



# Federal Register

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7-8-03

Vol. 68 No. 130

Tuesday

July 8, 2003

Pages 40469-40750



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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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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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

RIN 3150-AG86

#### Incorporation by Reference of ASME BPV and OM Code Cases

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to incorporate by reference NRC Regulatory Guides listing Code cases published by the American Society of Mechanical Engineers (ASME) which the NRC has reviewed and found to be acceptable for use. These Code cases provide alternatives to requirements in the ASME Boiler and Pressure Vessel Code (BPV Code) and the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) pertaining to construction, inservice inspection and inservice testing of nuclear power plant components. This action incorporates by reference three regulatory guides that address NRC review and approval of ASME-published Code cases. Therefore, the Code cases listed in these regulatory guides are incorporated by reference into the NRC's regulations.

**EFFECTIVE DATE:** August 7, 2003. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Office of the Federal Register as of August 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-3092, e-mail [hst@nrc.gov](mailto:hst@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

New editions of the ASME BPV and OM Codes are issued every three years and addenda to the editions are issued annually. It has been the Commission's policy to update 10 CFR 50.55a to incorporate the ASME Code editions and addenda by reference. Section 50.55a was last amended on September 26, 2002 (67 FR 60520), to incorporate by reference the 1998 Edition of these Codes, up to and including the 2000 Addenda. The ASME also publishes Code cases for Section III and Section XI quarterly and Code cases for the OM Code yearly. Code cases are alternatives to the requirements of the ASME BPV Code and the OM Code. In the past the NRC staff's practice was to review these Code cases and find them either acceptable, conditionally acceptable, or unacceptable for use by NRC licensees. These Code cases were then listed in periodically revised regulatory guides (RGs), together with information on their acceptability. Footnote 6 to § 50.55a referred to those RGs listing Code cases determined by the staff to be "suitable for use." However, the publication dates and version numbers of the RGs were not specified in Footnote 6 and these RGs had not been approved by the Director of the *Office of the Federal Register* (OFR) for incorporation by reference into the Code of Federal Regulations.

#### Discussion

The NRC identified a concern with the practice of generally referencing the RGs addressing ASME Code cases in Footnote 6 to § 50.55a. The notice and comment provisions of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*), as amended, were arguably not satisfied by this practice. To address this matter, on March 19, 2002 (67 FR 12488), the NRC published a proposed amendment to revise § 50.55a to incorporate by reference the regulatory guides which list the ASME Code cases approved or conditionally approved by the NRC.

This final rule amends 10 CFR 50.55a(b) to incorporate by reference the RGs listing ASME BPV and OM Code cases which are approved for use by NRC licensees (including their revision numbers) into Title 10 of the Code of Federal Regulations. The text of existing Footnote 6 to § 50.55a is deleted and all references to Footnote 6 in § 50.55a have

been removed and replaced by language that specifies, where appropriate, that the optional ASME Code cases that are incorporated by reference in § 50.55a(b) may be applied in lieu of the corresponding requirements of the ASME Codes. Sections 50.55a(b)(4), (b)(5), and (b)(6), which specify limitations upon the implementation of approved ASME Code cases, have been added.

Over the past several years, NRC licensees have expressed their dissatisfaction about the length of time it takes the NRC to review and approve Code cases. To improve the efficiency of the process for endorsement of ASME Code cases, the NRC plans to proceed as follows for future updates. First, the NRC will review Code cases and revise the RGs periodically to indicate Code cases approved for use by NRC licensees. The NRC will issue the draft RGs for comment before issuance of the final RGs. At approximately the time each set of final guides is issued, the NRC will also issue the next set of proposed guides. Second, the NRC will conduct rulemakings to incorporate by reference the revised RGs into § 50.55a. The NRC will complete each rulemaking within a short time of the issuance of the applicable final RGs. Where these rulemakings do not involve any significant questions of policy, they will be issued in accordance with the rulemaking authority delegated to the NRC's Executive Director for Operations under NRC Management Directives 6.3 and 9.17. To expedite the issuance of subsequent rules, the NRC will conduct these rulemakings without preparing a rulemaking plan. If the rulemakings are not controversial and significant adverse comment is not expected, the NRC will incorporate by reference future revisions of the RGs through the issuance of direct final rules. These actions should expedite the NRC process for reviewing and approving ASME Code cases.

#### Resolution of Public Comments

In response to the publication of the proposed rule, the NRC received eight letters commenting on various aspects of the rulemaking. The letters came from utilities, law firms representing utilities, and the Nuclear Energy Institute (NEI). NEI sent a second letter to supplement its first letter. The following sections address the various issues raised by the public commenters.

### 1. Comment

On December 28, 2001 (66 FR 67335), the NRC published a notice of the availability of proposed revisions to RGs 1.84 and 1.147 and a new proposed RG [temporarily designated DG-1089 but subsequently given a permanent designation of RG 1.192] and solicited public comments. One rule commenter that had responded to the December 28, 2001, notice requests that the NRC consider the comments he submitted on the proposed regulatory guides as part of this rulemaking.

### Response

The NRC has considered the public comments received in response to its December 28, 2001, notice and has resolved those comments by modifying the guides, as appropriate, or providing its rationale for not doing so. The public comments received and the NRC resolution of the comments on the guides is available to the public as indicated in the "Availability of Documents" section of these statements of consideration. The NRC finds no reason to further consider those comments as part of this rulemaking.

### 2. Comment

One commenter believes that as an alternative to this rulemaking, the NRC should consider developing a Web site (1) where the individual Code cases could be posted for public comment and for subsequent NRC acceptance (identifying any limitations on or exceptions to the use of the Code cases), or (2) where revisions to the RGs could be posted for comment each time the NRC proposes to endorse a Code case. Either method would allow individual Code cases to be reviewed by the NRC, posted for public comment, and accepted for use by licensees within 3-to-6 months of the ASME publication of the Code case, as compared to the 3-to-5 years between past revisions of the RGs.

### Response

The commenter's suggestion does not appear to be in compliance with the notice and comment provisions of the APA. The APA requires notice of proposed rulemaking to be published in the **Federal Register**. As discussed earlier, the Code cases listed in the RGs to be incorporated by reference provide alternatives to compliance with the ASME Codes, which are rules by virtue of their incorporation by reference into § 50.55a. Accordingly, it is the NRC's view that any generally applicable alternatives to the endorsed ASME Codes must be considered requirements,

and are therefore subject to the notice and comment requirements of the APA.

### 3. Comment

Some commenters state that the NRC's regulations already allow "generic" approval of Code cases as alternatives to the requirements in § 50.55a. In accordance with § 50.55a(a)(3), alternatives "may be used when authorized by the Director of the Office of Nuclear Reactor Regulation" if the alternatives provide an acceptable level of quality and safety. Several commenters believe that the NRC's acceptance on a generic basis could be authorized in a generic communication, such as a regulatory issue summary. These commenters recommend that if the NRC determines that the current provisions do not allow a generic approval in this manner, the NRC should provide a generic approval process similar to § 50.55a(a)(3) that would not require continued rulemaking for endorsement of Code cases.

### Response

The NRC does not agree that the provisions in § 50.55a(a)(3) provide for generic approval of Code cases. This paragraph allows licensees, on a licensee-specific basis, to request NRC's review and approval of alternatives to the requirements in the ASME Codes. The purpose of § 50.55a(a)(3) is to provide a mechanism for individual licensees to request approval to implement measures (including Code cases) not generically approved by the NRC in order to meet specific licensee needs. The NRC does not believe that it may through rulemaking adopt a procedure for "generically" approving alternatives to ASME Code provisions which are incorporated by reference in § 50.55a if the procedure does not meet the requirements for rulemaking or an "order" under the APA.

### 4. Comment

While acknowledging that the recommendation is beyond the scope of this rulemaking, one commenter suggests that the NRC explore whether § 50.55a should be revised to no longer reference the editions and addenda of the ASME Code. The editions and addenda of the Code and the Code cases could be put into RGs which provide a means by which the revised regulation could be met. The commenter believes that both the editions and addenda of the Code sections and Code cases could be approved more efficiently in this manner.

### Response

The NRC previously considered this approach but rejected it because of the difficulty, the length of time, and substantial resources that would be necessary to develop a rule that sets forth general requirements for inservice inspection (ISI), inservice testing (IST), and the construction of nuclear power plant components. The NRC agrees that if the rule were revised to no longer incorporate the ASME Codes by reference, then this rulemaking to approve Code cases would not be necessary. However, as a practical matter, to avoid imposing a backfit, the rule would likely have to include a grandfather provision that would allow licensees to use current ASME Code requirements already incorporated by reference into § 50.55a. Thus, the NRC would still be faced with the task of conducting rulemakings to approve Code cases for the grandfathered licensees.

### 5. Comment

Several commenters urge the NRC to expedite the process for reviewing and approving ASME Code cases. One commenter believes that the proposed rule is inconsistent with the NRC strategic goal of improving the efficiency of the regulatory process. Alternative approaches for streamlining the process should be explored.

### Response

The NRC agrees that the process of approving ASME BPV and OM Code cases through incorporation by reference into the regulations is cumbersome and that a more efficient process would better satisfy the NRC's goal of streamlining the regulatory process. As mentioned in the Discussion section of these statements of consideration, the NRC is planning several actions that it believes will improve the timeliness of the incorporation by reference process. Other actions to improve the efficiency of the Code case approval process are discussed in the Resolution of Public Comments on Guides document published in conjunction with the publication of the RGs in question (see "Availability of Documents" section). However, any streamlining of the process must comply with applicable law.

### 6. Comment

One commenter recommends that, if the NRC believes it must use the rulemaking process to incorporate by reference its Code case approvals, maximum use should be made of the direct final rule process to enable

licensees to implement Code cases sooner.

#### Response

The NRC agrees with this comment and is considering the feasibility of taking this approach with future rulemakings of this type. Direct final rules are published together with companion proposed rules containing the identical regulations. If there is no significant adverse public comment on the direct final rule during the comment period, the rule becomes a final rule within a specified number of days after publication. If one or more significant adverse comment is received, the direct final rule is withdrawn and the proposed rule is treated as though no direct final rule had been published. There is no further opportunity for public comment. However, the NRC cautions that the RGs in question may control the timeliness in this matter. Unless a method to streamline the RG publication process is developed, efficiencies arrived at by using direct final rules may be minor.

#### 7. Comment

Several commenters object to the wording in proposed § 50.55a(i)(2)(ii), as well as the parallel wording of §§ 50.55a(i)(3)(ii) and (i)(4)(ii). The proposed language would require that users of a Code case implement newly approved versions of the Code case along with any modifications or limitations. The commenters argue that this is inconsistent with the existing requirements in §§ 50.55a(f)(4)(ii) and (g)(4)(ii), which permit licensees to defer implementation of new ASME Code criteria.

#### Response

The NRC agrees that the proposed rule language would require licensees who have implemented a Code case to implement additional modifications and limitations if the Code case is revised in the future. In general, this is contrary to NRC's intention. The NRC intends that once an approved Code case is implemented by an applicant or licensee, it may continue to apply the Code case until it updates its Code of Record for the component being constructed or until the end of the licensee's current 120-month ISI or IST update interval, as applicable. Accordingly, the proposed rule language has been modified in the final rule §§ 50.55a(b)(4)(ii), (b)(5)(ii), and (b)(6)(ii) (corresponding to §§ 50.55a(i)(2)(ii), (i)(3)(ii), and (i)(4)(ii) in the proposed rule) to clarify the NRC's intention in this regard. An exception to this would be when the NRC's initial

approval of the Code case by a specific licensee is conditioned by including language that requires the licensee to apply any limitations or conditions specified in a revised RG that approves that Code case. Accordingly, the final rule states that the licensee may apply the previous version of the Code case "as authorized," which refers to the NRC's condition in the initial approval of the Code case for use by a specific licensee.

#### 8. Comment

One commenter states that proposed § 50.55a(i)(2)(iv) is not "conducive to" use with repair/replacement activities under Section XI of the ASME Code and the Section XI Code cases. Replacement items are procured over time and many different editions and addenda of Section III may be referenced for different items. Therefore, the phrase in the proposed rule "\* \* \* until the licensee updates its Section III Code of Record" could be interpreted as referring to a singular event rather than an action that occurs many times. Adding the phrase "for the item being constructed" would clarify that a licensee can use an annulled Code case until it procures the specific item to an updated Section III.

The commenter is also concerned about situations in which the licensee implements a Code case to a certain edition of the Code, but later updates his Code of Record to a later edition of the Code. In some instances the updated Code of Record will not have the Code case approved because it has been incorporated into the Code. The commenter recommends the following wording to resolve both concerns: "A licensee that has initiated implementation of a Code case that is subsequently annulled by the ASME may continue to apply that Code case until the licensee updates its Section III Code of Record for the item being constructed to an edition or addenda of Section III that has incorporated the case."

#### Response

The NRC agrees with these comments and has amended § 50.55a(b)(4)(iii) in the final rule to read as the commenter suggests with some further clarifications, as follows: "Application of an annulled Code case is prohibited unless an applicant or licensee applied the listed Code case prior to it being listed as annulled in Regulatory Guide 1.84. If an applicant or licensee has applied a listed Code case that is later listed as annulled in Regulatory Guide 1.84, the applicant or licensee may continue to apply the Code case until it

updates its Code of Record for the component being constructed."

#### 9. Comment

A commenter requests that the NRC retain Footnote 6 of § 50.55a and amend it to reference a new RG which is temporarily designated as DG-1112. Although this RG, which has been designated NRC Regulatory Guide 1.193, lists Code cases that the NRC has reviewed and not approved, the commenter believes that it would be useful to licensees because they could still implement the Code cases through the provisions of § 50.55a(a)(3), if the NRC's concerns are adequately resolved.

#### Response

The NRC does not believe that it is appropriate to reference RGs that list disapproved ASME Code cases. The fact the NRC has not incorporated a Code case by reference simply means that the Code case has not received generic NRC approval, and therefore may not be applied without prior NRC review and approval. Referencing RGs which list disapproved Code cases may give the appearance that the NRC has generically disapproved the Code cases in question, which is incorrect. As the commenter points out, disapproved Code cases may be proposed through the relief request process permitted by § 50.55a(a)(3). Also, the NRC does not believe that the lack of a reference to Regulatory Guide 1.193 presents a hardship to licensees. Licensees are generally aware of its existence and availability and may make use of it as they see fit. Thus, the final rule does not reference this RG.

#### 10. Comment

Several commenters recommend that the incorporation by reference of the RGs listing the NRC-approved ASME BPV and OM Code cases be placed in § 50.55a(b), instead of in a new § 50.55a(i) as in the proposed rule, because of the similarity of the requirements.

#### Response

During the preparation of the proposed rule, the staff considered several options for integrating the incorporation by reference of the RGs with the remaining requirements in § 50.55a and sought public comment on this question. The staff agrees with the commenters that incorporation by reference of the RGs listing NRC-approved Code cases should be co-located with the incorporation by reference of the various ASME BPV and OM Code editions and addenda. Thus, this final rule expands § 50.55a(b) to include the incorporation by reference

of the RGs and adds paragraphs (b)(4), (b)(5), and (b)(6) to specify the implementation requirements.

#### 11. Comment

Sections 50.55a(i)(2)(iv), 50.55a(i)(3)(iv), and 50.55a(i)(4)(iv) of the proposed rule state that licensees could no longer apply an NRC-approved annulled Code case if the NRC later determines the Code case is unacceptable for use and revises § 50.55a or the applicable regulatory guide (1.84, 1.147, or 1.192) to prohibit continued application of the annulled Code case. Several commenters state that revising § 50.55a or the applicable regulatory guide (1.84, 1.147, or 1.192) to prohibit continued application of the NRC-approved annulled Code case for the remainder of the interval is a backfit.

#### Response

The NRC agrees that any revision to § 50.55a prohibiting the continued application of an annulled Code case for the remainder of an interval would be a backfit that must be justified in accordance with § 50.109. In order to avoid confusion, the requirement in the proposed rule prohibiting the continued application of an annulled Code case previously approved by the NRC is deleted in the final rule. However, if in the future, an NRC-approved Code case is annulled, allowed to expire, or revised because the Code case is no longer adequate, the NRC will consider amending § 50.55a and the applicable regulatory guide to prohibit continued application of the Code case. The NRC will justify the revision to § 50.55a in accordance with the requirements in § 50.109.

#### 12. Comment

Several commenters recommend that the phrase, “or the optional ASME Code cases listed in the RGs incorporated by reference in paragraph (i) of this section” be added in six other paragraphs in § 50.55a where reference is made to the use of ASME BPV or OM Code provisions.

#### Response

The phrase in question occurred in various locations of § 50.55a in the proposed rule where the regulations in the current rule had referred the reader to Footnote 6 (which references the RGs listing approved Code cases). The NRC agrees with the commenter that the reference to the use of the optional ASME BPV and OM Code cases should also be included in the specified paragraphs. The NRC has modified §§ 50.55a(f)(3)(iii)(B), (f)(3)(iv)(B),

(f)(4)(i), (f)(4)(ii), (g)(4)(i), and (g)(4)(ii), accordingly.

#### 13. Comment

One commenter states that the incorporation by reference of the ASME Code cases in § 50.55a is unnecessary because the ASME issues Code cases as alternative rules applicable for a 3-year period, after which the Code cases are incorporated into the ASME Code, annulled, or renewed, and because § 50.55a has provisions for endorsement of future editions and addenda of the ASME Code. The commenter also believes the process is inefficient and unlawful because it introduces new regulatory positions without satisfying the requirements of the Backfit Rule, 10 CFR 50.109.

#### Response

The Commission agrees that once the provisions of a Code case are incorporated into an edition or addenda of the ASME BPV or OM Code, and those editions and addenda of the Codes are incorporated by reference, there is no need for incorporation by reference of those alternative requirements. However, from the time that the Code case is published by the ASME to the time it is listed in an incorporated edition or addenda of the Codes, there is no legal mechanism for the NRC to approve its use other than through the provisions of § 50.55a(a)(3) for requesting approval of alternatives. This requires a case-by-case review and approval, which is time consuming and wasteful of agency resources. Therefore, the Commission has determined that rulemaking approving the use of alternatives to the required ASME Code provisions specified in § 50.55a is the most efficient course of action that complies with applicable law.

This rulemaking contains no requirements that satisfy the definition of a backfit as specified in 10 CFR 50.109(a)(1). The initial application of a Code case is voluntary on the part of the licensee. Absent approval of the NRC, either on a license-specific basis or through a generic rulemaking, a licensee is not legally authorized to use an ASME Code case. Hence, any limitations on the use of Code cases are not backfits as defined in § 50.109(a)(1).

#### 14. Comment

Several commenters believe that the NRC is acting contrary to the intent of Congress in passing the National Technology Transfer and Advancement Act of 1995, (Pub. L. 104–113), which was implemented through Office Management and Budget (OMB) Circular A–119 and NRC Management

Directive 6.5, “NRC Participation on Development and Use of Consensus Standards.” These commenters believe the NRC has not identified regulations that are in direct conflict with the published Code case or documented a regulatory basis for imposing limitations or modifications.

#### Response

The NRC does not agree with the commenters’ opinion that the NRC has not fully complied with the letter and intent of Public Law 104–113 and the associated guidance. Public Law 104–113, requires that Federal agencies use technical standards that are developed by voluntary consensus standards bodies unless the use of these standards is inconsistent with applicable law or is otherwise impractical. The statute does not require Federal agencies to endorse a standard in its entirety, nor does it forbid Federal agencies to endorse industry consensus standards with limitations or modifications, if the agencies deem the provisions of the standards to be inconsistent with applicable law or otherwise impractical. Endorsing a voluntary consensus standard with limitations, modifications, or exceptions furthers the congressional intent of Federal reliance on voluntary consensus standards by allowing the adoption of substantial portions of consensus standards. Agencies need not reject the standards in their entirety because a few provisions are not acceptable. Moreover, there is no legislative history suggesting that Congress intended agencies to take an “all or nothing” approach to the endorsement of voluntary consensus standards under the Act, and the OMB guidance implementing Public Law 104–113 does not address the matter. The discussions of the limitations and modifications in the RGs and the document on the Resolution of Public Comments on the RGs are sufficient to satisfy the requirements of section 12(d)(3) of Public Law 104–113, and the relevant requirements of OMB Circular A–119 (1998).

#### 15. Comment

According to one commenter the proposed rulemaking is unlawful because it is not in compliance with the Backfit Rule, 10 CFR 50.109. (The commenter provided no explanation of why the proposed rule is in conflict with the Backfit Rule.)

#### Response

Section 50.109(a)(2) requires that the NRC perform a backfit analysis for any backfits, as defined in § 50.109(a)(1), that it seeks to impose, unless the

backfits fall into one or more of the delineated exceptions. A backfit is a modification of or addition to systems, components, or design of a facility, or the design approval or manufacturing license, or procedures or organization required to design, construct or operate a facility, any of which may result from a new or amended provision in the Commission's rules or the imposition of a staff regulatory position interpreting the Commission rules that is either new or different from previously applicable staff positions. As discussed in the responses to Comments 11 and 13, the Commission finds that this final rule does not contain any requirements which satisfy the definition of a backfit, and consequently, a backfit analysis is not required.

#### 16. Comment

One commenter states that when Code cases are interpretive of the regulations (or provide an alternative means for achieving compliance with a requirement), they need not be incorporated by reference and that licensees should be permitted to use them with no further NRC action.

#### Response

The NRC agrees that Code cases that are purely interpretations of the regulations incorporated by reference in § 50.55a(b) need not be incorporated by reference. However, the Code cases incorporated by reference in § 50.55a, with or without modifications or limitations, constitute alternatives to the requirements in § 50.55a and not interpretations. Therefore, the NRC believes that incorporating the RGs by reference is the proper treatment of these alternative requirements.

#### Paragraph-by-Paragraph Discussion

On December 28, 2001 (66 FR 67335), the NRC published proposed revisions to RGs 1.84 and 1.147 and a new proposed RG [temporarily designated DG-1089]. The NRC has considered the public comments on these RGs and has resolved those comments by modifying the guides, as appropriate, or providing its rationale for not doing so. Previously, RG 1.84, Revision 31, listed only Section III Code cases related to design and fabrication, and RG 1.85, Revision 31, listed Section III Code cases related to materials and testing. Revision 32 to RG 1.84 lists for the first time in one guide all Section III Code cases that have been approved for use by the NRC. The staff intends to withdraw RG 1.85 when the ensuing revisions to the RGs are published. This rulemaking incorporates by reference Regulatory Guide 1.84, Revision 32, "Design,

Fabrication, and Materials Code Case Acceptability, ASME Section III," Regulatory Guide 1.147, through Revision 13, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," and Regulatory Guide 1.192, "Operation and Maintenance Code Case Acceptability, ASME OM Code."

#### 1. Paragraph 50.55a(b)

In the proposed rule (March 19, 2002: 67 FR 12488), the language of incorporation by reference of the RGs and the implementation requirements were contained in a new postulated paragraph (i). The NRC requested public comment on the proposed placement of these requirements. As discussed in Comment 10 and the corresponding NRC response, the Commission has decided to place the incorporation by reference of the RGs listing NRC-approved ASME BPV and OM Code case in § 50.55a(b) and the corresponding implementation requirements in §§ 50.55a(b)(4), (b)(5), and (b)(6). In this manner, the incorporation by reference of the RGs listing NRC-approved Code cases would be located with the incorporation by reference of the editions and addenda of the ASME BPV and OM Codes and be more organizationally consistent. Thus § 50.55a(b) has been expanded and now contains the language of incorporation by reference of the RGs listing NRC-approved ASME BPV and OM Code cases and identifies each RG by title and revision number.

Section 50.55a(b) now specifies the applicable RGs for incorporation by reference in addition to the editions and addenda of the ASME Boiler and Pressure Vessel Code and Code for Operation and Maintenance of Nuclear Power Plants. This paragraph incorporates by reference NRC Regulatory Guide 1.84, Revision 32, NRC Regulatory Guide 1.147, through Revision 13, and NRC Regulatory Guide 1.192. This final rule incorporates all of the revisions of Regulatory Guide 1.147 because some licensees continue to apply Code cases listed as approved in earlier revisions to this RG and if these revisions were not incorporated by reference the further use of these Code cases would be prohibited. Similarly, Revision 14 of Regulatory Guide 1.147 will be incorporated by reference in the same fashion because it has already been prepared in draft form and major reformatting of that document would result in a substantial delay in issuing the final version. However, the NRC will format Revision 15 of Regulatory Guide 1.147 so that it provides the current status of all Section XI Code cases and

at that time the incorporation by reference of previous revisions of that RG will be superceded.

The RGs incorporated by reference in this final rule list Code cases applicable to Section III of the ASME BPV Code, Section XI of the ASME BPV Code, and the ASME OM Code, respectively, that have been approved unconditionally, or with conditions and limitations specified by the NRC, as alternatives to specific Code provisions. NRC approval of the use of Code cases listed in these RGs is granted only if the limitations and conditions, if any, are applied.

Sections 50.55a(b)(4), (b)(5), and (b)(6) require that licensees or applicants initially applying a Code case which is listed in one of the RGs as acceptable apply the most recent version of the Code case listed in the RG. If a licensee or applicant is applying a particular version of an approved Section III Code case, and a later version is incorporated into the applicable RG as acceptable, the licensee or applicant may continue to apply the earlier version of the Code case until it updates its Code of Record for the component being constructed. A licensee may continue to apply the earlier version of a Section XI or OM Code case until the end of the licensee's current 120-month ISI or IST update interval, including any adjustments to the interval permitted under Paragraphs IWA-2430(c)(1) and (e) of Section XI of the ASME BPV Code or Paragraphs ISTA 2.2.3(d) and (e) of the OM Code.

Sections 50.55a (b)(4), (b)(5), and (b)(6) also specify that a licensee is permitted to apply an annulled or expired Code case provided that it has been applied before it has been listed as expired or annulled in RG 1.84, 1.147, or 1.192. A licensee implementing an approved Section III Code case that is subsequently listed as annulled or expired in RG 1.84 may continue to apply that Code case until it updates its Code of Record for the component being constructed. A licensee implementing an approved Section XI or OM Code case that is subsequently listed as annulled or expired in RG 1.147 or RG 1.192 may continue to apply that Code case until it updates its ISI or IST program to an edition or addenda of the Code that has incorporated the Code case. In most circumstances, a Code case is annulled or allowed to expire by the ASME because the Code case is included in a later edition or addenda of the ASME BPV or OM Codes. When a licensee updates its construction, ISI or IST Code of Record, the provisions of the Code can then be applied instead of the annulled or expired Code case. In any event, a licensee may continue to use the annulled or expired Code case

until the end of its 120-month ISI/IST interval or until it updates its construction Code of Record, unless the NRC specifically prohibits its continued use by modifying the RG or 10 CFR 50.55a and performing a backfit analysis in accordance with the provisions in 10 CFR 50.109.

In the proposed rule, §§ 50.55a(i)(2)(iv), (i)(3)(iv), and (i)(4)(iv) contained language implying that § 50.55a or the RGs could specifically prohibit the use of annulled Code cases. As noted in the Response to Comment 11, this language is unnecessary and has been removed in the final rule.

2. Paragraphs 50.55a(c)(3), (d)(2), and (e)(2)

Current references to Footnote 6 in §§ 50.55a(c)(3), (d)(2), and (e)(2) have been removed, and text has been added to indicate that the optional ASME Code cases referred to are those listed in the RGs that are incorporated by reference in § 50.55a(b).

3. Paragraphs 50.55a(f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (g)(2), (g)(3)(i), and (g)(3)(ii)

Currently, §§ 50.55a(f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (g)(2), (g)(3)(i), and (g)(3)(ii) do not specifically mention ASME Code cases but have a reference to Footnote 6. These references to Footnote 6 have been removed and text has been added

to indicate that the optional ASME Code cases referred to are those listed in the RGs that are incorporated by reference in § 50.55a(b).

4. Paragraphs 50.55a(f)(3)(iii)(B), (f)(3)(iv)(B), (f)(4)(i), (f)(4)(ii), (g)(4)(i), and (g)(4)(ii)

Sections 50.55a(f)(3)(iii)(B), (f)(3)(iv)(B), (f)(4)(i), (f)(4)(ii), (g)(4)(i), and (g)(4)(ii) have been amended to indicate that the ASME Code cases listed in the RGs that are incorporated by reference in § 50.55a may be applied in lieu of corresponding ASME BPV or OM Code requirements.

5. Footnote 6, 10 CFR 50.55a

Footnote 6 has been removed from § 50.55a and the footnote number has been reserved. Footnote 6 to § 50.55a formerly stated that ASME Code cases suitable for use are listed in RGs 1.84, 1.85, and 1.147. These Code cases are now approved for use by specific language in §§ 50.55a(c)(3), (d)(2), (e)(2), (f)(2), (f)(3)(iii)(A), (f)(3)(iii)(B), (f)(3)(iv)(A), (f)(3)(iv)(B), (f)(4)(i), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(4)(ii). Footnote 6 also stated that the use of other Code cases may be authorized by the Director of the Office of Nuclear Reactor Regulation upon request pursuant to § 50.55a(a)(3). This text is being removed because it is unnecessary; licensees continue to have

the option of requesting approval to use Code cases not incorporated by reference into § 50.55a under § 50.55a(a)(3).

Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following:

*Public Document Room (PDR).* The NRC Public Document Room is located at 11555 Rockville Pike, Public File Area O-1 F21, Rockville, Maryland.

*Rulemaking Web site.* The NRC's interactive rulemaking Web site is located at <http://ruleforum.nrl.gov>. The documents may be viewed and downloaded electronically via this Web site.

*The NRC's Public Electronic Reading Room (PERR).* The NRC's public electronic Reading Room is located at <http://www.nrc.gov/reading-rm.html>.

*The NRC staff contact (NRC Staff).* Single copies of the final rule, the regulatory analysis, the environmental assessment, and the regulatory guides may be obtained from Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Alternatively, you may contact Mr. Tovmassian at (301) 415-3092 or via e-mail to: [hst@nrc.gov](mailto:hst@nrc.gov).

Document	PDR	Web	PERR	NRC staff
Environmental Assessment .....	x	x	ML030690244	x
Regulatory Analysis .....	x	x	ML031490533	x
Regulatory Guide 1.192 .....	x		ML030730430	x
Regulatory Guide 1.84, Revision 32 .....	x		ML030730417	x
Regulatory Guide 1.147, Revisions 0 to 12 .....	x		ML031560264	x
Regulatory Guide 1.147, Revision 13 .....	x		ML030730423	x
Regulatory Guide 1.193 .....	x		ML030730440	x
Resolution of Public Comments on Guides .....	x		ML030730448	x

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such standards is inconsistent with applicable law or is otherwise impractical. The NRC is amending its regulations to incorporate by reference regulatory guides that list ASME BPV and OM Code cases which have been approved by the NRC. ASME Code cases, which are ASME-approved alternatives to the provisions of ASME Code editions and addenda, constitute national consensus standards, as defined in Public Law 104-113 and OMB Circular A-119. They are

developed by bodies whose members (including the NRC and utilities) have broad and varied interests.

These statements of consideration provide the reasons for modifying or limiting the applicability of ASME Code cases otherwise approved for use by the NRC as alternatives to current ASME Code provisions incorporated by reference into § 50.55a. The treatment of ASME BPV and OM Code cases, and modifications and conditions placed on them, in this final rule does not conflict with any policy on agency use of consensus standards specified in OMB Circular A-119.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment, and, therefore, an environmental impact statement is not required.

This rulemaking will not significantly increase the probability or consequences of accidents; no changes are being made in the types of effluents that may be released off site; and there is no significant increase in public radiation exposure. Therefore, there are no significant environmental impacts

associated with the action. Therefore, the NRC determines that there will be no significant off site impact to the public from this action.

The basis for NRC's finding is set forth in an environmental assessment on this final rule. The environmental assessment is available as indicated in the Availability of Documents section under the Supplementary Information heading. The NRC requested the views of the States on the environmental assessment for the rule and did not receive any comments from the States.

