) effected on any single day must not exceed the higher of 25 percent of the ADTV for that security or 500 shares.

(c) *Alternative conditions.* The conditions of paragraph (b) of this section shall apply in connection with a Rule 10b–18 purchase effected during a trading session following the

imposition of a market-wide trading suspension, except:

(1) That the time of purchases condition in paragraph (b)(2) of this section shall not apply, either:

(i) From the reopening of trading until the scheduled close of trading; or

(ii) At the opening of trading on the next trading day until the scheduled close of trading that day, if a market-wide trading suspension was in effect at the close of trading on the preceding day; and

(2) The volume of purchases condition in paragraph (b)(4) of this section is modified so that the amount of Rule 10b–18 purchases must not exceed 100 percent of the ADTV for that security.

(d) *Other purchases.* Failure to meet any one of the Rule's conditions with respect to any Rule 10b–18 purchase will remove from the safe harbor all other Rule 10b–18 purchases for that day. However, no presumption shall arise that an issuer or an affiliated purchaser has violated the anti-manipulation provisions of sections 9(a)(2) or 10(b) of the Act (15 U.S.C. 78i(a)(2) or 78j(b)), or § 240.10b–5, if the Rule 10b–18 purchases of such issuer or affiliated purchaser do not meet the conditions specified in paragraph (b) or (c) of this section.

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 249 is revised to read as follows:

**Authority:** 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

Section 249.220f is also issued under 15 U.S.C. 78m, 78w(a), and secs. 3(a), 302, 404 and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 302, 404 and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.308 is also issued under 15 U.S.C. 80a–29 and secs. 3(a), 302 and 404, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.308a is also issued under secs. 3(a), 302 and 404, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.308b is also issued under secs. 3(a), 302 and 404, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.310 is also issued under secs. 3(a), 302, 404 and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.310b is also issued under secs. 3(a), 302, 404 and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.326(T) is also issued under 15 U.S.C. 78m(f)(1).

Section 249.330 is also issued under secs. 3(a), 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.331 is also issued under secs. 3(a), 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

8. Amend Form 20–F, part I (referenced in § 249.220f) by adding Item 15(e) to read as follows:

**Note:** The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form 20–F**

* * * * *

**Part I**

* * * * *

*Item 15(e) Purchases of Equity Securities by the Issuer and Affiliated Purchasers*

(1) In the following tabular format, provide the information specified in paragraph (2) of this Item with respect to any purchase made by or on behalf of the issuer or any ''affiliated purchaser,'' as defined in § 240.10b–18(a)(3), of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*).

ISSUER PURCHASES OF EQUITY SECURITIES

| Period | (a) Total number of shares (or units) purchased | (b) Average price paid per share | (c) Number of shares (or units) purchased as part of a publicly announced plan or program | (d) Maximum number (or approximate dollar value) of shares (or units that may yet be purchased under the plans or programs |
|---|---|---|---|---|
| Month #1 | | | | |
| Month #2 | | | | |
| Month #3 | | | | |
| Total | | | | |

(2) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(A) The total number of shares purchased (column (a)).

(B) The average price paid per share (column (b)).

(C) The number of shares purchased as part of a publicly announced repurchase plan or program (column (c)).

(D) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (d)).

*Instruction to Item 15(e)*

Disclose all purchases covered by this item, including purchases that do not satisfy the conditions of the safe harbor of § 240.10b–18.

*Instruction to Paragraph (2)(A) of Item 15(e)*

Including in this column all issuer repurchases, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction (*e.g.*, whether the purchases were made in open-market transactions, tender offers, in satisfaction of the company's obligations upon exercise of outstanding put options issued by the company, or other transactions).

*Instruction to Paragraphs (2)(C) and (2)(D) of Item 15(e)*

1 In the table, disclose this information in the aggregate for all plans or programs publicly announced.

2 By footnote to the table, indicate:

(a) The date each plan or program was announced;

(b) The dollar amount (or share amount) approved;

(c) The expiration date (if any) of each plan or program;

(d) Each plan or program that has expired during the period covered by the table;

(e) Each plan or program the issuer has determined to terminate prior to expiration; and

(f) Each plan or program the issuer has not purchased under during the period covered by the table and whether the issuer still intends to purchase under that plan or program.

* * * * *

9. Amend Form 10–Q (referenced in § 249.308a) by:

a. Revising the heading for Item 2 in Part II;

b. Designating the existing paragraph in Item 2 as paragraph (a); and

c. Adding paragraph (b).

The addition and revision reads as follows:

**Note:** The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form 10–Q**

* * * * *

**Part II—Other Information**

* * * * *

*Item 2. Use of Proceeds and Issuer Purchases of Equity Securities.*

* * * * *

(b) Furnish the information required by Item 703 of Regulation S–K (§ 229.703 of this chapter) for any repurchase made in the quarter covered by the report. Provide disclosures on a rolling-monthly basis. For example, if the quarter began on January 15 and ended on April 15, the charge would show repurchases for the months from January 15 through February 14, February 15 through March 14, and March 15 through April 15.

* * * * *

10. Amend Form 10–QSB (referenced in § 249.308b) by:

a. Revising the heading for Item 2 in Part II;

b. Designating the existing paragraph in Item 2 as paragraph (a); and

c. Adding paragraph (b).

The revision and addition reads as follows.

**Note:** The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form 10–QSB**

* * * * *

**Part II—Other Information**

* * * * *

*Item 2. Use of Proceeds and Small Business Issuer Purchases of Equity Securities*

* * * * *

(b) Furnish the information required by Item 703 of Regulation S–B (§ 228.703 of this chapter) for any repurchase made in the quarter covered by the report. Provide disclosures on a rolling-monthly basis. For example, if the quarter began on January 15 and ended on April 15, the charge would show repurchases for the months from January 15 through February 14, February 15 through March 14, and March 15 through April 15.

* * * * *

11. Amend Form 10–K (referenced in § 249.310) by revising the heading for Item 5 in Part II by revising the caption and by adding paragraph (c) to read as follows:

**Note:** The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form 10–K**

* * * * *

**Part II**

* * * * *

*Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities*

* * * * *

(c) Furnish the information required by Item 703 of Regulation S–K (§ 229.703 of this chapter) for any repurchase made in a month within the fourth quarter of the fiscal year covered by the report. Provide disclosures covering repurchases made on a rolling-monthly basis. For example, if the fourth quarter began on January 15 and ended on April 15, the chart would show repurchases for the months from January 15 through February 14, February 15 through March 14, and March 15 through April 15.

* * * * *

12. Amend Form 10–KSB (referenced in § 249.310b) by revising the heading for Item 5 in Part II and by adding paragraph (c) to read as follows:

**Note:** The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form 10–KSB**

* * * * *

**Part II**

* * * * *

*Item 5. Market for Common Equity, Related Stockholder Matters and Small Business Issuer Purchases of Equity Securities*

* * * * *

(c) Furnish the information required by Item 703 of Regulation S–B (§ 228.703 of this chapter) for any repurchase made in a month within the fourth quarter of the fiscal year covered by the report. Provide disclosures covering repurchases made on a rolling-monthly basis. For example, if the fourth quarter began on January 15 and ended on April 15, the chart would show repurchases for the months from January 15 through February 14, February 15 through March 14, and March 15 through April 15.

* * * * *

## PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

13. The authority citation for part 274 is amended by adding the following citations to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

Section 274.101 is also issued under secs. 3(a), 302, Pub. L. No. 107–204, 116 Stat. 745.

Section 274.128 is also issued under secs. 3(a), 302, Pub. L. No. 107–204, 116 Stat. 745.

14. Form N–CSR (referenced in §§ 249.331 and 274.128) is amended by:

a. Redesignating Items 6 and 7 as Items 7 and 8;

b. Removing ''Item 7(b)'' from General Instruction D and in its place adding ''Item 7(b)'';

c. Removing ''Item 6(a)'' from Instruction to Item 3(a) and Instruction 1 to Item 4 and in its place adding ''Item 8(a)''; and

d. Adding a new Item 6 to read as follows:

**Note:** The text of Form N–CSR does not, and its amendment will not, appear in the Code of Federal Regulations.

**Form N–CSR**

* * * * *

*Item 6. Purchases of Equity Securities by Closed-End Management Investment Company and Affiliated Purchasers*

(a) If the registrant is a closed-end management investment company, in the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the registrant or any ''affiliated purchaser,'' as defined in Rule 10b–18(a)(3) under the Securities Exchange Act of 1934 (17 CFR 240.10b–18(a)(3)), of shares or other units of any class of the registrant's equity securities that is registered by the registrant pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*).

REGISTRANT PURCHASES OF EQUITY SECURITIES

| Period | (a) Total number of shares (or units) purchased | (b) Average price per share (or unit) | (c) Identity of broker-dealer(s) used to effect purchases | (d) Number of shares (or units) purchased as part of publicly announced plans or programs | (e) Maximum number (or approximate dollare value) of shares (or units) that may yet be purchased under the plans or programs |
|---|---|---|---|---|---|
| Month #1 (Identify beginning and ending dates) | | | | | |

REGISTRANT PURCHASES OF EQUITY SECURITIES—Continued

| Period | (a) Total number of shares (or units) purchased | (b) Average price per share (or unit) | (c) Identity of broker-dealer(s) used to effect purchases | (d) Number of shares (or units) purchased as part of publicly announced plans or programs | (e) Maximum number (or approximate dollare value) of shares (or units) that may yet be purchased under the plans or programs |
|---|---|---|---|---|---|
| Month #2 (Identify beginning and ending dates) | | | | | |
| Month #3 (Identify beginning and ending dates) | | | | | |
| Month #4 (Identify beginning and ending dates) | | | | | |
| Month #5 (Identify beginning and ending dates) | | | | | |
| Month #6 (Identify beginning and ending dates) | | | | | |
| Total | | | | | |

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report.

(1) The total number of shares purchased (column (a)).

(2) The average price paid per share (column (b)).

(3) The identity of any broker-dealer(s) that effected the purchases (column (c)).

(4) The number of shares purchased as part of a publicly announced repurchase plan or program (column (d)).

(5) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (e)).

**General Instruction**

Disclose all purchases covered by this Item, including purchases that do not satisfy the conditions of the safe harbor of Rule 10b–18 under the Securities Exchange Act of 1934 (17 CFR 240.10b–18), made in the period covered by the report.

*Instruction to paragraph (b)(1).* Include in this column all repurchases by the registrant, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction (e.g., whether the purchases were made in open-market transactions, tender offers, in satisfaction of the registrant's obligations upon exercise of outstanding put options issued by the registrant, or other transactions.)

*Instruction to Paragraphs (b)(4) and (b)(5)*

1 In the table, disclose this information in the aggregate for all plans or programs publicly announced.

2 By footnote to the table, indicate:

a. The date each plan or program was announced;

b. The dollar amount (or share amount) approved;

c. The expiration date (if any) of each plan or program;

d. Each plan or program that has expired during the period covered by the table;

e. Each plan or program the registrant has determined to terminate prior to expiration; and

f. Each plan or program the registrant has not purchased under during the period covered by the table and whether the registrant still intends to purchase under that plan or program.

* * * * *

Dated: December 10, 2002.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–31656 Filed 12–17–02; 8:45 am]

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Federal Register

**Wednesday,**
**December 18, 2002**

**Part IV**

# Securities and Exchange Commission

**17 CFR Parts 275 and 279**
**Exemption for Certain Investment Advisers Operating Through the Internet; Final Rule**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 275 and 279

**[Release No. IA–2091; File No. S7–10–02]**

**RIN 3235–AI15**

## Exemption for Certain Investment Advisers Operating Through the Internet

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting rule amendments under the Investment Advisers Act of 1940 to exempt certain investment advisers that provide advisory services through the Internet from the prohibition on Commission registration. The rule amendments permit these advisers, whose businesses are not connected to any particular state, to register with the Commission instead of with state securities authorities.

**EFFECTIVE DATE:** The rule amendments will become effective on January 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Barker, Senior Counsel, or Jamey Basham, Special Counsel, at (202) 942–0719 or *IArules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

**SUPPLEMENTARY INFORMATION:** The Commission is adopting amendments to rule 203A–2 [17 CFR 275.203A–2], Form ADV [(Part 1A, Item 2)] (17 CFR 279.1) and Schedule D to Form ADV [17 CFR 279.1] under the Investment Advisers Act of 1940.

### Executive Summary

Section 203A of the Investment Advisers Act of 1940 (the ''Advisers Act'') generally prohibits an investment adviser from registering with the Commission unless that adviser has more than $25 million of assets under management or is an adviser to a registered investment company. The Commission is adopting new rule 203A–2(f) under the Advisers Act to exempt from the prohibition on Commission registration certain investment advisers that provide advisory services through the Internet.[1] An adviser is eligible for registration under the rule if the adviser provides investment advice to all of its clients exclusively through the adviser's interactive Web site, except that the adviser may advise fewer than 15 clients through other means during the preceding 12 months.

### I. Background

The National Securities Markets Improvement Act of 1996 (''NSMIA'') amended the Advisers Act to divide the responsibility for regulating investment advisers between the Commission and state securities authorities.[2] Section 203A of the Advisers Act effects this division by generally prohibiting investment advisers from registering with us unless they have at least $25 million of assets under management or advise a registered investment company, and preempting most state regulatory requirements with respect to SEC-registered advisers.[3] The $25 million threshold was designed to distinguish investment advisers with a national presence from those that are essentially local businesses.[4] Congress recognized, however, that some investment advisers should be regulated at the federal level even though they have less than $25 million of assets under management, and gave the Commission the authority in section 203A(c) of the Advisers Act to exempt investment advisers, by rule or order, from the prohibition on Commission registration in cases in which the prohibition otherwise would be ''unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes'' of section 203A.[5]

In April of this year, we proposed to use our exemptive authority under section 203A(c) to adopt new rule 203A–2(f), providing relief to certain investment advisers who, unlike state-registered advisers, have no local presence and whose advisory activities are not limited to one or a few states.[6] These advisers, which we call ''Internet Investment Advisers,'' provide investment advice to their clients through interactive Web sites. Clients visit these Web sites and answer online questions concerning their personal finances and investment goals. Thereafter, the adviser's computer-based application or algorithm processes and analyzes each client's response, and then transmits investment advice back to each client through the interactive Web site.[7] Clients residing in any state can, upon accessing the interactive Web site, obtain investment advice at any time.

Internet Investment Advisers typically are not eligible to register with us. They do not manage the assets of their Internet clients, and consequently do not meet the $25 million statutory threshold for registration with the SEC. While traditional advisory firms with less than $25 million of assets under management usually must register in one or a few states, Internet Investment Advisers would be required as a practical matter to register in all the states absent an exemption.[8] Furthermore, our existing exemptive rules do not work for Internet Investment Advisers.[9]

In response to our proposal we received 22 comment letters, most of which supported our proposal.[10] Ten commenters urged that we expand the

[1] Unless otherwise noted, when we refer to rule 203A–2 or any paragraph of the rule, we are referring to 17 CFR 275.203A–2 of the Code of Federal Regulations in which the rule is published, as amended by this release.

[2] Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[3] 15 U.S.C. 80b–18a. Advisers prohibited from registering with us remain subject to the regulation of state securities authorities.

[4] *See* S. Rep. No. 293, 104th Cong., 2d Sess. 3–5 (1996) (hereinafter Senate Report).

[5] 15 U.S.C. 80b–3a(c). Section 203A was designed to allow the Commission to better use its limited resources by concentrating its regulatory responsibilities on advisers with national businesses, and to reduce the burden to investment advisers of the overlapping and duplicative regulation (existing prior to the enactment of NSMIA) by preempting state investment adviser statutes, thus subjecting advisers with national businesses to a single regulatory program administered by the Commission. *See* Senate Report at 2–4. Relying on this authority, the Commission has adopted and amended rule 203A–2 under the Advisers Act to permit nationally recognized statistical rating organizations, certain pension consultants, affiliated investment advisers, newly formed investment advisers, and advisers operating in multiple states to register with the Commission even if these advisers otherwise would not meet the criteria for Commission registration.