#### Paperwork Reduction Act Statement

This final rule decreases the burden on licensees for recordkeeping and reporting requirements related to examinations, tests, and repair and replacement activities during refueling outages and the recordkeeping requirements associated with welding procedures. The annual public burden reduction for this information collection is estimated to average 59 hours for each of 172 responses. Because the burden for this information collection is insignificant, OMB clearance is not required. The existing requirements were approved by OMB, approval number 3150-0011.

#### Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

#### Regulatory Analysis

The ASME Code cases listed in the RGs provide voluntary alternatives to the provisions in the ASME BPV Code and OM Code for construction, ISI, and IST of specific structures, systems, and components used in nuclear power plants. Implementation of these Code cases is not required. Licensees use NRC-approved ASME Code cases to reduce regulatory burden or gain additional operational flexibility. It would be difficult for the NRC to provide these advantages independent of the ASME Code case publication process without a considerable additional resource expenditure by the agency. The NRC has prepared a regulatory analysis addressing the qualitative benefits of the alternatives considered in this rulemaking and comparing the costs associated with each alternative. The regulatory analysis is available for inspection in the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O-1 F21. Single copies of the analysis may

be obtained from Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, telephone (301) 415-3092, e-mail [hst@nrc.gov](mailto:hst@nrc.gov).

#### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

#### Backfit Analysis

The provisions in this rulemaking permit, but do not require, licensees to apply Code cases that have been reviewed and approved by the NRC, sometimes with modifications or conditions. Therefore, the implementation of an approved Code case is voluntary and does not constitute a backfit. Thus the Commission finds that these amendments do not involve any provisions that constitute a backfit as defined in 10 CFR 50.109(a)(1), that the backfit rule does not apply to this final rule, and that a backfit analysis is not required.

#### Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

#### List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 50.

■ 1. The authority citation for Part 50 continues to read as follows:

#### PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2239, 2282); Secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under Secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

- 2. Section 50.55a is amended by—
- a. Revising the introductory text of paragraph (b), the introductory text of paragraph (c)(3), paragraph (c)(3)(iv), the introductory text of paragraph (d)(2), paragraph (d)(2)(iii), the introductory text of paragraph (e)(2), paragraphs (e)(2)(iii), (f)(2), (f)(3)(iii)(A), (f)(3)(iii)(B), (f)(3)(iv)(A), (f)(3)(iv)(B), (f)(4)(i), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i) and (g)(4)(ii);
- b. Adding paragraphs (b)(4), (b)(5), and (b)(6); and
- c. Removing the text of Footnote 6 and reserving the footnote number.

#### § 50.55a Codes and standards.

\* \* \* \* \*

(b) The ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants, which are referenced in paragraphs (b)(1), (b)(2), and (b)(3) of this section, were approved for incorporation by reference by the Director of the Office of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. NRC Regulatory Guide 1.84, Revision 32, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III" (June 2003); NRC Regulatory Guide 1.147 (Revision 0—

February 1981), including Revision 1 through Revision 13 (June 2003), "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1"; and Regulatory Guide 1.192, "Operation and Maintenance Code Case Acceptability, ASME OM Code" (June 2003), have been approved for incorporation by reference by the Director of the Office of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These regulatory guides list ASME Code cases which the NRC has approved in accordance with the requirements in paragraphs (b)(4), (b)(5), and (b)(6). Copies of the ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants may be purchased from the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016. Also, copies of these Codes and NRC Regulatory Guides 1.84, Revision 32; 1.147, through Revision 13; and 1.192 are available for inspection and copying for a fee at the Office of the Federal Register, 800 N. Capitol Street, Suite 700, Washington, DC, as well as the NRC Technical Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852-2738. Single copies of Regulatory Guides may be obtained free of charge by writing the Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax to (301) 415-2289; or by email to [DISTRIBUTION@NRC.GOV](mailto:DISTRIBUTION@NRC.GOV).

(4) *Design, Fabrication, and Materials Code Cases.* Licensees may apply the ASME Boiler and Pressure Vessel Code cases listed in NRC Regulatory Guide 1.84, Revision 32, without prior NRC approval subject to the following:

(i) When an applicant or licensee initially applies a listed Code case, the applicant or licensee shall apply the most recent version of that Code case incorporated by reference in this paragraph.

(ii) If an applicant or licensee has previously applied a Code case and a later version of the Code case is incorporated by reference in this paragraph, the applicant or licensee may continue to apply the previous version of the Code case as authorized, or may apply the later version of the Code case, including any NRC-specified conditions placed on its use, until it updates its Code of Record for the component being constructed.

(iii) Application of an annulled Code case is prohibited unless an applicant or licensee applied the listed Code case prior to it being listed as annulled in

Regulatory Guide 1.84. If an applicant or licensee has applied a listed Code case that is later listed as annulled in Regulatory Guide 1.84, the applicant or licensee may continue to apply the Code case until it updates its Code of Record for the component being constructed.

(5) *Inservice Inspection Code Cases.* Licensees may apply the ASME Boiler and Pressure Vessel Code cases listed in Regulatory Guide 1.147 through Revision 13, without prior NRC approval subject to the following:

(i) When a licensee initially applies a listed Code case, the licensee shall apply the most recent version of that Code case incorporated by reference in this paragraph.

(ii) If a licensee has previously applied a Code case and a later version of the Code case is incorporated by reference in this paragraph, the licensee may continue to apply, to the end of the current 120-month interval, the previous version of the Code case as authorized or may apply the later version of the Code case, including any NRC-specified conditions placed on its use.

(iii) Application of an annulled Code case is prohibited unless a licensee previously applied the listed Code case prior to it being listed as annulled in Regulatory Guide 1.147. Any Code case listed as annulled in any Revision of Regulatory Guide 1.147 which a licensee has applied prior to it being listed as annulled, may continue to be applied by that licensee to the end of the 120-month interval in which the Code case was implemented.

(6) *Operation and Maintenance of Nuclear Power Plants Code Cases.* Licensees may apply the ASME Operation and Maintenance Nuclear Power Plants Code cases listed in Regulatory Guide 1.192 without prior NRC approval subject to the following:

(i) When a licensee initially applies a listed Code case, the licensee shall apply the most recent version of that Code case incorporated by reference in this paragraph.

(ii) If a licensee has previously applied a Code case and a later version of the Code case is incorporated by reference in this paragraph, the licensee may continue to apply, to the end of the current 120-month interval, the previous version of the Code case as authorized or may apply the later version of the Code case, including any NRC-specified conditions placed on its use.

(iii) Application of an annulled Code case is prohibited unless a licensee previously applied the listed Code case prior to it being listed as annulled in Regulatory Guide 1.192. If a licensee has

applied a listed Code case that is later listed as annulled in Regulatory Guide 1.192, the licensee may continue to apply the Code case to the end of the current 120-month interval.

(c) \* \* \*  
 (3) The Code edition, addenda, and optional ASME Code cases to be applied to components of the reactor coolant pressure boundary must be determined by the provisions of paragraph NCA-1140, Subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, but—

\* \* \* \* \*  
 (iv) The optional Code cases applied to a component must be those listed in NRC Regulatory Guide 1.84 that is incorporated by reference in paragraph (b) of this section.

\* \* \* \* \*  
 (d) \* \* \*  
 (2) The Code edition, addenda, and optional ASME Code cases to be applied to the systems and components identified in paragraph (d)(1) of this section must be determined by the rules of paragraph NCA-1140, Subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, but—

\* \* \* \* \*  
 (iii) The optional Code cases must be those listed in the NRC Regulatory Guide 1.84 that is incorporated by reference in paragraph (b) of this section.

(e) \* \* \*  
 (2) The Code edition, addenda, and optional ASME Code cases to be applied to the systems and components identified in paragraph (e)(1) of this section must be determined by the rules of paragraph NCA-1140, subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, but—

\* \* \* \* \*  
 (iii) The optional Code cases must be those listed in NRC Regulatory Guide 1.84 that is incorporated by reference in paragraph (b) of this section.

(f) \* \* \*  
 (2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, pumps and valves which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice tests for operational readiness set forth in editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, through Revision 13, or 1.192 that are

incorporated by reference in paragraph (b) of this section) in effect 6 months before the date of issuance of the construction permit. The pumps and valves may meet the inservice test requirements set forth in subsequent editions of this Code and addenda which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, through Revision 13, or 1.192 that are incorporated by reference in paragraph (b) of this section), subject to the applicable limitations and modifications listed therein.

(3) \* \* \*

(iii) \* \* \*

(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases that are listed in NRC Regulatory Guide 1.147, through Revision 13, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

(B) Pumps and valves, in facilities whose construction permit is issued on or after November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in editions and addenda of the ASME OM Code (or the optional ASME Code cases listed in NRC Regulatory Guide 1.192 that is incorporated by reference in paragraph (b) of this section) referenced in paragraph (b)(3) of this section at the time the construction permit is issued.

(iv) \* \* \*

(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 2 and Class 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the

optional ASME Code cases listed in NRC Regulatory Guide 1.147, through Revision 13, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

(B) Pumps and valves, in facilities whose construction permit is issued on or after November 22, 1999, which are classified as ASME Code Class 2 and 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in editions and addenda of the ASME OM Code (or the optional ASME Code cases listed in the NRC Regulatory Guide 1.192 that is incorporated by reference in paragraph (b) of this section) referenced in paragraph (b)(3) of this section at the time the construction permit is issued.

\* \* \* \* \*

(4) \* \* \*

(i) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during the initial 120-month interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months before the date of issuance of the operating license (or the optional ASME Code cases listed in NRC Regulatory Guide 1.192 that is incorporated by reference in paragraph (b) of this section), subject to the limitations and modifications listed in paragraph (b) of this section.

(ii) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during successive 120-month intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month interval (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, through Revision 13, or 1.192 that are incorporated by reference in paragraph (b) of this section), subject to the limitations and modifications listed in paragraph (b) of this section.

\* \* \* \* \*

(g) \* \* \*

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, components (including supports) which are classified as ASME Code Class 1 and Class 2 must be designed

and be provided with access to enable the performance of inservice examination of such components (including supports) and must meet the preservice examination requirements set forth in editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, through Revision 13, that are incorporated by reference in paragraph (b) of this section) in effect six months before the date of issuance of the construction permit. The components (including supports) may meet the requirements set forth in subsequent editions and addenda of this Code which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, through Revision 13, that are incorporated by reference in paragraph (b) of this section), subject to the applicable limitations and modifications.

(3) \* \* \*

(i) Components (including supports) which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice examination of these components and must meet the preservice examination requirements set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, through Revision 13, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular component.

(ii) Components which are classified as ASME Code Class 2 and Class 3 and supports for components which are classified as ASME Code Class 1, Class 2, and Class 3 must be designed and be provided with access to enable the performance of inservice examination of these components and must meet the preservice examination requirements set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, through Revision 13, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular component.

\* \* \* \* \*

(4) \* \* \*

(i) Inservice examinations of components and system pressure tests

conducted during the initial 120-month inspection interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months before the date of issuance of the operating license (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, through Revision 13, that are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed in paragraph (b) of this section.

(ii) Inservice examination of components and system pressure tests conducted during successive 120-month inspection intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month inspection interval (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, through Revision 13, that are incorporated by reference in paragraph (b) of this section), subject to the limitations and modifications listed in paragraph (b) of this section.

\* \* \* \* \*

Dated at Rockville, Maryland, this 10th day of June, 2003. For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 03-17027 Filed 7-7-03; 8:45 am]

BILLING CODE 7590-01-P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM246; Special Conditions No. 25-231-SC]

#### **Special Conditions: Embraer Model 170-100 and 170-200 Airplanes; Sudden Engine Stoppage; Operation Without Normal Electrical Power; Interaction of Systems and Structures**

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

**ACTION:** Final special conditions; correction.

**SUMMARY:** This document corrects a typographical error that appeared in Final Special Conditions 25-231-SC, which were published in the **Federal Register** on April 23, 2003 (68 FR 19933). The typographical error resulted in inadvertent repetition of the following language:

In lieu of compliance with 14 CFR 25.1351(d), the following special conditions apply:

This language correctly appears in the section of the special conditions entitled Operation Without Normal Electrical Power. This same language incorrectly appears in the section entitled Interaction of Systems and Structure and should be stricken.

**EFFECTIVE DATE:** April 10, 2003.

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

**SUPPLEMENTARY INFORMATION:** Final special conditions for Embraer Model 170-100 and 170-200 airplanes were published in the **Federal Register** on April 23, 2003 [68 FR 19933]. These special conditions pertained to sudden engine stoppage, operation without normal electrical power, and interaction of systems and structures.

As published, the final special conditions contained an inadvertent repetition of certain language on page 19935. After the section entitled Operation Without Normal Electrical Power, the language "In lieu of compliance with 14 CFR 25.13519(d), the following special conditions apply:" should remain. In the section entitled Interaction of Systems and Structure, that language should be stricken.

Since no other part of the final special conditions has been changed, the final special conditions are not being republished.

The effective date of the final special conditions remains April 10, 2003.

Issued in Renton, Washington on June 23, 2003.

**Ali Bahrami,**

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

[FR Doc. 03-17112 Filed 7-7-03; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-SW-25-AD; Amendment 39-13217; AD 2003-13-15]

RIN 2120-AA64

#### **Airworthiness Directives; Schweizer Aircraft Corporation Model 269A, 269A-1, 269B, 269C, and TH-55A Helicopters**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to Schweizer Aircraft Corporation (Schweizer) Model 269A, 269A-1, 269B, 269C, and TH-55A helicopters, that currently requires inspecting the lugs on certain aft cluster fittings and each aluminum end fitting on certain tailboom struts. Modifying or replacing each strut assembly within a specified time period and serializing certain strut assemblies are also required by the existing AD. This amendment requires the same actions as the existing AD, and also requires a one-time inspection and repair, if necessary, of certain additional cluster fittings, and replacement and modification of certain cluster fittings within 150 hours time-in-service (TIS) or 6 months, whichever occurs first. This amendment is prompted by the need to expand the applicability to include certain Hughes-manufactured cluster fittings and to provide a terminating action for the repetitive dye-penetrant inspections of the cluster fittings. The actions specified by this AD are intended to prevent failure of a tailboom support strut or a cluster fitting, which could cause rotation of a tailboom into the main rotor blades, and subsequent loss of control of the helicopter.

**DATES:** Effective August 12, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 12, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. 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:**

George Duckett, Aviation Safety Engineer, FAA, New York Aircraft Certification Office, Airframe and Propulsion Branch, 10 Fifth Street, 3rd Floor, Valley Stream, New York, telephone (516) 256-7525, fax (516) 568-2716.

**SUPPLEMENTARY INFORMATION:**

A proposal to amend 14 CFR part 39 by superseding AD 2001-25-52, Amendment 39-12726 (67 FR 19646, April 23, 2002), for Schweizer Model 269A, 269A-1, 269B, 269C, and TH-55A helicopters, was published in the **Federal Register** on February 26, 2003 (68 FR 8865). That action proposed to require:

- Within 10 hours TIS and thereafter at intervals not to exceed 50 hours TIS, dye-penetrant inspect the lugs and replace any cracked cluster fitting;
- Within 150 hours TIS or 6 months, whichever occurs first, replace or modify, using kit, part number (P/N) SA-269K-106-1, each cluster fitting, P/N 269A2234 and P/N 269A2235;
- For strut assemblies, P/N 269A2015 or P/N 269A2015-5, at intervals not to exceed 50 hours TIS, visually inspect the strut aluminum end fittings for deformation or damage, dye-penetrant inspect the strut aluminum end fittings for a crack, and replace deformed, damaged, or cracked parts. Within 500 hours TIS or one year, whichever occurs first, modify or replace certain part-numbered strut assemblies;
- Within 100 hours TIS, for Model 269C helicopters, serialize each strut assembly, P/N 269A2015-5 and 269A2015-11;
- Within 25 hours TIS or 60 days, whichever occurs first, inspect and repair cluster fittings, P/N 269A2234-3 and P/N 269A2235-3; and
- Before further flight, replace any cluster fitting that is cracked or has a surface defect beyond rework limits.

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.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

The FAA estimates that 1,000 helicopters of U.S. registry will be affected by this AD. It will take approximately 2.5 work hours for each dye-penetrant inspection, 12 work hours to replace one cluster fitting, 4 work hours to modify or replace the strut assembly, 0.25 work hours to serialize the strut assembly, and 16 work hours to modify a cluster fitting. The average labor rate is \$60 per work hour. Required parts will cost approximately \$5 for each fitting inspection, \$1,635 to replace a cluster fitting, \$1,500 to modify or replace the strut assembly, and \$1,688 for each cluster fitting modification kit (2 fittings). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$2,260,320 (assuming 2,000 cluster fittings are inspected, 50 cluster fittings are replaced, 6 strut assemblies are modified or replaced, 6 strut assemblies are serialized, and 1,010 cluster fittings are modified).

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 removing Amendment 39-12726 (67 FR 19646, April 23, 2002), and by adding a new airworthiness directive (AD), Amendment 39-13217, to read as follows:

**2003-13-15 Schweizer Aircraft**

**Corporation:** Amendment 39-13217. Docket No. 2002-SW-25-AD. Supersedes AD 2001-25-52, Amendment 39-12726, Docket No. 2001-SW-58-AD.

**Applicability:** Model 269A, 269A-1, 269B, 269C, and TH-55A helicopters, certificated in any category, with a tailboom support strut (strut) assembly, part number (P/N) 269A2015 or 269A2015-5; or with a center frame aft cluster fitting, P/N 269A2234 or 269A2235, and an aft cluster fitting listed in the following table:

Helicopter model number	Helicopter serial number	With aft cluster fitting, P/N
Model 269C .....	0570 through 1165 .....	269A2234-3
Model 269C .....	0500 through 1165 .....	269A2235-3
Model 269A, A-1, B, or C, or TH-55A .....	All .....	269A2234-3 or 269A2235-3

**Exception:** For the Model 269A, A-1, B, or C or TH-55A helicopters with Hughes-manufactured cluster fittings, P/N 269A2234-3 or P/N 269A2235-3, installed, if there is *written* documentation in the aircraft or manufacturer's records that shows the cluster fitting was originally sold by Hughes

after June 1, 1988, the requirements of this AD are not applicable.

**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 (h) 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.

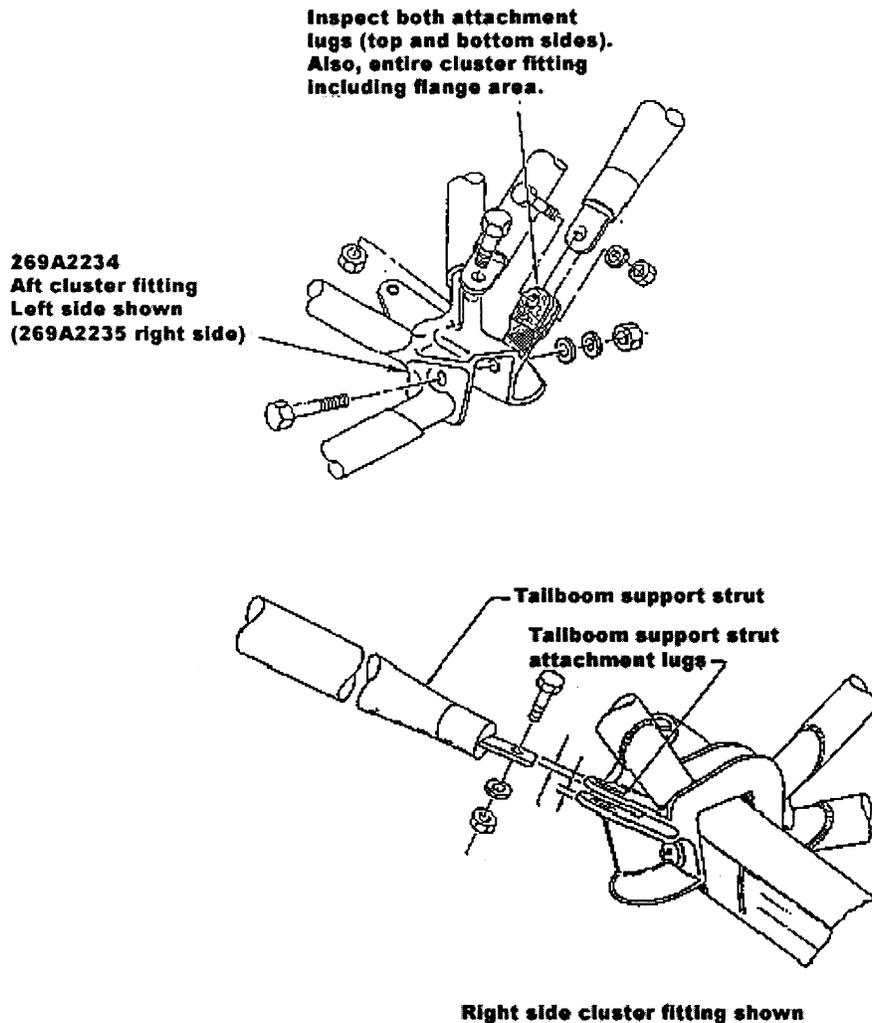
To prevent failure of a tailboom support strut or lug on a cluster fitting, which could cause rotation of a tailboom into the main rotor blades, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 50 hours TIS, for helicopters with cluster fittings, P/N 269A2234 or P/N 269A2235:

(1) Using paint remover, remove paint from the lugs on each cluster fitting. Wash with water and dry. The tailboom support strut must be removed prior to the paint stripping.

(2) Dye-penetrant inspect the lugs on each cluster fitting. See the following Figure 1:

**BILLING CODE 4910-13-P**



**Figure 1**

**BILLING CODE 4910-13-C**

(3) If a crack is found, before further flight, replace the cracked cluster fitting with an airworthy cluster fitting.

(b) Cluster fittings, P/N 269A2234 and P/N 269A2235, that have NOT been modified with Kit P/N SA-269K-106-1, are NOT eligible replacement parts.

(c) Within 150 hours TIS or 6 months, whichever occurs first, replace each cluster

fitting, P/N 269A2234 and P/N 269A2235, with an airworthy cluster fitting or modify each cluster fitting, P/N 269A2234 and P/N 269A2235, with Kit, P/N SA-269K-106-1. Installing the kit is terminating action for the 50-hour TIS repetitive dye-penetrant inspection for these cluster fittings. Broken or cracked cluster fittings are not eligible for the kit modification.

(d) For helicopters with strut assemblies, P/N 269A2015 or 269A2015-5, accomplish the following:

(1) At intervals not to exceed 50 hours TIS:

(i) Remove the strut assemblies, P/N 269A2015 or P/N 269A2015-5.

(ii) Visually inspect the strut aluminum end fittings for deformation or damage and dye-penetrant inspect the strut aluminum end fittings for a crack in accordance with

Step II of Schweizer Service Information Notice No. N-109.2, dated September 1, 1976 (SIN N-109.2).

(iii) If deformation, damage, or a crack is found, before further flight, modify the strut assemblies by replacing the aluminum end fittings with stainless steel end fittings, P/N 269A2017-3 and -5, and attach bolts in accordance with Step III of SIN N-109.2; or replace each strut assembly P/N 269A2015 with P/N 269A2015-9, and replace each strut assembly P/N 269A2015-5 with P/N 269A2015-11.

(2) Within 500 hours TIS or one year, whichever occurs first, modify or replace the strut assemblies in accordance with paragraph (d)(1)(iii) of this AD.

(e) For the Model 269C helicopters, within 100 hours TIS, serialize each strut assembly, P/N 269A2015-5 and P/N 269A2015-11, in accordance with Schweizer Service Information Notice No. N-108, dated May 21, 1973.

(f) Within 25 hours TIS or 60 days, whichever occurs first, for cluster fittings, P/N 269A2234-3 and P/N 269A2235-3, perform a one-time inspection and repair, if required, in accordance with Procedures, Part II of Schweizer Service Bulletin No. B-277, dated January 25, 2002.

(g) Before further flight, replace any cluster fitting that is cracked or has surface defects beyond rework limits with an airworthy cluster fitting.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (NYACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, NYACO.

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

(i) 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.

(j) The inspections, modifications, replacements and serializations shall be done in accordance with Schweizer Service Information Notice No. N-109.2, dated September 1, 1976; Schweizer Service Information Notice No. N-108, dated May 21, 1973; and Schweizer Service Bulletin No. B-277, dated January 25, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. 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.

(k) This amendment becomes effective on August 12, 2003.

Issued in Fort Worth, Texas, on June 24, 2003.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 03-16685 Filed 7-7-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. 2002-SW-01-AD; Amendment 39-13216; AD 2003-13-14]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Bell Helicopter Textron Canada Model 206A, 206A-1, 206B, 206B-1, 206L, 206L-1, 206L-3, and 206L-4 Helicopters**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (BHTC) model helicopters that requires performing a continuity test, temporarily repairing any unairworthy chip detector, and replacing any repaired chip detectors. This amendment is prompted by reports of poor or no continuity between the insert and the chip detector housing on certain chip detectors. The actions specified by this AD are intended to prevent failure of a chip detector indication, loss of a critical component, and subsequent loss of control of the helicopter.

**DATES:** Effective August 12, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 12, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437-2862 or (800) 363-8023, fax (450) 433-0272. 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:** Jorge Castillo, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas

76193-0110, telephone (817) 222-5127, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on October 21, 2002 (67 FR 64571). That action proposed to require performing a continuity test; repairing temporarily the chip detectors, part number (P/N) B3188B and B4093, installed in the transmission bottom and upper case, found on certain transmission assemblies; and replacing repaired chip detectors.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 206A, 206A-1, 206B, 206B-1, 206L, 206L-1, 206L-3, and 206L-4 helicopters. Transport Canada advises that Tedeco B3188B and B4093 chip detectors could possibly have poor or no continuity between the insert and the chip detector housing. This could result in no chip indication when the chip detector has been bridged by metal particles.

BHTC has issued Alert Service Bulletin (ASB) No. 206-01-96, Revision A, and No. 206L-01-119, Revision A, both dated May 7, 2001, which specify accomplishing the Eaton Tedeco Product Bulletins attached to their Alert Service Bulletin. The Eaton Tedeco Product Bulletins contain procedures for performing a continuity test, repairing chip detectors, and replacing repaired chip detectors. Transport Canada classified these ASBs as mandatory and issued AD No. CF-2001-33, dated August 24, 2001, to ensure the continued airworthiness of these helicopters in Canada.

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

The two commenters state that the cost of the chip detector that was stated in the proposal (\$75) was incorrect. They estimate the correct cost of the B3188B chip detector to be \$308 and the cost of the B4093 chip detector to be \$378. Therefore, one of these commenters states that the estimated impact is more likely to be \$455,795. Further, that same commenter states that he feels that this increased cost will result in this AD having a significant economic impact on a substantial number of small entities unless the manufacturer provides the parts at no cost or at a significantly reduced cost. We agree that the cost of the chip detectors was incorrectly stated in the

proposal and that the actual cost of the chip detectors is approximately the unit costs provided by the commenters. We have revised our economic analysis accordingly using an approximate average cost of \$350 per chip detector. Using this revised parts' cost, the total estimated cost impact of this AD increases from \$186,615 (\$30 (labor) per helicopter for 1,131 helicopters, plus \$135 (\$75 parts and \$60 labor) per helicopter for the other 1,131 helicopters) to \$497,640 (\$30 (labor) per helicopter for 1,131 helicopters plus \$410 (\$350 parts and \$60 labor) per helicopter for the other 1,131 helicopters). While the AD may affect a substantial number of small entities, we believe that neither the original estimated cost per helicopter of either \$30 or \$135, as applicable, nor this revised estimated cost per helicopter of either \$30 or \$410, as applicable, will have a significant economic impact on any small entity.

One commenter questions why the proposed AD did not propose to require a repetitive inspection to preclude failure of a chip detector subsequent to it passing the inspection contained in the proposed AD. We do not agree that repetitive inspections are necessary. The inspection that is required is intended to provide a means to identify an unairworthy chip detector installed on a helicopter. Once identified, the proposal specified a temporary repair for the chip detector until it could be replaced with an airworthy part. While it is true that a chip detector could fail after successfully passing the proposed inspection, the causes for potential subsequent failures are not necessarily attributable to the design deficiency addressed by the proposed AD. Accordingly, no change is made to this AD based on this comment.

One commenter believes that more than 50 percent of the currently installed chip detectors may be faulty, which would increase the estimated cost impact of the AD. The commenter states that the AD is not warranted unless airworthiness data were presented to the FAA showing that the manufacturer's previously issued ASBs have not been effective in correcting the problem.

Both commenters state their concerns about the availability of an adequate inventory of chip detectors to replace all unairworthy chip detectors that may be discovered during the inspections required by the AD. The FAA does not agree. We consider our estimate that half of the fleet inspections will result in detection of an unairworthy chip detector to be a conservative estimate. That number may be reduced since

some chip detectors have already been replaced due to the release of BHTC's ASBs. Since compliance with an ASB is not universally mandatory, this AD is being issued to mandate testing, repairing (if necessary), and replacing chip detectors for the operators that have not been required to comply with the ASB. We believe this AD provides a reasonable method for identifying the total number of existing unairworthy chip detectors, a temporary repair procedure that allows chip detectors to be made functional, and a requirement to replace all chip detectors after 300 hours time-in-service (TIS).

Further, one commenter states that the FAA should take the lead in negotiating a firm replacement agreement with the manufacturer since the proposed AD states that Tedeco/Bell "may" provide replacements at "no charge." We do not agree. Negotiating warranty coverage between operators and manufacturers is not a proper role for the FAA. However, we are required to assess the economic impact of our regulation and we have appropriately addressed that issue previously in our discussion of the costs impact of this AD.

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes described previously, and that these changes will not increase the scope of the AD.

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

The FAA estimates that this AD will affect 2,262 helicopters of U.S. registry, and the required actions will take approximately 0.5 work hours per helicopter to initially inspect the chip detectors, and 0.5 work hours per helicopter to repair and ultimately replace any chip detectors that were previously temporarily repaired. The average labor rate is \$60 per work hour. Required parts will cost approximately \$350 per chip detector. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be \$497,640, assuming half of the fleet will require repairing and replacing the chip detectors. The chip detector manufacturer has stated that it may

provide reworked or replacement parts at no charge at its discretion.

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:

#### 2003-13-14 Bell Helicopter Textron

**Canada:** Amendment 39-13216. Docket No. 2002-SW-01-AD.

**Applicability:** Model 206A, 206A-1, 206B, 206B-1, 206L, 206L-1, 206L-3, and 206L-4 helicopters, 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:** Required as indicated, unless accomplished previously.

To prevent failure of a chip detector indication, loss of a critical component, and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model 206A, 206A-1, 206B, and 206B-1 helicopters, within 60 days, perform a continuity test and repair the Eaton Tedeco chip detector (chip detector), part number (P/N) B3188B, installed in the transmission bottom case, in accordance with the "Test Procedure", Procedure B, and the "Repair Instructions" portions of the Tedeco Products Alert Service attached to Bell Helicopter Textron (BHTC) Alert Service Bulletin (ASB) No. 206-01-96, Revision A, dated May 7, 2001.

(b) For 206L, 206L-1, 206L-3, and 206L-4 helicopters:

(1) Within 60 days, perform a continuity test on, and also repair, the chip detector, P/N B3188B, installed in the transmission bottom case found on transmission assemblies, P/N 206-040-004-003, 206-040-004-005, 206-040-004-101, 206-040-004-107, 206-040-004-111, or 206-040-004-115, in accordance with the "Test Procedure", Procedure B, and the "Repair Instructions" portions of the Tedeco Products Alert Service Bulletin for affected P/N B3188B chip detectors, attached to BHTC ASB No. 206L-01-119, Revision A, dated May 7, 2001.

(2) Within 60 days, perform a continuity test and repair the chip detector, P/N B4093, installed in the transmission top case found on transmission assemblies, P/N 206-040-004-003, 206-040-004-005, 206-040-004-101, or 206-040-004-111, in accordance with the "Test Procedure", Procedure B, and the "Repair Instructions" portion of the Tedeco Products Alert Service Bulletin for the affected P/N B4093 chip detectors, attached to BHTC ASB No. 206L-01-119, Revision A, dated May 7, 2001.