[6] *Exemption for Certain Investment Advisers Operating Through the Internet,* Investment Advisers Release No. 2028 (April 12, 2002)[(67 FR 19500 (April 19, 2002))](''Proposing Release'').

[7] Internet Investment Advisers are required to provide these prospective Internet clients with a copy of their client brochure. Rule 204–3 [17 CFR 275.204–3](an investment adviser must deliver either a copy of their Part 2 of Form ADV [17 CFR 279.1] or a narrative brochure that contains at least the information required in Part 2). The personalized nature of the investment advice provided by these interactive Web sites makes the exception under Rule 204–3 for impersonal advisory services unavailable. Internet Investment Advisers may deliver their client brochure electronically, in compliance with previous SEC guidance on electronic delivery. *See Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information,* Investment Advisers Act Release No. 1562 (May 9, 1996) [61 FR 24644 (May 15, 1996)].

[8] *See* discussion in text accompanying note 13, infra.

[9] *See* discussion in Proposing Release at section I.

[10] These comment letters and a summary of comments prepared by our staff are available for public inspection and copying at our Public Reference Room in File No. S7–10–02. The comment summary is also available on our Internet Web site at <*http://www.sec.gov/rules/extra/s71002commsumm.htm*>.

exemption, six wanted us to narrow it, and six asserted that we should take no action. Several commenters representing state securities authorities objected to the rule, arguing that they should continue to be responsible for Internet Investment Advisers; some supported a narrower version of the rule.

## II. Discussion

We are today adopting an exemption for Internet Investment Advisers in a form modified to reflect comments submitted to us. Rule 203A–2(f), which we discuss in more detail below, provides a narrow exemption for a type of adviser whose activities do not fall neatly into the model assumed by Congress when it added Section 203A to the Act to divide regulatory authority over advisers.[11] We have concluded that, as applied to these advisers, the application of the prohibition on Commission registration would be ''unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of [Section 203A].'' [12]

In framing the scope of the exemption, we have carefully balanced the burdens of multiple state registration requirements for Internet Investment Advisers with the design of NSMIA to allocate responsibility for regulating smaller advisers to state securities authorities. Several commenters urging us to expand the rule suggested approaches that would or could result in the migration of a large number of smaller advisers to Commission registration. On the other hand, some of the commenters opposing or arguing for substantial narrowing of our proposed exemption seemed not to appreciate fully the burdens of multiple registration on Internet Investment Advisers.

Absent an exemption, Internet Investment Advisers would likely incur the burden of temporarily registering in every state and later de-registering. State investment adviser registration statutes generally obligate advisers to register in every state in which the adviser obtains more than a *de minimis* number of clients. Because an Internet Investment Adviser uses an interactive Web site to provide investment advice, the adviser's clients can come from any state, at any time. As a result, an Internet Investment Adviser must as a practical matter register in every state. This ensures that the adviser's registrations will be in place when it later obtains the requisite number of clients from any particular state. The adviser may subsequently become eligible for our existing exemption under Rule 203A–2(e), permitting Commission registration for advisers otherwise obligated to register in at least 30 states, but not before the adviser had already incurred the burden of registering in every state.[13]

### *A. New Rule 203A–2(f)*

Under rule 203A–2(f), an adviser is exempt from the prohibition on Commission registration if the adviser provides investment advice to all of its clients exclusively through an interactive Web site. A limited exception, however, permits an adviser relying on the rule to provide investment advice to fewer than 15 clients through other means during the preceding 12 months. In addition, advisers registering with us in reliance on the rule must keep records demonstrating that they meet the conditions of the rule. We discuss each of the elements of the new exemption below.

#### 1. Interactive Web Site

The exemption is available only to an adviser that provides investment advice to clients exclusively through an ''interactive Web site,'' except as permitted by the *de minimis* exception described below. The rule defines ''interactive Web site'' as a Web site in which computer software-based models or applications provide investment advice to clients based on personal information provided by each client through the Web site.[14] The rule is thus not available to advisers that merely use Web sites as marketing tools or that use Internet vehicles such as E-mail, chat rooms, bulletin boards and webcasts or other electronic media in communicating with clients. The Commission recognizes that most advisers today use (or could use) the Internet in some aspect of their business. As a result, expansion of the rule to include such activities as suggested by some commenters could undermine NSMIA's allocation of regulatory responsibility over smaller advisers to state securities authorities.

In addition, the exemption is for advisers that provide investment advice to their Internet clients ''exclusively'' through their interactive Web sites. An adviser relying on the exemption may not use its advisory personnel to elaborate or expand upon the investment advice provided by its interactive Web site, or otherwise provide investment advice to its Internet clients, except as permitted by the *de minimis* exception discussed below.[15]

#### 2. De Minimis Exception for Non-Internet Clients

The new rule includes an exception that would permit an adviser relying on the rule to advise clients through means other than its interactive Web site, so long as the adviser had fewer than 15 of these non-Internet clients during the preceding 12 months. This is a change from the proposal, under which an adviser would have been eligible to rely on the rule so long as at least 90 percent of the adviser's clients obtained their investment advice exclusively through the interactive Web site. We included the ''90 percent test'' in our proposal to prevent Internet Investment Advisers from losing the exemption as a result of providing advice to a *de minimis* number of clients through means other than an interactive Web site.

A few commenters thought the rule should employ a lower percentage threshold permitting a greater level of non-Internet clients, which we believe would be inconsistent with the purpose of the exemption. Other commenters urged a narrower exemption, arguing that an adviser having a large number of Internet clients could, under the proposed 90 percent test, have as many or more non-Internet clients than many advisers have clients.

The commenters have persuaded us that the 90 percent test, as proposed, would have permitted more than a *de minimis* number of non-Internet clients. Accordingly, we have decided to replace the 90 percent test with a provision permitting an adviser relying on the rule to have fewer than 15 non-Internet clients during the course of the preceding twelve months.[16] In

[11] *See* Section I. of the Proposing Release.

[12] Section 203A(c).

[13] An Internet Investment Adviser relying on the multi-state adviser exemption provision would not be eligible for that exemption until the adviser had obtained the requisite number of clients in 30 states to trigger its registration obligations in those states. Under that rule, the adviser must represent that it has reviewed its obligation under state and federal law and has concluded that it would be required to register with the securities administrators of at least 30 states. Rule 203A–2(e)(2).

[14] Rule 203A–2(f)(2). In response to one comment requesting technical clarification of the definition, we have added language clarifying that an interactive Web site is one which provides advice based on *personal* information supplied by the client, in order to distinguish Web sites covered by the exemption from other types of Web sites that aggregate and provide financial information in response to user-provided requests that do not include personal information.

[15] The firm may still provide clients with assistance in the technical aspects of accessing and using the interactive Web site.

[16] The new rule's *de minimis* exception is similar to section 203(b)(3) of the Advisers Act [15 U.S.C. 80b–2(b)(3)], which exempts from the requirement to register with the Commission any adviser that, during the course of the preceding 12 months, has had fewer than 15 clients. We did not include the other requirements under section 203(b)(3), that the adviser may not hold itself out generally to the

Continued

determining how many clients the adviser provided investment advice through means other than the adviser's interactive Web site for purposes of determining eligibility for the exemption, the rule provides that an Internet Investment Adviser may rely on the definition of ''client'' in rule 203(b)(3)–1.[17]

3. Precluding Use of Rule 203A–2(c)

One commenter expressed concern that, absent changes to the language of the proposed rule, some advisers might use rule 203A–2(c) to attempt to evade the limit on the number of non-Internet clients under new rule 203A–2(f). Rule 203A–2(c) exempts an adviser from the prohibition on Commission registration if the adviser controls, is controlled by, or is under common control with, another SEC-registered adviser with the same principal place of business. The commenter expressed concern that an Internet Investment Adviser intent on evading the restrictions on non-Internet clients under new rule 203A–2(f) might attempt to organize a subsidiary firm to serve its non-Internet clients, and assert rule 203A–2(c) as a basis to register the subsidiary with the SEC, even though the subsidiary does not manage $25 million of client assets.[18] To forestall any such efforts, 203A–2(f), as adopted, is unavailable to an Internet Investment Adviser if another adviser in a control relationship with the Internet Investment Adviser relies on the Internet Investment Adviser's registration under rule 203A–2(f) as the basis for its own registration under rule 203A–2(c).[19]

4. Recordkeeping Requirements

The rule requires an adviser relying on the exemption to maintain records demonstrating that it provides investment advice to its clients exclusively through an interactive Web site in accordance with the limits of the exemption.[20] An advisory firm relying on the exemption could comply with this requirement by maintaining records showing which of its clients the firm advised exclusively through its interactive Web site and which, if any, of its clients the firm advised through non-Internet means.[21]

*B. Form ADV*

We are also amending Part 1 of Form ADV, the Uniform Application for Investment Adviser Registration. Advisers register with us by electronically submitting the information required by Part 1 of Form ADV through the Investment Adviser Registration Depository (the ''IARD''). We are adding the exemption under rule 203A–2(f) to the list of exemptions in Item 2 of Part 1, in which advisers registering with us indicate the basis upon which they are eligible to register with the SEC.

It will be some number of months before the National Association of Securities Dealers (''NASD''), which operates the IARD for us, completes reprogramming the IARD to implement this change to Item 2 of Part 1. In the interim, advisers relying on the 203A–2(f) exemption to register with us should select current Item 2(10), for registrants eligible for registration by SEC order, and in Schedule D, current Item 2.A(10), enter ''203A–2(f)'' in lieu of an application number. Upon NASD's implementation of the new 203A–2(f) exemption selection on IARD, registrants should amend their Item 2 selection and remove the Schedule D reference to the rule no later than their next annual amendment of Part 1.

## III. Effective Date

The effective date of the new rule and rule amendments is January 20, 2003.

## IV. Cost-Benefit Analysis

*A. Background*

The Commission is sensitive to the costs and benefits imposed by its rules. New rule 203A–2(f) provides relief to Internet Investment Advisers. Under the rule, an Internet Investment Adviser is exempt from the prohibition on Commission registration if the adviser provides investment advice to all of its clients exclusively through its interactive Web site (except that the adviser may advise fewer than 15 clients through other means during the preceding 12 months). In addition, advisers registering with us in reliance on the rule must keep records demonstrating that they meet the conditions of the rule. Without the exemption to the prohibition on Commission registration as provided by new rule 203A–2(f), Internet Investment Advisers typically would not initially be eligible to register with us, as they do not manage the assets of their Internet clients, and, consequently, would not meet the $25 million statutory threshold for SEC-registration. Unlike a typical state-registered adviser, an Internet Investment Adviser's advisory activities are not confined to one or a few states. Because an Internet Investment Adviser uses an interactive Web site to provide investment advice, the adviser's clients can come from any state, *at any time,* without the adviser's prior knowledge. As a result, an Internet Investment Adviser must register in all states, ensuring it has its registration in place when the firm obtains the requisite number of clients from any particular state. Consequently, these advisers would be required, absent an exemption, to register in every state.

Moreover, the Commission's existing exemptive rules would not work for these advisers. For example, an Internet Investment Adviser relying on the multi-state exemption under rule 203A–2(e) must represent that it has reviewed its obligations under state law and has concluded that it would be required to register as an investment adviser with the securities administrators of at least 30 states. The state registration obligations of Internet Investment Advisers depend on the residences of their clients, and their clients can come from any state at any time. Thus, as a practical matter, these advisers would still need to register in every state and wait until they encounter registration obligations in 30 states before registering under rule 203A–2(e) and then canceling their state registrations.

Nor is it likely Internet Investment Advisers could rely on rule 203A–2(d) to carry them through an initial period of operation without state registration in anticipation of eligibility under the multi-state exemption. If an adviser relying on rule 203A–2(d) has not become eligible for SEC registration within 120 days, it must withdraw its registration. Internet Investment Advisers must typically register early in their development and testing phase in order to obtain venture capital, and many may not even be fully operational 120 days later.

In adopting rule 203A–2(f) and amendments to Form ADV, the

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public as an investment adviser, and may not act as investment adviser to any registered investment company or business development company.

[17] *See* rule 203A–2(f)(3) (citing rule 203(b)(3)–1 [17 CFR 275.203(b)(3)–1]). Rule 203(b)(3)–1 provides a safe harbor provision for purposes of determining who may be deemed to be a single client for purposes of section 203(b)(3).

[18] Such an attempt would not, however, be successful because it would violate section 208(d) of the Advisers Act [15 U.S.C. 80b–8(d)], which makes it unlawful for any person ''indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly'' under the Advisers Act.

[19] Rule 203A–2(f)(1)(iii). An investment adviser controlled, controlling, or under common control with two or more SEC-registered investment advisers, only one of which is an Internet Investment Adviser, may still rely on the Commission registration of the other adviser to establish its eligibility for the exemption in rule 203A–2(c), and the Internet Investment Adviser will not be precluded from relying on rule 203A–2(f).

[20] Rule 203A–2(f)(1)(ii).

[21] Internet Investment Advisers maintaining these records in electronic form must do so in compliance with the Commission's rules on electronic recordkeeping, rule 204–2(g) [17 CFR 275.204–2(g)].

Commission has given consideration to the costs, as well as the benefits of the new exemption.

*B. Benefits*

Rule 203A–2(f) will, we believe, provide several important benefits to Internet Investment Advisers. We have limited data on the number of Internet Investment Advisers who would be eligible to obtain these benefits, since most do not currently register with us. Based on news articles, we estimate that as many as 20 firms could avail themselves of the exemption. In the Proposing Release, we requested that commenters with additional data provide it to us. However, few commenters addressed the number of Internet Investment Advisers potentially eligible for the exemption, and none provided supporting data. Importantly, while these commenters were not in agreement whether our estimate was too high or too low, all agreed that the number of firms eligible to benefit by the exemption would likely grow in the future.

The rule will benefit Internet Investment Advisers by relieving them of the burden of registering temporarily in every state and subsequently deregistering upon becoming eligible under the multi-state exemption, as discussed above. To register in every state, an advisory firm will, in all likelihood, need assistance of counsel to perform several tasks. These include evaluating the statutes and regulations of each state to check for any disparities, responding to varying comments on the firm's registration submissions from multiple state securities administrators, reviewing the firm's operations for compliance with the statutory and regulatory requirements of every state, and the like. Several small firms commenting on the rule stated that the burden of complying with the registration requirements of multiple states prohibited or significantly impeded their firm's ability to provide investment advice to clients in multiple states.

To estimate the approximate cost advisory firms would incur to obtain these services, our staff engaged in discussions with counsel familiar with state adviser registration and regulatory issues. Based on these discussions, we estimate the cost to be approximately $50,000 for each adviser, for a total of $1 million for all 20 advisers.[22] Some commenters asserted that the $50,000 estimate was significantly in excess of true costs, but none of these commenters provided any cost data or estimates of their own. One of these commenters asserted the estimate was flawed because it was based on registration with every state, whereas an Internet Investment Adviser would only be required to register in 29 states, and would then become eligible for the multi-state exemption once the adviser's registration obligations were triggered in a thirtieth state. However, this commenter did not explain how the Internet Investment Adviser, whose clients can come from any state at any time, would be able to predict which 29 states to register with as an initial matter. This commenter also argued the $50,000 estimate should be reduced to reflect the amount a firm would save on costs associated with SEC registration. We did not include such costs as an offset in our estimate, since the firm would still incur them upon reaching eligibility for our multi-state exemption.

The benefits of rule 203A–2(f) would also include other benefits that are difficult to quantify. Subjecting Internet Investment Advisers to the cost of registering temporarily in all states and to multiple state regulation acts as an impediment to launching these businesses. Rule 203A–2(f) would benefit this segment of the advisory industry by removing this potential barrier to entry, and may enable more firms to offer these types of Internet-based services. Other benefits include the savings to affected advisers from the cost of examinations by multiple states' regulators, as well as the savings to state securities authorities that would no longer examine these firms.