(c) Within 300 hours time-in-service (TIS) after any chip detector is repaired, replace the chip detector with a reworked or new production airworthy chip detector.

(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, Safety Management 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, Safety Management Group.

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

(e) Special flight permits will not be issued.

(f) Testing, repairing, and replacing chip detectors shall be done in accordance with Bell Helicopter Textron Canada Alert Service Bulletins No. 206-01-96, Revision A, and No. 206L-01-119, Revision A, both dated

May 7, 2001. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4. 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 August 12, 2003.

**Note 3:** The subject of this AD is addressed in Transport Canada (Canada) AD No. CF-2001-33, dated August 24, 2001.

Issued in Fort Worth, Texas, on June 23, 2003.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 03-16686 Filed 7-7-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-SW-27-AD; Amendment 39-13214; AD 2003-13-13]

RIN 2120-AA64

#### Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, and 222U Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (Bell) model helicopters that requires a one-time inspection of the adjustable stop screws of the magnetic brake assembly; repairing, as appropriate, certain mechanical damage to the cyclic and collective flight control magnetic brake arm assembly (arm assembly), if necessary; and installing the stop screw with the proper adhesive, adjusting the arm assembly travel, and applying slippage marks. This amendment is prompted by reports that the magnetic brake adjustable screws have backed out, which limited travel of the arm assembly. The actions specified by this AD are intended to detect loose adjustable stop screws that could result in limiting the travel of the cyclic and collective arm assembly, and subsequent loss of control of the helicopter.

**DATES:** Effective August 12, 2003.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of August 12, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437-2862 or (800) 363-8023, fax (450) 433-0272. 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:

Charles Harrison, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193-0110, telephone (817) 222-5128, fax (817) 222-5961.

#### SUPPLEMENTARY INFORMATION:

A proposal to amend 14 CFR part 39 to include an AD for Bell Model 222, 222B, and 222U helicopters was published in the Federal Register on February 7, 2003 (68 FR 6383). That action proposed to require inspecting the adjustable stop screws of the magnetic brake assembly to ensure they are installed correctly; repairing the arm assembly, if necessary; installing the stop screw with the proper adhesive; adjusting the arm assembly travel; and applying slippage marks.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on Bell Model 222, 222B, and 222U helicopters with Instrument Flight Rule (IFR) kits, part number (P/N) 222-706-013, installed, and all delivered spare magnetic brakes, P/N 222-706-013, manufactured by Memcor Truohm, Inc., under P/N MP 498-3. Transport Canada advises that the stop screws, P/N MS51959-3, of the magnetic brake, P/N 204-001-376-003 (Memcor Truohm P/N MP 498-3), were installed without the proper adhesive.

Bell has issued Bell Helicopter Textron Alert Service Bulletin (ASB) No. 222-01-87, for Model 222 and 222B helicopters, and ASB No. 222U-01-58, for Model 222U helicopters, both dated January 19, 2001. Both ASB's specify a one-time inspection of the magnetic brake adjustable stop screw, P/N M551959-3; repairing any arm assembly mechanical damage created by the screws; and installing the stop screw with the proper adhesive and adjusting the arm assembly shaft travel. Transport Canada classified these ASB's as mandatory and issued AD No. CF-2002-17, dated March 4, 2002, to ensure the continued airworthiness of these helicopters in Canada.

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.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

The FAA estimates that 92 helicopters of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per helicopter to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$3,785. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$364,780, assuming all parts are replaced.

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:

#### 2003-13-13 Bell Helicopter Textron

**Canada:** Amendment 39-13214. Docket No. 2002-SW-27-AD.

**Applicability:** Model 222, 222B, and 222U helicopters, with a magnetic brake, part number (P/N) 204-001-376-105 or -107, installed, that was manufactured by Memcor Truohm, Inc. as P/N MP498-105 or -107, 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 (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 within 100 hours time in service and before installation of any affected magnetic brake, unless accomplished previously.

To detect loose adjustable stop screws that could result in limiting the travel of the cyclic and collective arm assembly, and subsequent loss of control of the helicopter:

(a) Inspect and, if necessary, repair, adjust, and apply slippage marks to the magnetic brake assembly in accordance with the Accomplishment Instructions, paragraphs 5. through 11. in Bell Helicopter Textron Alert Service Bulletin (ASB) No. 222-01-87, applicable to Model 222 and 222B helicopters, or ASB No. 222U-01-58, applicable to Model 222U helicopters, both dated January 19, 2001, except if damage to the arm assembly exceeds 0.030 inch (0.762 mm), replace the magnetic brake assembly with an airworthy magnetic brake assembly. Contacting the manufacturer is not required.

(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, Safety Management 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, Safety Management Group.

**Note 2:** Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Safety Management 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.

(d) The actions referenced in paragraph (a) of this AD shall be done in accordance with Bell Helicopter Textron Alert Service Bulletin (ASB) No. 222-01-87, applicable to Model 222 and 222B helicopters, or ASB No. 222U-01-58, applicable to Model 222U helicopters, both dated January 19, 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 Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4. 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.

(e) This amendment becomes effective on August 12, 2003.

**Note 3:** The subject of this AD is addressed in Transport Canada (Canada) AD CF-2002-17, dated March 4, 2002.

Issued in Fort Worth, Texas, on June 20, 2003.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 03-16688 Filed 7-7-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-CE-45-AD; Amendment 39-13218; AD 2003-13-16]

RIN 2120-AA64

#### Airworthiness Directives; Raytheon Aircraft Company 90, 100, and 200 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) 90, 100, and 200 series airplanes. This AD requires you to inspect the forward side of the aft pressure bulkhead for scoring damage and repair, if necessary. This AD is the result of reports of the aft pressure bulkhead being damaged by scoring during manufacture. The actions specified by this AD are intended to detect and correct damage to the aft pressure bulkhead of the fuselage. Such

damage could lead to fatigue failure of the bulkhead.

**DATES:** This AD becomes effective on August 25, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 25, 2003.

**ADDRESSES:** You may get the service information referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE-45-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946-4124; facsimile: (316) 946-4107.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

*What Events Have Caused This AD?*

The FAA has received reports that during manufacturing, nine aft pressure bulkheads of Raytheon 90, 100, and 200 series airplanes may have been damaged by scribing or knife marks (scoring).

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

The damage to the aft pressure bulkhead may cause fatigue failure of the bulkhead.

*Has FAA Taken Any Action to This Point?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon 90, 100, and 200 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 14, 2003 (68 FR 7449). The NPRM proposed to require you to inspect the forward side of the aft pressure bulkhead for scoring damage and repair, if damage is found.

*Was the Public Invited to Comment?*

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comment received on the proposal and FAA's response to the comment:

*Comment Issue:*

AD Applicability to Model B200 Range of Serial Numbers.

*What Is the Commenter's Concern?*

The commenter states that there is a typographical error in the range of serial numbers for the Model B200 applicability.

*What Is FAA's Response to the Concern?*

We concur. The last serial number for the Model B200 applicability is incorrectly stated as BB-14443. The correct serial number is BB-1443. We will change the final rule AD action to incorporate the correct serial number.

**FAA's Determination**

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

After careful review of all available information related to the subject

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

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

*How Does the Revision to 14 CFR Part 39 Affect This AD?*

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

**Cost Impact**

*How Many Airplanes Does This AD Impact?*

We estimate that this AD affects 3,223 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish the inspection of the forward side of the aft pressure bulkhead:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours × \$60 per hour = \$480 .....	Not applicable .....	\$480	\$1,547,040

We estimate the following costs to accomplish any necessary repairs that will be required based on the results of

the inspection. We have no way of determining the number of airplanes that may need such repair of the

forward side of the aft pressure bulkhead:

Labor cost	Parts cost	Total cost per airplane
16 workhours × \$60 per hour = \$960 .....	\$25	\$985

**Compliance Time of This AD**

*What Will Be the Compliance Time of This AD?*

The compliance time of this AD is within the next 6 calendar months after the effective date of this AD.

*Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?*

This unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours TIS as it would be for an airplane with 500 hours TIS. For this reason, FAA has determined that a compliance based on calendar time will be utilized in this AD in order to ensure that the unsafe condition is addressed on all airplanes in a reasonable time period.

**Regulatory Impact**

*Does This AD Impact Various Entities?*

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between

the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

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

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

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

2. FAA amends § 39.13 by adding a new AD to read as follows:

**2003-13-16 Raytheon Aircraft Company:**  
Amendment 39-13218; Docket No. 2002-CE-45-AD.

(a) *What airplanes are affected by this AD?*  
This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
(1) 65-90, 65-A90, B90, C90, and C90A .....	LJ-1 through LJ-1287, LJ-1289 through LJ-1294, and LJ-1296 through LJ-1299.
(2) E90 .....	LW-1 through LW-347.
(3) F90 .....	LA-2 through LA-236.
(4) H90 (T-44A) .....	LL-1 through LL-61.
(5) 100 and A100 .....	B-2 through B-89, B-93, and B-100 through B-247.
(6) A100 (U-21F) .....	B1, B-90 through B-92, and B-94 through B-99.
(7) A100-1 (U-21J) .....	BB-3 through BB-5.
(8) A200 (C-12A) and (C-12C) .....	BC-1 through BC-61, BC-62 through BC-75, and BD-1 through BD-30.
(9) A200C (UC-12B) .....	BJ-1 through BJ-66
(10) A200CT (C-12D) .....	BP-1, BP-19, and BP-24 through BP-51.
(11) A200CT (C-12F) .....	BP-52 through BP-63.
(12) B200C (C-12F) .....	BP-64 through BP-71, BL-73 through BL-112, and BL-118 through BL-123.
(13) A200CT (FWC-12D) .....	BP-7 through BP-11.
(14) A200CT (RC-12D) .....	GR-1 through GR-12.
(15) A200CT (RC-12G) .....	FC-1 through FC-3.
(16) A200CT (RC-12H) .....	GR-14 through GR-19.
(17) A200CT (RC-12K) .....	FE-1 through FE-9.
(18) A200CT (RC-12P) .....	FE-25 through FE-31, FE-33, and FE-35.
(19) A200CT (RC-12Q) .....	FE-32, F-34, and FE-36.
(20) B100 .....	BE-1 through BE-137.
(21) B200C .....	BL-37 through BL-57, BL-61 through BL-72, and BL-124 through BL-138.
(22) 200C .....	BL-1 through BL-23, BL-26 through BL-36.
(23) B200C (C-12F) .....	BP-64 through BP-71, BL-73 through BL-112, and BL-118 through BL-123.
(24) B200C (C-12R) .....	BW-1 through BW-29.
(25) B200C (UC-12F) .....	BU 1 through BU10.
(26) B200C (UC-12M) .....	BV-1 through BV-10.
(27) B200CT and 200CT .....	BN-1 through BN-4.
(28) B200T and 200T .....	BT-1 through BT-34, and BB-1314.
(29) 200 .....	BB-2, BB-6 through BB-185, BB-187 through BB-202, BB-204 through BB-269, BB-271 through BB-407, BB-409 through BB-468, BB-470 through BB-488, BB-490 through BB-509, BB-511 through BB-529, BB-531 through BB-550, BB-552 through BB-562, BB-564 through BB-572, BB-574 through BB-590, BB-592 through BB-608, BB-610 through BB-626, BB-628 through BB-646, BB-648 through BB-664, BB-666 through BB-694, BB-696 through BB-733, BB-735 through BB-792, BB-794 through BB-797, BB-799 through BB-822, BB-825 through BB-828, BB-830 through BB-853, BB-872, BB-873, BB-892, BB-893, and BB-912.

Model	Serial numbers
(30) B200 .....	BB-734, BB-793, BB-829, BB-854 through BB-870, BB-874 through BB-891, BB-894, BB-896 through BB-911, BB-913 through BB-990, BB-992 through BB-1051, BB-1053 through BB-1092, BB-1094, BB-1099 through BB-1104, BB-1106 through BB-1116, BB-1118 through BB-1184, BB-1186 through BB-1263, BB-1265 through BB-1288, BB-1290 through BB-1300, BB-1302 through BB-1313, BB-1315 through BB-1384, BB-1389 through BB-1425, BB-1427 through BB-1438, and BB-1440 through BB-1443.

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

(c) *What problem does this AD address?*  
The actions specified by this AD are intended to detect and correct damage to the aft pressure bulkhead of the fuselage. Such

damage could lead to fatigue failure of the bulkhead.

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

Actions	Compliance	Procedures
(1) Inspect the forward side of the aft pressure bulkhead for scoring damage.	Within the next 6 calendar months after August 25, 2003 (the effective date of this AD), unless already accomplished.	In accordance with the Accomplishment Instructions of Raytheon Aircraft Mandatory Service Bulletin No.: SB 53-3513, Rev. 1, dated: October 2002.
(2) If scoring damage is found, repair as specified in the Raytheon Aircraft Mandatory Service Bulletin No.: SB 53-3513, Rev. 1, dated: October 2002. As applicable, obtain a repair plan from Raytheon Aircraft Company through FAA at the address specified in paragraph (e) of this AD and incorporate this repair scheme.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD, unless already accomplished.	In accordance with the Accomplishment Instructions of Raytheon Aircraft Mandatory Service Bulletin No.: SB 53-3513, Rev. 1, dated: October 2002. As applicable, repair in accordance with a repair scheme obtained from Raytheon Aircraft Company. Obtain this repair scheme through FAA at the address specified in paragraph (e) of this AD.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Mr. Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946-4124; facsimile: (316) 946-4107.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Aircraft Mandatory Service Bulletin No.: SB 53-3513, Rev. 1, dated: October 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *When does this amendment become effective?* This amendment becomes effective on August 25, 2003.

Issued in Kansas City, Missouri, on June 25, 2003.

**Dorenda D. Baker,**  
*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03-16691 Filed 7-7-03; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION  
Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 96-ANE-40-AD; Amendment 39-13212; AD 97-18-02R1]

**RIN 2120-AA64**

**Airworthiness Directives; Hartzell Propeller Inc. ( )HC-( ) (2,3)(X,V)( )-( ) Series and HA-A2V20-1B Series Propellers with Aluminum Blades; Correction**

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document makes a correction to Airworthiness Directive (AD) 97-18-02R1 applicable to Hartzell Propeller Inc. ( )HC-( ) (2,3)(X,V)( )-( ) series and HA-A2V20-1B series propellers with aluminum blades that was published in the **Federal Register** on June 26, 2003 (68 FR 37960). The Amendment number was omitted from the second paragraph of the Amendatory Language Section. This document corrects that omission. In all other respects, the original document remains the same.

**EFFECTIVE DATE:** Effective June 26, 2003.

**FOR FURTHER INFORMATION CONTACT:** Tomaso DiPaolo, Aerospace Engineer,

Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018; telephone (847) 294-7031; fax (847) 294-7834.

**SUPPLEMENTARY INFORMATION:** A final rule AD, FR Doc, 03-15991, applicable to Hartzell Propeller Inc. ( )HC-( ) (2,3)(X,V)( )-( ) series and HA-A2V20-1B series propellers with aluminum blades, was published in the **Federal Register** on June 26, 2003 (68 FR 37960). The following correction is needed:

**§ 39.13 [Corrected]**

■ On page 37960, in the third column, in the Amendatory Language Section, in the second paragraph, in the second from the last line, "Amendment 39-XXXXX" is corrected to read "Amendment 39-13212".

Issued in Burlington, MA, on June 26, 2003.

**Francis A. Favara,**  
*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03-17018 Filed 7-7-03; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****14 CFR Part 382**

[Docket No. OST-2003-11473]

RIN 2105-ADO4

**Reporting Requirements for Disability-Related Complaints****AGENCY:** Office of the Secretary, Department of Transportation (DOT).**ACTION:** Final rule.

**SUMMARY:** This document requires most certificated U.S. air carriers and foreign air carriers operating to and from the U.S. that conduct passenger-carrying service to record and categorize complaints that they receive alleging inadequate accessibility or discrimination on the basis of disability according to the type of disability and nature of complaint, prepare a summary report of those complaints, submit the report annually to the Department of Transportation's (Department or DOT) Aviation Consumer Protection Division, and retain copies of correspondence and record of action taken on disability-related complaints for three years.

**DATES:** This rule is effective on August 7, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Blane A. Workie, Office of the General Counsel, 400 7th Street, SW., Room 4116, Washington, DC 20590, (202) 366-9342 (voice), (202) 366-7152 (Fax) or [blane.workie@ost.dot.gov](mailto:blane.workie@ost.dot.gov) (E-mail).

Arrangements to receive the rule in an alternative format may be made by contacting the above-named individual.

**SUPPLEMENTARY INFORMATION:****Background**

The Air Carrier Access Act (ACAA, 49 U.S.C. 41705) prohibits discriminatory treatment of persons with disabilities in air transportation. The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR-21"; Public Law 106-181) signed into law on April 5, 2000, extended the requirements of the Air Carrier Access Act to foreign air carriers and required, among other things, that the Secretary of Transportation "regularly review all complaints received by air carriers alleging discrimination on the basis of disability" and "report annually to Congress on the results of such review."

On February 14, 2002, the Department published a Notice of Proposed Rulemaking (NPRM) to implement the requirement of AIR-21 (67 FR 6892). The notice stated that the only practical way the Department can implement the

statutory requirement to review disability complaints received by air carriers and report annually to Congress on the results of the review is by requiring carriers to record disability-related complaint data and submit it to the Department. It proposed to require an annual report on the disability-related incidents communicated by passengers to U.S. certificated and foreign air carriers involving flights to, from or between U.S. points. Air carriers would be required to categorize complaints that they receive into specific groups, and would be required to retain for three years copies of the complaints and the records of the action taken on the complaints. The proposed reporting regulations would not apply to air taxis, commuter air carriers, small certificated air carriers and foreign air carriers that operate strictly small aircraft (60 seats or less). The proposed reporting requirements would apply to all operations of carriers utilizing a mixed fleet (both large and small aircraft).

The NPRM had six main components on which we specifically solicited comment: (1) The scope/coverage of the rule; (2) the definition of a disability-related complaint; (3) the categories of data collected; (4) the frequency of data reporting; (5) the procedures for submission of data; and (6) the period of record retention. The comment period closed on June 4, 2002. The DOT received eleven comments, three from disability community organizations (Eastern Paralyzed Veterans Association, Epilepsy Foundation, Paralyzed Veterans of America), four from foreign air carriers (British Airways, Iberia Lineas Aereas de Espana, Crossair Ltd. d/b/a Swiss, Virgin Atlantic Airways), one from a U.S. carrier (Atlantic Southeast Airlines) and three from industry associations representing airlines (Air Transport Association of America, International Air Transport Association, Regional Airline Association). Generally, the disability community organizations supported the rule while carriers and industry representatives either opposed the rule or found the rule to be overly broad.

**Discussion of Comments***1. Entities Covered Under the Rule*

**Proposed Rule:** Under the proposed rule, certificated U.S. carriers that conduct passenger-carrying service with at least one aircraft having a designed seating capacity of more than 60 passengers and foreign air carriers operating to and from the United States that conduct passenger-carrying service

with at least one aircraft having a designed seating capacity of more than 60 passengers would be required to record, categorize and submit disability-related complaint data.

**Comments:** The disability community organizations commented that the requirement to record, categorize and submit disability-related complaint data should also apply to carriers conducting passenger-carrying service on smaller aircraft. More specifically, the Eastern Paralyzed Veterans Association (EPVA) commented that the rule should be expanded to cover all carriers who operate aircraft with 30 or more passenger seats, while the Epilepsy Foundation and Paralyzed Veterans of America (PVA) asserted that the rule should be expanded to include all carriers operating aircraft with 19 or more passenger seats. The disability community organizations believe that expansion of the rule to cover smaller aircraft is appropriate as small aircraft provide the only means of air travel available for certain areas of the United States.

The Regional Airline Association (RAA) contends that the scope of the rule should not be expanded and agrees with the Department's proposal excluding commuter carriers and certificated carriers operating only aircraft with 60 or fewer seats from the reporting requirement. RAA states that these entities carry a small percentage of passenger traffic but that the cost of complying with the rule would be enormous, as numerous regional air carriers do not have the systems or software to record, categorize, and submit disability-related complaint data.

All of the foreign air carriers that commented on the proposal oppose its application to foreign airlines. Several foreign air carriers contend that AIR-21 does not require that the Department's report to Congress include complaints received by "foreign air carriers" since AIR-21 states that "all complaints received by air carriers" be reported to Congress and the term "foreign air carrier" is not normally encompassed within the term "air carrier." The International Air Transport Association (IATA), British Airways, Iberia Lineas Aereas de Espana (Iberia), Crossair Ltd. d/b/a Swiss (Swiss), Virgin Atlantic Airways (Virgin) also argue that the proposed rule would impose an undue burden on foreign airlines. IATA and Virgin further assert that the proposal raises extraterritoriality concerns. IATA believes that it is unclear whether the proposed rule would require complaints relating to events outside the U.S. be reported to the Department. Another

concern raised by British Airways is that the proposed rule would lead to unanticipated negative consequences such as other countries imposing comparable reporting requirements on all carriers serving those countries.

*DOT Response:* After fully considering the disability community organizations' comments that the rule should be extended to cover carriers that operate aircraft with 60 or fewer seats, the Department maintains that it is reasonable to apply the rule only to carriers operating larger than 60-seat aircraft. In choosing to exclude from the reporting requirement commuter carriers and certificated carriers operating only "small aircraft" (aircraft with 60 or fewer seats), the Department has tried to balance the need to receive good data regarding accessibility in air travel and the cost of compliance to carriers operating only aircraft with less than 60 seats. Carriers operating only aircraft with 60 or fewer seats are classified as small under the OST aviation "small business" standard in 14 CFR 399.73 and the Regulatory Flexibility Act encourages agencies to consider flexible approaches to the regulation of small businesses and other small entities that take into account their special needs and problems. As explained by RAA in its comments, the cost of complying with the reporting requirements would be prohibitive for most of its 58 member airlines. Further, the vast majority of passengers are carried on aircraft with more than 60 seats so the Department would still be able to receive high-quality data without extending coverage of the proposal to carriers operating only small aircraft.

The Department is also not persuaded by comments that there is no statutory basis for the Department to impose the new reporting requirements on non-U.S. carriers. AIR-21, which extended the Air Carrier Access Act (ACAA) to foreign air carriers, provides in the general applicability part of the section on discrimination against individuals with disabilities that " \* \* \* an air carrier, including (subject to section 40105(b)) any foreign air carrier \* \* \*" may not discriminate against a person in air transportation on the basis of disability. By defining an air carrier in the section on discrimination against disabled individuals to include any foreign air carrier, Congress demonstrated its intention for the ACAA requirements that apply to U.S. carriers to also apply to foreign air carriers. As a result, the Department believes that the requirement that it "regularly review all complaints received by air carriers alleging discrimination on the basis of

disability" and "report annually to Congress on the results of such review" is a requirement for the Department to review not only complaints received by U.S. carriers but also complaints received by foreign carriers. In addition, the Department's general statutory authority for imposing reporting requirements under 49 U.S.C. 41708(b) applies to foreign air carriers.

With regard to issues of extraterritoriality, IATA and several foreign carriers raise this issue but do not fully explain their concerns. Although the rule would require complaints relating to events outside the U.S. be reported to the Department, most of the provisions of 14 CFR part 382 (the Department's rule implementing the ACAA) have applied extraterritorially to U.S. carriers for years and the only new feature about this proposal is its extraterritorial application to foreign carriers. As for cost issues raised by IATA and foreign air carriers, the Department realizes that this is the first time that reporting of disability-related complaints has been required and that there will be a cost to creating new databases but we expect that these costs would be minimal. Neither IATA nor the foreign air carriers provide data disputing the cost estimates provided by the Department and simply state that the reporting burden on foreign air carriers would be unnecessarily burdensome. Having considered all of these comments, the Department is not persuaded that the rule should not apply to foreign air carriers.

## 2. Definition of a Disability-Related Complaint

*Proposed Rule:* The proposed rule defined a disability-related complaint as a specific expression of dissatisfaction received from, or submitted on behalf of, an individual with a disability against a covered air carrier or foreign air carrier concerning a difficulty associated with the person's disability, which the person experienced when using or attempting to use the carrier's services. It proposed that disability-related complaints be recorded and reported without regard to the carrier's perception of the validity of the complaint and that in circumstances where a flight that is the subject of a disability-related complaint was a code-share flight, the carrier that receives the complaint from the passenger report the complaint.

*Comments:* The vast majority of carriers and industry associations representing airlines strongly argued that the definition of a disability-related complaint was overly broad because it

requires any expression of dissatisfaction concerning a disability-related issue be recorded and reported as a complaint. They contend that DOT should only require complaints received in writing through a specifically designated department in the airline be reported. There were also arguments made, particularly by ATA and British Airways, that complaints that only incidentally address a disability-related issue not be reported. Other commenters such as IATA and Virgin insist that complaints that are unreasonable or were satisfactorily resolved not be reported while ATA recommends that only complaints that relate to a service or process required under part 382 be reported as DOT's authority is grounded in, and limited to, the Air Carrier Access Act as implemented by part 382. Virgin also urges that the complaints that a carrier receives as a result of the carrier directly soliciting comments and feedback from its passengers be exempted from the reporting requirements.

Further, several carriers and industry associations object to the proposal that a complaint received by a carrier from a passenger on a code-share partner's service be reported by the carrier that receives the complaint. These commenters argue that this requirement will result in double reporting as industry experience is that passengers complain to both ticketing and operating airlines about a problem on a particular flight. Representatives of airlines recommend that only the airline that operated the flight and carried the passenger who is making a complaint report the complaint. Two disability advocacy organizations, EPVA and PVA, while agreeing with the Department's proposal that in the case of code-share flights the carrier that receives the complaint record it, seem primarily interested in the Department creating some means to identify both code share partners.

*DOT Response:* The Department does not believe that it is advisable to narrow the definition of a disability-related complaint to only complaints provided to a designated department in the airline. An airline employee can forward a complaint that he or she receives to the appropriate office in the airline. However, the Department is persuaded by comments from carriers and industry associations that the definition of a disability-related complaint is overly broad in other ways and needs to be amended. As noted in comments from industry, it would be impractical to expect every utterance of dissatisfaction concerning an accessibility matter by a passenger to an

airline employee be captured, recorded and coded for subsequent reporting to DOT. As a result, the definition of a disability-related complaint has been narrowed and carriers are required to record and report only written complaints.

It should be noted though that the Department believes further consideration of a complaint provided in person or over the telephone to Complaint Resolution Officials (CROs), specially trained employees available to passengers with disabilities whenever the carrier is operating flights at an airport, is warranted. The Department may, in a future rulemaking, expand the definition of a disability-related complaint that must be recorded and reported to include oral complaints to a CRO. The Department intends to solicit specific comments on this issue from the public in an upcoming Notice of Proposed Rulemaking (NPRM) that will propose to amend part 382 and extend its applicability to foreign air carriers. In this upcoming NPRM, the Department expects to ask about the benefit and/or detriment of broadening the definition of a disability-related complaint that must be recorded and reported to include oral complaints made to a CRO whenever a carrier is operating. At present, only U.S. carriers are required to have a CRO available in person or by telephone. This rulemaking has not changed the obligation of a U.S. carrier to provide a CRO whenever the carrier is operating and to ensure that its CRO provides a written response to a passenger's oral or written complaint of alleged violations of part 382.

With respect to the carriers' and industry associations' arguments that the types of complaints covered by the final rule should be limited to complaints deemed by the carrier to be reasonable, complaints that the carrier is not able to resolve satisfactorily, complaints that relate to a service required under part 382, complaints that address a disability-related issue as the primary issue and/or complaints that are not received as a result of the carrier soliciting comments, the Department is also not persuaded. The Department is required to report annually to Congress on all complaints received by carriers alleging discrimination on the basis of disability not just those disability complaints that the carrier deems to be valid or to constitute a potential violation of the Department's rule on air travel by passengers with disabilities. Limiting the definition of complaints as suggested by carriers and industry associations would result in the under-reporting of disability complaints in DOT's annual report to Congress.

The Department agrees with industry that a requirement that code-share complaints be reported by the carrier that receives the complaint may result in double reporting since passengers may complain to both ticketing and operating airlines about a problem on a particular flight. The Department also believes that if it requires only the ticketing or operating airline to report the complaint then some complaints would go unreported. As a result, the Department is requiring that the operating airline report disability-related complaints involving the flight itself and services provided on that flight and the ticketing airline report all other complaints, particularly complaints about the reservation system. The Department realizes that there may be situations where it is not clear if a particular complaint involves services provided by the operating carrier or services provided by the ticketing carrier. If there is disagreement between the code-share partners as to which carrier is responsible for reporting a particular complaint, the carrier that receives the complaint must report it. If both the ticketing and operating carrier receive the same complaint and there is no agreement between the two as to which one is ultimately responsible for reporting the complaint, then both carriers must report the complaint. The final rules also requires that, in a code-share situation, the ticketing airline/operating airline must forward to its code share partner disability-related complaints it receives involving services provided by its code share partner. The Department would not be requiring the carrier reporting the complaint to identify its code-share partner, as requested by the disability community organizations, because knowing the identity of the code share partner, while useful, serves a limited public interest especially when weighed against the cost to carriers of providing this additional information.

### 3. Categories of Data Collected

*Proposed Rule:* The NPRM proposed that carriers use 13 categories to identify the nature of a passenger's disability and 12 areas to categorize the alleged discrimination or service problems related to disability, a system currently being used by the Department's Aviation Consumer Protect Division (ACPD). The 13 proposed categories within which to classify a passenger's disability are: vision-impaired, hearing-impaired, vision- and hearing-impaired, mentally impaired, communicable disease, allergies (e.g., food allergies, chemical sensitivity), paraplegic,

quadriplegic, other wheelchair, oxygen, stretcher, other assistive device (cane, respirator, etc.), and other disability. The 12 proposed categories within which to classify service problems are: refusal to board, refusal to board without an attendant, security issues concerning disability, aircraft not accessible, airport not accessible, advance-notice dispute, seating accommodation, failure to provide adequate or timely assistance, problem with storage/damage/delay relating to assistive device, service animal problem, unsatisfactory information, and "other." Under the proposed rule, a contact from a passenger may express more than one complaint and a passenger may have more than one disability.

*Comments:* British Airways noted that its existing complaint categorization system and possibly other carriers' existing categorization systems are different from the one proposed by the Department. British Airways objects to the Department's requirement that the airline industry adopt the ACPD system and suggests that the Department develop a system that better reflects current industry categorizations systems.

Other carriers as well as RAA and ATA are opposed to reporting on a passenger's specific disability or disabilities and argue that the 13 categories used to identify the nature of a passenger's disability should all be removed. According to these commenters, passengers do not always identify their disability and passengers would view questions by carriers about a passenger's disability as intrusive and offensive. Moreover, industry representatives contend that data gathered from reports on the nature of passengers' complaints provide sufficient information for the Department to identify potential areas of concern and meet the requirements of AIR-21.

The Department also received comments from industry advocating the removal of certain categories used to identify the nature of a passenger's disability. Virgin asserts that categories such as "allergies" and "chemical sensitivity" are not appropriate categories as they are open to interpretation and have definitions that change in different territories, while Swiss points out that some categories such as "vision impaired," "hearing impaired," "allergies" and "communicable disease" are not appropriate categories as they are not discernable without passenger disclosure.

Unlike commenters from the airline industry, disability community organizations do not appear to be troubled by the idea that the rule requires carriers to report on a passenger's specific disability. In fact, the Epilepsy Foundation remarked that an additional category should be created for people with epilepsy or seizure disorder. The Epilepsy Foundation explained that it is concerned that the existing categories would mask the problems experienced by individuals with epilepsy or seizure disorders when flying. Under the proposed categories of impairments, people with epilepsy or neurological disorders other than paraplegia or quadriplegia would be lumped together with the wide array of other conditions not specifically listed under the category, "other."

There were also a number of comments requesting that modifications be made to the proposed categorization system within which to classify service problems. The EPVA and PVA recommend that the category defined as "problem with storage/damage/delay relating to assistive devices" be separated into two categories, "damage to assistive devices" and "storage and delay of assistive devices." PVA explains that damage to mobility equipment is a widespread problem that merits its own category. Similarly, the Epilepsy Foundation recommends that the category titled "refuse to board" be separated into two categories, refuse to board because no medical certificate and refuse to board because of epilepsy or seizure-related concern. The Epilepsy Foundation believes that carriers refuse to board people with epilepsy because of a lack of a medical certificate or because the individual has a disability and having two separate categories for the different reasons carriers refuse boarding would make it easier to identify an effective solution.

Comments from the industry differed from comments provided by disability community organizations in that carriers and their representatives recommend the elimination of categories rather than the addition of categories. Swiss and ATA, among others, strongly object to carriers having to report about security issues concerning disability, since the Transportation Security Administration (TSA) is now responsible for screening of passengers and baggage. Carriers also object to having to report about airports not being accessible as the airports are responsible for ensuring that the facilities are accessible. These commenters declare that carriers have little or no control over these types of complaints and it is unreasonable to

charge these complaints against carriers and unfairly taint the airline industry. There were also comments from the industry that the category "assistive devices" either be removed as it is unclear or the Department give examples of the types of complaints that it would classify under this category.

Another issue raised by Swiss and ATA involves the requirement that airlines determine the type of service problem for each disability-related incident in a given contact (e.g., email, letter) and record each of these disability-related problems as separate complaints. Swiss contends that this scheme of recording complaints is complicated and likely to lead to inconsistencies in categorizations. ATA argues that complaints should be coded only once and placed in only one category otherwise the overall number of complaints would be inflated and the value of reporting would be reduced because of inaccuracy.

*DOT Response:* The Department maintains that carriers need to adopt the system that the Department's ACPD uses to categorize complaints that carriers receive alleging inadequate accessibility or discrimination. The ACPD system enables the Department to determine for complaints that it receives directly from passengers the service areas that generate the most complaints and the groups of individuals with disabilities that appear to be experiencing the most problems when flying. By having the airline industry adopt the ACPD complaint categorization system, the data that carriers report would serve as an industry-wide diagnostic and monitoring tool as it would be a mechanism for identifying problem areas in the airline industry and gauging the industry's progress toward accessibility. Further, carriers do not presently have a uniform system of categorizing disability-related complaints and whatever system of categorization that is required by the Department would undoubtedly result in some carriers having to modify their complaint recording system. DOT is also not persuaded by the argument that the entire section on the nature of a passenger's disability should be removed because of the carriers' belief that they would be forced to ask passengers intrusive questions about the nature of their disability. The nature of a passenger's disability will likely be disclosed in the written complaints sent by the passengers. If the passenger does not self-disclose his/her disability, then the carrier would simply classify the disability as "other disability". Inquiries into the nature of passengers' disabilities are not required or

encouraged by this rule. Similarly, the Department finds unconvincing the arguments presented by Virgin and Swiss that categories such as allergies and vision-impaired should be removed, as the carriers believe these categories are not discernable without passenger disclosure. The Department also finds that the 13 categories used by the ACPD to identify the passenger's disability is adequate and that there is no need to expand the number of categories describing the nature of the passenger's disability to include people with epilepsy or seizure disorder as suggested by the Epilepsy Foundation.

With regard to arguments concerning modifications to the categories describing alleged discrimination and service problems, the Department agrees with carriers that, complaints about services that the carrier has no control over need not be reported. However, despite assertions to the contrary, carriers are still involved in security and airport accessibility at terminals they own, lease, or otherwise control. Therefore, the final rule is keeping the categories "security issues concerning disability" and "airport not accessible". Carriers must report complaints involving security and/or accessibility at airports if they have any control over these services. Carriers do not need to report complaints involving security and/or airport accessibility if other entities (e.g., TSA or airport authorities) are responsible.

The Department also agrees with EPVA's and PVA's recommendation to change the proposed category of "assistive devices" into two separate categories, "damage to assistive devices" and "storage and delay of assistive devices." The Department believes this adjustment would be of benefit in determining whether most complaints about assistive devices concern damage to the devices or storage and delay problems. Further, having two separate categories for complaints concerning assistive devices makes it clearer to carriers about the types of complaints that would need to be classified under each category. However, the Department is not adopting the suggestion by the Epilepsy Foundation that the category "refuse to board" be divided into two separate categories. We believe that the term "refuse to board" should remain general because there could be many reasons beyond the two identified by the Epilepsy Foundation for a carrier to deny boarding to a passenger.

The Department has also considered comments from carriers and carrier associations regarding only one complaint being recorded per

communication. The Department maintains that carriers must treat each disability-related problem as a separate incident as there is no reason to require a complainant to write separate letters to document multiple problems/incidents occurring in connection with one or more flights. When DOT receives a written letter alleging more than violation, DOT records each separate incident as a complaint. The purpose of the report to Congress is not to track the number of letters but rather to track the number of complaints alleging inadequate accessibility or discrimination in an effort to improve accessibility.

#### 4. Frequency of Data Reporting

*Proposed Rule:* Under the NPRM, carriers would submit to the Department an annual report summarizing the disability-related complaint data. The first report, which would be for complaints received by carriers during calendar year 2003, would be submitted on January 26, 2004 and all subsequent submissions would be due on the last Monday in January and would cover data from the prior year.

*Comments:* None of the commenters object to the annual reporting system although British Airways objects to the proposed initial filing deadline of January 26, 2004 while EPVA and PVA state that the January 2004 filing deadline is appropriate and advises DOT to incorporate penalties for airlines that do not submit timely reports. British Airways and IATA argue that the initial filing deadline should be deferred to provide carriers an opportunity to develop the necessary database system and train its personnel. British Airways would also like for the Department to publish a notice 30 days in advance of each year's deadline. There were also recommendations from ASA and ATA that the Department report the complaint data on a per-enplanement basis rather than simply reporting the raw complaint numbers as the raw data will be of little use to the public given size and other differences among airlines.

*DOT Response:* The final rule provides that the initial filing deadline is in January 2005 rather than in January 2004 as proposed in the NPRM because this final rule is issued on July 8, 2003 and the information required to be submitted in January 2005 would cover complaints received by carriers during calendar year 2004. The Department can assess a civil penalty of up to \$10,000, under the ACAA and Part 382, against a carrier for each instance the carrier failed to submit the required complaint data in a timely fashion. For continuing

violations, each day each violation continues constitutes a separate offense. As a result, it is not necessary to create a specific penalty provision allowing the Department to assess fines for a carrier's failure to file a timely report as suggested by disability community organizations.

The Department is willing to publish a notice 30 days in advance of each year's deadline as a reminder to carriers of their reporting requirements. However, the lack of such notice by the Department, would not qualify as a justifiable excuse by carriers of not providing the required information. The Department also agrees to report the disability-related complaint data on a per-enplanement basis when possible.

#### 5. Procedures for Submission of Data

*Proposed Rule:* The NPRM proposes to require carriers to report a summary of the disability-related complaint data by using a form designed by the Department which is included in the appendix to part 382. It also proposes to mandate that carriers submit this form through the World Wide Web rather than submitting paper copies, disks or emails of the form. The NPRM proposed to allow limited exceptions to those carriers that can demonstrate that they would suffer undue hardship if required to submit the data through the web.

*Comments:* The disability community raises no specific issues. EPVA simply notes that the form used by carriers to submit data must be uniform in order to be of use. Swiss indicates that submission of the reports via a private website would an efficient methodology for carriers. However, IATA and British Airways believe that carriers should be given options as to the means they wish to use to file their reports.

*DOT Response:* The Department is not making any changes to the rule with regard to submission of data. If submission of the form through a website creates undue hardship, then carriers have options as to the means to file the report. The rule provides that carriers may submit the form, which summarizes the disability-related complaint data, by paper copies, disks, or emails.

#### 6. Retention of Records

*Proposed Rule:* The NPRM proposed that covered carriers retain copies of the disability-related complaints for three years. It also proposed that covered carriers make these records available for review by DOT officials at their request.

*Comments:* The disability community raises no specific issues here. ATA is opposed to a three-year retention period for complaint data and recommends that

the record retention term be reduced to one year. Swiss suggests that the Department take into consideration the record-retention requirements of the foreign air carriers' home governments. The other carriers and industry associations either had no comment or indicated that they were not opposed to the three year proposed record retention. Several carriers were concerned about the requirement that records be made available to DOT for review. Virgin appears to be concerned that DOT officials may make unreasonable and burdensome requests for review of such records. British Airways wants assurances that the Department would work with them to develop procedures to ensure that any sharing of complaint data would comply with the requirements imposed by the United Kingdom's Data Protection Act.

*DOT Response:* The Department does not require carriers to retain the complaint data for three years but rather to retain the actual complaints for three years. The requirement to retain consumer complaints for three years already exists for U.S. carriers and is not a new cost to them. The Department's regulations in 14 CFR 249.20 requires certificated U.S. air carriers to retain correspondence and record of action taken on all consumer complaints for three years. DOT believes the three-year record retention requirement for U.S. and foreign air carriers is a reasonable period of time as trends in the data over multiple years may indicate the need for the airlines and/or the Department to take a closer look at the actual complaints.

#### 7. Economic Analysis

*Proposed Rule:* The Department estimated that the first year cost to industry of the proposed rule would range from \$242,957 to \$254,738 and the annual cost to industry in subsequent years would range from \$239,113 to \$249,425.

*Comments:* The disability community raises no specific issues here. Several carriers and carrier associations assert that the Department has not accurately assessed the practical and financial impact the proposed reporting requirements will have on the airlines. They believe that the regulatory evaluation greatly underestimates the cost to the industry and are concerned that airlines will be required to undertake substantial investments in information technology, related equipment and staff training. ATA explains that it believes the cost to industry to be high, particularly if new training for a large number of employees is needed as well as extensive system

development and hardware. There is also concern, mostly by foreign air carriers, that necessary systems modifications will not be ready by the January 2004 reporting deadline.

*DOT Response:* The Department does not believe that the reporting requirements of this rule would result in significant costs to the airline industry, particularly since the definition of a complaint has been narrowed to exclude oral complaints. In addition, carriers already maintain reporting systems that record and categorize data about disability related complaints.

#### Regulatory Analysis and Notices

##### A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action has been determined to be non-significant under Executive Order 12866 and the Department of Transportation Regulatory Policies and Procedures. The cost resulting from this action would be minimal since most air carriers already record and categorize data about disability related complaints that they receive. The primary cost imposed of this final rule is the time to read, categorize, and record the disability complaint correspondence that the carriers receive. The Office of the Secretary has prepared and placed in the docket a regulatory evaluation of the final rule.

##### B. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

##### C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

##### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. We hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. A direct air carrier or a foreign air carrier is a small business if it provides air transportation only with small aircraft. *See* 14 CFR 399.73. This final rule does not apply to U.S. and foreign air carriers that are operating only a small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds). Moreover, the overall national annual costs of the rule are not great.

##### E. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, DOT has submitted the Information Collection Requests (ICRs) abstracted below to the Office of Management and Budget (OMB). Before OMB decides whether to approve these proposed collections of information and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to: Department of Transportation, Aviation Enforcement and Proceedings, Office of the General Counsel, 400 7th Street, SW., Room 4116, Washington DC 20590. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. OST may not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. OST intends to obtain current OMB control numbers for any

new information collection requirements resulting from this rulemaking action. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The ICRs were previously published in the **Federal Register** (67 FR 6892). Neither the assumptions upon which these calculations are based nor the information collection burden hours have changed. This final rule imposes three information collection requirements: (1) A requirement for carriers to record and categorize disability-related complaints that they receive according to type of disability and nature of complaint on a standard form; (2) a requirement for each covered carrier to submit an annual report summarizing the disability-related complaint data; and (3) a requirement for carriers to retain correspondence and record of action taken for all disability-related complaints. The Department will use the data submitted by carriers to report annually to Congress on the results of its review as required by law.

The title, description, respondent description of the information collections and the annual recordkeeping and periodic reporting burden are stated below.

(1) Requirement to read, record and categorize each disability related complaint from a passenger or on behalf of a passenger.

*Respondents:* Certificated U.S. air carriers and foreign air carriers operating to and from the United States that conduct passenger-carrying service with large aircraft.

*Estimated Annual Burden on Respondents:* 15 minutes to 1,000 hours a year for each respondent (time to record and categorize one complaint [15 minutes] multiplied by the number of complaints respondents receive [1 complaint a year to 4,000 annual complaints a year]. The number of complaints received by carriers varies greatly. In the year 2000, ACPD received complaints for 661 incidents from people with disabilities involving airline service difficulties. The 10 carriers that received the most complaints accounted for 84% of the total complaints received by ACPD. Carriers are estimated to receive 50 complaints for each one ACPD receives.

*Estimated Total Annual Burden:* 8,262 hours for all respondents (time to record and categorize one complaint [15 minutes] multiplied by the total number of complaints for all respondents [33,050]).

*Frequency:* 1 to 4,000 complaints per year for each respondent (Some of the air carriers may receive only one

complaint a year while some of the larger operators could receive 4,000 annual complaints based on our assumption that airlines receive 50 disability complaints for each disability complaint received by ACPD).

(2) Requirement to submit a report to DOT summarizing the disability-related complaint data (key-punching web-based matrix report).

*Respondents:* Certificated U.S. air carriers and foreign air carriers operating to and from the United States that conduct passenger-carrying service with large aircraft.

*Estimated Annual Burden on Respondents:* 30 minutes a year for each respondent to type in the 169 items (matrix consists of 13 disabilities and 13 service problems).

*Estimated Total Annual Burden:* 148 to 185 hours for all respondents (annual burden [30 minutes] multiplied by the total number respondents [295 to 370]).

*Frequency:* 1 report to DOT per year for each respondent.

(3) Requirement to retain correspondence and record of action taken on all disability-related complaints for three years.

*Respondents:* Foreign air carriers operating to and from the United States that conduct passenger carrying service with large aircraft.

*Estimated Annual Burden on Respondents:* 1 hour a year for each respondent.

*Estimated Total Annual Burden:* 231 to 306 hours for all respondents (annual burden [1 hour] multiplied by the total number respondents [231 to 306]).

*Frequency:* 1 to 4,000 complaints per year for each respondent.

#### F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

Issued this 24th day of June, 2003, at Washington DC.

**Norman Y. Mineta,**

*Secretary of Transportation.*

#### List of Subjects in 14 CFR Part 382

Air carriers, Consumer protection, Individuals with disabilities, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department amends 14 CFR part 382 as follows:

■ 1. The authority citation for 14 CFR part 382 continues to read as follows:

**Authority:** 49 U.S.C. 41702, 47105, and 41712.

■ 2. Section 382.3 (c) is revised to read as follows:

#### § 382.3 Applicability.

\* \* \* \* \*

(c) Except for § 382.70, this part does not apply to foreign air carriers or to airport facilities outside the United States, its territories, possessions, and commonwealths.

\* \* \* \* \*

■ 3. A new § 382.70 is added to read as follows:

#### § 382.70 Disability-related complaints received by carriers.

(a) For the purposes of this section, a disability-related complaint means a specific written expression of dissatisfaction received from, or submitted on behalf, of an individual with a disability concerning a difficulty associated with the person's disability, which the person experienced when using or attempting to use an air carrier's or foreign air carrier's services.

(b) This section applies to certificated U.S. carriers and foreign air carriers operating to, from, and in the United States, conducting passenger operations with at least one aircraft having a designed seating capacity of more than 60 passengers. Foreign air carriers are covered by this section only with respect to disability-related complaints associated with any flight segment originating or terminating in the United States.

(c) Carriers shall categorize disability-related complaints that they receive according to the type of disability and nature of complaint. Data concerning a passenger's disability must be recorded separately in the following areas: vision impaired, hearing impaired, vision and hearing impaired, mentally impaired, communicable disease, allergies (e.g., food allergies, chemical sensitivity), paraplegic, quadriplegic, other wheelchair, oxygen, stretcher, other assistive device (cane, respirator, etc.), and other disability. Data concerning the alleged discrimination or service problem related to the disability must be separately recorded in the following areas: refusal to board, refusal to board without an attendant, security issues concerning disability, aircraft not accessible, airport not accessible, advance notice dispute, seating accommodation, failure to provide adequate or timely assistance, damage to assistive device, storage and delay of assistive device, service animal problem, unsatisfactory information, and other.

(d) Carriers shall submit an annual report summarizing the disability-related complaints that they received during the prior calendar year using the form specified in Appendix A to this

Part. The first report shall cover complaints received during calendar year 2004 and shall be submitted to the Department of Transportation by January 25, 2005. Carriers shall submit all subsequent reports on the last Monday in January of that year for the prior calendar year. All submissions must be made through the World Wide Web except for situations where the carrier can demonstrate that it would suffer undue hardship if it were not permitted to submit the data via paper copies, disks, or email, and DOT has approved an exception. All fields in the form must be completed; carriers are to enter "0" where there were no complaints in a given category. Each annual report must contain the following certification signed by an authorized representative of the carrier: "I, the undersigned, do certify that this report has been prepared under my direction in accordance with the regulations in 14 CFR Part 382. I affirm that, to the best of my knowledge and belief, this is a true, correct, and complete report." Electronic signatures will be accepted.

(e) Carriers shall retain correspondence and record of action taken on all disability-related complaints for three years after receipt of the complaint or creation of the record of action taken. Carriers must make these records available to Department of Transportation officials at their request.

(f)(1) In a code-share situation, each carrier shall comply with paragraphs (c) through (e) of this section for—

(i) Disability-related complaints it receives from or on behalf of passengers with respect to difficulties encountered in connection with service it provides;

(ii) Disability-related complaints it receives from or on behalf of passengers when it is unable to reach agreement with its code-share partner as to whether the complaint involves service it provides or service its code-share partner provides; and

(iii) Disability-related complaints forwarded by another carrier or governmental agency with respect to difficulties encountered in connection with service it provides.

(2) Each carrier shall also forward to its code-share partner disability-related complaints the carrier receives from or on behalf of passengers with respect to difficulties encountered in connection with service provided by its code-sharing partner.

(g) Each carrier, except for carriers in code-share situations, shall comply with paragraphs (c) through (e) of this section for disability-related complaints it receives from or on behalf of passengers

as well as disability-related complaints forwarded by another carrier or governmental agency with respect to difficulties encountered in connection with service it provides.

(h) Carriers that do not submit their data via the Web shall use the disability-

related complaint data form specified in appendix A to this part when filing their annual report summarizing the disability-related complaints they received. The report shall be mailed, by the dates specified in paragraph (d) of this section, to the following address:

U.S. Department of Transportation,  
Aviation Consumer Protection Division,  
400 7th Street, SW., Room 4107, C-75,  
Washington, DC 20590.

■ 4. A new appendix A is added to part 382 to read as follows:

**BILLING CODE 4910-62-P**





[FR Doc. 03-17248 Filed 7-2-03; 4:35 pm]  
BILLING CODE 4910-62-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 30

#### Foreign Futures and Foreign Options Transactions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission (the "Commission" or "CFTC") is adopting amendments to Rule 30.5, which provides an exemption from registration for firms located outside the U.S. that, with regard to foreign futures and options, are acting in a capacity that requires registration, other than registration as a futures commission merchant. The amendments being adopted herein are necessary to facilitate the ongoing program of converting from a paper-based registration system to online registration. Currently, pursuant to Rule 30.5, firms that qualify for the exemption under the rule must file a petition for exemption with the National Futures Association and designate an agent for service of process in the U.S. The amendments being adopted herein facilitate the electronic submission of petitions for exemptions under Rule 30.5 through the online registration system and are technical in nature.

**EFFECTIVE DATE:** July 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lawrence B. Patent, Deputy Director, 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) 418-5439.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Commission Rule 30.5 provides an exemption from the registration requirement for any person located outside the U.S. who is required to be registered with the Commission under part 30 of the Commission's rules, other than a person required to register as a futures commission merchant ("FCM")—*i.e.*, an introducing broker ("IB"), commodity pool operator ("CPO"), or commodity trading advisor ("CTA").<sup>1</sup> Pursuant to Rule 30.5, any

person seeking exemption from registration under the rule must designate an agent for service of process in the U.S. and submit a petition for exemption to the National Futures Association ("NFA"). The designated agent must be the FCM located in the U.S. through which business is done, any registered futures association (currently NFA is the only registered futures association), or any person located in the U.S. in the business of providing services as an agent for service of process.

In June 2002, NFA implemented an electronic online registration system ("ORS") to replace a paper-based registration system. As part of the ongoing program of updating the registration process, NFA has submitted to the Commission for its approval, pursuant to Section 17(j) of the Commodity Exchange Act (the "Act"),<sup>2</sup> amendments to NFA registration rules that would require applicants seeking exemption pursuant to Commission Rule 30.5 to file such petitions electronically through ORS. On July 1, 2003, the Commission approved these amendments to the NFA registration rules.

The addition of the Rule 30.5 exemption to NFA's ORS should streamline the exemption process and provide a quicker and easier way for persons to provide NFA with the required information and enable NFA to process this information more efficiently and confirm exemption from registration pursuant to Rule 30.5 more quickly. Additionally, information on persons exempt from registration pursuant to Rule 30.5 should be more readily accessible by the public, NFA, and the Commission.

##### II. The Rule Amendments

Under the ORS, persons submitting a petition for exemption from registration pursuant to Rule 30.5 will file a Form 7-R. When a person indicates that it wishes to process a Part 30 exemption application, the ORS will follow the applicable "path" of the online Form 7-R, requiring the person to submit the information required by Rule 30.5. Currently, Rule 30.5 does not require a petition for exemption to be completed on a particular form, but instead requires the petition to be in writing and sets forth the information that must be included in the petition. The Commission is amending Rule 30.5 to make clear that a petition for exemption must be filed on a Form 7-R completed in accordance with the instructions therein.

Current Rule 30.5 provides the postal address where the petition should be submitted to NFA. As the petition will now be submitted through the ORS, it is unnecessary to include the postal address in the rule.

##### III. Related Matters

###### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")<sup>3</sup> requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments being adopted herein will not place any additional burdens since all persons seeking the exemption provided for pursuant to Rule 30.5 are already subject to the filing requirements of Rule 30.5. To the contrary, the amendments will help to streamline and simplify the current exemption procedures. Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to Section 3(a) of the RFA<sup>4</sup> that the proposed rules will not have a significant economic impact on a substantial number of small entities.

###### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")<sup>5</sup> 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. The Commission has submitted hard copies of how the new Form 7-R path will appear in the electronic registration system to the Office of Management and Budget.

###### C. 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, section 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

<sup>3</sup> 5 U.S.C. 601 *et seq.*

<sup>4</sup> 5 U.S.C. 605(b).

<sup>5</sup> 44 U.S.C. 3501 *et seq.*

<sup>1</sup> Commission rules referred to herein may be found at 17 CFR Ch. I (2002).

<sup>2</sup> 7 U.S.C. 1 *et seq.* (2000).

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 facilitate a streamlined exemption process that would result in quicker processing of petitions. 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 burden imposed upon persons submitting petitions for exemption, they do not affect the requirements to qualify for the exemption. Accordingly, they should have no effect on the Commission's ability to protect market participants and the public.

2. *Efficiency and competition.* The amendments are expected to benefit efficiency and competition by more quickly facilitating entry into the industry and by enabling information to be collected and made available in a more timely manner.

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, in facilitating the ongoing program of building an online registration system, are expected to result in a system that is easier to use and more efficient in its processing exemption applications. Additionally, the system should permit more information about persons exempt from registration pursuant to Rule 30.5 be readily accessible by the public more quickly.

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

#### D. 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.<sup>6</sup> The Commission further finds that, because the amendments relieve a restriction, in so far as they provide for a process that will make the submission of a petition for exemption under Rule 30.5, and the subsequent confirmation of such exemption, quicker and more efficient, and the amendments have no adverse effect upon a member of the public, there is good cause to make it effective less than thirty days after publication in the **Federal Register**.<sup>7</sup>

#### List of Subjects in 17 CFR Part 30

Commodity futures, consumer protection, fraud.

■ 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 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

■ 1. The authority citation for Part 30 is revised to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 6, 6c, and 12a, unless otherwise noted.

■ 2. Section 30.5 is amended as follows:

- a. By revising the introductory text;
- b. By revising paragraph (a);
- c. By revising paragraph (b); and
- d. By removing paragraph (e).

The revisions read as follows:

#### § 30.5 Alternative procedures for non-domestic persons.

Any person not located in the United States, its territories or possessions, who is required in accordance with the provisions of this part to be registered with the Commission, other than a person required to be registered as a futures commission merchant, may apply for an exemption from registration under this part by filing with the National Futures Association a Form 7-R completed and filed in accordance with the instructions thereto and designating an agent for service of process, as specified below. A person who receives confirmation of an exemption pursuant to this section must engage in all transactions subject to regulation under Part 30 through a registered futures commission merchant

or a foreign broker who has received confirmation of an exemption pursuant to § 30.10 in accordance with the provisions of § 30.3(b).

(a) *Agent for service of process.* Any person who seeks exemption from registration under this part shall enter into a written agency agreement with the futures commission merchant located in the United States through which business is done, with any registered futures association, or any other person located in the United States in the business of providing services as an agent for service of process, pursuant to which agreement such futures commission merchant or other person is authorized to serve as the agent of such person for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization, or any foreign futures or foreign options customer. If the written agency agreement is entered into with any person other than the futures commission merchant through which business is done, the futures commission merchant or foreign broker who has received confirmation of an exemption pursuant to § 30.10 with whom business is conducted must be expressly identified in such agency agreement. Service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer, pursuant to such agreement, shall constitute valid and effective service or delivery upon such person. Unless otherwise specified by the Commission, the agreement required by this section shall be filed with the National Futures Association. For the purposes of this section, the term "communication" includes any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document or correspondence relating to any activities of such person subject to regulation under this part.

(b) *Termination of agreement.* Whenever the agreement referred to in paragraph (a) of this section is terminated or is otherwise no longer in effect, the futures commission merchant or any other person that is party to the agreement shall immediately notify the National Futures Association and the futures commission merchant through which business is done, as appropriate. Upon notice, a futures commission merchant shall not accept from the person that has entered into such agreement any order, other than liquidating order(s), for, or on behalf of

<sup>6</sup> 5 U.S.C. 553(b)(3)(A).

<sup>7</sup> See 5 U.S.C. 553(d).

a foreign futures or foreign options customer. Notwithstanding the termination of the agreement referred to in paragraph (a) of this section, service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization, or any foreign futures or foreign options customer pursuant to the agreement shall nonetheless constitute valid and effective service or delivery upon such person with respect to any transaction entered into on or before the date of the termination of the agreement.

\* \* \* \* \*

Issued in Washington, DC, on July 1, 2003, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 03-17145 Filed 7-7-03; 8:45 am]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 101, 141, 201, 260, 352, and 357

[Docket No. RM02-14-000; Order No. 634]

#### Documentation Requirements for Cash Management Programs Issued June 26, 2003

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

**ACTION:** Interim rule.

**SUMMARY:** In order to protect the customers of jurisdictional companies, the Federal Energy Regulatory Commission is amending its regulations to implement documentation requirements for cash management programs. The Commission is also seeking comments on new reporting requirements that require FERC-regulated entities to file their cash management agreements with the Commission, and to notify the Commission when their proprietary capital ratios fall below 30 percent, and when their proprietary capital ratios subsequently return to or exceed 30 percent.

This initiative responds to recent investigations by FERC and others that revealed large amounts of funds in cash management programs (at least \$16 billion) that, in many instances, were not formalized in writing. The interim rule is intended to protect the ratepaying customers of FERC-regulated entities by providing greater transparency concerning cash

management programs. Additionally, it will ensure that the investing community has more and better information to evaluate the condition of these FERC-regulated entities and their financial exposure.

**DATES:** *Effective Date:* This rule is effective August 7, 2003.

*Compliance Date:* The Commission will not implement the reporting requirements in §§ 141.500, 260.400, and 357.5 until it has considered the comments filed on these requirements.

*Comment Date:* Comments on the new reporting requirements in §§ 141.500, 260.400, and 357.5 are due August 7, 2003.

**ADDRESSES:** Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

#### FOR FURTHER INFORMATION CONTACT:

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Appendix A—Commenters in RM02-14-000

## I. Introduction

1. The Federal Energy Regulatory Commission (Commission or FERC) is amending its regulations by implementing documentation requirements for FERC-regulated entities that participate in cash management programs. The documentation requirements are reflected in changes to 18 CFR parts 101, 201, and 352 of the Commission's Uniform Systems of Accounts for public utilities and licensees, natural gas and oil pipeline companies. The Commission, however, is not adopting the two financial prerequisites as proposed in the NOPR that would have limited participation in a cash management program when either of the two prerequisites was not met.

2. Additionally, the Commission is seeking comments on new reporting requirements that require FERC-regulated entities to file the agreements related to their cash management programs with the Commission, and require FERC-regulated entities to notify the Commission when their proprietary capital ratios drop below 30 percent, and when their proprietary capital ratios subsequently return to or exceed 30 percent. By making this information available to the public, the investing community will have needed and better information on which to evaluate the financial conditions of FERC-regulated entities. These reporting requirements are reflected in changes to 18 CFR §§ 141.500, 260.400, and 357.5 of the Commission's regulations. The Commission will not implement the reporting requirements in these Sections until it has considered the comments filed on these requirements.

3. Cash management programs are of several different types. Some concentrate and transfer funds from multiple accounts into a single bank account in the parent company's name. Another type is known as "cash pooling" or "money pooling." This system uses a single summary account with interest earned or charged on the net cash balance position. There is no movement of funds between accounts of the entities participating in the pool. All accounts must be in the same bank, but not at the same branch. A third type, known as a "zero balance account," empties or fills the balances in an affiliated company's account at a bank into or out of a parent's account each day. This list is not exhaustive and merely describes generic features of cash management programs.

4. Cash management programs control a large amount of assets. FERC Staff investigators found that in 2001, balances in cash management programs affecting FERC-regulated entities totaled approximately \$16 billion. In addition, other investigations have revealed large transfers of funds (amounting to more than \$1 billion) between regulated pipeline affiliates and non-regulated parents whose financial conditions were precarious. See *In Re Investigation of Certain Financial Data*, "Order to Respond," Docket No. IN02-6-000, 100 FERC ¶ 61,143 (2002). These and other fund transfers and the enormous, mostly unregulated, pools of money in cash management programs may detrimentally affect regulated rates.

5. To date, the scrutiny of cash management programs has been minimal and has been made difficult because many cash management programs have not been formalized in writing, and the impact of these programs on the energy markets and ratepayers is thus obscured. Other means of transferring assets from FERC-regulated entities to unregulated entities, such as loans and dividends, have a degree of transparency not found in cash management programs.

6. To protect the ratepaying customers of FERC-regulated entities by providing greater transparency of cash management programs, the Commission is implementing documentation standards for these activities that will assure appropriate data are maintained. The availability of such information will also allow FERC audit staff ready access to consistent data.

7. The Commission is amending its Uniform Systems of Accounts (18 CFR parts 101, 201, and 352) to provide documentation requirements for cash management programs, to require that cash management agreements be in writing, that the agreements specify the duties and responsibilities of cash management program participants and administrators, specify the methods for calculating interest and for allocating interest income and expenses, and specify any restrictions on deposits or borrowings by participants.

8. Additionally, to provide greater transparency of FERC-regulated entities' cash management programs, the Commission is seeking comments on a new reporting requirement that requires FERC-regulated entities to file these agreements with the Commission. Any subsequent changes to these agreements must be filed within 10 days from the date of the change.

9. The Commission is also seeking comments on a new reporting requirement that requires a FERC-

regulated entity to notify the Commission within 5 days when its proprietary capital ratio falls below 30 percent. The filing must include the entity's proprietary capital ratio, the significant event(s) or transaction(s) that contributed to the proprietary capital ratio falling below 30 percent, the extent to which the entity has amounts loaned or advanced to others within its corporate group through its cash management program, and plans, if any, to raise its proprietary capital ratio. Finally, the Commission is seeking comments on a new reporting requirement that would require a FERC-regulated entity to notify the Commission within 5 days when its proprietary capital ratio subsequently returns to or exceeds 30 percent.