*C. Costs*

Rule 203A–2(f) would impose certain costs on advisers relying on the exemption. The Commission estimated that the total cost to each Internet Investment Adviser to comply with the recordkeeping provision of the new rule would be approximately $138.80,[23] such that the total cost for the 20 advisers that may be eligible for the new exemption at this time would be $2,776.[24]

We have concluded that the benefits of rule 203A–2(f) and form amendments adopted today justify their costs.

## V. Paperwork Reduction Act

As set forth in the Proposing Release, certain provisions of rule 203A–2(f) and form amendments that we are adopting today contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (the ''PRA'').[25] The titles for the collections of information are ''Exemption for Certain Investment Advisers Operating Through the Internet'' and ''Form ADV,'' both under the Advisers Act. The Commission submitted those collection of information requirements to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The collection of information for Form ADV has been previously approved under OMB control number 3235–0049 (expires June 30, 2003). The collection of information for rule 203A–2(f) has recently been approved by OMB; the OMB control number is 3235–0559 (expires November 30, 2005). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

*A. Rule 203A–2(f)*

Rule 203A–2(f) includes a recordkeeping provision requiring an adviser registering under the new rule to maintain a record demonstrating that, with the exception of fewer than 15 clients during the preceding 12 months, all of its clients obtained investment advice exclusively through the adviser's interactive Web site. This recordkeeping provision contains a new ''collection of information'' requirement within the meaning of the PRA. Although we anticipate that most Internet Investment Advisers would generate the necessary records in the ordinary conduct of their Internet advisory business, we believe, as discussed in the Proposing Release, that the recordkeeping requirement might impose a small additional burden on these advisers.

In the Proposing Release, we estimated that the recordkeeping burden under the proposed rule should not

[22] $50,000 × 20 = $1,000,000. This figure does not, however, include the time to complete Form ADV initially and the fees to file Form ADV through the IARD, since advisers relying on the exemption will still incur these costs in registering with us. Similarly, this figure does not include state registration fees. States impose notice filing requirements upon Commission-registered advisers doing business in their states, with associated fees approximately equivalent to state registration fees.

[23] The Commission estimated this figure by multiplying the burden hours to comply with the proposed rule's recordkeeping requirements (4 hours) by an average hourly compensation rate of $34.70. This compensation rate includes overhead and is the rate for an operations supervisor outside of New York City, based on a 2000 study by the Securities Industry Association. The estimate of burden hours is based on the Commission's submission for the proposed rule under the Paperwork Reduction Act and reflects recent discussions with counsel familiar with advisers' recordkeeping issues. *See infra* Section V of this Release.

[24] 20 × $138.80 = $2,776.

[25] 44 U.S.C. 3501–3520.

exceed an average of four hours annually per Internet Investment Adviser. We also estimated that there would be approximately 20 potential respondents to the collection of information, for a total burden of 80 hours annually. We requested comments on the recordkeeping requirements, as well as on the number of Internet Investment Advisers likely to register with the Commission under the proposed rule.

Only one commenter addressed our request for comment on the reasonableness of our estimate of the recordkeeping burden of the proposed rule. The commenter noted that the burden appeared reasonable and necessary. As for the number of advisers likely to register with us under the proposed rule, four commenters responded with views on this issue. One of the four thought our estimate was too low, suggesting 50 instead. Another of the four, however, considered our estimate of 20 too high. All four commenters opined that the number of Internet Investment Advisers would likely grow in the future.

Rule 203A–2(f) is being adopted as proposed, with the exception that the *de minimis* exception for non-Internet clients was revised to state that an adviser relying on the rule may only accept fewer than 15 such clients during the preceding 12 months, and the adviser may not rely on the rule if another adviser with whom it is in a control relationship relies solely on the Internet adviser's registration under rule 203A–2(f) to register under rule 203A–2(c). The burden estimate is unchanged. Providing the information required under rule 203A–2(f) is mandatory, as Commission staff uses this collection of information in its examination and oversight program. Responses to the information generally will not be kept confidential.

*B. Form ADV*

Rule 203A–2(f) adds a new category of advisers eligible for Commission registration and requires that Form ADV be amended. The addition of Internet Investment Advisers will increase the total burden under Form ADV, but these advisers' burden for completing Form ADV would not differ from that for current registrants. The Commission has revised its estimate of the burden hours required by Form ADV as a result of a change in the number of estimated respondents. We estimated in the Proposing Release that approximately 20 Internet Investment Advisers would register with the Commission under the proposed rule, and that each of these advisers would file one complete Form ADV and one amendment annually. The increase in the total annual burden for this collection of information results in a total revised burden of 46,921 hours. We requested comments on these estimates. As stated above, only one commenter addressed our request for comment on the reasonableness of the estimated recordkeeping burden of the proposed rule, by noting that the estimated burden appeared reasonable and necessary.

Providing the information required by Form ADV is mandatory, and responses to the information will not be kept confidential. The amendments to Form ADV were adopted substantially as proposed, and the burden estimate has not changed.

## VI. Summary of Final Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis (''IRFA'') was published in the Proposing Release. No comments were received on the IRFA. The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA''), in accordance with 5 U.S.C. 604, regarding rule 203A–2(f) and the amendments to Form ADV. The following summarizes the FRFA.

The FRFA discusses the need for, and objectives of, the new rule exempting Internet Investment Advisers from the prohibition on Commission registration. Advisory firms eligible for the exemption will be relieved of the burden of temporarily registering in every state.

The FRFA also discusses the effect of the rule and rule amendments on small entities. For purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if (i) it manages assets of less than $25 million reported on its most recent Schedule I to Form ADV; (ii) it does not have total assets of $5 million or more on the last day of the most recent fiscal year and (iii) it is not in a control relationship with another investment adviser that is not a small entity.[26] The FRFA states that the Commission estimates that approximately 20 advisers will be affected by rule 203A–2(f), and all 20 are likely to be small entities.

As discussed in the FRFA, rule 203A–2(f) imposes no new reporting requirements, but does impose recordkeeping requirements on advisers, including small advisers, that provide advisory services through interactive Web sites. Rule 203A–2(f) requires advisers registering under the new rule to maintain in an easily accessible place a record demonstrating that, with the exception of fewer than 15 clients during the preceding 12 months, all of its clients obtained investment advice exclusively through the adviser's interactive Web site. As the FRFA notes, these advisers will likely generate these records in the ordinary course of their business, and the Commission believes they will not incur any significant burden under the recordkeeping requirement. The FRFA also notes that the amendments to Form ADV, requiring advisers relying on the exemption to check a box indicating their eligibility for the exemption, would have no measurable effect on these advisers.

The FRFA discusses alternatives considered by the Commission in adopting the rule that might minimize adverse effects on small advisers, including (a) the establishment of differing compliance or recordkeeping requirements or timetables that take into account resources available to small advisers; (b) the clarification, consolidation, or simplification of compliance and recordkeeping requirements under the new rule and rule amendments for small advisers; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the new rule and rule amendments, or any part thereof, for small advisers.

The FRFA states that the compliance and reporting requirements contained in the new rule will not impose a significant burden on small advisers relying on the rule. As such, it does not appear necessary to establish differing compliance and reporting requirements for small entities. The FRFA also states that small advisers will likely generate records to satisfy the compliance and recordkeeping requirements in the ordinary course of their businesses, and as a result it is not necessary to clarify, consolidate, or simplify these requirements. Regarding the use of performance rather than design standards, the FRFA discusses that the rule uses performance standards in that the rule does not specify the means by which an adviser must keep records to demonstrate its compliance with the rule. Finally, the FRFA notes that exempting small advisers from these recordkeeping requirements would be inconsistent with NSMIA's allocation of regulatory responsibility for smaller advisers to the states, because the Commission will use these records in connection with its examination and oversight program to verify an adviser's eligibility to register with the Commission under the exemption

[26] Rule 0–7 [17 CFR 275.0–7].

instead of registering with state securities authorities.

The FRFA is available for public inspection in File No. S7–10–02. A copy of the FRFA may be obtained by contacting Marilyn Barker, Senior Counsel, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

**VII. Statutory Authority**

The Commission is adopting new rule 203A–2(f) pursuant to the authority set forth in section 203A(c) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–203A(c)].

**List of Subjects in 17 CFR Parts 275 and 279**

Investment advisers, Reporting and recordkeeping requirements, Securities.

**Text of Rule and Rule Amendments**

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

**Authority:** 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3A, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

2. Section 275.203A–2 is amended by adding paragraph (f) to read as follows:

**§ 275.203A–2 Exemptions from prohibition on Commission registration.**

* * * * *

(f) *Internet investment advisers.* (1) An investment adviser that:

(i) Provides investment advice to all of its clients exclusively through an interactive website, except that the investment adviser may provide investment advice to fewer than 15 clients through other means during the preceding twelve months;

(ii) Maintains, in an easily accessible place, for a period of not less than five years from the filing of a Form ADV that includes a representation that the adviser is eligible to register with the Commission under paragraph (f) of this section, a record demonstrating that it provides investment advice to its clients exclusively through an interactive website in accordance with the limits in paragraph (f)(1)(i) of this section; and

(iii) Does not control, is not controlled by, and is not under common control with, another investment adviser that registers with the Commission under paragraph (c) of this section solely in reliance on the adviser registered under paragraph (f) of this section as its *registered adviser.*

(2) For purposes of paragraph (f) of this section, *interactive website* means a website in which computer software-based models or applications provide investment advice to clients based on personal information each client supplies through the website.

(3) An investment adviser may rely on the definition of *client* in § 275.203(b)(3)–1 in determining whether it provides investment advice to fewer than 15 clients under paragraph (f)(1)(i) of this section.

## PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for Part 279 continues to read as follows:

**Authority:** The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

4. Form ADV (referenced in § 279.1) is amended by:

a. Revising Item 2e. of Instructions for Part 1A;

b. Revising the last sentence of the third undesignated paragraph of Item 2f. of Instructions for Part 1A;

c. Revising the third undesignated paragraph of Item 2g. of Instructions for Part 1A;

d. Redesignating Item 2h. as Item 2i. of Instructions for Part 1A;

e. Adding a new Item 2h. of Instructions for Part 1A;

f. In newly designated Item 2i., revising the phrase ''box 11'' to read ''box 12'' in the two places it appears;

g. In Part 1A revising the introductory text of paragraph A, and paragraphs A(10) and A(11);

h. In Part 1A, adding paragraph A(12); and

i. In Schedule D, revising the heading ''Section 2.A(10) SEC Exemptive Order'' to read ''Section 2.A(11) SEC Exemptive Order''.

The revisions and additions read as follows:

**Note:** The text of Form ADV does not and the amendments to it will not appear in the Code of Federal Regulations.

**Form ADV**

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*Form ADV: Instructions for Part 1A*

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2. Item SEC Registration

* * * * *

e. Item 2.A(7): Affiliated Adviser. You may check box 7 *only* if you are eligible for the affiliated adviser exemption from the prohibition on SEC registration. See SEC rule 203A–2(c). You are eligible for this exemption if you *control,* are *controlled by,* or *are under common control with* an investment adviser that is registered with the SEC, *and* you have the same *principal office and place of business* as that other investment adviser. Note that you may not rely on the SEC registration of an Internet investment adviser under rule 203A–2(f) in establishing eligibility for this exemption. See SEC rule 203A–2(f)(iii). If you check box 7, you must also complete Section 2.A(7) of Schedule D.

f. Item 2.A(8): Newly-Formed Adviser.

* * *

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* * * If you indicate on that amendment (by checking box 12) that you are not eligible to register with the SEC, you also must at that same time file a Form ADV–W to withdraw your SEC registration.

g. Item 2.A(9): Multi-State Adviser.

* * *

* * * * *

If, at the time you file your *annual updating amendment,* you are required to register in less than 25 *states* and you are not otherwise eligible to register with the SEC, you must check box 12 in item 2.A. You also must file a Form ADV–W to withdraw your SEC registration. See Part 1A Instructions 2.i.

h. Item 2.A(10): Internet Investment Adviser. You may check box 10 *only* if you are eligible for the Internet adviser exemption from the prohibition on SEC registration. See SEC rule 203A–2(f). You are eligible for this exemption if:

- You provide investment advice to your clients through an interactive Web site. An *interactive Web site* means a Web site in which computer software-based models or applications provide investment advice based on personal information each client submits through the Web site. Other forms of online or Internet investment advice do not qualify for this exemption.
- You provide investment advice to all of your clients exclusively through the interactive Web site, except that you may provide investment advice to fewer than 15 clients through other means during the previous 12 months; and
- You maintain a record demonstrating that you provide investment advice to your clients exclusively through an interactive Web site in accordance with these limits.

* * * * *

**Part 1A**

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Item 2 SEC Registration

* * * * *

A. To register (or remain registered) with the SEC, you must check at least one of the Items 2.A(1) through 2.A(11), below. If you are submitting an *annual updating amendment* to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A(12). You:

* * * * *

☐ (10) Are an Internet investment adviser relying on rule 203A–2(f);

*See Part 1A Instructions 2.h. to determine whether you should check this box.*

☐ (11) Have received an SEC *order* exempting you from the prohibition against registration with the SEC;

*If you checked this box, complete Section 2.A(11) of Schedule D.*

☐ (12) Are no longer eligible to remain registered with the SEC.

*See Part 1A Instructions 2.i. to determine whether you should check this box.*

* * * * *

Dated: December 12, 2002.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–31843 Filed 12–17–02; 8:45 am]

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Federal Register

**Wednesday,**
**December 18, 2002**

## Part V

# Federal Emergency Managment Agency

**44 CFR Part 208**
**National Urban Search and Rescue Response System; Proposed Rule**

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 208**

**RIN 3067–AC93**

## National Urban Search and Rescue Response System

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** We (FEMA) propose to standardize the financing, administration and operation of the National Urban Search and Rescue Response System, a cooperative effort of FEMA, participating State emergency management agencies and local public safety agencies across the country. The proposed rule addresses the relationship between Urban Search & Rescue (US&R) Task Forces and FEMA, funding for preparedness and response activities, including the acquisition of equipment and supplies and training.

**DATES:** We invite your comments on this proposed rule and will accept them through February 3, 2003.

**ADDRESSES:** Please send comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536, or (e-mail) *rules@fema.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael Tamillow, United States Fire Administration, Federal Emergency Management Agency, 500 C Street, SW., room 326, Washington, DC 20472, (202) 646–2549, or (e-mail) *michael.tamillow@fema.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

Section 303 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5144, authorizes the President of the United States to form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. T he President delegated this function to the Director of the Federal Emergency Management Agency (FEMA) under Executive Order 12148. Section 306(a) of the Stafford Act authorizes the Federal Emergency Management Agency to accept and use the services or facilities of any State or local government, or of any agency, officer or employee thereof, with the consent of such government in the performance of its responsibilities under the Stafford Act. Section 306(b) authorizes the Director to appoint and fix the compensation of temporary personnel without regard to U.S. Code provisions governing appointments in the competitive service. Section 403(a)(3)(B) provides further that the President may authorize Federal agencies to perform work on public or private lands essential to save lives and protect property, including search and rescue and emergency medical care, and other essential needs. Under section 621(c) the Director may accept and use the services of State or local governments, and use voluntary services by individuals or organizations as needed.

We [1] (FEMA) established the National Urban Search and Rescue Response System (National US&R Response System) under these authorities. The system provides specialized lifesaving assistance during major disasters or emergencies that the President declares under the Stafford Act. US&R operational activities include locating, extracting and providing on-site medical treatment to victims trapped in collapsed structures, weapons of mass destruction events, and when assigned, incident command or coordination of other operational activities.

Created in consultation with State emergency management agencies and local public safety agencies, the system is built around a core of Task Forces prepared to deploy immediately and initiate US&R operations at FEMA's direction. The Task Forces are staffed primarily by local fire department and emergency services personnel who are experienced in collapsed structure search and rescue operations, incident management, and other emergency operational activities. On activation by FEMA, US&R Task Forces are activated as temporary federal resources.