10. The provisions of this interim rule will apply to all FERC-regulated entities that have not been granted waivers of the Commission's accounting and the FERC Annual Report Forms 1, 1-F, 2, 2-A or 6 filing requirements. The information collected through the new reporting requirements is considered non-confidential in nature and will be made available to the general public via the Federal Energy Regulatory Records Information System (FERRIS) accessed from the FERC's Home Page.

11. The new documentation standards, the filing of the cash management agreements, and the notification requirements, will achieve additional transparency with respect to the financial conditions and financial dealings of FERC-regulated entities and their corporate financial transactions. The public availability of the information will allow all users of financial information to make informed decisions based on relevant and accurate information.

## II. Background

12. In a Notice of Proposed Rulemaking (NOPR) issued on August 1, 2002, 67 FR 51150 (Aug. 7, 2002), IV FERC Stats. & Regs. ¶ 32,561 (Aug. 1, 2002), the Commission proposed to amend its Uniform Systems of Accounts for public utilities and licensees,<sup>1</sup> natural gas companies,<sup>2</sup> and oil pipeline companies,<sup>3</sup> to require that, as a prerequisite to a FERC-regulated entity

<sup>1</sup> Part 101 Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. 18 CFR part 101 (2003).

<sup>2</sup> Part 201 Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. 18 CFR part 201 (2003).

<sup>3</sup> Part 352 Uniform Systems of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. 18 CFR part 352 (2003).

participating in cash management programs, the FERC-regulated entity shall maintain a minimum proprietary capital ratio of at least 30 percent and the FERC-regulated entity and its parent shall maintain investment grade credit ratings. The Commission further proposed that if either of the conditions was not met, the FERC-regulated entity could not participate in the cash management program. Also, the NOPR proposed documentation requirements for cash management programs.

13. The NOPR was published in the **Federal Register** on August 7, 2002, and comments were initially due 15 days thereafter, or August 22, 2002. By notice issued August 16, 2002, the Commission extended the comment deadline to August 28, 2002. A Staff Technical Conference was held on September 25, 2002, to explore the issues raised by the NOPR.<sup>4</sup>

## III. Discussion

14. The Commission received nearly fifty comments concerning various aspects of the proposed rule. Virtually all commenters were generally supportive of the Commission's effort to establish more precise accounting rules with respect to cash management programs between regulated and unregulated entities.

15. On the other hand, most of the commenters objected to the proposed prerequisites to FERC-regulated entities' participation in cash management programs and claimed that there is no statutory basis for these requirements. Other commenters argued that they should be exempt from the requirements of the proposed rule. The Edison Electric Institute (EEI), the Interstate Natural Gas Association of America (INGAA), and the Association of Oil Pipe Lines (AOPL) filed a joint supplement to their initial comments, urging that the Commission adopt guidelines rather than a rule. A complete list of commenters may be found at Appendix A.

### A. Prerequisites for Participating in Cash Management Programs

16. The NOPR proposed two financial prerequisites that must be met for FERC-regulated entities to participate in cash management programs. As discussed below, most commenters objected to the use of these criteria for participation in the programs, and after reviewing the comments, the Commission will not impose the two financial prerequisites as conditions that FERC-regulated

<sup>4</sup> Notice of the Staff Technical Conference was issued September 6, 2002. See 67 FR 57994 (Sept. 13, 2002).

entities must meet to participate in cash management programs.

#### Comments Received

17. Commenters<sup>5</sup> argue that the NOPR fails to explain the basis for choosing a 30 percent proprietary capital requirement as well as how meeting this requirement achieves the stated objectives of the NOPR. They also assert that the proposed requirement would not effectively prevent any "upstream" loans from a regulated entity to its unregulated parent.

18. EEI, INGAA, AOPL and others object that to obtain credit ratings for previously unrated subsidiaries would be costly, and in some cases subsidiaries might not be able to obtain investment grade credit ratings without parental guarantees. Other commenters (e.g., PEPCO Holdings, Inc.) maintain that requiring a regulated entity to maintain a credit rating is unreasonable because not every subsidiary has publicly held debt, as the parent entity most likely does. Public Service Electric and Gas Company, *et al.* (PSEG) is concerned that many of its subsidiaries would be unable to obtain investment grade credit ratings based on its current business structure, which is designed to qualify subsidiaries for exempt wholesale generator status. KeySpan Corporation (KeySpan) expresses doubt that a credit rating for FERC-regulated entities would do much to protect ratepayers.

19. The National Rural Electric Cooperative Association (NRECA) points out that many of its electric cooperative members operate as not-for-profit organizations collecting only enough revenues in excess of operating expenses to meet mortgage requirements and would, therefore, not be able to meet the 30 percent proprietary capital requirement. These electric cooperatives argue that so long as they meet their loan agreements, they should be permitted to participate in cash management programs.

20. Commenters<sup>6</sup> also argue that the investment grade credit rating prerequisite could in fact increase costs to ratepayers where neither the FERC-regulated entity nor its unregulated parent currently holds a credit rating of any kind. The cost burden of obtaining and maintaining investment grade credit

ratings, commenters state, would invariably be passed on to ratepayers. They further argue that any costs associated with a FERC-regulated entity not being able to participate in a cash management program, such as higher costs of borrowing, would also be borne by ratepayers in the form of higher rates.

21. Duke Energy and NiSource fear the rule would effectively become a financial rating trigger and would place added stress on a company's investment grade credit rating. They point out that rating agencies advise companies to avoid such rating triggers in financing agreements because rating agencies view these triggers as creating additional risk. Accordingly, these commenters would eliminate either the investment grade credit rating or the 30 percent proprietary capital requirement, or both.

22. Conversely, Missouri Public Service Commission (MoPSC) suggests that the Commission require all entities that participate in the same cash management program as a regulated entity maintain investment grade credit ratings or maintain the ratings if they participate in different pools with members in common with the regulated entity's pool.

#### Commission Response

23. The Commission recognizes the myriad concerns raised by parties commenting on the NOPR, both in comments on the NOPR and in comments received at the related Staff Technical Conference, particularly with respect to the 30 percent proprietary capital and investment grade credit rating prerequisites. Based upon the additional information obtained from commenters, conditioning participation in a cash management program using an investment grade credit rating and a proprietary capital ratio of 30 percent may be too rigid and inflexible.

24. Although over 90 percent of FERC-regulated entities have at least 30 percent proprietary capital, many do not have credit ratings and would thus fail the investment grade prerequisite. The prerequisites, particularly the requirement for an investment grade credit rating, would create uncertainty as to the ability of FERC-regulated entities to participate in new or existing cash management programs. The Commission therefore is not adopting the proposed prerequisites.<sup>7</sup>

<sup>7</sup> The Commission will not adopt the NOPR's proposed revision to paragraph B of Accounts 146, Accounts receivable from associated companies and paragraph (b) of Account 13, Receivables from affiliated companies, which prescribed the prerequisites for participation in cash management programs.

#### B. Documentation Requirements

25. The NOPR proposed that FERC-regulated entities would be required to maintain documentation of all deposits into and borrowings from cash management programs, as well as documentation of security, if any, provided for repayment of deposits or in support of borrowings, and daily balances for each individual deposit or borrowing as well as documentation on the organization and operation of the cash management program.

#### Comments Received

26. Virtually all commenters supported the NOPR's proposed requirement to put all agreements in writing, specifying the duties of the participants as well as the duties of the administrators. EEI asserts that, as a general matter, the proposed documentation requirements as to the structure and operation of the cash management programs appear reasonable and would formalize documentation practices that should already be in place for such programs. AOPL argues that while companies could document the establishment of cash management programs and all transactions, individual agreements are rarely, if ever, put into writing. While agreeing that putting agreements into written documents would be helpful, Duke Energy urges the Commission not to dictate the terms of the agreements.

27. While commenters support the documentation requirements, many, including EEI, Allegheny Energy, Inc. (Allegheny), AOPL, Cinergy Corp. (Cinergy), Gulf South Pipeline Company LP (Gulf South), KeySpan and NiSource, request clarification on whether they must securitize cash management transactions. They also request clarification that securitization is not required for participation in a cash management program, but that the Commission intends that any security provided be documented. AOPL, Gulf South, and National Fuel Gas Supply Corporation (National Fuel) also request clarification of the level of detail required for the documentation, whether the documentation may be maintained electronically, and whether companies must submit the documentation on any regular basis or whether maintaining the documentation is sufficient. AOPL suggests that the documentation requirements should be simplified to more closely mirror Generally Accepted Accounting Principles (GAAP), arguing that tracking every transaction is unreasonable and unwarranted.

<sup>5</sup> E.g., NiSource Inc. (Nisource), Chevron Pipeline Company, *et al.* (Chevron), El Paso Energy Partners, L.P. (El Paso).

<sup>6</sup> Among them are AOPL, Chevron, INGAA, National Grid USA (National Grid), Duke Energy Corporation (Duke Energy), SCANA Corporation (SCANA) and Ameren Corporation (Ameren) (also arguing that cutting off access to capital could be detrimental to customers because utilities might then avoid maintenance and improvements to their systems).

*Commission Response*

28. While we recognize that some commenters argue that their particular cash management programs have not been reduced to writing, sound business practices dictate, as noted by EEL, that such agreements be in writing. We are not, however, establishing the terms of such agreements. In this interim rule, we require FERC-regulated entities to maintain documentation in support of their cash management programs including the duties and responsibilities of the program administrators and participants, restrictions on borrowings from the cash management programs, interest earnings and expense rates and cost sharing provisions, all as stated in the text of revised Account 146, Accounts receivable from associated companies, for public utilities and licensees, and natural gas companies, and Account 13, Receivables from affiliated companies, for oil pipeline companies.

29. With respect to the form of documentation required in support of cash management programs, the Commission's regulations at parts 125, 225 and 356 prescribe the form of the media to be utilized for maintaining the records including paper, electronic, optical or other new and evolving media, as well as the retention period for such records.<sup>8</sup>

30. The Commission did not propose the filing of any of the documentation that it proposed to be maintained. After review of comments and in recognition of the need for transparency of information on cash management programs, the Commission is now seeking comment on proposed filing requirements for cash management agreements and for notification of changes in the FERC-regulated entity's proprietary capital ratio.

31. Duke Energy's and other commenters' concerns about the Commission's requirements for security for cash management program deposits and borrowings are misplaced. The interim rule does not require security for these arrangements. To clarify, FERC-regulated entities must maintain documentation of security for deposits into and borrowings from these arrangements only when the cash management programs themselves require such security.<sup>9</sup>

32. Duke Energy also argues that the text of Account 146 should be revised to provide that items "not expected to be paid" within 12 months or non-current items should be transferred

either to Account 123, Investment in associated companies, or Account 123.1, Investment in subsidiary companies, rather than requiring the transfer of all non-current items to Account 123 as Account 146 now provides.<sup>10</sup> Duke Energy argues that this clarification will ensure proper classification of items and will "eliminate the need for burdensome daily monitoring for the twelve-month time limit on entries in this account \* \* \*."<sup>11</sup>

33. While Duke Energy's concern is not entirely clear, it may be related to a misperception of the proposed requirements for documenting security of cash management program transactions. The NOPR proposed no change in how current and non-current transactions are accounted for, and Duke Energy's suggested revision is beyond the scope of this interim rule. As explained above, the interim rule does not mandate that cash management transactions be securitized, but only imposes a documentation requirement for any security that exists. Duke Energy implies it is hard to monitor "undated" paper for purposes of the rule's documentation requirements. However, the possibility of "undated" paper existed prior to the interim rule, and for purposes of proper classification in Account 146, 123, or 123.1, a reasonable date must be imputed. Duke Energy has not clearly articulated any need for changing Account 146 as a consequence of the interim rule. Accordingly, the Commission will not modify Account 146, as requested by Duke Energy.

34. AOPL's proposal that documentation "mirror" GAAP is imprecise and does not identify the specific documentation to be maintained for cash management transactions. The Commission is specifying the documentation that FERC-regulated entities must maintain to meet Commission's oversight needs and to satisfy its regulatory mandate.

35. Finally, FirstEnergy Corp. (FirstEnergy) suggests creating a new account under the Uniform System of Accounts under which all cash management program loans would be recorded. It further requests that the Commission clarify the specific transactions to which the NOPR applies, as Account 146 encompasses all transactions between associated companies.

36. We do not find it necessary at this time to revise the Uniform Systems of Accounts by adding a new account as requested by FirstEnergy. The instructions to Account 146 are

sufficient and can accommodate cash management programs used by FERC-regulated entities.

*C. Prohibition on Netting*

37. The NOPR proposed that "cash deposits and borrowings may not be netted" in order to provide better transparency of inter-company payables or receivables resulting from cash management agreements.

*Comments Received*

38. Commenters uniformly object to this proposal or request clarification as to the meaning of this requirement, pointing out that netting is the essence of, and one of the key benefits of, cash management programs.<sup>12</sup> Commenters argued that cash management programs operate, essentially, as ordinary checking accounts and that transactions within an account are netted against each other.<sup>13</sup>

*Commission Response*

39. Prior to the issuance of the NOPR, the Commission examined a number of FERC-regulated entities' cash management accounts. That examination revealed numerous instances in which amounts reported in FERC Accounts 146 and 13 had negative balances. The Commission views the reporting of negative balances in these receivables accounts rather than in payable accounts as inappropriate and potentially misleading. The Commission included in the NOPR a ban on netting in an effort to rectify that situation.

40. The Commission agrees with the commenters that cash management programs operate essentially as ordinary checking accounts and that transactions within an account are netted against each other. The Commission is therefore deleting the prohibition on netting from this interim rule. We will require, however, that the balances in the FERC accounts that record cash management activities be properly classified: debit balances must be reported in the appropriate accounts receivable account and credit balances must be reported in the appropriate accounts payable account at the end of each accounting period.

*D. Applicability of Rule*

41. The NOPR proposed that the requirements of this rule apply to all FERC-regulated entities including registered holding companies that are regulated by the United States Securities and Exchange Commission (SEC).

<sup>8</sup> 18 CFR parts 125, 225 and 356 (2003).

<sup>9</sup> EEL made this point in its comments at the September 25, 2002 technical conference.

<sup>10</sup> Duke Energy comments at 26–27.

<sup>11</sup> *Id.* at 27.

<sup>12</sup> See, e.g., AOPL, INGAA, and EEL.

<sup>13</sup> *Id.*

*Comments Received*

42. Registered holding company commenters uniformly argue that registered holding companies, regulated by the SEC under the Public Utility Holding Company Act of 1935 (PUHCA), should be exempted from the proposed rule.<sup>14</sup> They argue that their cash management activities are already regulated by the SEC, that efforts by FERC to regulate the same would be burdensome and duplicative, that the PUHCA itself protects against cash management abuse, and that Section 318 of the Federal Power Act (FPA) deprives FERC of the authority to regulate their cash management practices.<sup>15</sup> Ameren suggests that the Commission deem registered holding companies in compliance with the proposed rule so long as the companies comply with all applicable PUHCA rules and SEC orders. Furthermore, several commenters, including Cinergy, point out that the regulation of cash management programs falls squarely within the technical expertise of the SEC.

43. Similarly, USG Pipelines,<sup>16</sup> Cinergy and others argue that the rule should not apply to small regulated entities and urge the Commission expressly to exempt these entities. The NRECA asks that the rule not be applied to cash management programs maintained by FERC-regulated electric cooperatives.

44. Energy marketers and traders argue that ratepayers would not be adversely affected by mismanagement of their cash management programs, and, therefore, they should be exempted from the proposed rule.<sup>17</sup> PSEG suggests expanding the exemption from the Uniform System of Accounts to include generators and suggests that energy marketers, traders and generators be allowed to apply for waivers by demonstrating that they are not subject to the Commission's cost-based rate regulation, similar to the Commission's

<sup>14</sup> Registered holding company commenters included: American Electric Power Company, Inc. (AEP), Allegheny, Ameren, Cinergy, FirstEnergy, KeySpan, National Fuel, National Grid, NiSource, Northeast Utilities (NU), SCANA, and WGL Holdings, Inc. (WGL Holdings).

<sup>15</sup> 16 U.S.C. 792.

<sup>16</sup> USG Pipeline Co., B-R Pipeline Co. and United States Gypsum Co. (collectively USG Pipelines).

<sup>17</sup> Ontario Energy Trading International, Electric Power Supply Association, Edison Mission Energy, and Edison Mission Marketing and Trading, Inc. The concern is that entities with market-based rate authority may lose their exemption from the requirements of the Uniform System of Accounts, at which time they would become subject to the Commission's cash management requirements.

waiver of its part 35 cost of service filing requirements.

*Commission Response*

45. The Commission agrees with comments submitted by registered holding companies and their affiliates asserting that the SEC regulates their cash management activities. The Commission is not, in this interim rule, prescribing any limitations on the entry into and participation in cash management programs. The Commission is, however, prescribing documentation requirements that will apply to FERC-regulated entities that are subject to the SEC's oversight. In carrying out its oversight, the SEC has not promulgated regulations governing the documentation to be maintained for cash management activities. The SEC's case-by-case documentation requirements do not provide assurance that documentation adequate for this Commission's regulatory oversight will be maintained. Therefore, we shall require that FERC-regulated entities that are also subject to the PUHCA follow the documentation requirements that we are adopting in our Uniform Systems of Accounts. Section 318 of the FPA does not prohibit the imposition of these requirements because there is no conflict between the documentation requirements the Commission is adopting here and those used by the SEC.

46. The eligibility concerns of NRECA and others representing "small regulated entities" are moot since the Commission is not adopting the proposed prerequisites for participation in cash management programs. Small regulated entities and NRECA members are subject to our Uniform Systems of Accounts and thus will be subject to the documentation requirements that we are adopting in this interim rule.

47. Energy marketers, traders, generators and other FERC-regulated entities that have been granted waivers of our accounting and the FERC Annual Report Forms 1, 1-F, 2, 2-A or 6 reporting requirements will not be subject to the documentation requirements included in this interim rule.

*E. Legal Authority to Prescribe Prerequisites*

48. Several commenters<sup>18</sup> argue that FERC lacks the authority under the

<sup>18</sup> Among the commenters are Duke Energy, INGAA (comments supported by El Paso, National Fuel, and Williston Basin Interstate Pipeline Co.), EEI (comments supported by AEP), AOPL (comments supported by Chevron), and the Kinder Morgan Pipelines (Kinder Morgan).

Natural Gas Act (NGA),<sup>19</sup> the FPA, as well as the Interstate Commerce Act (ICA)<sup>20</sup> to impose any prerequisites for the use of cash management accounts. Other commenters argue that the regulation of cash management participation is beyond the jurisdiction of the Commission. Others state that the proper way to protect customers and redress cash management issues is through rate cases.<sup>21</sup> Duke Energy in particular argues that the Commission's authority under its ratemaking powers and its related investigatory powers offers ample protection to ratepayers without the need for the more restrictive measures proposed in the NOPR.

49. These commenters' arguments about our authority to prescribe prerequisites to cash management programs are made moot by the Commission's decision in this interim rule to forego such prerequisites. The interim rule revises the Uniform Systems of Accounts for public utilities and licensees, natural gas companies, and oil pipeline companies pursuant to the authority granted the Commission under the FPA, the NGA, and the ICA to prescribe uniform accounting requirements for entities subject to the Commission's jurisdiction.<sup>22</sup>

*F. Requests for Policy Statement*

50. EEI, INGAA, AOPL and other commenters<sup>23</sup> suggest that the Commission issue a policy statement concerning cash management programs rather than a rule.

51. Because a policy statement does not have the force of law, a policy statement in lieu of a rule would not provide the assurance or transparency of a rule on documentation requirements and, therefore, would not adequately protect ratepayers. The Commission

<sup>19</sup> 15 U.S.C. 717.

<sup>20</sup> 49 App. U.S.C. 1-85 (1988).

<sup>21</sup> *E.g.*, Kinder Morgan, NiSource. These commenters argue that the Commission can prevent harm to consumers by disallowing the passthrough of costs related to improper cash management practices to customers, when the regulated entity files a rate case to recover such costs. However, the Commission observes that rate cases are infrequent for many FERC-regulated entities, and the harm done by improper cash management practices may occur long before a rate case is filed.

<sup>22</sup> Section 301(a) of the Federal Power Act (FPA), 16 U.S.C. 825(a), section 8 of the Natural Gas Act (NGA), 15 U.S.C. 717g and section 20 of the Interstate Commerce Act (ICA), 49 App. U.S.C. 20 (1988), authorize the Commission to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for the purpose of administering the FPA, NGA, and the ICA. The Commission may prescribe a system of accounts for FERC-regulated companies and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited.

<sup>23</sup> *See e.g.* Gulf South, Duke Energy, and Kinder Morgan.

finds that the public interest will be better satisfied by implementing a rule rather than by issuing advisory guidelines.

#### G. New Reporting Requirements

52. As part of this interim rule, the Commission is seeking comments on new reporting requirements that were not explicitly included in the NOPR that would require FERC-regulated entities to file their cash management agreements with the Commission, and to notify the Commission when their proprietary capital ratios fall below 30 percent and when they subsequently return to or exceed 30 percent.

53. As previously mentioned, large amounts of funds are controlled through cash management programs and in many instances such programs were not formalized in writing or were not adequately documented. In order to monitor these types of programs, the Commission is exercising its authority pursuant to sections 4, 304 and 309 of the Federal Power Act, sections 10(a) and 16 of the Natural Gas Act, and section 20 of the Interstate Commerce Act to require the filing of cash management agreements, and the filing of a notification when a FERC-regulated entity's proprietary capital ratio falls below 30 percent and when it subsequently returns to or exceeds 30 percent.<sup>24</sup> Additionally, all of the information collected in these filings will be considered non-confidential in nature and therefore will be made available to the general public for greater transparency. The Commission will not implement any reporting requirements, however, until it has received and analyzed the comments.

#### 1. Submission of Cash Management Agreements

54. The Commission is seeking comments on a new reporting requirement that would require FERC-regulated entities participating in cash management programs to file their cash management agreements, and any subsequent changes within 10 days from the date of the change. The filing of these agreements with the Commission will provide timely information that will lend additional transparency to the cash management program activities between FERC-regulated entities and their affiliates. The public availability of the information will allow the Commission, as well as all users of financial information to make informed decisions based on relevant and accurate information.

#### 2. Notification Requirements

55. The Commission is seeking comments on a new reporting requirement that would require FERC-regulated entities participating in cash management programs to notify the Commission when their proprietary capital ratios fall below 30 percent and when they subsequently return to or exceed 30 percent. In addition, the Commission is seeking comments on what would be an appropriate notification standard to use as a comparable indicator of a change in financial condition for electric cooperatives that file FERC Annual Report Forms 1 or 1-F with the Commission.

56. Although the two financial prerequisites (*i.e.*, the investment grade credit rating and the 30 percent proprietary capital) included in the NOPR were not adopted as part of this interim rule, they are important indicators of a company's financial health and indicate the extent to which a FERC-regulated entity has taken on debt to finance its assets or operations. A highly leveraged company, with the accompanying fixed interest expense and future obligation to repay the principal, may be in a weakened financial position if there is an unfavorable change in the business climate. This event may result in an inadequate flow of cash which may have an adverse impact on the FERC-regulated entity's ability to remain solvent.

57. Therefore, when a FERC-regulated entity's proprietary capital ratio falls below 30 percent (or conversely, its long-term debt ratio rises above 70 percent), the FERC-regulated entity must file a notification with the Commission, detailing its proprietary capital ratio, the significant event(s) or transaction(s) that contributed to the proprietary capital ratio falling below 30 percent, the extent to which the FERC-regulated entity has amounts loaned or money advanced to others within its corporate group through its cash management program(s), and plans, if any, to raise its proprietary capital ratio.

58. NRECA asserts that many of its electric cooperative members operate as not-for-profit organizations collecting only enough revenues in excess of operating expenses to meet mortgage requirements and would, therefore, not be able to meet the 30 percent proprietary capital requirement. However, NRECA also states that many electric cooperatives have themselves established subsidiaries that are engaged in diversified non-electric business

activities.<sup>25</sup> The Commission recognizes that electric cooperatives generally do not accumulate profits for shareholders as is the case of investor owned utilities. Consequently, the proprietary capital ratio may not be an appropriate indicator of a weakened financial condition for a cooperative. The Commission therefore invites comment on what would be an appropriate metric of financial condition to use as a notification trigger for cooperatives that participate in cash management programs with their affiliates.

59. Under the Uniform System of Accounts, FERC-regulated entities are required to keep their books and records on a monthly basis.<sup>26</sup> Therefore, within 15 days after the end of the month, FERC-regulated entities subject to this interim rule must compute their proprietary capital ratios. The proprietary capital ratio must be computed as follows. The numerator will be the sum of the balances in the proprietary capital accounts. Public utilities and licensees and natural gas companies will use Account 201, Common stock issued, through Account 219, Accumulated other comprehensive income, and oil pipeline companies will use Account 70, Capital stock, through Account 77, Accumulated other comprehensive income. The denominator will be the sum of the balances in the proprietary capital accounts plus the sum of the balances in the long-term debt accounts. Public utilities and licensees, and natural gas companies will use Account 221, Bonds, through Account 226, Unamortized discount on long-term debt-Debit, and oil pipeline companies will use Account 60, Long term debt-payable after one year, through Account 62, Unamortized discount and interest on long term debt. In the event the proprietary capital ratio falls below 30 percent, the FERC-regulated entity must make its notification filing within 5 days after making the above calculation. Additionally, the FERC-regulated entity will be required to notify the Commission within 5 days after the determination has been made that its proprietary capital ratio has met or exceeded 30 percent.

#### IV. Regulatory Flexibility Act Statement

60. The Regulatory Flexibility Act (RFA)<sup>27</sup> requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on

<sup>25</sup> NRECA comments at 4.

<sup>26</sup> General Instruction 4 in 18 CFR parts 101 and 201, General Instruction 1-3 in 18 CFR part 352.

<sup>27</sup> 5 U.S.C. 601-612.

<sup>24</sup> See 16 U.S.C. 797, 825c and 825h; 15 U.S.C. 7171(a) and 7170; and 49 App. U.S.C. 1-85.

substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect.

61. The Commission concludes that this interim rule would not have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of a small entity, and the data required by this rule are already being captured by their accounting systems. However, if the recordkeeping requirements represent an undue burden on small businesses, the entity affected may seek a waiver of the requirements from the Commission.

62. AOPL argues that the NOPR's estimate of the impact of this rule for the purposes of the Regulatory Flexibility Act of 1980 was too low. AOPL bases its estimate largely on the costs that previously unrated subsidiaries would incur to obtain credit ratings.<sup>28</sup> The interim rule, however, eliminates the proposed prerequisites for participation in cash management programs thus making concerns over obtaining credit ratings moot.

#### V. Environmental Analysis

63. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>29</sup> The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental impact statement.<sup>30</sup> No environmental consideration is raised by the promulgation of a rule that is procedural or does not substantially change the effect of legislation or regulations being amended.<sup>31</sup> This rule updates parts 101, 141, 201, 260, 352 and 357 of the Commission's regulations and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. Accordingly, no environmental consideration is necessary.

#### VI. Information Collection Statement

64. The Office of Management and Budget's (OMB) regulations at 5 CFR 1320.11 require that it approve certain

reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the information collection requirements of this interim rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

65. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995,<sup>32</sup> the information collection requirements in the subject rulemaking were submitted to OMB for review.

66. *Public Reporting Burden:* In the NOPR the Commission provided burden estimates based on an estimate of the number of FERC-regulated entities currently filing FERC Forms 1, 2 and 6, who are members of consolidated groups and participate in their consolidated groups' cash management programs. The NOPR estimated that 448 FERC-regulated entities would need to convert verbal cash management agreements into writing to comply with this interim rule. For each entity, the NOPR estimated it would require an average of two hours to make the conversion for a total of burden estimate of 896 hours.<sup>33</sup> In addition, FERC-regulated entities must maintain documentation on their cash management programs. Also, the Commission is seeking comments on new reporting requirements that would require FERC-regulated entities to file their cash management agreements and notify the Commission when their proprietary capital ratios fall below 30 percent and when their proprietary capital ratios subsequently return to or exceed 30 percent. These requirements will be part of a new reporting requirement, FERC-604. The burden estimates below reflect both the documentation and the reporting requirements.

67. The Commission received 48 comments on the proposed cash management prerequisites and documentation requirements. Of the 48 commenters, EEI and AOPL challenged the Commission's estimates for reporting burden as too low. EEI asserts

a company of any size with multiple cash management agreements is likely to spend more than two hours per year maintaining written cash management agreements and the non-netted transactional records. EEI further asserts that the rule's FERC Form 1 reporting requirements would likely take 10 or more hours by themselves. EEI suggests that a more realistic estimate of burden imposed by the rule would be at least 30 hours or more per company per year. AOPL states that while the FERC Form 6 reporting is unlikely to increase significantly, other requirements within the proposed rule would have a significant impact on the cost and burden of this rule. AOPL estimates the cost of complying with the investment grade rating requirement could range from \$100,000 to \$300,000 for each previously unrated subsidiary. Six other commenters argued that the proposed prerequisite would impose significant costs and burdens upon them.

68. In this interim rule, the Commission has eliminated the prerequisites for participation in cash management programs and the no-netting requirement for cash management transactions. Therefore, issues raised by EEI, AOPL and others about costs and burdens of complying with these aspects of the proposed rule are moot. The Commission concludes that EEI's comment that the rule imposes ten or more hours of additional burden on FERC Form 1 reporting requirements is unsupported and misplaced. Similarly, the Commission concludes that EEI has not provided any support regarding its assertion that burden imposed by this rule is 30 or more hours. The Commission finds the burden associated with converting documents to comply with this interim rule is minimal and that its previous estimate was a reasonable one. While FERC-regulated entities will now be required to reduce their cash management agreements to writing, the Commission finds that this is simply sound business practice and, as the Commission is not dictating the terms of these agreements, the burden should be small.

#### 69. Recordkeeping (Documentation) Requirements

requirement and requires all cash management agreements to be in writing, the associated burden is correctly assigned to FERC-555 "Records Retention Requirements." The reporting requirements that are also the subject of this interim rule will be identified by a new information collection requirement.

<sup>28</sup> AOPL Comments at 12.

<sup>29</sup> Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶30,783 (1987).

<sup>30</sup> 18 CFR 380.4.

<sup>31</sup> 18 CFR 380.4(a)(2)(ii).

<sup>32</sup> 44 U.S.C. 3507(d).

<sup>33</sup> In the NOPR, the burden estimate was improperly identified as applying to the FERC Form 1, FERC Form 2 and FERC Form 6 data collections. Since the interim rule imposes a recordkeeping

Data Collection	Number of Respondents	Number of Responses Per Respondent	Hours Per Respondent	Total Annual Hours
FERC-555 .....	448	1	2	896
Totals .....				896

The total annual hours for documentation requirements = 896 hours.

70. Reporting Requirements:

Data Collection	Number of Respondents	Number of Responses Per Respondent	Hours Per Response	Total Annual Hours
FERC-604 (new) (cash management agreement) .....	602*	1	1.5	903
(Notification) .....	34	2	.75	51
Totals .....				954

\*(The number of respondents as identified in the NOPR that will be subject to submitting documents describing their cash management agreements.)

The total annual hours for reporting requirements is 954.

71. *Information Collection Costs:* The Commission estimates the costs associated with converting verbal cash management agreements into writing to comply with the requirements of this interim rule to be \$50,418.<sup>34</sup> The Commission estimates the costs associated with submitting cash management program documents and notifying the Commission when a FERC-regulated entity's proprietary capital ratio falls below 30 percent and when its proprietary capital ratio subsequently returns to or exceeds 30 percent to be \$53,681.<sup>35</sup>

72. The Commission has assured itself, by means of its internal review that there is specific, objective support for the burden estimates associated with the information requirements.

*Title:* FERC-555 "Records Retention Requirements"; FERC-604 "Cash Management Programs and Financial Reporting Requirements".