The system presently comprises 28 Task Forces in 19 States, each of which is sponsored by a State agency or local public safety agency (Sponsoring Organization). While the Sponsoring Organizations are solely responsible for the administrative management of their respective Task Forces, many invite other public safety agencies in their vicinity to contribute personnel and other resources to the Task Force. These agencies are Participating Agencies.

FEMA provides financial support in the form of grants or cooperative agreements (Grants) to each of the Sponsoring Organizations under the disaster preparedness authorities of the Stafford Act. The Sponsoring Organizations use these grants to train Task Force personnel, maintain a state of readiness and to acquire necessary equipment and supplies. We award and administer Grants under 44 CFR Part 13. In return for this financial support, each Task Force must be available for deployment as a federal resource when activated by FEMA.[2] Task Forces also must maintain minimum training requirements that we prescribe.

Separate non-standardized Memoranda of Agreement, which were individually negotiated at different stages in the system's development, govern the relationship between FEMA and each of the US&R Task Forces. In addition, we required the Task Forces to enter into separate Cooperative Agreements on forms that our Office of Financial Management prescribed. As the National US&R Response System has matured, the participants have concluded that it is desirable to standardize these relationships through a set of comprehensive regulations. We developed the proposed rule with the assistance of the National Urban Search and Rescue Advisory Committee and its Legal Issues Working Group.

Adoption of the proposed rule will enable us to standardize our agreements with the Task Forces. Following adoption of the final rule, we will ask each of the Task Forces to enter into a new, streamlined MOA as well as a Preparedness Cooperative Agreement, as described in subpart B of the proposed rule and a Response Cooperative Agreement, as described in subpart C of the proposed rule. These new, standardized agreements will document our relationship with the Sponsoring Organizations.[3]

### Organization of the Proposed Rule

We divide the proposed rule into five subparts. Subpart A addresses the

[1] Throughout this preamble and the proposed rule the terms ''we'', ''our'' and ''us'' mean FEMA.

[2] The Task Forces also respond to disasters and emergencies in their home states as State resources. FEMA does not directly reimburse Task Forces for the costs that they incur when deploying in their home state, although in a State deployment Task Forces may use equipment that they purchased with FEMA grant funds and federal property that is in their custody. Subpart C of this Proposed Rule does not cover in-state deployment of US&R resources. However, federal reimbursement for the cost of an in-state deployment may be available through FEMA's Public Assistance Program under regulations published at 44 CFR Part 206. In addition, the Office of Foreign Disaster Assistance of the U.S. Agency for International Development (USAID) often uses the services of US&R Task Forces to deliver humanitarian assistance abroad under agreements to which FEMA is not a party. The Proposed Rule would not affect the relationships between USAID and the Task Forces.

[3] Following adoption of the final rule, FEMA also expects to release an Administrative Manual, which will contain system policies and explain other federal regulations, and will govern the operation of the National US&R Response System. The Administrative Manual will be updated periodically.

organization of the National US&R System, explains the relationship among the various components of the system, incorporates by reference certain provisions of other FEMA regulations and provides for sanctions if US&R regulations and directives are violated.

Subpart B describes the process through which we provide grant funds to the Sponsoring Organizations to maintain Task Force readiness. Sponsoring Organizations use these grant funds to administer the Task Forces, provide initial and recurrent training[4], and to acquire and maintain a uniform cache of equipment and supplies. Following adoption of the final rule, we will ask each Task Force to enter into a Preparedness Cooperative Agreement with us. From time to time FEMA will purchase equipment and supplies for each Task Force.

Subpart C addresses the deployment of Task Forces as a federal resource and the reimbursement of the Sponsoring Organizations for the costs that they incur as a result of these deployments. This subpart also explains the Response Cooperative Agreement that we will ask each Sponsoring Organization to sign following adoption of the final rule.

Subpart D establishes the procedures by which Sponsoring Organizations may present claims to FEMA for reimbursement of costs incurred when we use the Task Forces as federal resources, the timeframes in which they must present such claims, and any appeals.

A glossary of defined terms that we use throughout the rule and in subpart A appears in section 208.2. Sub-glossaries of defined terms used in subsequent subparts of the rule appear in sections 208.22 (subpart B), 208.32 (subpart C), and 208.52 (subpart D).

**Sectional Analysis**

The sectional analysis does not explain the provisions of each section of the proposed rule. We believe that most provisions are self-explanatory. We focus on providing a detailed explanation of the cost neutrality and personnel reimbursement provisions of subpart C because we believe that they are more complex than other provisions of the proposed rule. We welcome your questions and comments about any of the provisions in the proposed rule or this preamble. We will address them in the preamble to the final rule.

Section 208.33 sets forth the principles under which we will reimburse Sponsoring Organizations for participating in Alerts and Activations. Subsection (a) expresses our policy that participation in Alerts and Activations be cost neutral to Sponsoring Organizations and Participating Agencies. This commitment is critical to securing the participation of system resources. It is unreasonable to put local fire departments, which are the predominant sponsors of the Task Forces, at risk for the cost of providing emergency services outside of their respective jurisdictions. Payments are subject to 44 CFR part 13, particularly sections 13.21 (payment) and 13.22 (allowable cost). Section 13.22 incorporates various Office of Management and Budget circulars that address allowable cost. However, in the event of a conflict between this regulation and 44 CFR part 13 or the OMB Circulars, this regulation would control.

Section 208.39 explains how we will compensate Sponsoring Organizations for personnel costs during Activations. In order to understand section 208.39, one must first understand the employment relationships among FEMA, the Sponsoring Organization or Participating Agency and the individual. When we deploy individual members of US&R Task Forces we appoint them into federal service as Excepted Temporary Federal Volunteers and they work under our direction and control for the duration of the deployment. However, Task Force members who are regularly employed by a Sponsoring Organization or Participating Agency retain their concurrent employment relationship with their usual employers.[5] The maintenance of this concurrent employment relationship is a fundamental principle of the National US&R System, which dates from the inception of the system. We adopted the principle after consultations with the States, local governments and public safety employee organizations and we intend it to prevent Task Force members from suffering a break in their service to the usual employer while away on the federal deployment. While on a federal deployment, these Task Force members receive pay and benefits from their usual employers during the federal deployment just as they would if they were not Activated.

Section 208.39(a) provides that we will reimburse the Sponsoring Organization for personnel costs that result from the Activation and are consistent with these regulations. The Sponsoring Organization is responsible for reimbursing the personnel costs of its Participating Agencies in accordance with the provisions of section 208.39.

Section 208.39(b) speaks to how we will compensate Sponsoring Organizations for overtime costs that might not have been incurred but for the federal deployment. Section 7(k) of the Fair Labor Standards Act exempts public safety organizations from paying their employees overtime under certain circumstances. As interpreted by Department of Labor regulations and court decisions, the section 7(k) exemption does not apply unless the employee in question is trained in fire protection, has the legal authority and responsibility to engage in fire suppression, is employed by a public safety agency engaged in fire suppression and actually engages in fire suppression at least 80% of the time.

The scope of section 7(k) is frequently litigated and is sometimes narrowed as a result of litigation. After reviewing section 7(k), the Department of Labor regulations and court decisions, we are uncertain whether the rescue activities undertaken by US&R Task Forces are analogous to fire suppression. We also note that some Task Force personnel will not fall within the section 7(k) exemption because they are not regularly employed in fire suppression. It would be unfair not to compensate these individuals at an overtime rate, when fellow members of their Task Force, who may be volunteers or part-time fire service employees, are compensated at an overtime rate. For these reasons, we propose to disregard the section 7(k) exemption in reimbursing personnel costs and reimburse Sponsoring Organizations for regular wages and overtime wages as described in section 208.39(d), (e) and (f).[6] This will not create a windfall for Sponsoring Organizations and Participating Agencies. The Sponsoring Organizations cannot bill FEMA for

[4] FEMA is authorized by sections 306(a) and 621(c) of the Stafford Act, 42 U.S.C. §§ 5149(a), 5197(c) to federalize US&R Task Forces to participate in preparedness activities. US&R teams are periodically federalized to participate in FEMA sanctioned training exercises, also known as mobilization exercises. During these periods, they are not Activated, within the meaning of section 208.2 of the proposed rule and therefore the provisions of subpart C do not apply to FEMA sanctioned training exercises. Funding for participation in FEMA sanctioned training exercises may be available under section 208.24(b) of the proposed rule.

[5] In some cases, the relationship between the individual and the Sponsoring Organization or Participating Agency is a contractual relationship or a volunteer relationship. These regulations do not create a common law employment relationship between an individual and a Sponsoring Organization or Participating Agency where none otherwise exists.

[6] Section 208.40(b) of the Proposed Rule addresses reimbursement for differential pay in.

personnel costs in excess of those that they actually and normally incur.

Section 208.39(c) establishes a uniform 24-hour tour of duty during the federal deployment. We propose to reimburse the Sponsoring Organizations for 24 hours of pay for each day that a Task Force member is deployed, from his or her arrival at the pre-deployment staging area (Point of Arrival) [7] until his or her release from service (Point of Return). This is known as ''portal to portal'' pay. We are not establishing a different rate of reimbursement for meal periods or scheduled sleep periods. Once deployed, all Task Force members must be available for immediate response twenty-four hours a day during the entire deployment period. Meal periods and sleep periods will be interrupted if Task Force members are needed to engage in vital lifesaving activities, just as they are in the firehouse.

Fundamentally, we believe that search and rescue professionals who are expected to respond on a moment's notice at any time during a 24-hour period should be compensated for 24 hours of work. Activated Task Force Members often work the first 24 to 48 hours of the Activation continuously, as this initial period involves packaging the Task Force for transport, loading and unloading equipment, attending briefings, receiving and adjusting to changes in operational objectives, establishing the base of operations and initiating the search for live victims. Once the search begins, we control Task Force activities during the entire 24 -hour period and they must be available for immediate response at any time.

Section 208.39(g) provides for the reimbursement of backfill expenses. The National US&R System depends upon the voluntary participation of public safety agencies. We recognize that these public safety agencies may be short-handed when some of their personnel are away on a federal deployment. If a public safety agency ordinarily backfills a position in situations where a regular employee is unavailable for a period of time similar to that spent on a US&R deployment, *e.g.*, Family and Medical Leave, participation in an extended mutual aid assignment, injury or disability, then it may bill us for the cost of backfilling the position for the period that the incumbent is away on a federal deployment. We propose to reimburse for incremental overtime salary and benefit expenses associated with the replacement employee. We do not believe that it would be proper to reimburse the backfilling agency for the regular salary and overtime cost of the replacement employee because the public safety agency would have to pay this cost if the federal deployment had not occurred.

*National Environmental Policy Act.* 44 CFR 10.8(d)(2)(ii) categorically excludes actions that qualify for categorical exclusion, such as the preparation, revision, and adoption of regulations, and specifically 44 CFR 10.8(d)(2)(xviii)(C), which relates to planning and administrative activities in support of emergency and disaster response and recovery, including deployment of urban search and rescue teams. We have not prepared an environmental assessment or environmental impact statement for this proposed rule.

**Executive Order 12866, Regulatory Planning and Review**

Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. Section 3(f) of the Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or may 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.

This proposed rule could have an annual effect on the economy of $100 million or more but is not an economically significant rule under Executive Order 12866. The rule would establish the relationship between Urban Search & Rescue (US&R) Task Forces and FEMA, funding for preparedness and response activities, including the acquisition of equipment and supplies and training, and the eligibility of Task Forces to receive and maintain federal excess property. Average annual Federal cooperative agreements with US&R teams do not currently exceed $100 million. However, we anticipate that the Congress may appropriate funds exceeding $100 million to augment the equipment and human resources available for search and rescue operations. Although the funding to support US&R teams may exceed $100 million, the rule would not impose conditions on the recipients or their sponsoring organizations that would exceed $100 million annually, or would 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.

We know of no other conditions that would qualify the rule as a ''significant regulatory action'' within the definition of section 3(f) of the Executive Order. To the extent possible, this rule adheres to the principles of regulation as set forth in Executive Order 12866. The Office of Management and Budget has not reviewed this rule under the provisions of the Executive Order.

*Paperwork Reduction Act of 1995*

FEMA has determined that the implementation of this rule is subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As the Paperwork Reduction Act of 1995 requires and concurrently with this proposed rule, we have submitted a request for Office of Management and Budget (OMB) review and approval of a new collection of information, which is contained in this proposed rule. OMB will process this request for collection of information and notice for comment under its clearance procedures in 5 CFR 1320.11. The collection of information complies with provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). We invite the general public to comment on the collection of information.

Collection of Information

*Title:* Urban Search and Rescue Program.

US&R grant application forms approved by OMB under Control Number 3067–0206, which expires February 29, 2004, are:

*Form Numbers:* SF 424, Application for Federal Assistance; FEMA Form 20–10, Financial Status Report; FEMA Form 20–16, Summary Sheet for Assurances and Certifications; FEMA Form 20–16A, Assurances—Non-Construction Programs; FEMA Form 20–16C, Certifications Regarding Lobbying; Debarment, Suspension and Other

[7] Certain Task Force members who are Activated will not report to a pre-deployment staging area but we will instruct them to travel to the incident location directly from their home or regular place of work. These individuals are Activated when they leave their home or regular place of business and we will adjust the ''portal to portal'' pay of these individuals accordingly.

Responsibility Matters; and Drug-Free Workplace Requirements; FEMA Form 20–20, Budget Information—Non-Construction Programs; and SF LLL, Disclosure of Lobbying Activities.

*Abstract:* This information collection is to implement the National Urban Search and Rescue System (US&R), by which FEMA provides specialized lifesaving assistance during major disaster or emergency. US&R operational activities include locating, extracting and providing on-site medical treatment to victims trapped in collapsed structures, weapons of mass destruction events, and when assigned, incident command or coordination of other operational activities. In order to implement the US&R program FEMA must collect certain types of information, including grant applications, budget and budget narrative, financial status reports, assurances and certifications, performance information, and requests for advances or reimbursement on forms previously approved by OMB under Control Number 3067–0206.

*Affected Public:* State, local and Indian tribal governments.

*Estimated Total Annual Burden Hours:* 803 hours. A breakdown of the burden follows:

| FEMA forms | No. of respondents (A) | Frequency of response (B) | Hours per response and recordkeeping (C) | Annual burden hours (A × B × C) |
|---|---|---|---|---|
| The following forms were approved under 3067–0206: | | | | |
| SF–424 Application for Federal Assistance | 28 | 1 | 1 hour | 28 |
| FEMA Form 20–10 Financial Status Report | 28 | 1 | 1 hour | 28 |
| FEMA Forms 20–16, 20–16A, 20–16C, Summary Sheet for Assurances and Certifications. | 28 | 1 | 30 minutes | 14 |
| SF LLL, Disclosure of Lobbying Activities | 28 | 1 | 10 minutes | 5 |
| FEMA Form 20–20, Budget Information Non-Construction Programs and Budget Narrative. | 28 | 2 | 9 hours | 504 |
| SF 270, Request for Advance or Reimbursement | 28 | 2 | 4 hours | 224 |
| Subtotal | | 224 | | 803 |

*OMB Number:* New.

*Abstract:* In order to implement the US&R program FEMA must collect certain types of information not included in OMB Control Number 3067–0206, including memoranda of agreement, program narrative statements, grant awards, progress reports, extension or change requests, closeout information and audits.

*Affected Public:* State, local and Indian tribal governments.