*Action:* Proposed information collection requirements.

*OMB Control No.:* 1902-0098 and to be determined.

*Respondents:* Public utilities and licensees; natural gas companies; oil pipeline companies (Business or other for profit, including small businesses.)

*Frequency of the information:* On occasion.

*Necessity of the information:* The interim rule amends the Commission's regulations to revise parts 101, 141, 201, 260, and 352, the Commission's Uniform Systems of Accounts, to provide information collection requirements for cash management

activities and to require that cash management agreements be in writing.

73. The implementation of these requirements will help the Commission carry out its responsibilities under the FPA, the NGA and the ICA to protect ratepaying customers of FERC-regulated entities by providing greater transparency of cash management activities.

74. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, ED-30, (202) 502-8415, or [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov)] or by sending comments on the collections of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW., Washington, DC 20503. The Desk Officer can also be reached by phone at (202) 395-7856, or fax: (202) 395-7285.

**VII. Comment Procedures**

75. The Commission invites all interested persons to submit comments on the new reporting requirements included in this interim rule, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 7, 2003. Comments must refer to Docket No. RM02-14-000, and must include the commenter's name, the organization he or she represents, if applicable, and the commenter's address in the comments. Comments may be filed either in electronic or paper format.

76. Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington DC 20426.

77. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability Section below. Commenters on this rule are not required to serve copies of their comments on other commenters.

**VIII. Document Availability**

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

79. From FERC's Home page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or

<sup>34</sup> (896 hours for collection+2,080 hours) × \$117,041 = \$50,418.

<sup>35</sup> (954 hours for collection+2,080 hours) × \$117,041 = \$53,681.

downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

80. User assistance is available for FERRIS and the FERC's Web site during normal business hours by contacting FERC Online Support by telephone at (866) 208-3676 (toll free) or for TTY, (202) 502-8659, or by e-mail at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov).

**IX. Effective Date and Congressional Notification**

81. These regulations are effective August 7, 2003. The Commission, however, will not implement the new reporting requirements until it has had an opportunity to consider the comments filed on these requirements. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this interim rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>36</sup> The Commission will submit the interim rule to both houses of Congress and the General Accounting Office.<sup>37</sup>

**List of Subjects**

*18 CFR Part 101*

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

*18 CFR Part 141*

Electric power, Reporting and recordkeeping requirements.

*18 CFR Part 201*

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

*18 CFR Part 260*

Natural gas, Reporting and recordkeeping requirements.

*18 CFR Part 352*

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

*18 CFR Part 357*

Pipelines, Reporting and recordkeeping requirements.

By the Commission.

**Magalie R. Salas,**  
*Secretary.*

■ In consideration of the foregoing, the Commission is amending parts 101, 141, 201, 260, 352, and 357 in Title 18 of the Code of Federal Regulations, as follows:

**PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT**

■ 1. The authority citation for part 101 continues to read as follows:

**Authority:** 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

■ 2. In part 101, Balance Sheet Accounts, the existing paragraph in account 146 is designated as paragraph A, and paragraphs B and C are added to read as follows:

**Balance Sheet Accounts**

\* \* \* \* \*

*146 Accounts receivable from associated companies.*

A. \* \* \*

B. A public utility or licensee participating in a cash management program must maintain supporting documentation for all deposits into, borrowings from, interest income from, and interest expense to such program. Cash management programs include all agreements in which funds in excess of the daily needs of the public utility or licensee along with the excess funds of the public utility's or licensee's parent, affiliated and subsidiary companies are concentrated, consolidated, or otherwise made available for use by other entities within the corporate group. The written documentation must include the following information:

(1) For each deposit with and each withdrawal from the cash management program: the date of the deposit or withdrawal, the amount of the deposit or withdrawal, the maturity date, if any, of the deposit, and the interest earning rate on the deposit;

(2) For each borrowing from a cash management program: the date of the borrowing, the amount of the borrowing, the maturity date, if any, of the borrowing, and the interest rate on the borrowing;

(3) The security, if any, provided by the cash management program for repayment of deposits into the cash management program and the security required, if any, by the cash management program in support of borrowings from the program; and

(4) The daily balance of the cash management program.

C. The public utility or licensee must maintain current and up-to-date copies of the documents authorizing the establishment of the cash management program including the following:

(1) The duties and responsibilities of the administrator and the other

participants in the cash management program;

(2) The restrictions on deposits or borrowings by participants in the cash management program;

(3) The method used to determine the interest earning rates and interest borrowing rates for deposits into and borrowings from the program; and

(4) The method used to allocate interest income and expenses among participants in the program.

\* \* \* \* \*

**PART 141—STATEMENTS AND REPORTS (SCHEDULES)**

■ 3. The authority citation for part 141 continues to read:

**Authority:** 15 U.S.C. 79, 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 4. Section 141.500 is added to read as follows:

**§ 141.500 Cash management programs and financial condition reports.**

(a) Public utilities and licensees subject to the provisions of the Commission's Uniform System of Accounts Prescribed in part 101 of this title that participate in cash management programs must file these agreements with the Commission. The documentation establishing the cash management program and entry into the program must be filed within 10 days of entry into the program. Subsequent changes to the cash management agreement must be filed with the Commission within 10 days of the change.

(b) Public utilities and licensees must determine, on a monthly basis within 15 days after the end of each month, the percentage of their capital structure that constitutes proprietary capital. The proprietary capital ratio must be computed using a formula in which the total of the balances in the Proprietary Capital Accounts; Account 201, Common stock issued, through Account 219, Accumulated other comprehensive income, in part 101 of this title is the numerator and the total proprietary capital plus the total of the Long-Term Debt Accounts; Account 221, Bonds, through Account 226, Unamortized discount on long-term debt—Debit, in part 101 of this title, is the denominator.

(c) In the event that the proprietary capital ratio is less than 30 percent, the public utility or licensee must notify the Commission within 5 days of the determination of that fact and must describe the significant event(s) or transaction(s) causing its proprietary capital ratio to be less than 30 percent including the extent to which the public

<sup>36</sup> 5 U.S.C. 804(2) (2002).

<sup>37</sup> 5 U.S.C. 801(a)(1)(A) (2002).

utility or licensee has amounts loaned or money advanced to its parent, subsidiary, or affiliate companies through its cash management program(s), along with plans, if any, to regain at least a 30 percent proprietary capital ratio.

(d) In the event that the proprietary capital ratio subsequently meets or exceeds 30 percent, the public utility or licensee must notify the Commission within 5 days of the determination of that fact.

**PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT**

■ 5. The authority citation for part 201 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

■ 6. In part 201, Balance Sheet Accounts, the existing paragraph in account 146 is designated as paragraph A, and paragraphs B and C are added to read as follows:

**Balance Sheet Accounts**

\* \* \* \* \*

146 *Accounts receivable from associated companies.*

A. \* \* \*

B. A natural gas company participating in a cash management program must maintain supporting documentation for all deposits into, borrowings from, interest income from, and interest expense to such program. Cash management programs include all agreements in which funds in excess of the daily needs of the natural gas company along with the excess funds of the natural gas company's parent, affiliated and subsidiary companies are concentrated, consolidated, or otherwise made available for use by other entities within the corporate group. The written documentation must include the following information:

(1) For each deposit with and each withdrawal from the cash management program: The date of the deposit or withdrawal, the amount of the deposit or withdrawal, the maturity date, if any, of the deposit, and the interest earning rate on the deposit;

(2) For each borrowing from a cash management program: The date of the borrowing, the amount of the borrowing, the maturity date, if any, of the borrowing, and the interest rate on the borrowing;

(3) The security, if any, provided by the cash management program for repayment of deposits into the cash management program and the security

required, if any, by the cash management program in support of borrowings from the program; and

(4) The daily balance of the cash management program.

C. The natural gas company must maintain current and up-to-date copies of the documents authorizing the establishment of the cash management program including the following:

(1) The duties and responsibilities of the administrator and the other participants in the cash management program;

(2) The restrictions on deposits or borrowings by participants in the cash management program;

(3) The method used to determine the interest earning rates and interest borrowing rates for deposits into and borrowings from the program; and

(4) The method used to allocate interest income and expenses among participants in the program.

\* \* \* \* \*

**PART 260—STATEMENTS AND REPORTS (SCHEDULES)**

■ 7. The authority citation for part 260 continues to read:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 8. Section 260.400 is added to read as follows:

**§ 260.400 Cash management programs and financial condition reports.**

(a) Natural gas companies subject to the provisions of the Commission's Uniform System of Accounts in part 201 of this title that participate in cash management programs must file these agreements with the Commission. The documentation establishing the cash management program and entry into the program must be filed within 10 days of entry into the program. Subsequent changes to the cash management agreement must be filed with the Commission within 10 days of the change.

(b) Natural gas companies must determine, on a monthly basis within 15 days after the end of each month, the percentage of their capital structure that constitutes proprietary capital. The proprietary capital ratio must be computed using a formula in which the total of the balances in the Proprietary Capital Accounts; Account 201, Common stock issued, through Account 219, Accumulated other comprehensive income, in part 201 of this title is the numerator and the total proprietary capital plus the total of the Long-Term Debt Accounts; Account 221, Bonds, through Account 226, Unamortized

discount on long-term debt—Debit, in part 201 of this title, is the denominator.

(c) In the event that the proprietary capital ratio is less than 30 percent, the natural gas company must notify the Commission within 5 days of the determination of that fact and must describe the event(s) or transaction(s) causing its proprietary capital ratio to be less than 30 percent including the extent to which the natural gas company has amounts loaned or money advanced to its parent, subsidiary, or affiliate companies through its cash management program(s), along with plans, if any, to regain at least a 30 percent proprietary capital ratio.

(d) In the event that the proprietary capital ratio subsequently meets or exceeds 30 percent, the company must notify the Commission within 5 days of the determination of that fact.

**PART 352—UNIFORM SYSTEMS OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT**

■ 9. The authority citation for part 352 continues to read as follows:

**Authority:** 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 10. In Part 352, Balance Sheet Accounts, the existing paragraph of account 13 is designated as paragraph (a) and paragraphs (b) and (c) are added to read as follows:

**Balance Sheet Accounts**

\* \* \* \* \*

13 *Receivables from affiliated companies.*

(a) \* \* \*

(b) An oil pipeline company participating in a cash management program must maintain supporting documentation for all deposits into, borrowings from, interest income from, and interest expense to such program. Cash management programs include all agreements in which funds in excess of the daily needs of the carrier along with the excess funds of the carrier's parent, affiliated and subsidiary companies are concentrated, consolidated, or otherwise made available for use by other entities within the corporate group. The written documentation must include the following information:

(1) For each deposit with and each withdrawal from the cash management program: the date of the deposit or withdrawal, the amount of the deposit or withdrawal, the maturity date, if any, of the deposit, and the interest earning rate on the deposit;

(2) For each borrowing from a cash management program: the date of the

borrowing, the amount of the borrowing, the maturity date, if any, of the borrowing, and the interest rate on the borrowing;

(3) The security, if any, provided by the cash management program for repayment of deposits into the cash management program and the security required, if any, by the cash management program in support of borrowings from the program; and

(4) The daily balance of the cash management program.

(c) The oil pipeline company must maintain current and up-to-date copies of the documents authorizing the establishment of the cash management program including the following:

(1) The duties and responsibilities of the administrator and the other participants in the cash management program;

(2) The restrictions on deposits or borrowings by participants in the cash management program;

(3) The method used to determine the interest earning rates and interest borrowing rates for deposits into and borrowings from the program; and

(4) The method used to allocate interest income and expenses among the participants in the program.

\* \* \* \* \*

#### **PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT**

■ 11. The authority citation for part 357 continues to read:

**Authority:** 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1998).

■ 12. Section 357.5 is added to read as follows:

#### **§ 357.5 Cash management programs and financial condition reports.**

(a) Oil pipeline companies subject to the provisions of the Commission's Uniform System of Accounts in part 352 of this title that participate in cash management programs must file these agreements with the Commission. The documentation establishing the cash management program and entry into the program must be filed within 10 days of entry into the program. Subsequent changes to the cash management agreement must be filed with the Commission within 10 days of the change.

(b) Oil pipeline companies must determine, on a monthly basis within 15 days after the end of each month, the percentage of their capital structures that constitute proprietary capital. The proprietary capital ratio must be computed using a formula in which the

total of the balances in the Proprietary Capital Accounts; Account 70, Capital stock, through Account 77, Accumulated other comprehensive income, in part 352 of this title, is the numerator and the total proprietary capital plus the total of the Long-Term Debt Accounts; Account 60, Long-term debt payable after one year, through Account 62, Unamortized discount and interest on long-term debt, in part 352 of this title, is the denominator.

(c) In the event that the proprietary capital ratio is less than 30 percent, the oil pipeline company must notify the Commission within 5 working days of the determination of that fact and must describe the significant event(s) or transaction(s) causing its proprietary capital ratio to be less than 30 percent including the extent to which the oil pipeline company has amounts loaned or money advanced to its parent, subsidiary, or affiliate companies through its cash management program(s), along with plans, if any, to regain at least a 30 percent proprietary capital ratio.

(d) In the event that the proprietary capital ratio subsequently meets or exceeds 30 percent, the carrier must notify the Commission within 5 days of the determination of that fact.

**Note:** This Appendix will not be published in the *Code of Federal Regulations*.

#### **Appendix A—Commenters in RM02–14–000**

Air Conditioning Contractors of America, *et al.* (late-filed).  
 Allegheny Energy, Inc., *et al.*  
 Ameren Corporation.  
 American Electric Power Company, Inc., *et al.*  
 American Public Gas Association.  
 Association of Oil Pipelines.  
 Avista Corporation.  
 California Public Utilities Commission (late-filed).  
 Chevron Pipeline Company, *et al.*  
 Cinergy Corp.  
 Dominion Resources, Inc.  
 Duke Energy Corporation.  
 Edison Electric Institute.  
 Edison Mission Energy and Edison Mission Marketing and Trading, Inc.  
 Electric Power Supply Association.  
 El Paso Energy Partners, L.P.  
 Entergy Services, Inc.  
 Exelon Corporation.  
 Fairfax Financial Holdings, Ltd. (late-filed).  
 FirstEnergy Corp.  
 Gulf South Pipeline Company, LP.  
 Interstate Natural Gas Association of America.  
 Kansas State Corporation Commission.  
 KeySpan Corporation.  
 The KM Pipelines.  
 Marathon Ashland Pipeline LLC.  
 Midwestern Gas Transmission Company.  
 Missouri Public Service Commission (late-filed).

National Fuel Gas Supply Corporation.  
 National Grid USA.  
 National Rural Electric Cooperative Association.  
 NiSource Inc.  
 Northeast Utilities.  
 Northern Natural Gas Company.  
 Ontario Energy Trading International.  
 PEPCO Holdings, Inc.  
 PG&E Corporation.  
 Philadelphia Gas Works.  
 Pinnacle West Companies.  
 Plains All American Pipeline, L.P.  
 Public Service Electric and Gas Company, *et al.*  
 SCANA Corporation.  
 TECO Power Services Corporation.  
 USG Pipeline Co., B–R Pipeline Co., and United States Gypsum Co.  
 Washington Utilities and Transportation Commission (late-filed).  
 WGL Holdings, Inc., Hampshire Gas Co., and Washington Gas Light Co.  
 Williston Basin Interstate Pipeline Company.  
 WPS Resources Corporation.  
 [FR Doc. 03–16819 Filed 7–7–03; 8:45 am]

**BILLING CODE 6717–01–P**

## **DEPARTMENT OF TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 1**

[TD 9072]

RIN 1545–BA24

#### **Catch-Up Contributions for Individuals Age 50 or Older**

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that provide guidance concerning the requirements for retirement plans providing catch-up contributions to individuals age 50 or older pursuant to the provisions of section 414(v). These final regulations affect section 401(k) plans, section 408(p) SIMPLE IRA plans, section 408(k) simplified employee pensions, section 403(b) tax-sheltered annuity contracts, and section 457 eligible governmental plans, and affect participants eligible to make elective deferrals under these plans or contracts.

**DATES:** Effective Date: These final regulations are effective on July 8, 2003.

**Applicability Date:** These final regulations are applicable to contributions in taxable years beginning on or after January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** R. Lisa Mojiri-Azad or John T. Ricotta at 622–6060.

**SUPPLEMENTARY INFORMATION:**

## Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under sections 402(g) and 414(v) of the Internal Revenue Code (Code). Section 414(v), added by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (Public Law 107-16; 115 Stat. 38), effective for years beginning after December 31, 2001, permits an individual age 50 or older to make additional elective deferrals each year, up to a dollar limit, if certain requirements provided under that section are satisfied. Under section 414(v)(3), these additional elective deferrals are not subject to certain otherwise applicable limitations on elective deferrals and are excluded from consideration for certain nondiscrimination tests. Under section 414(v)(4), catch-up contributions generally must be made available to all catch-up eligible individuals who participate under any plan maintained by the employer that provides for elective deferrals.

Section 402(g)(1)(C) was added by the Job Creation and Worker Assistance Act of 2002, (JCWAA) (Public Law 107-147; 116 Stat. 21), effective for years beginning after December 31, 2001. This section increases the amount of elective deferrals that a catch-up eligible participant, as defined in section 414(v), may exclude from gross income under section 402(g) by the same dollar limit applicable for the year under section 414(v).

JCWAA also included technical corrections to section 414(v), including clarifications relating to: initial eligibility to make catch-up contributions, coordination of section 414(v) catch-up contributions for individuals who participate in more than one plan, coordination of section 414(v) catch-up contributions with the catch-up contributions provided under section 457(b)(3), and the application of the universal availability requirement of section 414(v)(4) in connection with mergers and acquisitions.

Proposed regulations under section 414(v) were published in the **Federal Register** on October 23, 2001 (66 FR 53555). On February 21, 2002, a public hearing was held on the proposed regulations. Notice 2002-4 (2002-1 C.B. 298) provided transitional rules for complying with the universal availability requirement of section 414(v)(4) and the proposed regulations.

After consideration of the comments and the changes made by JCWAA, these final regulations adopt the provisions of the proposed regulations with certain

modifications, the most significant of which are highlighted below.

## Explanation of Provisions

Under these final regulations, an applicable employer plan is not treated as violating any provision of the Code merely because the plan permits a catch-up eligible participant to make catch-up contributions. For this purpose, an applicable employer plan is a section 401(k) plan, a SIMPLE IRA plan (as defined in section 408(p)), a simplified employee pension (as defined in section 408(k)) (SEP), a plan or contract that satisfies the requirements of section 403(b), or a section 457 plan maintained by an eligible governmental employer (a section 457 eligible governmental plan).

Catch-up contributions are elective deferrals made by a catch-up eligible participant that exceed an otherwise applicable limit and that are treated as catch-up contributions under the plan, but only to the extent they do not exceed the maximum amount of catch-up contributions permitted for the taxable year. An employer is not required to provide for catch-up contributions in any of its plans. However, if any plan of an employer provides for catch-up contributions, all plans of the employer that provide for elective deferrals must comply with the universal availability requirement described below, to the extent applicable.

### A. Eligibility for Catch-up Contributions

As under the proposed regulations, a participant is a catch-up eligible participant, and thus is permitted to make catch-up contributions, if the participant is otherwise eligible to make elective deferrals under the plan and would attain age 50 or older before the end of the participant's taxable year. In the case of a non-calendar year plan, a participant is treated as a catch-up eligible participant beginning on January 1 of the calendar year that includes the participant's 50th birthday, without regard to the plan year.

### B. Determination of Catch-up Contributions

These final regulations retain the same basic structure for determining catch-up contributions as provided in the proposed regulations. Elective deferrals made by a catch-up eligible participant are treated as catch-up contributions if they exceed any otherwise applicable limit, to the extent they do not exceed the maximum dollar amount of catch-up contributions permitted under section 414(v). Catch-up contributions are determined by

reference to three types of otherwise applicable limits: statutory limits, employer-provided limits, and the actual deferral percentage (ADP) limit.

A statutory limit is a limit contained in the Code on elective deferrals or annual additions permitted to be made under the plan or contract (without regard to section 414(v)). Statutory limits include the requirement under section 401(a)(30) that a plan limit all elective deferrals within a calendar year under the plan and other plans (or contracts) maintained by members of a controlled group to the amount permitted under section 402(g).

An employer-provided limit is a limit on the elective deferrals an employee can make under the plan (without regard to section 414(v)) that is contained in the terms of the plan, but is not a statutory limit or the ADP limit. A number of commentators suggested that the regulations specifically provide that a limitation on elective deferrals set by the plan administrator in accordance with plan terms is a limit contained in the terms of the plan. As noted in the preamble to the proposed regulations, the condition that an employer-provided limit be contained in the terms of the plan is intended to correspond with the requirements of § 1.401-1 that a qualified plan be a definite written program and provide for a definite predetermined formula for allocating contributions made to the plan. Accordingly, if a limit is otherwise permissible under a section 401(k) plan, the limit will also satisfy the requirement in section 414(v)(5) that the limit be contained in the terms of the plan.

The ADP limit is the highest dollar amount of elective deferrals that any highly compensated employee (HCE) is permitted under a section 401(k) plan for a plan year by reason of the ADP test under section 401(k)(3) (without regard to section 414(v)). The ADP limit is determined after taking into account all elective deferrals (other than elective deferrals that are catch-up contributions because of an employer-provided limit or statutory limit) and qualified nonelective contributions or qualified matching contributions for the plan year in accordance with section 401(k)(3) and the applicable regulations, and after any necessary correction under section 401(k)(8).

The final regulations retain the rule that the amount of elective deferrals in excess of an applicable limit is generally determined as of the end of a plan year by comparing the total elective deferrals for the plan year with the applicable limit for the plan year. For an applicable limit that is determined on the basis of

a year other than a plan year (such as the calendar year limit on elective deferrals under section 401(a)(30)), the determination of whether elective deferrals are in excess of the applicable limit is made on the basis of such other year.

As under the proposed regulations, this annual method for determining whether amounts are in excess of an applicable limit also applies to an employer-provided limit that is applied on a payroll-by-payroll basis during the plan year. A number of commentators suggested that plans that provide for payroll-by-payroll limits, or similar limits that apply to a portion of the plan year, be permitted to determine amounts in excess of an applicable limit based on the period for which the limit is applied. These commentators noted that, although a plan is permitted to determine an additional amount of elective deferrals that a catch-up eligible participant is permitted to make on a payroll-by-payroll basis, the plan could not designate these elective deferrals as catch-up contributions on the same basis. These commentators suggested that for such a plan, an annual determination process would require the plan to collect and retain additional data during the year. In many cases, plans use a definition of compensation for purposes of ADP testing that is different from the definition used during the year to determine elective deferrals. Recordkeepers for these plans must collect and retain payroll-by-payroll compensation, and then determine the employer-provided limit on an annual basis before determining the amount of elective deferrals that are catch-up contributions.

A number of advocates for a payroll-by-payroll determination of catch-up contributions acknowledged that their proposal creates a risk that ADP testing could be distorted through changes in plan limits during the year. For example, if a plan were to provide that HCEs' elective deferrals are limited, on a payroll-by-payroll basis, to 1% of compensation for the first 2 months of the plan year, and then to 15% of compensation for the remainder of the year, the result would be equivalent to treating the first dollars deferred as catch-up contributions. While few employers might be likely to adopt such a design, a payroll-by-payroll system for determining catch-up contributions would require restrictions on the extent to which changes in employer-provided limits during the year could be made.

After considering these comments, Treasury and the IRS have determined that the need for rules to prevent abuse associated with a payroll-by-payroll

method of determining catch-up contributions outweighs the relative administrative advantages of that method, and these regulations retain the annual method. However, to address administrative concerns raised in these comments, these regulations also expand the alternative methods for determining an employer-provided limit in order to avoid requiring plans that use one definition of compensation for elective deferrals and another definition for ADP testing purposes to collect and retain data on both definitions.

These final regulations retain the rule in the proposed regulations that a plan that changes an employer-provided limit during the plan year is permitted to use a time-weighted average of these limits as the employer-provided limit. For example, under this alternative method, a plan that provides for an employer-provided limit of 8% for the first 6 months of the plan year and 10% for the second 6 months is permitted to use 9% as the employer-provided limit for the plan year. These final regulations also provide that the plan is permitted to use the definition of compensation used for ADP testing purposes for this weighted-average simplification, and can use this alternative method without regard to whether the employer-provided limit is changed during the plan year.

### *C. Treatment of Catch-up Contributions*

An elective deferral that is treated as a catch-up contribution is not subject to otherwise applicable limits under the applicable employer plan and the plan will not be treated as failing otherwise applicable nondiscrimination requirements because of catch-up contributions. Under these final regulations (including changes from the proposed regulations to reflect the provisions of JCWAA), catch-up contributions are not taken into account in applying the limits of section 401(a)(30), 402(h), 403(b), 408, 415(c), or 457(b)(2) (determined without regard to section 457(b)(3)) to other contributions or benefits under the plan offering catch-up contributions or under any other plan of the employer.

Elective deferrals that are treated as catch-up contributions under a plan because they exceed a statutory limit or an employer-provided limit are disregarded for purposes of ADP testing. These catch-up contributions are subtracted from the participant's elective deferrals for the plan year prior to determining the participant's actual deferral ratio. This subtraction applies without regard to whether the catch-up eligible participant is an HCE or a nonhighly compensated employee

(NHCE). If a plan needs to take corrective action under section 401(k)(8), the plan must determine the amount of elective deferrals for HCEs that are catch-up contributions because they are in excess of the ADP limit and retain such amounts. The plan would not be treated as failing section 401(k)(8) because these excess contributions are treated as catch-up contributions and retained.

Amounts in excess of an applicable limit are treated as catch-up contributions only to the extent that such excess amounts, combined with amounts previously treated as catch-up contributions for the taxable year, do not exceed the catch-up contribution limit for the year. As discussed above, whether elective deferrals in excess of an applicable limit can be treated as catch-up contributions is determined based on the year (e.g., plan year, calendar year, or limitation year) with respect to which each applicable limit is applied.

The interaction of this timing rule and the catch-up contribution limit for the year is most significant for a plan with a plan year that is not the calendar year. For example, in a plan with a plan year ending on June 30, 2005, elective deferrals in excess of the employer-provided limit or the ADP limit for the plan year ending June 30, 2005, would be treated as catch-up contributions as of the last day of the plan year, up to the catch-up contribution limit for 2005. These catch-up contributions are not taken into account for purposes of compliance with section 401(a)(30) for 2005. After June 30, 2005, the catch-up eligible participant is permitted to continue to make elective deferrals up to the section 401(a)(30) limit for 2005 (disregarding any amounts treated as catch-up contributions for 2005, as of June 30, 2005) and these additional contributions are not treated as contributions in excess of the section 401(a)(30) limit. Accordingly, these additional contributions are generally taken into account under the ADP test for the plan year ending June 30, 2006. In addition, to the extent the catch-up eligible participant has not made catch-up contributions up to the catch-up contribution limit for 2005, the participant can make additional catch-up contributions in excess of the section 401(a)(30) limit for 2005. These latter contributions are catch-up contributions which will not be taken into account under the ADP test for the plan year ending June 30, 2006.

Without regard to their special treatment under certain nondiscrimination provisions and limitations under the Code, catch-up

contributions are elective deferrals and remain subject to the applicable requirements for elective deferrals. For example, catch-up contributions under an applicable employer plan that is a section 401(k) plan are subject to the distribution and vesting restrictions of section 401(k)(2)(B) and (C), although the plan provisions applicable to distributions of elective deferrals treated as catch-up contributions may differ from those applicable to other elective deferrals under the plan (as long as each provision complies with the distribution restrictions of section 401(k)(2)(B)). In addition, excess contributions treated as catch-up contributions nevertheless remain excess contributions for purposes of section 411(a)(3)(G). Therefore, the plan is permitted to provide that matching contributions related to excess contributions treated as catch-up contributions are forfeited. However, as discussed below, it is also permissible for a plan to provide that these matching contributions are not forfeited, without violating section 401(a)(4).

These final regulations retain the rules of the proposed regulations on the treatment of catch-up contributions for purposes of sections 416, 410(b) and 401(a)(4). Catch-up contributions for the current plan year are not taken into account under section 416 or 410(b). However, catch-up contributions for prior years are taken into account in determining whether a plan is top-heavy under section 416, and for purposes of average benefit percentage testing to the extent prior years' contributions are taken into account (*i.e.*, if accrued-to-date calculations are used). In addition, a plan does not fail the requirements of section 401(a)(4) merely because it permits only catch-up eligible participants to make catch-up contributions, without regard to whether the group of catch-up eligible employees would satisfy section 410(b). Similarly, if a plan applies a single matching formula to elective deferrals whether or not they are catch-up contributions, the matching formula as applied to catch-up eligible participants is not treated as a separate benefit, right, or feature under § 1.401(a)(4)-4 from the matching formula as applied to the other participants. However, the matching contributions under the plan must satisfy the actual contribution percentage test under section 401(m)(2) taking into account all matching contributions, including matching contributions on catch-up contributions.

A number of commentators indicated that some employers would not want to provide matching contributions on catch-up contributions and requested

guidance on how they might accomplish that goal in light of the annual determination of whether amounts are in excess of an employer-provided limit. The IRS and Treasury believe that employers can achieve their desired goal by specifying which contributions will be matched, rather than specifying which contributions will not be matched. For example, if an employer-provided limit on elective deferrals is 10% of compensation for each payroll period, the plan can specify that matching contributions will be made based on elective deferrals that do not exceed 10% of compensation for that payroll period (and that do not exceed a statutory limit), and that matching contributions on elective deferrals in excess of the ADP limit will be forfeited, with the assurance that the plan will not be matching catch-up contributions.

#### *D. Universal Availability*

Section 414(v)(4)(A) provides that an applicable employer plan is treated as failing to comply with section 401(a)(4) unless the plan allows all catch-up eligible participants to make the same election with respect to additional elective deferrals. Section 414(v)(4)(B) provides that, for this purpose, all plans maintained by employers treated as a single employer under section 414(b), (c), (m) or (o) are treated as a single plan. The proposed regulations provided that, if an applicable employer plan otherwise subject to section 401(a)(4) provides for catch-up contributions, all other applicable employer plans in the controlled group that provide for elective deferrals (including plans not subject to section 401(a)(4)) must provide catch-up eligible participants with the same effective opportunity to make catch-up contributions. The proposed regulations also included a transition rule for collectively bargained plans and an exception related to mergers and acquisitions.

Several commentators requested that collectively bargained employees described in section 410(b)(3) be disregarded for purposes of the universal availability requirement, just as they are disregarded for purposes of section 401(a)(4) compliance. These commentators explained that it is difficult to coordinate catch-up contributions among non-collectively bargained employees and collectively bargained employees, particularly when more than one collective bargaining unit is involved. For employers participating in multiemployer plans, the difficulties are increased significantly, because of the implications for other, unrelated employers. Some commentators also requested that other groups of

employees be excluded pursuant to provisions of the regulations under section 410(b) allowing employees to be excluded based on plan design, such as participants who have not met the minimum age and service requirements of section 410(a)(1) or employees in different qualified separate lines of business under section 414(r).

In response to comments, these final regulations provide that employees described in section 410(b)(3), most notably collectively bargained employees, are disregarded for purposes of determining whether an applicable employer plan complies with the universal availability requirement. Pursuant to sections 401(a)(4) and 410(b)(3), collectively bargained employees are disregarded for purposes of section 401(a)(4), without regard to plan design or an employer's choice of testing method. The final regulations do not adopt the other suggested exclusions, participants who have not met minimum age and service or participants in different qualified separate lines of business, because these exclusions are based on plan design and testing choices.