*Estimated Total Annual Burden Hours:* 1181 hours. A breakdown of the burden follows:

| FEMA forms | No. of respondents (A) | Frequency of response (B) | Hours Per response and recordkeeping.(C) | Annual burden hours (A x B x C) |
|---|---|---|---|---|
| The following are new collections: | | | | |
| Narrative Statement | 28 | 2 | 4 | 224 |
| Progress Reports | 28 | 2 | 2 | 112 |
| Extension or Change Requests | 5 | 1 | 1 | 5 |
| Audits of States, Local Governments, and Non-Profit Organizations | 28 | 1 | 30 | 840 |
| Memoranda of Agreement | 28 | 1 | [8] | [8] |
| Subtotal | | 145 | | 1181 |
| Total | | 369 | | 1984 |

[8] After we publish the final US&R rule we will prepare a standardized, streamlined memorandum of agreement in consultation with the National US&R Advisory Committee, which represents the 28 US&R sponsoring organizations, and other interested parties. When completed we will make a second Paperwork Reduction Act submission to OMB.

*Estimated times and costs:* The approximate annual salary of State and local staff who will complete the forms is $35,000. The approximate hourly rate of pay is $18.90 ($35,000 divided by 1850 hours). The total cost to grantees is estimated to be $37,498.

The cost to FEMA is largely Headquarters grants personnel salary costs because reviewing and analyzing the information collected by these forms—for all FEMA grant programs, not just US&R grants—is a significant portion of their annual work. We estimate that for the US&R program Headquarters would expend approximately 672 hours on analysis, or an average of 24 hours per program. We estimate the cost to FEMA to be $14,112 (672 hours times $21 per hour of staff work). Printing costs are minimal because the forms are available in electronic format.

The total annual estimated time and costs are 1984 hours and $37,498 cost to applicants and $14,112 cost to FEMA. This calculation is based on the number of burden hours for each type of information collection/form, as indicated above, and the estimated wage rates for those individuals responsible for collecting the information or completing the forms. The new collection is required for sound grants management and compliance with OMB Circulars and FEMA regulations.

*Comments:* We solicit your written comments to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be

collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

**ADDRESSES:** Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., room 316, Washington, DC 20472, or (e-mail) *informationcollections@fema.gov*.

**FOR FURTHER INFORMATION CONTACT:** Contact Michael Tamillow, United States Fire Administration, Urban Search and Rescue Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, telephone (202) 646–3456, facsimile (202) 646–2549, or e-mail *michael.tamillow@fema.gov* for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646-3347 or e-mail *informationcollections@fema.gov*.

**Executive Order 13132 Federalism—Federalism Summary Impact Statement**

The proposed rule does not have federalism implications as defined in Executive Order 13132 . The rule imposes no mandates on State or local governments; participation in the National US&R Response System is strictly voluntary. Moreover, one of the most significant objectives of this program is to build state and local US&R capability. The US&R program recognizes the primary role of state and local governments in responding to disasters and emergencies. Equipment and supplies purchased with federal funds may be used to respond to in-state disasters and emergencies. The teams may only be deployed across state lines when released by their home state. The assistance these teams provide, like other assistance under the Stafford Act, is only furnished when the combined state and local capabilities of the receiving state are exceeded and its Governor requests the assistance.

While this rule does not have federalism implications, we developed it through a collaborative process with state and local representatives. As noted above, the Legal Issues Working Group, a subcommittee of the National US&R Advisory Committee, developed the original draft of these regulations. The National US&R Advisory Committee presented a draft to FEMA. The working group and the advisory committee both comprised federal, state and local officials, as well as representatives of labor organizations some of whose members serve on the Task Forces.

**List of Subjects in 44 CFR Part 208**

Disaster assistance, Grant programs.

Accordingly, we propose to add part 208 to Title 44, Chapter 1 of the Code of Federal Regulations as follows:

## PART 208—NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM

**Subpart A—General**

Sec.
208.1 Purpose and scope.
208.2 Definitions of terms used in this part.
208.3 Authority for the National US&R Response System.
208.4 Purpose for System.
208.5 Authority of the United States Fire Administrator.
208.6 System Resource reports.
208.7 Sanctions for violations of regulations or System orders.
208.8 Code of conduct.
208.9 Agreements between Sponsoring Organizations and Participating Agencies.
208.10 Other regulations.
208.11 Federal status of System Members.
§ 208.12–208.20 [Reserved].

**Subpart B—Preparedness Cooperative Agreements**

208.21 Purpose.
208.22 Definitions of terms used in this subpart.
208.23 Preparedness Cooperative Agreement process.
208.24 Allowable costs under Preparedness Cooperative Agreements.
208.25 Purchase and maintenance of items not listed on Equipment Cache List
208.26 Obsolete equipment.
208.27 Accountability.
208.28–208.30 [Reserved].

**Subpart C—Response Cooperative Agreements**

208.31 Purpose.
208.32 Definitions of terms used in this subpart.
208.33 Allowable costs.
208.34 Agreements between Sponsoring Organizations and others.
208.35 Reimbursement for Advisory.
208.36 Reimbursement for Alert.
208.37 Reimbursement for equipment and supply costs incurred during Activation.
208.38 Reimbursement for re-supply and logistics costs incurred during Activation.
208.39 Reimbursement for personnel costs incurred during Activation.
208.40 Reimbursement of fringe benefit costs during Activation.
208.41 Administrative allowance.
208.42 Reimbursement for other administrative costs.
208.43 Rehabilitation.
208.44 Reimbursement for other costs.
208.45 Advance of funds.
208.46–208.50 [Reserved]

**Subpart D—Reimbursement Claims and Appeals**

208.51 General.
208.52 Definitions of terms used in this subpart.
208.53 Reimbursement procedures.
208.54–208.60 [Reserved]
208.60 Determination of claims.
208.61 Payment of claims.
208.62 Appeals.
208.63 Request by FEMA for supplemental information.
208.64 Administrative and audit requirements.
208.65 Mode of transmission.
208.66 Reopening of claims for retrospective or retroactive adjustment of costs.
208.67–208.70 [Reserved]

**Authority:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 to 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412.

### Subpart A—General

#### § 208.1 Purpose and scope of this part.

(a) *Purpose.* The purpose of part 208 is to prescribe policies and procedures pertaining to FEMA's National Urban Search and Rescue Response System.

(b) *Scope.* This part applies to Sponsoring Organizations and other participants in the National Urban Search and Rescue Response System that have executed agreements governed by this part. Part 206 of this chapter does not apply to activities undertaken under this part.

This part does not apply to reimbursement under part 206, Subpart H, of this chapter.

#### § 208.2 Definitions of terms used in this part.

(a) *General.* Any capitalized word in this part is a defined term unless such capitalization results from the application of standard capitalization or style rules for Federal regulations. The following definitions have general applicability throughout this part:

*Activated* or *Activation* means the status of a System resource placed at the direction, control and funding of FEMA in response to, or in anticipation of, a presidential declaration of a major disaster or emergency under the Stafford Act.

*Activation Order* means the FEMA communication placing a System resource under the direction, control, and funding of FEMA.

*Administrator* means the Administrator of the United States Fire Administration, or such officer's functional or designated representative.

*Advisory* means a FEMA communication to System resources indicating that an event has occurred or FEMA anticipates will occur that may require Alert or Activation of System resources.

*Alert* means the status of a System resource's readiness that is begun by an Alert Order indicating that FEMA may Activate the System resource.

*Alert Order* means the FEMA communication that places a System resource on Alert status.

*Assistance Officer* means the FEMA employee who has legal authority to bind FEMA by awarding and amending Cooperative Agreements.

*Backfill* means the personnel practice of temporarily replacing a person in his or her usual position with another person.

*Cooperating Agency* means a State or Local Government that has executed a Cooperative Agreement to provide Technical Specialists.

*Cooperative Agreement* means a legal instrument between FEMA and a Sponsoring Organization or Cooperating Agency that provides funds to accomplish a public purpose and anticipates substantial federal involvement during the performance of the contemplated activity.

*Daily Cost Estimate* means a Sponsoring Organization's estimate of Task Force personnel compensation, itemized fringe benefit rates and amounts including calculations, and backfill expenditures for a 24-hour period of Activation.

*Deputy Administrator* means the Deputy Administrator of the United States Fire Administration.

*Disaster Search Canine Team* means a disaster search canine and handler who have successfully completed the written examination and demonstrated the performance skills required by the Disaster Search Canine Readiness Evaluation Process. A disaster search canine is a dog that has successfully completed the FEMA Disaster Search Canine Readiness Evaluation criteria for Type II or both Type II and Type I.

*Emergency* means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

*Equipment Cache List* means the FEMA-issued list that identifies the maximum quantities and types of equipment and supplies that a Sponsoring Organization and Participating Agencies may purchase and maintain with FEMA funds.

*Federal excess property* means any federal personal property under the control of a Federal agency that the agency head or a designee determines is not required for its needs or for the discharge of its responsibilities

*Federal Response Plan* means the signed agreement among various federal departments and agencies that provides a mechanism for coordinating delivery of federal assistance and resources to augment efforts of State and Local Governments overwhelmed by a Major Disaster or Emergency; supports implementation of the Stafford Act, as well as individual agency statutory authorities; and supplements other federal emergency operations plans developed to address specific hazards.

*FEMA* means the Federal Emergency Management Agency.

*IST or Incident Support Team* means a multi-disciplinary System resource composed of individuals brought together to provide management control and logistical support for federal US&R resources and technical advice and assistance to Local Governments.

*Local Government* means any county, city, village, town, district, or other political subdivision of any State; any federally-recognized Indian tribe or authorized tribal organization; and any Alaska Native village or organization.

*Major Disaster* means any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, that in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, Local Governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

*Memorandum of Understanding (MOU)* means the document signed by FEMA, a Sponsoring Organization and its State that describes the relationship of the parties with respect to the National Urban Search & Rescue Response System.

*Participating Agency* means a Local Government or non-profit organization that has executed an agreement with a Sponsoring Organization to participate in the National US&R Response System.

*Personnel Rehabilitation Period* means the period allowed by FEMA for a person's rehabilitation to normal conditions of living following an Activation.

*Preparedness Cooperative Agreement* means the agreement between FEMA and a Sponsoring Organization to develop and maintain System capabilities and operational readiness.

*Program Manager* means the individual within FEMA who is responsible for day-to-day administration of the National US&R Response System.

*Program Office* means the organizational entity within FEMA that is responsible for day-to-day administration of the National US&R Response System.

*Response Cooperative Agreement* means an agreement between FEMA and a Sponsoring Organization for reimbursement of allowable expenditures incurred as a result of an Alert or Activation.

*Sponsoring Organization* means a State or Local Government that has executed an MOU with FEMA to organize and administer a Task Force.

*Stafford Act* means the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5260.

*State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia or the Republic of the Marshall Islands.

*Support Specialist* means a person participating in the System who assists the Task Force with administrative or other support during mobilization, ground transportation and demobilization as directed.

*System* or *National US&R Response System* means the national US&R response capability administered by FEMA.

*System Member* means any Task Force Member, IST Member, Technical Specialist, Support Specialist or Disaster Search Canine Team.

*Task Force* means an integrated US&R organization of multi-disciplinary resources with common communications and a leader, organized and administered by a Sponsoring Organization and meeting FEMA standards.

*Task Force Member* means a person occupying a position on a Task Force.

*Technical Specialist* means a person participating in the System contributing

technical knowledge and skill who may be placed on Alert or Activated as a single resource and not as a part of an IST or a Task Force.

*US&R* means urban search and rescue, the process of searching for, extricating, and providing for the immediate medical stabilization of victims who are entrapped in collapsed structures.

*We* or *our* or *us* means the Federal Emergency Management Agency.

(b) *Additional Definitions.* Definitions that apply only to individual subparts of part 208 are in those subparts.

**§ 208.3 Authority for the National US&R Response System.**

(a) *Enabling legislation.* FEMA established and operates the System under authority of sections 303, 306(a), 306(b), 403(a)(3)(B) and 621(c) of the Stafford Act, 42 U.S.C. 5144, 5149(a), 5149(b), 5170b(a)(3)(B) and 5197(c) respectively.

(b) *Implementing Plan.* The Federal Response Plan identifies FEMA as the primary federal agency with responsibility for Emergency Support Function 9, Urban Search and Rescue.

**§ 208.4 Purpose for system.**

It is our policy to develop and provide a national system of standardized US&R resources to respond to Emergencies and Major Disasters that are beyond the capabilities of affected State and Local Governments.

**§ 208.5 Authority of the Administrator.**

(a) *Participation in activities of the System.* The Administrator is responsible for determining participation in the System and any activity thereof, including but not limited to whether a System resource is operationally ready and can be Activated.

(b) *Standards for and measurement of System efficiency and effectiveness.* In addition to the authority provided in §206.13 of this chapter, the Administrator may establish performance standards and assess the efficiency and effectiveness of System resources.

**§ 208.6 System resource reports.**

(a) *Reports to Administrator.* The Administrator may request reports from any System resource relating to its activities as part of the System.

(b) *Reports to FEMA Regional Directors.* Any FEMA Regional Director may request through the Administrator reports from any System resource used within or based within the Regional Director's jurisdiction.

(c) *Audits, investigations, studies and evaluations.* FEMA and the General Accounting Office may conduct audits, investigations, studies, and evaluations as necessary. Sponsoring Organizations, Participating Agencies and System Members are expected to cooperate fully in such audits, investigations, studies and evaluations.

**§ 208.7 Sanctions for violations of regulations or System orders.**

(a) *Sanctions for knowing violations.* The Administrator may impose a sanction on any State or Sponsoring Organization whose representative knowingly violates a regulation or System Order, including knowingly submitting a false or misleading request for reimbursement or knowingly submitting a request for reimbursement of a non-reimbursable expense.

(b) *Sanctions for other violations.* The Administrator may impose a sanction on any State or Sponsoring Organization for other violations of regulations or System Orders including significant or repeated failure of the State or Sponsoring Organization to conform to the standards and procedures of the System.

(c) *Other authority for sanctions.* Nothing in this section limits or precludes the application of other authority to impose sanctions.

(d) *Range of sanctions.* Sanctions may include but are not limited to censure, suspension, or removal from the System.

**§ 208.8 Code of conduct.**

The Administrator will develop and implement a code of conduct for System Members while acting under FEMA's direction and control. Nothing in this section or our code of conduct will limit the authority of a Sponsoring Organization, Participating Agency or Cooperating Agency to apply its own code of conduct to its System Members or employees. If our code is more restrictive, it controls.

**§ 208.9 Agreements between Sponsoring Organizations and Participating Agencies.**

Every agreement between a Sponsoring Organization and a Participating Agency regarding the System must include a provision making the rules in this part applicable to the Participating Agency and its employees who engage in System activities.

**§ 208.10 Other regulations.**

The following provisions of title 44 CFR, Chapter 1 also apply to the program in this part:

(a) Section 206.9, which deals with our non-liability in certain circumstances.

(b) Section 206.11, which prescribes nondiscrimination in the provision of disaster assistance.

(c) Section 206.14, which deals with criminal and civil penalties.

(d) Section 206.15, which permits recovery of assistance by us.

**§ 208.11 Federal Status of System Members.**

The Administrator will appoint all Activated System Members as temporary excepted volunteer employees of the United States Government. The Administrator may appoint a System Member who participates in Alert activities as such an employee of the United States Government. The Administrator may also appoint each System Member who participates in FEMA sanctioned preparedness activities as such an employee of the United States Government. We intend these appointments to secure protection for such employees under the Federal Employees Compensation Act and the Federal Tort Claims Act and do not intend to interfere with any preexisting employment relationship between a System Member and a Sponsoring Organization, Cooperating Agency or Participating Agency. System Members whom we appoint as temporary excepted volunteer employees of the United States Government will not receive any compensation or employee benefit directly from the United States of America for their service, but will be compensated through their sponsoring organization.

**§§ 208.12—208.20 Reserved**

## Subpart B—Preparedness Cooperative Agreements

**§ 208.21 Purpose.**

Subpart B provides guidance on the administration of Preparedness Cooperative Agreements.

**§ 208.22 Definitions of terms used in this subpart.**

*Project Manager* means the Sponsoring Organization's primary point of contact for matters related to the Preparedness Cooperative Agreement.

*Program Manager* means the FEMA official responsible for developing statements of work for Cooperative Agreements and initiating amendments or awards under such agreements by developing and funding requisitions.

**§ 208.23 Preparedness Cooperative Agreement process.**

(a) *Application.* To obtain FEMA funding for an award or amendment of

a Preparedness Cooperative Agreement, the Sponsoring Organization must submit an application. The application must be in a form that the Assistance Officer specifies.

(b) *Award.* We will award a Preparedness Cooperative Agreement with each Sponsoring Organization to provide Federal funding to develop and maintain System resource capabilities and operational readiness. For the purposes of the Preparedness Cooperative Agreement, the Sponsoring Organization will be considered the ''recipient.''

(c) *Amendment.* (1) *Procedure.* Absent special circumstances, we will fund and amend Preparedness Cooperative Agreements on an annual basis. Before amendment, the Assistance Officer will issue a call for Cooperative Agreement amendment applications. The Assistance Officer will specify required application forms and supporting documentation to be submitted with the application.

(2) *Period of performance.* Absent special circumstances, the period of performance for Preparedness Cooperative Agreements will be 1 year from the date of award. The Assistance Officer may allow for an alternate period of performance with the approval of the Administrator.

(3) *Assistance Officer.* The Assistance Officer is the only individual authorized to award or modify a Preparedness Cooperative Agreement.

(d) *Award amounts.* The Administrator will determine award amounts on an annual basis. A Task Force is eligible for an annual award only if the Program Manager has received and approved the Task Force's current-year Daily Cost Estimate.

(e) *FEMA priorities.* The Administrator will establish overall priorities for the use of Preparedness Cooperative Agreement funds taking into consideration the results of readiness evaluations and actual Activations, our overall priorities, and other factors, as appropriate.

(f) *Cost sharing.* The Administrator may subject Preparedness Cooperative Agreement awards to cost sharing provisions. In the call for Preparedness Cooperative Agreement amendment applications, the Assistance Officer must inform Sponsoring Organizations about any cost sharing obligations.

(g) *Sponsoring Organization priorities.* The Sponsoring Organization should indicate its spending priorities in the application. The Program Manager will review these priorities and will make recommendations to the Assistance Officer for negotiating the final agreement.

**§ 208.24 Allowable costs under Preparedness Cooperative Agreements.**

System Members may spend Federal funds that we provide under any Preparedness Cooperative Agreement and any required matching funds under 44 CFR 13.22 and this section to pay reasonable, allowable, necessary and allocable costs that directly support System activities, including the following:

(a) Administration, including:

(1) Management and administration of day-to-day System activities such as personnel compensation and benefits relating to System maintenance and development, record keeping, inventory of equipment, and correspondence;

(2) Travel to and from System activities, meetings, conferences, training, drills and exercises;

(3) Tests and examinations, including vaccinations, immunizations and other tests that are not normally required or provided in the course of a System Member's employment, and that FEMA requires to meet our standards.

(b) Training:

(1) Development and delivery of, and participation in, System-related training courses, exercises, and drills;

(2) Construction, maintenance, lease or purchase of System-related training facilities or materials;

(3) Personnel compensation expenses, including overtime and other related expenses associated with System-related training, exercises, or drills;

(4) System-required evaluations and certifications other than the certifications that we require System Members to possess at the time of entry into the System. For instance, we will not pay for a medical school degree, paramedic certification or recertification, civil engineering license, etc.

(c) Equipment:

(1) Procurement of equipment and supplies specifically identified on the then-current FEMA-approved Equipment Cache List;

(2) Maintenance and repair of equipment included on the current Equipment Cache List;

(3) Maintenance and repair of equipment acquired with our approval through the Federal Excess Property program, except as provided in §208.25 of this part;

(4) Purchase, construction, maintenance or lease of storage facilities and associated equipment for System equipment and supplies.

(d) Disaster search canine expenses limited to:

(1) Procurement for use as a System resource;

(2) Training and certification expenses;

(3) Veterinary care.

(e) Management and administrative costs, actually incurred but not otherwise specified in this section that directly support the Sponsoring Organization's US&R capability, provided that such costs do not exceed 7.5 percent of the award/amendment amount.

**§ 208.25 Purchase and maintenance of items not listed on Equipment Cache List.**

(a) Requests for purchase or maintenance of equipment and supplies not appearing on the Equipment Cache List, or that exceed the number specified in the Equipment Cache List, must be made in writing to the Program Manager. No Federal funds provided under any Preparedness Cooperative Agreement may be expended to purchase or maintain any equipment or supply item unless:

(1) The equipment and supplies directly support the Sponsoring Organization's US&R capability;

(2) The Program Manager approves the expenditure and gives written notice of his or her approval to the Sponsoring Organization before the Sponsoring Organization purchases the equipment or supply item.

(b) Maintenance of items approved for purchase under this section is eligible for reimbursement, except as provided in §208.26 of this subpart.

**§ 208.26 Obsolete equipment.**

(a) The Administrator will periodically identify obsolete items on the Equipment Cache List and provide such information to Sponsoring Organizations.

(b) Neither funds that we provide nor matching funds required under a Preparedness Cooperative Agreement may be used to maintain or repair items that FEMA has identified as obsolete.

**§ 208.27 Accountability for use of funds.**

The Sponsoring Organization is accountable for the use of funds as provided under the Preparedness Cooperative Agreement.

**§§ 208.28—208.30 [Reserved]**

## SUBPART C—RESPONSE COOPERATIVE AGREEMENTS

**§ 208.31 Purpose.**

Subpart C provides guidance on the administration of Response Cooperative Agreements.

**§ 208.32 Definitions of terms used in this subpart.**

*Affiliated Personnel* means individuals not normally employed by a Sponsoring Organization or

Participating Agency and individuals normally affiliated with a Sponsoring Organization or Participating Agency as volunteers.

*Demobilization Order* means a FEMA communication that terminates an Alert or Activation and identifies cost and time allowances for rehabilitation.

*Exempt* means any System Member who is exempt from 29 U.S.C. 201 *et seq.* pertaining to overtime compensation and other labor standards.

*Maximum Pay Rate Table* means the FEMA-issued list that identifies the maximum pay rates for selected System positions, and whether that position is compensated on an hourly or daily basis, that may be used for reimbursement of Affiliated Personnel compensation. The Maximum Pay Rate Table does not apply to System members whom a Sponsoring Organization or Participating Agency employ.

*Mobilization* means the process of assembling equipment and personnel in response to an Alert or Activation.

*Non-Exempt* means any System Member who is covered by 29 U.S.C. 201 *et seq.*

*Rehabilitation* means the process of returning personnel and equipment to a pre-incident state of readiness after we terminate an Activation.

**§ 208.33 Allowable costs.**

(a) *Cost neutrality.* Our policy is that an Alert or Activation should be cost neutral to Sponsoring Organizations and Participating Agencies. To make an Alert or Activation cost-neutral, we will reimburse under this subpart all reasonable, allowable, necessary and allocable costs that a Sponsoring Organization or Participating Agency incurs during the Alert or Activation.

(b) *Actual costs.* Notwithstanding any other provision of this chapter, we will not reimburse a Sponsoring Organization or Participating Agency for any costs greater than those that the Sponsoring Organization or Participating Agency actually incurred during an Alert, Activation or Rehabilitation.

(c) *Normal or predetermined practices.* Consistent with OMB Circulars A–87 and A–102, Sponsoring Organizations and Participating Agencies must adhere to their own normal and predetermined practices and policies of general application when requesting reimbursement from us except as we set out in this subpart.

(d) *Indirect costs not allowed.* Except for costs included in the administrative and management costs allowance established by §208.41, indirect costs are not allowable.

**§ 208.34 Agreements between Sponsoring Organizations and others.**

Sponsoring Organizations are responsible for executing such agreements with Participating Agencies and Affiliated Personnel as may be necessary to implement the Sponsoring Organization's Response Cooperative Agreement with us. Those agreements must identify established hourly or daily rates of pay of System Members. The hourly or daily rates of pay for Affiliated Personnel must be in accordance with, and must not exceed the maximum pay rates contained in the then-current Maximum Pay Rate Table.

**§ 208.35 Reimbursement for Advisory.**

We will not reimburse costs incurred during an Advisory.

**§ 208.36 Reimbursement for Alert.**

(a) *Allowable costs.* We will reimburse costs incurred during an Alert, up to the dollar limit specified in the Alert Order, for the following activities:

(1) Personnel costs, including backfill, incurred to prepare for Activation.

(2) Transportation costs relating to hiring, leasing, or renting vehicles and drivers.

(3) The administrative allowance provided in §208.41.

(4) Food and beverages for Task Force Members and Support Specialists when we do not provide meals during the Alert. We will limit food and beverage reimbursement to the amount of the then-current Federal meals daily allowance published in the **Federal Register** for the locality where such food and beverages were provided, multiplied by the number of personnel who received them.

(b) *Calculation of Alert Order dollar limit.* The Alert Order dollar limit will equal:

(1) An allowance of 10 percent of the Task Force's Daily Cost Estimate; and

(2) A supplemental allowance of 1 percent of the Task Force's Daily Cost Estimate for each 24-hour period beyond the first 72 hours of Alert.

(c) *Non-allowable costs.* We will not reimburse costs incurred or relating to the leasing, hiring or chartering of aircraft or the purchase of any equipment, aircraft, or vehicles.

**§ 208.37 Reimbursement for equipment and supply costs incurred during Activation.**

(a) *Allowable costs.* We will reimburse costs incurred for the emergency procurement of equipment and supplies in the number, type, and up to the cost specified in the current approved Equipment Cache List, and up to the aggregate dollar limit specified in the Activation Order. The Administrator may determine emergency procurement dollar limits, taking into account previous Activation history, available funding, the extent and nature of the incident, and the current state of Task Force readiness.

(b) *Non-Allowable costs.* We will not reimburse costs incurred for items that are not listed on the Equipment Cache List; for items purchased greater than the cost or quantity identified in the Equipment Cache List; or for any purchase of non-expendable items that duplicate a previous purchase under a Preparedness or Response Cooperative Agreement.

**§ 208.38 Reimbursement for re-supply and logistics costs incurred during Activation.**

With the exception of emergency procurement authorized in the Activation Order, and replacement of consumable items provided for in §208.43(a)(2) of this subpart, we will not reimburse costs incurred for re-supply and logistical support during Activation. Re-supply and logistical support of Task Forces needed during Activation are the responsibility of the Incident Support Team.

**§ 208.39 Reimbursement for personnel costs incurred during Activation.**

(a) *Compensation.* We will reimburse the Sponsoring Organization for costs incurred for the compensation of each Activated System Member during Activation. Reimbursement of compensation costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the Activation or traveling to or from locations at which they were actively supporting the Activation. The provisions of §208.40 of this part govern costs incurred for providing fringe benefits to System Members.

(b) *Public Safety Exemption not applicable.* We will reimburse Sponsoring Organizations for costs incurred by Non-Exempt System Members in accordance with 29 U.S.C. 207(a) of the Fair Labor Standards Act, without regard to the public safety exemption contained in 29 U.S.C. 207(k). In other words, we will reimburse Sponsoring Organizations on an overtime basis for any hours worked by Non-Exempt System Members greater than 40 hours during a regular work week.

(c) *Tour of duty.* The tour of duty for all Activated System Members will be 24 hours. We will reimburse the Sponsoring Organization for salary and

overtime costs incurred in compensating System Members for meal periods and regularly-scheduled sleep periods during Activation. Activated System Members are considered ''on-duty'' and must be available for immediate response at all times during Activation.

(d) *Regular Rate.* The regular rate for purposes of calculating allowable salary and overtime costs is the amount determined in accordance with §208.39(e)(1) through (3) of this subpart.

(e) *Procedures for calculating compensation during Activation.* A Sponsoring Organization or Participating Agency must:

(1) Convert the base hourly wage of any Non-Exempt System Member regularly paid under 29 U.S.C. 207(k) to its equivalent for a 40-hour work week;

(2) Convert the annual salary of any salaried Non-Exempt System Member to its hourly equivalent for a 40-hour work week;

(3) Calculate the daily compensation of Exempt System Members based on their current annual salary, exclusive of fringe benefits;

(4) Calculate the total number of hours worked by each System Member to be included in the Sponsoring Organization's request for reimbursement; and

(5) Submit a request for reimbursement under § 208.52 of this part according to the following table:

| If the sponsoring organization or participating agency— | And the sponsoring organization or participating agency— | Then the following compensation costs are allowable— |
|---|---|---|
| (i) Customarily and usually compensates Exempt System Members by paying a salary, but not overtime. | Does not customarily and usually grant compensatory time or other form of overtime substitute to Exempt System members. | The daily compensation equivalent calculated under § 208.39(e)(3) for each Activated Exempt System Member for each full or partial day during Activation. |
| (ii) Customarily and usually compensates Exempt System Members by paying a salary but not overtime,. | Customarily and usually awards compensatory time or other overtime substitute for Exempt System Members for hours worked above a predetermined hours threshold (for example, the Sponsoring Organization customarily and usually grants compensatory time for all hours worked above 60 in a given week). | The daily compensation equivalent calculated under § 208.39(e)(3) for each Activated Exempt System Member for each full or partial day during Activation AND the dollar value at the time of accrual of the compensatory time or other overtime substitute for each Activated Exempt System Member based on the duration of the Activation. |
| (iii) Customarily and usually compensate Exempt System Members by paying a salary and overtime. | Customarily and usually calculates overtime for Exempt System Members by paying a predetermined overtime payment for each hour worked above a predetermined hours threshold. | The daily compensation equivalent calculated under § 208.39(e)(3) for each Activated Exempt System Member for each full or partial day during Activation AND the predetermined overtime payment for each hour during the Activation above the previously determined hours threshold for each Activated Exempt System Member |
| (iv) Customarily and usually compensates Non-Exempt System Members by paying overtime after 40 hours per week. | Does not customarily and usually grant compensatory time or other form of overtime substitute to Non-Exempt System members,. | For each seven-day period during the Activation, the hourly wage equivalent of each Activated Non-Exempt System Member for every hour over 40. |
| (v) Customarily and usually compensates Non-Exempt System Members according to a compensation plan established under 29 U.S.C. 207(k). | Does not customarily and usually grant compensatory time or other form of overtime substitute to Non Exempt System Members,. | For each seven-day period during the Activation, the hourly wage equivalent of each Activated Non-Exempt System Member calculated under § 208.39(e)(1) for the first 40 hours AND the overtime payment equivalent for each Activated Non-Exempt System Member calculated under § 208.39(e)(1) for every hour over 40. |
| (vi) Activates Affiliated Personnel, who are customarily and usually paid an hourly wage according to the Maximum Pay Rate Table. | ..... | For each seven-day period during the Activation, the hourly wage for each Activated Affiliated Personnel for the first 40 hours and one and one-half times the hourly wage for each Activated Affiliated Personnel for every hour over 40. |
| (vii) Activates Affiliated Personnel who are customarily and usually paid a daily compensation rate according to the Maximum Pay Rate Table. | ..... | The daily compensation rate for each Activated Affiliated Personnel for each full or partial day during the Activation. |

(f) *Reimbursement of additional salary and overtime costs.* We will reimburse any identified additional salary and overtime cost incurred by a Sponsoring Organization as a result of the temporary conversion of a Non-Exempt System Member normally compensated under 29 U.S.C. 207(k) to a 40-hour work week under 29 U.S.C. 207(a).

(g) *Reimbursement for backfill costs upon Activation.* We will reimburse the cost to backfill System Members. Backfill costs consist of the expenses generated by filling the position in which the Activated System Member should have been working. These costs are calculated by subtracting the non-overtime compensation, including fringe benefits, of Activated System Members from the total costs (non-overtime and overtime compensation, including fringe benefits) paid to backfill the Activated System Members. Backfill reimbursement is available only for those positions that are normally backfilled by the Sponsoring Organization or Participating Agency during Activation. Employees exempt under the Fair Labor Standards Act (FLSA) not normally backfilled by the Sponsoring Organization or

Participating Agency are not eligible for backfill during Activation.