These regulations otherwise retain the basic rules of the proposed regulations relating to universal availability and provide that a plan that offers catch-up contributions satisfies the requirements of section 401(a)(4) only if all catch-up eligible participants are provided with an effective opportunity to make the same dollar amount of catch-up contributions. Catch-up eligible participants do not have an effective opportunity to make catch-up contributions unless the applicable employer plan permits each catch-up eligible participant to make sufficient elective deferrals during the year so that the participant has the opportunity to make elective deferrals up to the otherwise applicable limit plus the catch-up contribution limit. An effective opportunity could be provided in several different ways. For example, a plan that limits elective deferrals on a payroll-by-payroll basis might also provide participants with an opportunity to make catch-up contributions that is administered on a payroll-by-payroll basis (*i.e.*, by allowing catch-up eligible participants to increase their deferrals above the otherwise applicable limit by a pro-rata portion of the catch-up limit for the year). The plan would satisfy the effective opportunity requirement even though, as discussed above, whether these elective deferrals are treated as catch-up contributions would not be determined until the end of the year.

A plan will not fail the universal availability requirement solely because an employer-provided limit does not apply to all employees or different employer-provided limits apply to different groups of employees, as long as each limit satisfies the nondiscriminatory availability requirements of § 1.401(a)(4)–4 for benefits, rights, and features. Thus, for example, a plan could provide for an employer-provided limit that applies to HCEs, even though no employer-provided limit applies to NHCEs. However, as under the proposed regulations, these final regulations retain the rule that an applicable employer plan is not permitted to provide lower employer-provided limits for catch-up eligible participants. Furthermore, a plan fails to provide an effective opportunity to make catch-up contributions if it has an applicable limit (e.g., an employer-provided limit) and does not permit all catch-up eligible participants to make elective deferrals in excess of that limit.

In addition to the exclusion for collectively bargained employees discussed above, these final regulations include several other exceptions to the universal availability requirement. Under these regulations, a plan does not fail the universal availability requirement because it restricts elective deferrals, including elective deferrals for catch-up eligible participants, under a cash availability limit. A cash availability limit is a limit that restricts elective deferrals to amounts available after withholding from the employee's pay (e.g., after deduction of all applicable income and employment taxes). For this purpose, a limit of 75% of compensation or higher will be treated as limiting employees to amounts available after other withholdings.

These final regulations also include a broader exception to the universal availability requirement during the transition period provided under section 410(b)(6)(C) than was included in the proposed regulations, consistent with the amendments made by JCWAA. Under these final regulations, an applicable employer plan that satisfies the universal availability requirement before an acquisition or disposition described in § 1.410(b)–2(f) continues to be treated as satisfying the universal availability requirement of section 414(v)(4) through the end of the period described in section 410(b)(6)(C). These final regulations also retain a rule providing for coordination between catch-up contributions under section 414(v) and the provisions of section

457(b)(3), in accordance with section 414(v)(6)(C).

A number of comments were received on the application of the universal availability requirement to an applicable employer plan that is qualified under Puerto Rico tax law as well as under the Code. These final regulations do not affect the transitional relief granted in Notice 2002–4 that provides that an applicable employer plan will not fail to satisfy the universal availability requirement solely because another applicable employer plan of the employer that is qualified under Puerto Rico law does not provide for catch-up contributions.

#### *E. Participants in Multiple Plans*

The technical corrections in JCWAA amended section 414(v) to provide that all applicable employer plans of an employer, other than section 457 eligible governmental plans, are treated as one plan for purposes of determining the amount of catch-up contributions and all section 457 eligible governmental plans of the same employer are treated as one plan for this purpose. Statutory limits, such as the limits under section 401(a)(30) or 415, already provide for coordination among plans in the same controlled group, and elective deferrals in addition to the amounts permitted under these limits are similarly coordinated. Employer-provided limits, however, apply only to the plan that provides for the limit, and the ADP limit applies only to section 401(k) plans. Accordingly, these final regulations provide guidance on coordination of the amount in excess of these limits on a controlled-group basis.

With respect to employer-provided limits, these regulations allow a plan to permit a catch-up eligible participant to defer an amount in addition to the amount allowed under the employer-provided limit, without regard to whether the employee has already utilized his or her catch-up opportunity under another plan of the same employer. However, to the extent elective deferrals under another plan maintained by the employer have already been treated as catch-up contributions during the taxable year, the elective deferrals under the plan may be treated as catch-up contributions only up to the amount remaining under the catch-up limit for the year. Any other elective deferrals that exceed the employer-provided limit may not be treated as catch-up contributions and must satisfy the otherwise applicable nondiscrimination rules. For example, the right to make contributions in excess of the employer-provided limit is an other right or feature which must satisfy

§ 1.401(a)(4)–4 to the extent that the contributions are not catch-up contributions. Also, contributions in excess of the employer provided limit are taken into account under the ADP test to the extent they are not catch-up contributions.

Finally, these regulations retain the allocation rule included in the proposed regulations. When a participant is eligible under more than one applicable employer plan maintained by the same employer, the specific plan under which amounts in excess of an applicable limit are treated as catch-up contributions is permitted to be determined in any manner that is not inconsistent with the manner in which such amounts were actually deferred under the plans.

#### *F. Excludability of Catch-up Contributions*

JCWAA amended section 402(g) to increase the elective deferral limit for a catch-up eligible participant by the amount of the allowable catch-up contributions for the taxable year. The provisions of these final regulations related to these provisions are under new § 1.402(g)–2, rather than under § 1.414(v)–1, as in the proposed regulations. Under § 1.402(g)–2, the amount of elective deferrals that a catch-up eligible participant is permitted to exclude from income under section 402(g) for the taxable year is increased by the maximum amount of catch-up contributions permitted for the taxable year under section 414(v). This treatment by the catch-up eligible participant is not affected by whether the applicable employer plans treat the elective deferrals as catch-up contributions. Thus, a catch-up eligible participant who participates in plans of two or more employers is permitted to exclude from gross income elective deferrals that exceed the section 402(g) limit, even though neither plan treats those elective deferrals as catch-up contributions. In addition, the treatment by an individual of such elective deferrals as catch-up contributions will not have any effect on either employer's plan.

#### **Effective Date**

These final regulations are applicable to contributions in taxable years beginning on or after January 1, 2004. Taxpayers are permitted to rely on these final regulations and the proposed regulations for taxable years beginning prior to January 1, 2004.

#### **Special Analyses**

It has been determined that these final regulations are 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. Because §§ 1.402(g)-2 and 1.414(v)-1 impose no new 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 that preceded these final regulations 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 authors of these regulations are R. Lisa Mojiri-Azad and John T. Ricotta of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

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

Income taxes, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.402(g)-2 is added to read as follows:

#### § 1.402(g)-2 Increased limit for catch-up contributions.

(a) *General rule.* Under section 402(g)(1)(C), in determining the amount of elective deferrals that are includible in gross income under section 402(g) for a catch-up eligible participant (within the meaning of § 1.414(v)-1(g)), the otherwise applicable dollar limit under section 402(g)(1)(B) (as increased under section 402(g)(7), to the extent applicable) shall be further increased by the applicable dollar catch-up limit as set forth under § 1.414(v)-1(c)(2).

(b) *Participants in multiple plans.* Paragraph (a) of this section applies without regard to whether the applicable employer plans (within the meaning of section 414(v)(6)) treat the elective deferrals as catch-up contributions. Thus, a catch-up eligible participant who makes elective deferrals

under applicable employer plans of two or more employers that in total exceed the applicable dollar amount under section 402(g)(1) by an amount that does not exceed the applicable dollar catch-up limit under either plan may exclude the elective deferrals from gross income, even if neither applicable employer plan treats those elective deferrals as catch-up contributions.

(c) *Effective date*—(1) *Statutory effective date.* Section 402(g)(1)(C) applies to contributions in taxable years beginning on or after January 1, 2002.

(2) *Regulatory effective date.* Paragraphs (a) and (b) of this section apply to contributions in taxable years beginning on or after January 1, 2004.

■ **Par. 3.** Section 1.414(v)-1 is added to read as follows:

#### § 1.414(v)-1 Catch-up contributions.

(a) *Catch-up contributions*—(1) *General rule.* An applicable employer plan shall not be treated as failing to meet any requirement of the Internal Revenue Code solely because the plan permits a catch-up eligible participant to make catch-up contributions in accordance with section 414(v) and this section. With respect to an applicable employer plan, catch-up contributions are elective deferrals made by a catch-up eligible participant that exceed any of the applicable limits set forth in paragraph (b) of this section and that are treated under the applicable employer plan as catch-up contributions, but only to the extent they do not exceed the catch-up contribution limit described in paragraph (c) of this section (determined in accordance with the special rules for employers that maintain multiple applicable employer plans in paragraph (f) of this section, if applicable). To the extent provided under paragraph (d) of this section, catch-up contributions are disregarded for purposes of various statutory limits. In addition, unless otherwise provided in paragraph (e) of this section, all catch-up eligible participants of the employer must be provided the opportunity to make catch-up contributions in order for an applicable employer plan to comply with the universal availability requirement of section 414(v)(4). The definitions in paragraph (g) of this section apply for purposes of this section and § 1.402(g)-2.

(2) *Treatment as elective deferrals.* Except as specifically provided in this section, elective deferrals treated as catch-up contributions remain subject to statutory and regulatory rules otherwise applicable to elective deferrals. For example, catch-up contributions under an applicable employer plan that is a section 401(k) plan are subject to the

distribution and vesting restrictions of section 401(k)(2)(B) and (C). In addition, the plan is permitted to provide a single election for catch-up eligible participants, with the determination of whether elective deferrals are catch-up contributions being made under the terms of the plan.

(3) *Coordination with section 457(b)(3).* In the case of an applicable employer plan that is a section 457 eligible governmental plan, the catch-up contributions permitted under this section shall not apply to a catch-up eligible participant for any taxable year for which a higher limitation applies to such participant under section 457(b)(3). For additional guidance, see regulations under section 457.

(b) *Elective deferrals that exceed an applicable limit*—(1) *Applicable limits.* An applicable limit for purposes of determining catch-up contributions for a catch-up eligible participant is any of the following:

(i) *Statutory limit.* A statutory limit is a limit on elective deferrals or annual additions permitted to be made (without regard to section 414(v) and this section) with respect to an employee for a year provided in section 401(a)(30), 402(h), 403(b), 408, 415(c), or 457(b)(2) (without regard to section 457(b)(3)), as applicable.

(ii) *Employer-provided limit.* An employer-provided limit is any limit on the elective deferrals an employee is permitted to make (without regard to section 414(v) and this section) that is contained in the terms of the plan, but which is not required under the Internal Revenue Code. Thus, for example, if, in accordance with the terms of the plan, highly compensated employees are limited to a deferral percentage of 10% of compensation, this limit is an employer-provided limit that is an applicable limit with respect to the highly compensated employees.

(iii) *Actual deferral percentage (ADP) limit.* In the case of a section 401(k) plan that would fail the ADP test of section 401(k)(3) if it did not correct under section 401(k)(8), the ADP limit is the highest amount of elective deferrals that can be retained in the plan by any highly compensated employee under the rules of section 401(k)(8)(C) (without regard to paragraph (d)(2)(iii) of this section). In the case of a simplified employee pension (SEP) with a salary reduction arrangement (within the meaning of section 408(k)(6)) that would fail the requirements of section 408(k)(6)(A)(iii) if it did not correct in accordance with section 408(k)(6)(C), the ADP limit is the highest amount of elective deferrals that can be made by any highly compensated employee

under the rules of section 408(k)(6) (without regard to paragraph (d)(2)(iii) of this section).

(2) *Contributions in excess of applicable limit*—(i) *Plan year limits*—(A) *General rule.* Except as provided in paragraph (b)(2)(ii) of this section, the amount of elective deferrals in excess of an applicable limit is determined as of the end of the plan year by comparing the total elective deferrals for the plan year with the applicable limit for the plan year. In addition, except as provided in paragraph (b)(2)(i)(B) of this section, in the case of a plan that provides for separate employer-provided limits on elective deferrals for separate portions of plan compensation within the plan year, the applicable limit for the plan year is the sum of the dollar amounts of the limits for the separate portions. For example, if a plan sets a deferral percentage limit for each payroll period, the applicable limit for the plan year is the sum of the dollar amounts of the limits for the payroll periods.

(B) *Alternative method for determining employer-provided limit*—(1) *General rule.* If the plan limits elective deferrals for separate portions of the plan year, then, solely for purposes of determining the amount that is in excess of an employer-provided limit, the plan is permitted to provide that the applicable limit for the plan year is the product of the employee's plan year compensation and the time-weighted average of the deferral percentage limits, rather than determining the employer-provided limit as the sum of the limits for the separate portions of the year. Thus, for example, if, in accordance with the terms of the plan, highly compensated employees are limited to 8% of compensation during the first half of the plan year and 10% of compensation for the second half of the plan year, the plan is permitted to provide that the applicable limit for a highly compensated employee is 9% of the employee's plan year compensation.

(2) *Alternative definition of compensation permitted.* A plan using the alternative method in this paragraph (b)(2)(i)(B) is permitted to provide that the applicable limit for the plan year is determined as the product of the catch-up eligible participant's compensation used for purposes of the ADP test and the time-weighted average of the deferral percentage limits. The alternative calculation in this paragraph (b)(2)(i)(B)(2) is available regardless of whether the deferral percentage limits change during the plan year.

(ii) *Other year limit.* In the case of an applicable limit that is applied on the

basis of a year other than the plan year (e.g., the calendar-year limit on elective deferrals under section 401(a)(30)), the determination of whether elective deferrals are in excess of the applicable limit is made on the basis of such other year.

(c) *Catch-up contribution limit*—(1) *General rule.* Elective deferrals with respect to a catch-up eligible participant in excess of an applicable limit under paragraph (b) of this section are treated as catch-up contributions under this section as of a date within a taxable year only to the extent that such elective deferrals do not exceed the catch-up contribution limit described in paragraphs (c)(1) and (2) of this section, reduced by elective deferrals previously treated as catch-up contributions for the taxable year, determined in accordance with paragraph (c)(3) of this section. The catch-up contribution limit for a taxable year is generally the applicable dollar catch-up limit for such taxable year, as set forth in paragraph (c)(2) of this section. However, an elective deferral is not treated as a catch-up contribution to the extent that the elective deferral, when added to all other elective deferrals for the taxable year under any applicable employer plan of the employer, exceeds the participant's compensation (determined in accordance with section 415(c)(3)) for the taxable year. See also paragraph (f) of this section for special rules for employees who participate in more than one applicable employer plan maintained by the employer.

(2) *Applicable dollar catch-up limit*—(i) *In general.* The applicable dollar catch-up limit for an applicable employer plan, other than a plan described in section 401(k)(11) or 408(p), is determined under the following table:

For taxable years beginning in	Applicable dollar catch-up limit
2002 .....	\$1,000
2003 .....	2,000
2004 .....	3,000
2005 .....	4,000
2006 .....	5,000

(ii) *SIMPLE plans.* The applicable dollar catch-up limit for a SIMPLE 401(k) plan described in section 401(k)(11) or a SIMPLE IRA plan as described in section 408(p) is determined under the following table:

For taxable years beginning in	Applicable dollar catch-up limit
2002 .....	\$ 500
2003 .....	1,000

For taxable years beginning in	Applicable dollar catch-up limit
2004 .....	1,500
2005 .....	2,000
2006 .....	2,500

(iii) *Cost of living adjustments.* For taxable years beginning after 2006, the applicable dollar catch-up limit is the applicable dollar catch-up limit for 2006 described in paragraph (c)(2)(i) or (ii) of this section increased at the same time and in the same manner as adjustments under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase that is not a multiple of \$500 shall be rounded to the next lower multiple of \$500.

(3) *Timing rules.* For purposes of determining the maximum amount of permitted catch-up contributions for a catch-up eligible participant, the determination of whether an elective deferral is a catch-up contribution is made as of the last day of the plan year (or in the case of section 415, as of the last day of the limitation year), except that, with respect to elective deferrals in excess of an applicable limit that is tested on the basis of the taxable year or calendar year (e.g., the section 401(a)(30) limit on elective deferrals), the determination of whether such elective deferrals are treated as catch-up contributions is made at the time they are deferred.

(d) *Treatment of catch-up contributions*—(1) *Contributions not taken into account for certain limits.* Catch-up contributions are not taken into account in applying the limits of section 401(a)(30), 402(h), 403(b), 408, 415(c), or 457(b)(2) (determined without regard to section 457(b)(3)) to other contributions or benefits under an applicable employer plan or any other plan of the employer.

(2) *Contributions not taken into account in application of ADP test*—(i) *Calculation of ADR.* Elective deferrals that are treated as catch-up contributions pursuant to paragraph (c) of this section with respect to a section 401(k) plan because they exceed a statutory or employer-provided limit described in paragraph (b)(1)(i) or (ii) of this section, respectively, are subtracted from the catch-up eligible participant's elective deferrals for the plan year for purposes of determining the actual deferral ratio (ADR) (as defined in regulations under section 401(k)) of a catch-up eligible participant. Similarly, elective deferrals that are treated as catch-up contributions pursuant to paragraph (c) of this section with

respect to a SEP because they exceed a statutory or employer-provided limit described in paragraph (b)(1)(i) or (ii) of this section, respectively, are subtracted from the catch-up eligible participant's elective deferrals for the plan year for purposes of determining the deferral percentage under section 408(k)(6)(D) of a catch-up eligible participant.

(ii) *Adjustment of elective deferrals for correction purposes.* For purposes of the correction of excess contributions in accordance with section 401(k)(8)(C), elective deferrals under the plan treated as catch-up contributions for the plan year and not taken into account in the ADP test under paragraph (d)(2)(i) of this section are subtracted from the catch-up eligible participant's elective deferrals under the plan for the plan year.

(iii) *Excess contributions treated as catch-up contributions.* A section 401(k) plan that satisfies the ADP test of section 401(k)(3) through correction under section 401(k)(8) must retain any elective deferrals that are treated as catch-up contributions pursuant to paragraph (c) of this section because they exceed the ADP limit in paragraph (b)(1)(iii) of this section. In addition, a section 401(k) plan is not treated as failing to satisfy section 401(k)(8) merely because elective deferrals described in the preceding sentence are not distributed or recharacterized as employee contributions. Similarly, a SEP is not treated as failing to satisfy section 408(k)(6)(A)(iii) merely because catch-up contributions are not treated as excess contributions with respect to a catch-up eligible participant under the rules of section 408(k)(6)(C). Notwithstanding the fact that elective deferrals described in this paragraph (d)(2)(iii) are not distributed, such elective deferrals are still considered to be excess contributions under section 401(k)(8), and accordingly, matching contributions with respect to such elective deferrals are permitted to be forfeited under the rules of section 411(a)(3)(G).

(3) *Contributions not taken into account for other nondiscrimination purposes—(i) Application for top-heavy.* Catch-up contributions with respect to the current plan year are not taken into account for purposes of section 416. However, catch-up contributions for prior years are taken into account for purposes of section 416. Thus, catch-up contributions for prior years are included in the account balances that are used in determining whether the plan is top-heavy under section 416(g).

(ii) *Application for section 410(b).* Catch-up contributions with respect to the current plan year are not taken into

account for purposes of section 410(b). Thus, catch-up contributions are not taken into account in determining the average benefit percentage under § 1.410(b)–5 for the year if benefit percentages are determined based on current year contributions. However, catch-up contributions for prior years are taken into account for purposes of section 410(b). Thus, catch-up contributions for prior years would be included in the account balances that are used in determining the average benefit percentage if allocations for prior years are taken into account.

(4) *Availability of catch-up contributions.* An applicable employer plan does not violate § 1.401(a)(4)–4 merely because the group of employees for whom catch-up contributions are currently available (*i.e.*, the catch-up eligible participants) is not a group of employees that would satisfy section 410(b) (without regard to § 1.410(b)–5). In addition, a catch-up eligible participant is not treated as having a right to a different rate of allocation of matching contributions merely because an otherwise nondiscriminatory schedule of matching rates is applied to elective deferrals that include catch-up contributions. The rules in this paragraph (d)(4) also apply for purposes of satisfying the requirements of section 403(b)(12).

(e) *Universal availability requirement—(1) General rule—(i) Effective opportunity.* An applicable employer plan that offers catch-up contributions and that is otherwise subject to section 401(a)(4) (including a plan that is subject to section 401(a)(4) pursuant to section 403(b)(12)) will not satisfy the requirements of section 401(a)(4) unless all catch-up eligible participants who participate under any applicable employer plan maintained by the employer are provided with an effective opportunity to make the same dollar amount of catch-up contributions. A plan fails to provide an effective opportunity to make catch-up contributions if it has an applicable limit (*e.g.*, an employer-provided limit) that applies to a catch-up eligible participant and does not permit the participant to make elective deferrals in excess of that limit. An applicable employer plan does not fail to satisfy the universal availability requirement of this paragraph (e) solely because an employer-provided limit does not apply to all employees or different limits apply to different groups of employees under paragraph (b)(2)(i) of this section. However, a plan may not provide lower employer-provided limits for catch-up eligible participants.

(ii) *Certain practices permitted—(A) Proration of limit.* An applicable employer plan does not fail to satisfy the universal availability requirement of this paragraph (e) merely because the plan allows participants to defer an amount equal to a specified percentage of compensation for each payroll period and for each payroll period permits each catch-up eligible participant to defer a pro-rata share of the applicable dollar catch-up limit in addition to that amount.

(B) *Cash availability.* An applicable employer plan does not fail to satisfy the universal availability requirement of this paragraph (e) merely because it restricts the elective deferrals of any employee (including a catch-up eligible participant) to amounts available after other withholding from the employee's pay (*e.g.*, after deduction of all applicable income and employment taxes). For this purpose, an employer limit of 75% of compensation or higher will be treated as limiting employees to amounts available after other withholdings.

(2) *Certain employees disregarded.* An applicable employer plan does not fail to satisfy the universal availability requirement of this paragraph (e) merely because employees described in section 410(b)(3) (*e.g.*, collectively bargained employees) are not provided the opportunity to make catch-up contributions.

(3) *Exception for certain plans.* An applicable employer plan does not fail to satisfy the universal availability requirement of this paragraph (e) merely because another applicable employer plan that is a section 457 eligible governmental plan does not provide for catch-up contributions to the extent set forth in section 414(v)(6)(C) and paragraph (a)(3) of this section.

(4) *Exception for section 410(b)(6)(C)(ii) period.* If an applicable employer plan satisfies the universal availability requirement of this paragraph (e) before an acquisition or disposition described in § 1.410(b)–2(f) and would fail to satisfy the universal availability requirement of this paragraph (e) merely because of such event, then the applicable employer plan shall continue to be treated as satisfying this paragraph (e) through the end of the period determined under section 410(b)(6)(C)(ii).

(f) *Special rules for an employer that sponsors multiple plans—(1) General rule.* For purposes of paragraph (c) of this section, all applicable employer plans, other than section 457 eligible governmental plans, maintained by the same employer are treated as one plan and all section 457 eligible

governmental plans maintained by the same employer are treated as one plan. Thus, the total amount of catch-up contributions under all applicable employer plans of an employer (other than section 457 eligible governmental plans) is limited to the applicable dollar catch-up limit for the taxable year, and the total amount of catch-up contributions for all section 457 eligible governmental plans of an employer is limited to the applicable dollar catch-up limit for the taxable year.

(2) *Coordination of employer-provided limits.* An applicable employer plan is permitted to allow a catch-up eligible participant to defer amounts in excess of an employer-provided limit under that plan without regard to whether elective deferrals made by the participant have been treated as catch-up contributions for the taxable year under another applicable employer plan aggregated with such plan under this paragraph (f). However, to the extent elective deferrals under another plan maintained by the employer have already been treated as catch-up contributions during the taxable year, the elective deferrals under the plan may be treated as catch-up contributions only up to the amount remaining under the catch-up limit for the year. Any other elective deferrals that exceed the employer-provided limit may not be treated as catch-up contributions and must satisfy the otherwise applicable nondiscrimination rules. For example, the right to make contributions in excess of the employer-provided limit is another right or feature which must satisfy § 1.401(a)(4)-4 to the extent that the contributions are not catch-up contributions. Also, contributions in excess of the employer provided limit are taken into account under the ADP test to the extent they are not catch-up contributions.

(3) *Allocation rules.* If a catch-up eligible participant makes additional elective deferrals in excess of an applicable limit under paragraph (b)(1) of this section under more than one applicable employer plan that is aggregated under the rules of this paragraph (f), the applicable employer plan under which elective deferrals in excess of an applicable limit are treated as catch-up contributions is permitted to be determined in any manner that is not inconsistent with the manner in which such amounts were actually deferred under the plan.

(g) *Definitions*—(1) *Applicable employer plan.* The term applicable employer plan means a section 401(k) plan, a SIMPLE IRA plan as defined in section 408(p), a simplified employee pension plan as defined in section

408(k) (SEP), a plan or contract that satisfies the requirements of section 403(b), or a section 457 eligible governmental plan.

(2) *Elective deferral.* The term elective deferral means an elective deferral within the meaning of section 402(g)(3) or any contribution to a section 457 eligible governmental plan.

(3) *Catch-up eligible participant.* An employee is a catch-up eligible participant for a taxable year if—

(i) The employee is eligible to make elective deferrals under an applicable employer plan (without regard to section 414(v) or this section); and

(ii) The employee's 50th or higher birthday would occur before the end of the employee's taxable year.

(4) *Other definitions.* (i) The terms employer, employee, section 401(k) plan, and highly compensated employee have the meanings provided in § 1.410(b)-9.

(ii) The term section 457 eligible governmental plan means an eligible deferred compensation plan described in section 457(b) that is established and maintained by an eligible employer described in section 457(e)(1)(A).

(h) *Examples.* The following examples illustrate the application of this section. For purposes of these examples, the limit under section 401(a)(30) is \$15,000 and the applicable dollar catch-up limit is \$5,000 and, except as specifically provided, the plan year is the calendar year. In addition, it is assumed that the participant's elective deferrals under all plans of the employer do not exceed the participant's section 415(c)(3) compensation, that the taxable year of the participant is the calendar year and that any correction pursuant to section 401(k)(8) is made through distribution of excess contributions. The examples are as follows:

*Example 1.* (i) Participant A is eligible to make elective deferrals under a section 401(k) plan, Plan P. Plan P does not limit elective deferrals except as necessary to comply with sections 401(a)(30) and 415. In 2006, Participant A is 55 years old. Plan P also provides that a catch-up eligible participant is permitted to defer amounts in excess of the section 401(a)(30) limit up to the applicable dollar catch-up limit for the year. Participant A defers \$18,000 during 2006.

(ii) Participant A's elective deferrals in excess of the section 401(a)(30) limit (\$3,000) do not exceed the applicable dollar catch-up limit for 2006 (\$5,000). Under paragraph (a)(1) of this section, the \$3,000 is a catch-up contribution and, pursuant to paragraph (d)(2)(i) of this section, it is not taken into account in determining Participant A's ADR for purposes of section 401(k)(3).

*Example 2.* (i) Participants B and C, who are highly compensated employees each earning \$120,000, are eligible to make

elective deferrals under a section 401(k) plan, Plan Q. Plan Q limits elective deferrals as necessary to comply with section 401(a)(30) and 415, and also provides that no highly compensated employee may make an elective deferral at a rate that exceeds 10% of compensation. However, Plan Q also provides that a catch-up eligible participant is permitted to defer amounts in excess of 10% during the plan year up to the applicable dollar catch-up limit for the year. In 2006, Participants B and C are both 55 years old and, pursuant to the catch-up provision in Plan Q, both elect to defer 10% of compensation plus a pro-rata portion of the \$5,000 applicable dollar catch-up limit for 2006. Participant B continues this election in effect for the entire year, for a total elective contribution for the year of \$17,000. However, in July 2006, after deferring \$8,500, Participant C discontinues making elective deferrals.

(ii) Once Participant B's elective deferrals for the year exceed the section 401(a)(30) limit (\$15,000), subsequent elective deferrals are treated as catch-up contributions as they are deferred, provided that such elective deferrals do not exceed the catch-up contribution limit for the taxable year. Since the \$2,000 in elective deferrals made after Participant B reaches the section 402(g) limit for the calendar year does not exceed the applicable dollar catch-up limit for 2006, the entire \$2,000 is treated as a catch-up contribution.

(iii) As of the last day of the plan year, Participant B has exceeded the employer-provided limit of 10% (10% of \$120,000 or \$12,000 for Participant B) by an additional \$3,000. Since the additional \$3,000 in elective deferrals does not exceed the \$5,000 applicable dollar catch-up limit for 2006, reduced by the \$2,000 in elective deferrals previously treated as catch-up contributions, the entire \$3,000 of elective deferrals is treated as a catch-up contribution.

(iv) In determining Participant B's ADR, the \$5,000 of catch-up contributions are subtracted from Participant B's elective deferrals for the plan year under paragraph (d)(2)(i) of this section. Accordingly, Participant B's ADR is 10% (\$12,000/\$120,000). In addition, for purposes of applying the rules of section 401(k)(8), Participant B is treated as having elective deferrals of \$12,000.

(v) Participant C's elective deferrals for the year do not exceed an applicable limit for the plan year. Accordingly, Participant C's \$8,500 of elective deferrals must be taken into account in determining Participant C's ADR for purposes of section 401(k)(3).

*Example 3.* (i) The facts are the same as in *Example 2*, except that Plan Q is amended to change the maximum permitted deferral percentage for highly compensated employees to 7%, effective for deferrals after April 1, 2006. Participant B, who has earned \$40,000 in the first 3 months of the year and has been deferring at a rate of 10% of compensation plus a pro-rata portion of the \$5,000 applicable dollar catch-up limit for 2006, reduces the 10% of pay deferral rate to 7% for the remaining 9 months of the year (while continuing to defer a pro-rata portion of the \$5,000 applicable dollar catch-up limit

for 2006). During those 9 months, Participant B earns \$80,000. Thus, Participant B's total elective deferrals for the year are \$14,600 (\$4,000 for the first 3 months of the year plus \$5,600 for the last 9 months of the year plus an additional \$5,000 throughout the year).

(ii) The employer-provided limit for Participant B for the plan year is \$9,600 (\$4,000 for the first 3 months of the year, plus \$5,600 for the last 9 months of the year). Accordingly, Participant B's elective deferrals for the year that are in excess of the employer-provided limit are \$5,000 (the excess of \$14,600 over \$9,600), which does not exceed the applicable dollar catch-up limit of \$5,000.

(iii) Alternatively, Plan Q may provide that the employer-provided limit is determined as the time-weighted average of the different deferral percentage limits over the course of the year. In this case, the time-weighted average limit is 7.75% for all participants, and the applicable limit for Participant B is 7.75% of \$120,000, or \$9,300. Accordingly, Participant B's elective deferrals for the year that are in excess of the employer-provided limit are \$5,300 (the excess of \$14,600 over \$9,300). Since the amount of Participant B's elective deferrals in excess of the employer-provided limit (\$5,300) exceeds the applicable dollar catch-up limit for the taxable year, only \$5,000 of Participant B's elective deferrals may be treated as catch-up contributions. In determining Participant B's actual deferral ratio, the \$5,000 of catch-up contributions are subtracted from Participant B's elective deferrals for the plan year under paragraph (d)(2)(i) of this section. Accordingly, Participant B's actual deferral ratio is 8% (\$9,600/\$120,000). In addition, for purposes of applying the rules of section 401(k)(8), Participant B is treated as having elective deferrals of \$9,600.

*Example 4.* (i) The facts are the same as in *Example 1*. In addition to Participant A, Participant D is a highly compensated employee who is eligible to make elective deferrals under Plan P. During 2006, Participant D, who is 60 years old, elects to defer \$14,000.

(ii) The ADP test is run for Plan P (after excluding the \$3,000 in catch-up contributions from Participant A's elective deferrals), but Plan P needs to take corrective action in order to pass the ADP test. After applying the rules of section 401(k)(8)(C) to allocate the total excess contributions determined under section 401(k)(8)(B), the maximum deferrals which may be retained by any highly compensated employee in Plan P is \$12,500.

(iii) Pursuant to paragraph (b)(1)(iii) of this section, the ADP limit under Plan P of \$12,500 is an applicable limit. Accordingly, \$1,500 of Participant D's elective deferrals exceed the applicable limit. Similarly, \$2,500 of Participant A's elective deferrals (other than the \$3,000 of elective deferrals treated as catch-up contributions because they exceed the section 401(a)(30) limit) exceed the applicable limit.