**§ 208.40 Reimbursement of fringe benefit costs during Activation.**

(a) Except as specified in paragraph (c) of this section, we will reimburse the Sponsoring Organization for fringe benefit costs incurred during Activation according to the following table:

| If the sponsoring organization or participating agency— | Then the sponsoring organization or participating agency must | Example |
|---|---|---|
| (1) Incurs a fringe benefit cost based on the number of base hours worked by a System Member, | Bill us for a pro-rata share of the premium based on the number of base hours workedhours worked during Activation. | The City Fire Department incurs a premium of 3 percent for dental coverage based on the number of base hours worked in a week (53 hours). The City should bill us an additional 3 percent of the firefighter's converted compensation for the first 40 hours during worked per week during Activation. |
| (2) Incurs a fringe benefit cost based on the number of hours each System Member actually worked (base hours and overtime), | Bill us for a pro-rata share of the premium based on the number of hours each System Member worked during Activation | The City Fire Department pays a premium of 12 percent for retirement based on the number of hours worked by a firefighter. The City should bill us an additional 12 percent of the firefighter's total compensation during Activation. |
| (3) Incurs a fringe benefit cost on a yearly basis based on the number of people employed full-time during the year, | Bill us for a pro-rata share of those fringe benefit costs based on the number of non-overtime hours worked during Activation by System Members employed full time | The City Fire Department pays workers compensation premiums into the City risk fund for the following year, based on the number of full-time firefighters employed during the current year. The City should bill us for workers compensation premium costs by multiplying the hourly fringe benefit rate or amount by the number of non-overtime hours worked during Activation by full time firefighters who are System Members. |

(b) *Differential pay.* We will reimburse the Sponsoring Organization for direct costs incurred because of any separate differential compensation paid for work performed during an Activation including, but not limited to, differentials paid for holidays, night work, hazardous duty, or other paid fringe benefits, provided such differentials are not otherwise reimbursed under paragraph (a) of this section. A detailed explanation of the differential payment for which the Sponsoring Organization seeks reimbursement must accompany any request for reimbursement under this section together with identification of every fringe benefit sought under paragraph (a) of this section and the method used to calculate each such payment and the reimbursement sought from us.

(c) We will not reimburse the Sponsoring Organization for fringe benefit costs for Affiliated Personnel.

**§ 208.41 Administrative allowance.**

(a) The administrative allowance is intended to defray costs of the following activities, to the extent provided in paragraph (b) of this section:

(1) Collecting expenditure information from Sponsoring Organizations and Participating Agencies;

(2) Compiling and summarizing cost records and reimbursement claims;

(3) Duplicating cost records and reimbursement claims; and

(4) Submitting reimbursement claims, including mailing, transmittal, and related costs.

(b) The administrative allowance will be equal to the following:

(1) If total allowable costs are less than $100,000, 3 percent of total allowable costs included in the reimbursement claim;

(2) If total allowable costs are $100,000 or more but less than $1,000,000, $3,000 plus 2 percent of costs included in the reimbursement claim greater than $100,000;

(3) If total allowable costs are $1,000,000 or more, $21,000 plus 1 percent of costs included in the reimbursement claim greater than $1,000,000.

**§ 208.42 Reimbursement for other administrative costs.**

Costs incurred for conducting after-action meetings and preparing after-action reports must be billed as direct costs in accordance with our administrative policy.

**§ 208.43 Rehabilitation.**

We will reimburse costs incurred to return System equipment and personnel to a state of readiness following Activation as provided in this section.

(a) *Costs for Equipment Cache List items.* (1) *Non-consumable items.* We will reimburse costs incurred to repair or replace any non-consumable item on the Equipment Cache List that was lost, damaged, destroyed, or donated at our direction to another entity, during Activation. For each such item, the Sponsoring Organization must document, in writing, the circumstances of the loss, damage, destruction, or donation.

(2) *Consumable items.* We will reimburse costs incurred to replace any consumable item on the Equipment Cache List that was consumed during Activation.

(3) *Personnel costs associated with equipment cache rehabilitation.* We will reimburse costs incurred for the compensation, including benefits, payable for actual time worked by each person engaged in rehabilitating the equipment cache following Activation, in accordance with the standard pay policy of the Sponsoring Organization or Participating Agency and without regard to the provisions of § 208.39(e)(1) of this subpart, up to the number of hours specified in the Demobilization Order. Fringe benefits are reimbursed under the provisions of § 208.40.

(b) *Costs for personnel rehabilitation.* We will reimburse costs incurred for the compensation, including benefits and backfill, of each Activated System Member regularly scheduled to work during the rehabilitation period specified in the Demobilization Order, in accordance with the standard pay policy of the Sponsoring Organization or Participating Agency and without regard to the provisions of § 208.39(e)(1) of this subpart.

(c) *Other allowable costs.* (1) *Local transportation.* We will reimburse costs

incurred for transporting Task Force Members from the point of assembly to the point of departure and from the point of return to the location where they are released from duty. We will also reimburse transportation costs incurred for assembling and moving the equipment cache from its usual place(s) of storage to the point of departure, and from the point of return to its usual place(s) of storage. Such reimbursement will include costs to return the means of transportation to its point of origin.

(2) *Ground transportation.* When we have ordered a Sponsoring Organization to move its Task Force Members and equipment cache by ground transportation, we will reimburse costs incurred for such transportation, including but not limited to charges for contract carriers, rented vehicles, contract vehicle operators, fleet vehicles, fuel and associated transportation expenses. The Administrator shall have authority to issue schedules of maximum hourly or per mile reimbursement rates for fleet and contract vehicles.

(3) *Food and beverages.* We will reimburse expenditures for food and beverages for Activated Task Force Members and Support Specialists when meals are not provided by the Federal government during Activation. Reimbursement of food and beverage costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the Activation or traveling to or from locations at which they were actively supporting the Activation. Food and beverage reimbursement will be limited to the amount of the then-current Federal meals and incidental expenses daily allowance published in the Federal Register for the locality where such food and beverages were provided, multiplied by the number of personnel who received the same.

**§ 208.44 Reimbursement for other costs.**

(a) Except as allowed under paragraph (b) of this section, we will not reimburse other costs incurred preceding, during or upon the conclusion of an Activation unless, before making the expenditure, the Sponsoring Organization has requested, in writing, permission for a specific expenditure and has received written permission from the Program Manager to make such expenditure.

(b) At the discretion of the Program Manager, a request for approval of costs presented after the costs were incurred must be in writing and establish that:

(1) The expenditure was essential to the Activation and was reasonable;

(2) Advance written approval by the Program Manager was not feasible; and

(3) Advance verbal approval by the Program Manager had been requested and was given.

**§ 208.45 Advance of funds.**

At the time of Activation of a Task Force, the Task Force will develop the documentation necessary to request an advance of funds be paid to such Task Force's Sponsoring Organization. Upon approval, we will submit the documentation to the Assistance Officer and will request an advance of funds equal to 75 percent of the estimated personnel costs for the Activation. The estimated personnel costs will include the salaries, benefits, and backfill costs for Task Force Members and an estimate of the salaries, benefits and backfill costs required for equipment cache rehabilitation. The advance of funds will not include any costs for equipment purchase.

**§§ 208.46–208.50 [Reserved]**

## Subpart D—Reimbursement Claims and Appeals

**§ 208.51 General.**

(a) *Purpose.* This subpart identifies the procedures that Sponsoring Organizations must use to request reimbursement from us for costs incurred under Response Cooperative Agreements.

(b) *Policy.* It is our policy to reimburse Sponsoring Organizations as expeditiously as possible consistent with Federal laws and regulations.

**§ 208.52 Reimbursement procedures.**

(a) *General.* A Sponsoring Organization must present a claim for reimbursement to us in such manner as specified by the Administrator.

(b) *Time for submission.* (1) Claims for reimbursement must be submitted within 90 days after the end of the Personnel Rehabilitation Period specified in the Demobilization Order.

(2) The Administrator may extend and specify the time limitation in paragraph (b)(1) of this section when the Sponsoring Organization justifies and requests the extension in writing.

**§ 208.53–208.59 [Reserved]**

**§ 208.60 Determination of claims.**

When we receive a reviewable claim for reimbursement, we will review the claim to determine whether and to what extent reimbursement is allowable. Except as provided in § 208.63, we will complete our review and give written notice to the Sponsoring Organization of our determination within 90 days after the date we receive the claim. If we determine that any item of cost is not eligible for reimbursement, our notice of determination will specify the grounds on which we disallowed reimbursement.

**§ 208.61 Payment of claims.**

We will reimburse all allowable costs for which a Sponsoring Organization requests reimbursement within 30 days after we determine that reimbursement is allowable, in whole or in part, at any stage of the reimbursement and appeal processes identified in this subpart.

**§ 208.62 Appeals**

(a) *Initial appeal.* The Sponsoring Organization may appeal to the Program Manager any determination made under § 208.60 to disallow reimbursement of an item of cost:

(1) The appeal must be in writing and submitted within 60 days after receipt of our written notice of disallowance under § 208.60 of this part.

(2) The appeal must contain legal and factual justification for the Sponsoring Organization's contention that the cost is allowable.

(3) Within 90 days after we receive an appeal, the Program Manager will review the information submitted, make such additional investigations as necessary, make a determination on the appeal, and submit written notice of the determination of the appeal to the Sponsoring Organization.

(b) *Final appeal.* (1) If the Program Manager denies the initial appeal, in whole or in part, the Sponsoring Organization may submit a final appeal to the Deputy Administrator. The appeal must be made in writing and must be submitted not later than 60 days after receipt of written notice of our determination of the initial appeal.

(2) Within 90 days following the receipt of a final appeal, the Deputy Administrator will render a determination and notify the Sponsoring Organization, in writing, of the final disposition of the appeal.

(c) *Failure to file timely appeal.* If the Sponsoring Organization does not file an appeal within the time periods specified in this section, we will deem that the Sponsoring Organization has waived its right to appeal any decision that could have been the subject of an appeal.

**§ 208.63 Request by us for supplemental information**

(a) At any stage of the reimbursement and appeal processes identified in this subpart, we may request the Sponsoring Organization to provide supplemental information that we consider necessary to determine either a claim for reimbursement or an appeal. The

Sponsoring Organization must exercise its best efforts to provide the supplemental information and must submit to us a written response that includes such supplemental information as the Sponsoring Organization is able to provide within 30 days after receiving our request.

(b) If we make a request for supplemental information at any stage of the reimbursement and appeal processes, the applicable time within which our determination of the claim or appeal is to be made will be extended by 30 days. However, without the consent of the Sponsoring Organization, no more than one such time extension will be allowed for any stage of the reimbursement and appeal processes.

**§ 208.64 Administrative and audit requirements.**

(a) *Nonfederal audit.* For Sponsoring Organizations and states, requirements for nonfederal audit are contained in 44 CFR 13.26.

(b) *Federal audit.* FEMA or the General Accounting Office may elect to conduct a Federal audit of any payment made to a Sponsoring Organization or State.

**§ 208.65 Mode of transmission.**

When sending all submissions, determinations, and requests for supplemental information under this subpart, all parties must use a means of delivery that permits both the sender and addressee to verify the dates of delivery.

**§ 208.66 Reopening of claims for retrospective or retroactive adjustment of costs.**

(a) Upon written request by the Sponsoring Organization we will reopen the time period for submission of a request for reimbursement after the Sponsoring Organization has submitted its request for reimbursement, if:

(1) The salary or wage rate applicable to the period of an Activation is retroactively changed due to the execution of a collective bargaining agreement, or due to the adoption of a generally applicable State or local law, ordinance or wage order or a cost-of-living adjustment;

(2) The Sponsoring Organization or any Participating Agency incurs an additional cost because of a legally-binding determination; or

(3) The Deputy Administrator determines that other extenuating circumstances existed that prevented the Sponsoring Organization from including the adjustment of costs in its original submission.

(b) The Sponsoring Organization must notify us as early as practicable that it anticipates such a request.

**§§ 208.67–208.70 [Reserved]**

Dated: December 11, 2002.

**Joe M. Allbaugh,**

*Director.*

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## Part VI

# Department of Justice

### Immigration and Naturalization Service

### Registration of Certain Nonimmigrant Aliens From Designated Countries; Notice

**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**[AG Order No. 2638–2002]**

## Registration of Certain Nonimmigrant Aliens from Designated Countries

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** This Notice requires certain nonimmigrant aliens to appear before, register with, and provide requested information to the Immigration and Naturalization Service on or before February 21, 2003. It applies to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 30, 2002, and who will remain in the United States after February 21, 2003. The specific requirements are set forth in the Notice. This Notice is applicable to certain nationals and citizens of Pakistan and Saudi Arabia who entered the United States on or before September 30, 2002, and who will remain in the United States after February 21, 2003. Aliens described in this Notice are required to register and provide additional information to the Immigration and Naturalization Service between January 13, 2003, and February 21, 2003, inclusive. This Notice also rescinds an earlier Notice, Attorney General Order No. 2636–2002 of December 12, 2002, which appeared in the **Federal Register** on December 16, 2002 (67 FR 77136), and incorrectly listed Armenia as a designated country.

**EFFECTIVE DATES:** This Notice is effective on January 13, 2003. Aliens described in this Notice are required to register and provide additional information to the Immigration and Naturalization Service on or before February 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dan Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

**SUPPLEMENTARY INFORMATION:** Section 265(b) of the Immigration and Nationality Act (''Act''), as amended, 8 U.S.C. 1305(b), provides that

> [t]he Attorney General may in his discretion, upon ten days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

Additionally, section 263(a) of the Act, 8 U.S.C. 1303(a), provides that the Attorney General may ''prescribe special regulations and forms for the registration and fingerprinting of * * * aliens of any other class not lawfully admitted to the United States for permanent residence.''

The Attorney General has previously exercised his authority under these and other provisions of the Act to establish special registration procedures under 8 CFR 264.1(f). 67 FR 52584 (Aug. 12, 2002). These requirements are known as the National Security Entry—Exit Registration System (''NSEERS''). In accordance with the authority set forth in 8 CFR 264.1(f)(4), the Attorney General has determined that certain nonimmigrant aliens specified in this Notice shall be registered and required to provide specific information. The Attorney General has the sole discretion to make this determination. Under this Notice certain nonimmigrant nationals or citizens of Pakistan and Saudi Arabia are required to appear at an Immigration and Naturalization Service (''Service'') office to register under NSEERS and provide additional information. Previous Notices have applied to certain nonimmigrant nationals or citizens of Afghanistan, Algeria, Bahrain, Eritrea, Iran, Iraq, Lebanon, Libya, Morocco, North Korea, Oman, Qatar, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. *See* 67 FR 67766 (Nov. 6, 2002); 67 FR 70526 (Nov. 22, 2002).

In light of recent events, and based on intelligence information available to the Attorney General, the Attorney General has determined that the aliens described in paragraph (a) of this Notice must appear before the Service and provide certain information. This Notice applies only to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 30, 2002, and who will remain after February 21, 2003. Based on intelligence information available to the Attorney General, the Attorney General has determined that registering all nonimmigrant aliens from the covered countries would not enhance national security. Moreover, the Attorney General has determined that it would not be administratively feasible at the present time to register all of the nonimmigrants from the specific countries covered by this Notice, and that the delay occasioned by registering all nonimmigrants from the countries covered by this Notice would jeopardize the national security. Accordingly, the Attorney General has determined that only males aged 16 years or older need to be registered at this time. Furthermore, the Attorney General has determined that an alien who has an application for asylum pending on the date of publication of this Notice has already provided sufficient information in the application for asylum, along with fingerprints, to warrant exclusion from this Notice.

Although section 265(b) of the Act, 8 U.S.C. 1305(b), provides a minimum period of 10 days notice for covered aliens to provide their current address and other required information, this Notice allows an alien described by the Notice a period of more than 30 days to register. The Attorney General has determined that such additional time to register is in the best interests of the United States and has extended this time to register solely as a matter of discretion.

Finally, until further notice, once enrolled within NSEERS by registration under this Notice, an alien described in paragraph (a) of this Notice is required to register annually with the Service. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5) through (f)(9).

A willful failure to comply with the requirements of this Notice constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act, 8 U.S.C. 1227(a)(1)(C)(i). *See* 8 CFR 214.1(f). Pursuant to section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A), an alien who fails to comply with the provisions of this Notice is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful. Finally, if an alien subject to this Notice fails, without good cause, to comply with the requirement in 8 CFR 264.1(f)(8) that the alien must report to an inspecting officer of the Service when departing the United States, the alien shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. 1182(a)(3)(A)(ii). *See* 8 CFR 264.1(f)(8).

### Notice of Requirements for Registration of Certain Nonimmigrant Aliens From Designated Countries

Pursuant to sections 261 through 266 of the Immigration and Nationality Act (''Act''), as amended, 8 U.S.C. 1302 through 1306, and particularly sections 263(a) and 265(b) of the Act, 8 U.S.C. 1303(a) and 8 U.S.C. 1305(b), and 8 CFR 264.1(f), I hereby order as follows:

(a) **Scope.** Except as provided in paragraph (g), an alien is required to register pursuant to this Notice if the alien:

(1) Is a male who was born on or before January 13, 1987;

(2) Is a national or citizen of Pakistan or Saudi Arabia, who was inspected by the Immigration and Naturalization Service and was last admitted to the United States as a nonimmigrant on or before September 30, 2002; and

(3) Will remain in the United States after February 21, 2003.

(b) **Dual citizens.** This Notice is applicable to any alien who is a national or citizen of a designated country, notwithstanding any dual nationality or citizenship.

(c) **Requirement to appear before an immigration officer.** All aliens described in paragraph (a) shall, between January 13, 2003, and February 21, 2003, inclusive, appear before an immigration officer at any of the locations listed in the appendix to this Notice.

(d) **Information to be provided.** All aliens described in paragraph (a) shall:

(1) Answer questions under oath before an immigration officer, which answers shall be recorded by the immigration officer;

(2) Present to such immigration officer:

(i) The alien's travel documents, including passport and the Form I–94 issued upon admission, and any other forms of government-issued identification;

(ii) Proof of residence, such as, but not limited to, title to land or a lease or a rental agreement, and, if applicable, proof of matriculation at an educational institution, and, if applicable, proof of employment; and

(iii) Such other information as is requested by the immigration officer; and

(3) Shall be fingerprinted and photographed by the immigration officer.

(e) *Annual reporting obligations.* All aliens described in paragraph (a) shall appear, within 10 days of each anniversary of the date on which they were registered under this Notice, before an immigration officer at any of the locations listed in the appendix to this Notice and answer questions under oath. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5)–(9).

(f) *Notice of Change of Address.* All aliens described in paragraph (a) shall advise the Immigration and Naturalization Service, through the filing of Form AR–11, of any change of address within 10 days of such change of address. If an alien fails to notify the Immigration and Naturalization Service in writing of a change of address and the new address, as required by section 265(a) of the Act, 8 U.S.C. 1305(a), the alien may be subject to prosecution under section 266(b) of the Act, 8 U.S.C. 1306(b), and may be deportable as provided in section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A). If it becomes necessary to place the alien in removal proceedings, the Immigration and Naturalization Service may use the most recent address provided by the alien for service of the Notice to Appear.

(g) *Inapplicability.* The requirements of this Notice do not apply to any alien who:

(1) Is presently in a nonimmigrant classification under section 101(a)(15)(A) or 101(a)(15)(G) of the Act, 8 U.S.C. 1101(a)(15)(A) or 8 U.S.C. 1101(a)(15)(G);

(2) Is lawfully admitted to the United States for permanent residence; or

(3) Has an application for asylum pending on December 18, 2002, or has been granted asylum, under section 208 of the Act, 8 U.S.C. 1158.

(h) *Rescission.* Attorney General Order No. 2636–2002 of December 12, 2002, is rescinded.

Dated: December 16, 2002.

**John Ashcroft,**

*Attorney General.*

## Appendix: Immigration and Naturalization Service Offices for Registration of Certain Nonimmigrants Pursuant to Notice of December 18, 2002

ALASKA—Anchorage, 620 East 10th Avenue, Anchorage, Alaska 99501
ARIZONA—Phoenix 2035 North Central Avenue, Phoenix, Arizona 85004
ARIZONA—Tucson 6431 South Country Club Road, Tucson, Arizona 85706–5907
ARKANSAS—Fort Smith 4991 Old Greenwood Road, Fort Smith, Arkansas 72903
CALIFORNIA—Fresno 865 Fulton Mall, Fresno, California 93721
CALIFORNIA—Los Angeles, 300 North Los Angeles Street, Room 2024, Los Angeles, California 90012
CALIFORNIA—Sacramento, 650 Capitol Mall, Sacramento, CA 95814
CALIFORNIA—San Bernardino 655 West Rialto Avenue, San Bernardino, California 92410
CALIFORNIA—San Diego, 880 Front Street, Suite 1209 San Diego, California 92101
CALIFORNIA—San Francisco, 444 Washington Street, San Francisco, California 94111
CALIFORNIA—San Jose, 1887 Monterey Road, San Jose, California 95112
CALIFORNIA—Santa Ana, 34 Civic Center Plaza, Santa Ana, California 92701
COLORADO—Denver, 4730 Paris Street, Denver, CO 80239
CONNECTICUT—Hartford, 450 Main Street, 4th Floor, Hartford, Connecticut 06103
FLORIDA—Jacksonville, 4121 Southpoint Boulevard, Jacksonville, Florida 32216
FLORIDA—Miami, 7880 Biscayne Boulevard, Miami, Florida 33138
FLORIDA—Orlando, 9403 Tradeport Drive, Orlando, Florida 32827
FLORIDA—Tampa, 5524 West Cypress Street, Tampa, Florida 33607–1708
FLORIDA—West Palm Beach, 326 Fern Street, Riviera Beach, Florida 33401
GEORGIA—Atlanta, 77 Forsyth Street, SW, Atlanta, Georgia 30303
GUAM—Agana, Sirena Plaza, Suite 100, 108 Hernan Cortez Avenue, Hagatna, Guam 96910
HAWAII—Honolulu, 595 Ala Moana Boulevard, Honolulu, Hawaii 96813
IDAHO—Boise, 1185 South Vinnell Way, Boise, Idaho 83709
ILLINOIS—Chicago, 230 South Dearborn, 2nd Floor, Chicago, Illinois 60604
INDIANA—Indianapolis, 950 N. Meridian Street, Room 400, Indianapolis, Indiana 46204
IOWA—Des Moines, 210 Walnut Street, Room 369, Des Moines, Iowa 50309
KANSAS—Wichita, 271 West 3rd Street North, Suite 1050, Wichita, Kansas 67202–1212
KENTUCKY—Louisville, 601 West Broadway, Room 390, Louisville, Kentucky 40202
LOUISIANA—New Orleans, 701 Loyola Avenue, New Orleans, Louisiana 70113
MAINE—Portland, 176 Gannet Drive, South Portland, Maine 04106
MARYLAND—Baltimore, 31 Hopkins Place, Baltimore, Maryland 21201
MASSACHUSETTS—Boston, Government Center, JFK Federal Building, Boston, Massachusetts 02203
MICHIGAN—Detroit, 333 Mount Elliot Street, Detroit, Michigan 48207–4381
MINNESOTA—Minneapolis, 2901 Metro Drive, Suite 100, Bloomington, Minnesota 55425
MISSOURI—Kansas City, 9747 Northwest Conant Avenue, Kansas City, Missouri 64153
MISSOURI—St. Louis, 1222 Spruce Street, St. Louis, Missouri 63103
MONTANA—Helena, 2800 Skyway Drive, Helena, Montana 59601
NEBRASKA—Omaha, 3736 South 132nd Street, Omaha, Nebraska 68144
NEVADA—Las Vegas, 3373 Pepper Lane, Las Vegas, NV 89120–2739
NEVADA—Reno, 1352 Corporate Boulevard, Reno, Nevada 85902
NEW HAMPSHIRE—Manchester, 803 Canal Street, Manchester, New Hampshire 03101
NEW JERSEY—Cherry Hill, 1886 Greentree Road, Cherry Hill, New Jersey 08003
NEW JERSEY—Newark 970, Broad Street, Newark, New Jersey 07102
NEW MEXICO—Albuquerque, 1720 Randolph Road SE, Albuquerque, New Mexico 87106
NEW YORK—Albany, 1086 Troy-Schenectady Road, Latham, New York 12110
NEW YORK—Buffalo, 130 Delaware Avenue, Buffalo, New York 14202
NEW YORK—New York City, 26 Federal Plaza New York, New York 10278
NORTH CAROLINA—Charlotte, 210 E. Woodlawn Road, Building 6, Suite 138, Charlotte, North Carolina 28217

OHIO—Cincinnati, 550 Main Street, Room 4001, Cincinnati, Ohio 45202
OHIO—Cleveland, 1240 East Ninth Street, Cleveland, Ohio 44199
OHIO—Columbus, 50 West Broad Street, Suite 304D, Columbus, Ohio 43215
OKLAHOMA—Oklahoma City, 4149 Highline Boulevard, Suite 300, Oklahoma City, Oklahoma 73108
OREGON—Portland, 511 Northwest Broadway, Portland, Oregon 97209
PENNSYLVANIA—Philadelphia, 1600 Callowhill Street, Philadelphia, Pennsylvania 19130
PENNSYLVANIA—Pittsburgh, 1000 Liberty Avenue, Room 214, Pittsburgh, Pennsylvania 15222
PUERTO RICO—San Juan, 7 Tabonuco Street, Guaynabo, Puerto Rico 00968
RHODE ISLAND—Providence, 200 Dyer Street, Providence, Rhode Island 02903
ST. CROIX—Christiansted, Sunny Isle Shopping Center, Christiansted, St. Croix, U.S. Virgin Islands 00820
ST. THOMAS—Charlotte Amalie, Nisky Center, Suite 1A, First Floor South, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00802
SOUTH CAROLINA—Charleston, 170 Meeting Street, Fifth Floor, Charleston, South Carolina 29401
SOUTH CAROLINA—Greer, 142–D West Philips Road, Greer, South Carolina 29650
TENNESSEE—Memphis, 1314 Sycamore View Road, Suite 100, Memphis, Tennessee 38134
TEXAS—Dallas, 8101 North Stemmons Freeway, Dallas, Texas 75247
TEXAS—El Paso, 1545 Hawkins Boulevard, El Paso, Texas 79925
TEXAS—Harlingen, 2102 Teege Avenue, Harlingen, Texas 78550–4667
TEXAS—Houston, 126 Northpoint Drive, Houston, Texas 77060
TEXAS—San Antonio, 8904 Fourwinds Drive, San Antonio, Texas 78239
UTAH—Salt Lake City, 5272 South College Drive, #100, Murray, Utah 84123
VERMONT—St. Albans, 64 Gricebrook Road, St. Albans, Vermont 05478
VIRGINIA—Norfolk, 5280 Henneman Drive, Norfolk, Virginia 23513
WASHINGTON, D.C., 4420 North Fairfax Drive, Arlington, Virginia 22203
WASHINGTON—Seattle, 815 Airport Way, South, Seattle, Washington 98134
WASHINGTON—Spokane, 920 W. Riverside Room 691, Spokane, Washington 99201
WASHINGTON—Yakima, 417 E. Chestnut, Yakima, Washington 98901
WEST VIRGINIA—Charleston, 210 Kanawha Boulevard West, Charleston, West Virginia 25302
WISCONSIN—Milwaukee, 310 East Knapp Street, Milwaukee, Wisconsin 53202

For further information relating to this notice and information about local office hours and locations, the public may call the National Customer Service Center at 1–800–375–5283 or (TTY) 1–800–767–1833, or visit the INS Web site at *http://www.ins.gov/.*

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT DECEMBER 18, 2002

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**National Park Service**

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**JUSTICE DEPARTMENT**

**Prisons Bureau**

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**Federal Aviation Administration**

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**Internal Revenue Service**

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California; comments due by 12-27-02; published 10-28-02 [FR 02-27305]

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

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**AGRICULTURE DEPARTMENT**

**Food and Nutrition Service**

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**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

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**DEFENSE DEPARTMENT**

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Federal Acquisition Regulation (FAR):

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**DEFENSE DEPARTMENT**

**Engineers Corps**

Danger zones and restricted areas:

Sandy Hook Bay, NJ; Naval Weapons Station EARLE; comments due by 12-27-02; published 11-27-02 [FR 02-30028]

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

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Water pollution; effluent guidelines for point source categories:

Construction and development; storm water discharges; comments due by 12-23-02; published 10-16-02 [FR 02-26302]

Water programs:

Water quality standards—

Five Mile Creek, AL; designated use; comments due by 12-23-02; published 10-23-02 [FR 02-26845]

**FARM CREDIT ADMINISTRATION**

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**FEDERAL COMMUNICATIONS COMMISSION**

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Private land mobile services—

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**FEDERAL ELECTION COMMISSION**

Bipartisan Campaign Reform Act; implementation:

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**GENERAL SERVICES ADMINISTRATION**

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**HEALTH AND HUMAN SERVICES DEPARTMENT**

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**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

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**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

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**JUSTICE DEPARTMENT**

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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

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**NATIONAL CREDIT UNION ADMINISTRATION**

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**NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL**

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**TRANSPORTATION DEPARTMENT**

**Coast Guard**

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New York Marine Inspection Zone and Captain of Port Zone, NY; safety and security zones; comments due by 12-27-02; published 11-27-02 [FR 02-30105]
Port Valdez and Valdez Narrows, AK; security zone; comments due by 12-23-02; published 10-23-02 [FR 02-26974]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

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**National Highway Traffic Safety Administration**

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**International Investment Office**

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**Internal Revenue Service**

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**Thrift Supervision Office**

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

**H.R. 38/P.L. 107–332**

Homestead National Monument of America Additions Act (Dec. 16, 2002; 116 Stat. 2871)

**H.R. 308/P.L. 107–333**

Guam War Claims Review Commission Act (Dec. 16, 2002; 116 Stat. 2873)

**H.R. 451/P.L. 107–334**

To make certain adjustments to the boundaries of the Mount Nebo Wilderness Area, and for other purposes. (Dec. 16, 2002; 116 Stat. 2876)

**H.R. 706/P.L. 107–335**

Lease Lot Conveyance Act of 2002 (Dec. 16, 2002; 116 Stat. 2878)

**H.R. 1712/P.L. 107–336**

To authorize the Secretary of the Interior to make adjustments to the boundary of the National Park of American Samoa to include certain portions of the islands of Ofu and Olosega within the park, and for other purposes. (Dec. 16, 2002; 116 Stat. 2882)

**H.R. 1776/P.L. 107–337**

Buffalo Bayou National Heritage Area Study Act (Dec. 16, 2002; 116 Stat. 2883)

**H.R. 1814/P.L. 107–338**

Metacomet-Monadnock-Mattabesett Trail Study Act of 2002 (Dec. 16, 2002; 116 Stat. 2886)

**H.R. 1870/P.L. 107–339**

Fallon Rail Freight Loading Facility Transfer Act (Dec. 16, 2002; 116 Stat. 2887)

**H.R. 1906/P.L. 107–340**

Pu'uhonua o Honaunau National Historical Park Addition Act of 2002 (Dec. 16, 2002; 116 Stat. 2889)

**H.R. 1925/P.L. 107–341**

To direct the Secretary of the Interior to study the suitability and feasibility of designating the Waco Mammoth Site Area in Waco, Texas, as a unit of the National Park System, and for other purposes. (Dec. 16, 2002; 116 Stat. 2890)

**Last List December 17, 2002**

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