(iv) The \$1,500 of Participant D's elective deferrals that exceed the applicable limit are less than the applicable dollar catch-up limit and are treated as catch-up contributions. Pursuant to paragraph (d)(2)(iii) of this

section, Plan P must retain Participant D's \$1,500 in elective deferrals and Plan P is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant D.

(v) The \$2,500 of Participant A's elective deferrals that exceed the applicable limit are greater than the portion of the applicable dollar catch-up limit (\$2,000) that remains after treating the \$3,000 of elective deferrals in excess of the section 401(a)(30) limit as catch-up contributions. Accordingly, \$2,000 of Participant A's elective deferrals are treated as catch-up contributions. Pursuant to paragraph (d)(2)(iii) of this section, Plan P must retain Participant A's \$2,000 in elective deferrals and Plan P is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant A. However, \$500 of Participant A's elective deferrals cannot be treated as catch-up contributions and must be distributed to Participant A in order to satisfy section 401(k)(8).

*Example 5.* (i) Participant E is a highly compensated employee who is a catch-up eligible participant under a section 401(k) plan, Plan R, with a plan year ending October 31, 2006. Plan R does not limit elective deferrals except as necessary to comply with section 401(a)(30) and section 415. Plan R permits all catch-up eligible participants to defer an additional amount equal to the applicable dollar catch-up limit for the year (\$5,000) in excess of the section 401(a)(30) limit. Participant E did not exceed the section 401(a)(30) limit in 2005 and did not exceed the ADP limit for the plan year ending October 31, 2005. Participant E made \$3,200 of deferrals in the period November 1, 2005 through December 31, 2005 and an additional \$16,000 of deferrals in the first 10 months of 2006, for a total of \$19,200 in elective deferrals for the plan year.

(ii) Once Participant E's elective deferrals for the calendar year 2006 exceed \$15,000, subsequent elective deferrals are treated as catch-up contributions at the time they are deferred, provided that such elective deferrals do not exceed the applicable dollar catch-up limit for the taxable year. Since the \$1,000 in elective deferrals made after Participant E reaches the section 402(g) limit for the calendar year does not exceed the applicable dollar catch-up limit for 2006, the entire \$1,000 is a catch-up contribution. Pursuant to paragraph (d)(2)(i) of this section, \$1,000 is subtracted from Participant E's \$19,200 in elective deferrals for the plan year ending October 31, 2006 in determining Participant E's ADR for that plan year.

(iii) The ADP test is run for Plan R (after excluding the \$1,000 in elective deferrals in excess of the section 401(a)(30) limit), but Plan R needs to take corrective action in order to pass the ADP test. After applying the rules of section 401(k)(8)(C) to allocate the total excess contributions determined under section 401(k)(8)(C), the maximum deferrals that may be retained by any highly compensated employee under Plan R for the plan year ending October 31, 2006 (the ADP limit) is \$14,800.

(iv) Under paragraph (d)(2)(ii) of this section, elective deferrals that exceed the section 401(a)(30) limit under Plan R are also

subtracted from Participant E's elective deferrals under Plan R for purposes of applying the rules of section 401(k)(8). Accordingly, for purposes of correcting the failed ADP test, Participant E is treated as having contributed \$18,200 of elective deferrals in Plan R. The amount of elective deferrals that would have to be distributed to Participant E in order to satisfy section 401(k)(8)(C) is \$3,400 (\$18,200 minus \$14,800), which is less than the excess of the applicable dollar catch-up limit (\$5,000) over the elective deferrals previously treated as catch-up contributions under Plan R for the taxable year (\$1,000). Under paragraph (d)(2)(iii) of this section, Plan R must retain Participant E's \$3,400 in elective deferrals and is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant E.

(v) Even though Participant E's elective deferrals for the calendar year 2006 have exceeded the section 401(a)(30) limit, Participant E can continue to make elective deferrals during the last 2 months of the calendar year, since Participant E's catch-up contributions for the taxable year are not taken into account in applying the section 401(a)(30) limit for 2006. Thus, Participant E can make an additional contribution of \$3,400 (\$15,000 minus (\$16,000 minus \$4,400)) without exceeding the section 401(a)(30) for the calendar year and without regard to any additional catch-up contributions. In addition, Participant E may make additional catch-up contributions of \$600 (the \$5,000 applicable dollar catch-up limit for 2006, reduced by the \$4,400 (\$1,000 plus \$3,400) of elective deferrals previously treated as catch-up contributions during the taxable year). The \$600 of catch-up contributions will not be taken into account in the ADP test for the plan year ending October 31, 2007.

*Example 6.* (i) The facts are the same as in *Example 5*, except that Participant E exceeded the section 401(a)(30) limit for 2005 by \$1,300 prior to October 31, 2005, and made \$600 of elective deferrals in the period November 1, 2005, through December 31, 2005 (which were catch-up contributions for 2005). Thus, Participant E made \$16,600 of elective deferrals for the plan year ending October 31, 2006.

(ii) Once Participant E's elective deferrals for the calendar year 2006 exceed \$15,000, subsequent elective deferrals are treated as catch-up contributions as they are deferred, provided that such elective deferrals do not exceed the applicable dollar catch-up limit for the taxable year. Since the \$1,000 in elective deferrals made after Participant E reaches the section 402(g) limit for calendar year 2006 does not exceed the applicable dollar catch-up limit for 2006, the entire \$1,000 is a catch-up contribution. Pursuant to paragraph (d)(2)(i) of this section, \$1,000 is subtracted from Participant E's elective deferrals in determining Participant E's ADR for the plan year ending October 31, 2006. In addition, the \$600 of catch-up contributions from the period November 1, 2005 to December 31, 2005 are subtracted from Participant E's elective deferrals in determining Participant E's ADR. Thus, the total elective deferrals taken into account in

determining Participant E's ADR for the plan year ending October 31, 2006, is \$15,000 (\$16,600 in elective deferrals for the current plan year, less \$1,600 in catch-up contributions).

(iii) The ADP test is run for Plan R (after excluding the \$1,600 in elective deferrals in excess of the section 401(a)(30) limit), but Plan R needs to take corrective action in order to pass the ADP test. After applying the rules of section 401(k)(8)(C) to allocate the total excess contributions determined under section 401(k)(8)(C), the maximum deferrals that may be retained by any highly compensated employee under Plan R (the ADP limit) is \$14,800.

(iv) Under paragraph (d)(2)(ii) of this section, elective deferrals that exceed the section 401(a)(30) limit under Plan R are also subtracted from Participant E's elective deferrals under Plan R for purposes of applying the rules of section 401(k)(8). Accordingly, for purposes of correcting the failed ADP test, Participant E is treated as having contributed \$15,000 of elective deferrals in Plan R. The amount of elective deferrals that would have to be distributed to Participant E in order to satisfy section 401(k)(8)(C) is \$200 (\$15,000 minus \$14,800), which is less than the excess of the applicable dollar catch-up limit (\$5,000) over the elective deferrals previously treated as catch-up contributions under Plan R for the taxable year (\$1,000). Under paragraph (d)(2)(iii) of this section, Plan R must retain Participant E's \$200 in elective deferrals and is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant E.

(v) Even though Participant E's elective deferrals for calendar year 2006 have exceeded the section 401(a)(30) limit, Participant E can continue to make elective deferrals during the last 2 months of the calendar year, since Participant E's catch-up contributions for the taxable year are not taken into account in applying the section 401(a)(30) limit for 2006. Thus Participant E can make an additional contribution of \$200 (\$15,000 minus (\$16,000 minus \$1,200)) without exceeding the section 401(a)(30) for the calendar year and without regard to any additional catch-up contributions. In addition, Participant E may make additional catch-up contributions of \$3,800 (the \$5,000 applicable dollar catch-up limit for 2006, reduced by the \$1,200 (\$1,000 plus \$200) of elective deferrals previously treated as catch-up contributions during the taxable year). The \$3,800 of catch-up contributions will not be taken into account in the ADP test for the plan year ending October 31, 2007.

*Example 7.* (i) Participant F, who is 58 years old, is a highly compensated employee who earns \$100,000 per year. Participant F participates in a section 401(k) plan, Plan S, for the first 6 months of the year and then transfers to another section 401(k) plan, Plan T, sponsored by the same employer, for the second 6 months of the year. Plan S limits highly compensated employees' elective deferrals to 6% of compensation for the period of participation, but permits catch-up eligible participants to defer amounts in excess of 6% during the plan year, up to the applicable dollar catch-up limit for the year.

Plan T limits highly compensated employees' elective deferrals to 8% of compensation for the period of participation, but permits catch-up eligible participants to defer amounts in excess of 8% during the plan year, up to the applicable dollar catch-up limit for the year. Participant F earned \$50,000 in the first 6 months of the year and deferred \$6,000 under Plan S. Participant F also deferred \$6,500 under Plan T.

(ii) As of the last day of the plan year, Participant F has \$3,000 in elective deferrals under Plan S that exceed the employer-provided limit of \$3,000. Under Plan T, Participant F has \$2,500 in elective deferrals that exceed the employer-provided limit of \$4,000. The total amount of elective deferrals in excess of employer-provided limits, \$5,500, exceeds the applicable dollar catch-up limit by \$500. Accordingly, \$500 of the elective deferrals in excess of the employer-provided limits are not catch-up contributions and are treated as regular elective deferrals (and are taken into account in the ADP test). The determination of which elective deferrals in excess of an applicable limit are treated as catch-up contributions is permitted to be made in any manner that is not inconsistent with the manner in which such amounts were actually deferred under Plan S and Plan T.

*Example 8.* (i) Employer X sponsors Plan P, which provides for matching contributions equal to 50% of elective deferrals that do not exceed 10% of compensation. Elective deferrals for highly compensated employees are limited, on a payroll-by-payroll basis, to 10% of compensation. Employer X pays employees on a monthly basis. Plan P also provides that elective contributions are limited in accordance with section 401(a)(30) and other applicable statutory limits. Plan P also provides for catch-up contributions. Under Plan P, for purposes of calculating the amount to be treated as catch-up contributions (and to be excluded from the ADP test), amounts in excess of the 10% limit for highly compensated employees are determined at the end of the plan year based on compensation used for purposes of ADP testing (testing compensation), a definition of compensation that is different from the definition used under the plan for purposes of calculating elective deferrals and matching contributions during the plan year (deferral compensation).

(ii) Participant A, a highly compensated employee, is a catch-up eligible participant under Plan P with deferral compensation of \$10,000 per monthly payroll period. Participant A defers 10% per payroll period for the first 10 months of the year, and is allocated a matching contribution each payroll period of \$500. In addition, Participant A defers an additional \$4,000 during the first 10 months of the year. Participant A then reduces deferrals during the last 2 months of the year to 5% of compensation. Participant A is allocated a matching contribution of \$250 for each of the last 2 months of the plan year. For the plan year, Participant A has \$15,000 in elective deferrals and \$5,500 in matching contributions.

(iii) A's testing compensation is \$118,000. At the end of the plan year, based on 10%

of testing compensation, or \$11,800, Plan P determines that A has \$3,200 in deferrals that exceed the 10% employer provided limit. Plan P excludes \$3,200 from ADP testing and calculates A's ADR as \$11,800 divided by \$118,000, or 10%. Although A has not been allocated a matching contribution equal to 50% of \$11,800, because Plan P provides that matching contributions are calculated based on elective deferrals during a payroll period as a percentage of deferral compensation, Plan P is not required to allocate an additional \$400 of matching contributions to A.

(i) *Effective date*—(1) *Statutory effective date.* Section 414(v) applies to contributions in taxable years beginning on or after January 1, 2002.

(2) *Regulatory effective date.* Paragraphs (a) through (h) of this section apply to contributions in taxable years beginning on or after January 1, 2004.

**Robert E. Wenzel,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: June 27, 2003.

**Pamela F. Olson,**  
*Assistant Secretary (Tax Policy).*  
[FR Doc. 03-17226 Filed 7-7-03; 8:45 am]  
**BILLING CODE 4830-01-P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[VA127-5064; FRL-7523-2]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia Nitrogen Oxides Budget Trading Program

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia which consists of its nitrogen oxides (NO<sub>x</sub>) allowance trading program for large electric generating and industrial units, with the exception of the programs' NO<sub>x</sub> allowance banking provisions, which EPA is conditionally approving. The effect of this action is to approve the Virginia NO<sub>x</sub> Budget Trading Program, with conditions on the approval of its allowance banking provisions, because the program substantively addresses the requirements of Phase I of the NO<sub>x</sub> SIP Call which will significantly reduce ozone transport in the eastern United States.

**EFFECTIVE DATE:** This final rule is effective on August 7, 2003.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, (215) 814-2308, or by e-mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On November 12, 2002 (67 FR 68542), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of Virginia's NO<sub>x</sub> Budget Trading Program, with the exception of its NO<sub>x</sub> allowance banking provisions, for which EPA proposed conditional approval. The formal SIP revision was submitted by the Virginia Department of Environmental Quality (VADEQ) on June 25, 2002 to address the requirements of the NO<sub>x</sub> SIP Call Phase I. Virginia's SIP revision to address the NO<sub>x</sub> SIP Call Phase I consists of the addition of 9 VAC Chapter 140, part I—NO<sub>x</sub> Budget Trading Program. Detailed descriptions of this SIP revision, the general NO<sub>x</sub> SIP Call requirements, and EPA's rationale for approving Virginia's NO<sub>x</sub> Budget Trading Program while conditionally approving the program's allowance banking provisions were provided in the November 12, 2002 NPR and will not be restated here. The terms of the conditional approval require that Virginia revise its banking provision to amend the flow control trigger date from 2006 to 2005, and submit the amendment as a SIP revision within one year from the effective date of today's final rulemaking action.

On May 13, 2003, the VADEQ submitted a letter to EPA committing to adopt the necessary regulatory amendment to 9 VAC 5 Chapter 140 to change the flow control date from 2006 to 2005. In the May 13, 2003 letter, the VADEQ also commits to submit this regulatory amendment as a SIP revision as expeditiously as possible but no later than one year from the effective date of EPA's final conditional approval of its NO<sub>x</sub> Budget Trading Program's allowance banking provisions. The May 13, 2003 letter from the Commonwealth

has been included in the administrative record (docket) of this final rulemaking.

Six comment letters were received; all comments pertained to EPA's proposed conditional approval of Virginia's NO<sub>x</sub> allowance banking provisions. The comments opposed EPA's requirement that full approval of these provisions is conditioned upon Virginia revising the flow control trigger date from 2006 to 2005. A summary of the comments and EPA's responses is provided in Section II below.

**II. Public Comments and EPA Responses**

*Comment:* All commenters disagreed with EPA's proposed approval of Virginia's NO<sub>x</sub> SIP Rule conditioned on adoption of a 2005 flow control date. The commenters expressed support for the 2006 flow control date currently in Virginia's rule.

*EPA's Response:* The NO<sub>x</sub> SIP Call includes a limitation (referred to as "flow control") on the use of banked allowances for compliance with the requirement to hold allowances covering emissions. EPA rejects the commenters' claims and maintains that approval of Virginia's NO<sub>x</sub> SIP Call rule should be conditioned on establishing 2005 as the earliest ozone season (referred to as the "flow control date") for which the limitation on use of banked allowances may be triggered.

First, allowing 2006 to be the flow control date in Virginia could result in an unfair advantage for units in the Commonwealth over units in other states with an earlier flow control date. EPA has approved NO<sub>x</sub> Budget Trading Program rules under the NO<sub>x</sub> SIP Call for 15 other states and the District of Columbia. None of the approved rules provide for a flow control date later than 2005.<sup>1</sup> The flow control limitation on

<sup>1</sup> In approving trading program rules for Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, and Rhode Island, EPA approved flow control dates of 2004. The NO<sub>x</sub> SIP Call established May 1, 2003 as the commencement date for the NO<sub>x</sub> Budget Trading Program and required the flow control provisions to apply starting in the second year (2004) of the program. 40 CFR 51.121(b)(1)(ii) and (b)(2)(ii)(E). EPA's approval of the 2004 flow control date was based on the NO<sub>x</sub> SIP Call. (EPA notes that it erroneously approved 2005 as the flow control date for Pennsylvania, whose program also begins in 2003.) Subsequently, the United States Court of Appeals for the District of Columbia Circuit established May 31, 2004 as the commencement date for the NO<sub>x</sub> Budget Trading Program, and so 2005 became the second year of the program, and the mandated flow control date, for state trading programs starting in 2004. While § 51.121 and Part 96 were not revised, EPA has implemented the new flow control date through the notice and comment rulemakings for approval of the SIPs. EPA approved 2005 as the flow control date for states (*i.e.*, Alabama, Illinois, Indiana, Kentucky, North Carolina, South Carolina, and

use of banked allowances is triggered for an upcoming ozone season if the total amount of banked allowances held in allowance accounts as of the allowance transfer deadline (November 30 or, if it is not a business day, the next business day) for the prior ozone season exceeds 10 percent of the total trading budgets for all state programs for the upcoming ozone season. For the 2005 ozone season, banked allowances held for Virginia's units or by Virginia companies as of November 30, 2004 could be a contributing factor for triggering flow control in 2005 for all states with trading programs that are in effect. If Virginia units were to be a factor in triggering flow control in 2005, but would not be subject to the flow control limitation on use of banked allowances in 2005, those Virginia units would have an unfair advantage over units in the other states with a flow control date earlier than 2006.<sup>2</sup>

Further, should a 2006 flow control date be approved for Virginia, this would allow some companies to circumvent the earlier flow control dates established by other states. A company with affected units in both Virginia and a state with an earlier flow control date would be particularly advantaged in this regard. Such a company could circumvent the earlier flow control date by exchanging banked allowances held for its units in the state with the earlier flow control date for 2005 allowances held for its units in Virginia. All of these banked allowances could be used in Virginia in 2005 without application of flow control. However, a company with only units in states with earlier flow control dates could also circumvent, to some extent, the flow control provisions of those states. To the extent that the latter company could purchase 2005

West Virginia) whose programs begin in 2004. EPA also has outstanding a proposed approval of a 2005 flow control date for Tennessee and a proposed approval for Ohio with the understanding that a 2005 flow control date will be adopted.

<sup>2</sup> Although EPA approved several state trading programs with a 2004 flow control date (*see n.1*), those states will not be disadvantaged by the fact that the other states have a 2005 flow control date. This is because 2005 is the earliest year that flow control is likely to be triggered for states with a 2004 flow control date. For 2004, the calculation for triggering flow control is the total number of banked allowances in accounts as of December 1, 2003 (*i.e.*, only the unused allowances allocated for 2003 plus the compliance supplement pool allowances for those states with trading programs beginning in 2003) divided by the total trading budgets for the states with programs in effect in 2004 (*i.e.*, virtually all states in the NO<sub>x</sub> SIP Call region). Because, for this calculation for 2004, the number of states reflected in the numerator is so much smaller than the number of states reflected in the denominator, 2005 is effectively the flow control date for all states whose programs begin in 2003.

allowances and sell banked allowances, it could also avoid the application of the flow control limitation in 2005. In short, allowing a 2006 flow control date for Virginia would allow erosion of the effectiveness of flow control for states with a flow control date before 2006 and would provide for an unfair advantage to some companies.<sup>3</sup>

*Comment:* A number of commenters asserted that the 2006 flow control date adopted by Virginia is supported by the rationale in the preamble of the January 18, 2000 Section 126 rule (Part 97), the accompanying December 1999 response-to-comments document, and the preamble of the April 30, 2002 revision of Part 97 for extension of the flow control date. Commenters also stated that the possibility of different dates under different programs would not affect the trading program and that Part 96 should not be relied on for determination of approvability of the flow control date.

*EPA's Response:* EPA first notes that, at the time Part 97 was promulgated, the potential existed that a number of states would be subject to the trading program under Section 126 as well as that a number of states would be subject to the trading program under the NO<sub>x</sub> SIP Call. This was due to uncertainty as to whether all states would be able to establish SIP approved programs under the NO<sub>x</sub> SIP Call. While the NO<sub>x</sub> SIP Call established statewide NO<sub>x</sub> emissions budgets, it allowed states the flexibility to adopt whatever NO<sub>x</sub> control measures were shown to meet their respective budgets (including the option of participating in the NO<sub>x</sub> Budget Trading Program based on the model rule in Part 96). The states in the NO<sub>x</sub> SIP Call region chose to adopt, or are in the process of adopting, trading programs based on Part 96. As long as a state fully meets its obligations under the NO<sub>x</sub> SIP Call, EPA does not intend to apply the Section 126 rule to units in that state. The existing rule provision withdrawing the Section 126 findings for any state is keyed to the NO<sub>x</sub> SIP Call compliance date of 2003. EPA has already withdrawn the Section 126 findings for Connecticut, Maryland, New Jersey, and New York on that basis. EPA has proposed to revise the Section 126 rule to withdraw the Section 126 findings for states with a May 31, 2004 compliance date. 65 FR 16644 (Apr. 2, 2003). In short, Part 97 (including the later flow control date of 2006) will likely no longer apply to any states in

the NO<sub>x</sub> SIP Call region.<sup>4</sup> Only the NO<sub>x</sub> SIP Call and Part 96 will likely be applicable.

Moreover, in light of this change in circumstances and upon reconsideration of the discussion in the January 18, 2000 and April 30, 2002 preambles for Part 97 (and echoed in the December 1999 response-to-comments document) concerning the flow control date, EPA concludes that such discussion is not complete and is no longer applicable. In the January 18, 2000 Part 97 preamble, EPA stated that it was extending the flow control date to 2005 in response to some sources' concern "regarding the feasibility of installing the NO<sub>x</sub> control equipment required . . . without any risk to electricity reliability" and their resulting concern that "there would not be enough allowances for compliance in the initial years of the Federal NO<sub>x</sub> Budget Trading Program" under Part 97. See 65 FR 2674, 2717 (Jan. 18, 2000). That preamble explained that those concerns had been "heightened" by the triggering of an analogous flow control requirement in the second year of the Ozone Transport Commission (OTC) NO<sub>x</sub> trading program, the predecessor program in the Ozone Transport Region. *Id.*

However, the basis for any potential need for allowances to supplement the trading budget in the initial years of the NO<sub>x</sub> SIP Call and Section 126 trading programs is that some units might experience difficulties in installing NO<sub>x</sub> emission controls (e.g., selective catalytic reduction (SCR) before the commencement of the programs and might need to use additional allowances to cover their emissions in the initial years of the programs until the installations are completed. [See 63 FR 57356, 57428-32 (Oct. 27, 1998)] explaining that EPA addressed these concerns in establishing the compliance deadline, banking as limited by flow control, and the compliance supplement pool of 200,000 additional allowances]. The triggering of flow control in the second year (2000) of the OTC program provides no basis for "heightened" concern that units under the Section 126 program or the NO<sub>x</sub> SIP Call program might have difficulties in installing NO<sub>x</sub> controls and thus in meeting the compliance deadline. The OTC flow control was triggered in 2000

because of the presence of extra allowances (in addition to the amount allocated for 1999) awarded in 1999 for early reductions and because OTC units were able to install sufficient NO<sub>x</sub> controls to meet the OTC program's 1999 compliance deadline. This is demonstrated by the fact that without the 24,635 early reduction allowances, the bank would not have exceeded 10% of the total trading budget and so would not have triggered flow control;<sup>5</sup> and the fact that, in 1999, total emissions for units participating in the OTC program were less than the total number of regular allowances allocated by states participating in that program.<sup>6</sup> Thus, contrary to the January 18, 2000 Part 97 preamble, the triggering of flow control in 2000 in the OTC program does not provide a logical basis for concluding that there will be a greater level of control-installation difficulties than already addressed in the NO<sub>x</sub> SIP Call (which has a 2005 flow control date) and that the flow control date should therefore be extended to 2006.<sup>7</sup>

Further, there is an additional factor that was not considered in the January 18, 2000 and April 30, 2002 Part 97 preambles and that affects the applicability of the preamble rationale for the flow-control-date extension to the NO<sub>x</sub> SIP Call. The likelihood of there being insufficient allowances in the initial years of the NO<sub>x</sub> SIP Call trading program has been reduced because, in addition to the compliance supplement pool (which was considered in the January 18, 2000 Part 97 preamble and represents about 1/3 of the trading budget), the availability of allowances in those years has been effectively augmented by U.S. Court of Appeal's extension of the commencement of the program from May 1, 2003 to May 31, 2004. See *Michigan v. EPA*, 213 F.3d

<sup>5</sup> The allowance bank as of November 30, 1999 equaled 43,585 allowances. If the 24,635 early reduction allowances had not been provided, the bank would have been 18,950 allowances, which would have been less than the flow control trigger level of 10% of the 2000 trading budget (i.e., 10% of 195,401 allowances or 19,540 allowances). See 1999 and 2000 OTC NO<sub>x</sub> Budget Program Compliance Reports (March 27, 2000 and May 9, 2001).

<sup>6</sup> Total emissions in 1999 for participating units in the OTC program were 174,843 tons, as compared to a total trading budget in 1999 of 194,103 allowances for participating states. *Id.*

<sup>7</sup> The January 18, 2000 Part 97 preamble also stated that the 2006 flow control date "gives sources greater assurance that they will be able to use compliance supplement pool allowances for compliance and before such allowances expire." 65 FR 2717. As discussed in a subsequent comment, it is unlikely that compliance supplement pool allowances will expire before being used for compliance. Units in states with a 2005 flow control date can use all such allowances in 2004, before flow control applies.

<sup>3</sup> Companies in states with a 2004 flow control date are not similarly disadvantaged by the 2005 flow control date for the remaining states. See n. 2.

<sup>4</sup> EPA has proposed, but not finalized, revisions to the NO<sub>x</sub> SIP Call concerning its application to Georgia and Missouri. All other states in the NO<sub>x</sub> SIP Call region either have approved programs or are in the process of developing programs meeting NO<sub>x</sub> SIP Call requirements. It seems likely that all states that are subject to the NO<sub>x</sub> SIP Call will meet its requirements. In any event, Part 97 does not apply to Georgia and Missouri.

663 (D.C. Cir. 2000), *cert. den.*, 121 S. Ct. 1225 (2001) (August 30, 2000 order amending June 22, 2000 order lifting stay of state's SIP submission deadline). Under the Court's decision, the first year for state trading programs commencing in 2004 includes only 4 months (May 31-September 30, 2004). Despite this, EPA retained the full ozone season trading budget for 2004 reflecting 5 months of emissions, an effective increase of about 20%.

Finally, one utility claimed that the 2005 flow control date will "seriously impair the construction schedules to which \* \* \* sources have already committed" and "could compromise their ability to achieve compliance during 2005." The commenter alleged that "[u]tilities \* \* \* have been planning outages and related construction activities based on the submittals by the state \* \* \*" However, the commenter failed to provide any support for these speculative claims, for example, by discussing any specific unit's NO<sub>x</sub> control construction schedule, showing that such schedule requires reliance by the owner or operator on the use of banked allowances for compliance for 2005, and showing that such schedule and such reliance were based on there being a 2006 flow control date.

Moreover, it is difficult to see how companies could have reasonably relied on a 2006 flow control date in scheduling installation of controls. First, since 1998, the NO<sub>x</sub> SIP Call has called for a 2004 (or 2005, after the Court-mandated compliance date delay) flow control date and every state has been developing, through a public notice and comment procedure, NO<sub>x</sub> SIP Call rules aimed at avoiding application of the Section 126 rule with a later flow control date. Second, the January 18, 2000 Part 97 preamble reiterated that the NO<sub>x</sub> SIP Call continued to have a 2005 flow control date. *See* 65 FR 2718. Third, except for Virginia and Ohio, no state's NO<sub>x</sub> SIP Call rule used a 2006 flow control date, and the Virginia and Ohio NO<sub>x</sub> SIP Call rules with a 2006 flow control date were not promulgated until mid-2002. In short, commenters fail to show that the rationale for extending the flow control date stated in the January 18, 2000 Part 97 preamble is applicable here or that utilities reasonably relied on such an extension in the NO<sub>x</sub> SIP Call in setting compliance schedules.

Commenters also noted that, in the January 18, 2000 Part 97 preamble, EPA stated that a "one-year difference" in flow control dates for sources subject to the NO<sub>x</sub> SIP Call and Section 126 trading programs "will not interfere

with the trading of NO<sub>x</sub> allowances" and that there is "no need to restrict trading between" sources in the two programs. 65 FR 2718; *see also* 67 FR 21522, 21526 (April 30, 2002). However, neither the January 18, 2000 nor the April 30, 2002 Part 97 preamble considered the problems discussed above that can result from some States having a later flow control date than other States. *See* response to comment concerning the potential for unfair advantage for some companies and the potential for erosion of the earlier flow control date provisions. The Part 97 preambles also did not address the issue of consistency with the general objective under the Clean Air Act of expeditious as practicable achievement of attainment. *See* response to comment concerning availability of 2006 date for any of the NO<sub>x</sub> SIP Call states.

*Comment:* A number of commenters stated that revision of the Virginia rule to require a 2005 flow control date could have the effect of "deeply discounting" the compliance supplement pool should flow control be triggered in 2005.

*EPA's Response:* The compliance supplement pool may be used in the first two years of a state NO<sub>x</sub> SIP Call trading program, and the compliance supplement pool allowances are treated as banked allowances for purposes of triggering and applying flow control. 40 CFR 51.121(b)(2)(iii)(D) and (E). While compliance supplement pool allowances in states with trading programs beginning in 2003 or 2004 may be subject to flow control in 2005, a unit has the flexibility to use those allowances for compliance before 2005 in lieu of regular allowances and thereby to avoid application of flow control to the compliance supplement pool allowances. EPA recognizes, of course, that such a strategy may result in regular allowances (*i.e.*, those allocated for 2003, in states with programs beginning in 2003, and for 2004) being banked and subject to flow control. However, whether compliance supplement pool or regular allowances are subject to flow control, that result was intended under the NO<sub>x</sub> SIP Call.

In the NO<sub>x</sub> SIP Call, EPA noted that banking of allowances may "inhibit or prohibit achievement of the desired emissions budget in a given [ozone] season" since the use of banked allowances for compliance for a specific ozone season may result in total emissions for affected units exceeding the trading budget for that ozone season. *See* 63 FR 25902, 25935 (May 11, 1998). The trading budget reflects the emission reductions mandated, and found to be highly cost effective, under the NO<sub>x</sub> SIP

Call in order to prevent significant contribution to nonattainment in downwind states. Flow control addresses the potential problem caused by banking by continuing to allow banking but discouraging the "excessive use" of banked allowances for compliance. *Id.*; *see also* 63 FR 57473. Excessive use of banked allowances is discouraged by requiring that banked allowances above a certain amount be used on a 2-allowances-for-1-ton-of-emissions basis. All other allowances are used for compliance on a 1-for-1 basis. Because of this difference in use for compliance, commenters apparently are claiming that application of flow control "discounts" the allowances subject to flow control.

However, the NO<sub>x</sub> SIP Call not only required SIPs to include the flow control provisions, but also required that these provisions apply starting in the second year of the program, which was 2004 in the NO<sub>x</sub> SIP Call and which became 2005 for many states after the Court's order delaying the commencement of the trading program. In short, the "deep discount" claimed by the commenters results from the intentional curbing under the NO<sub>x</sub> SIP Call of excessive use of banked allowances and so that claim is not a basis for allowing a 2006 flow control date.<sup>8</sup>

*Comment:* A number of commenters believe that the 2006 date should be available to any of the NO<sub>x</sub> SIP Call states.

*EPA's Response:* EPA disagrees. First, allowing all states to use 2006 as the flow control date would be contrary to the NO<sub>x</sub> SIP Call, which, as discussed above, requires the flow control provisions to apply starting in the second year of the program.

Second, the Clean Air Act rests on an "overarching" principle that the national ambient air quality standards (NAAQS) be achieved as expeditiously as possible. *See* 63 FR 57449. For example, under section 181 of the Clean Air Act, the "primary standard

<sup>8</sup> Some commenters made a related claim that a 2005 flow control date will discourage early reductions as compared to a 2006 flow control date. However, in establishing flow control in the NO<sub>x</sub> SIP Call, EPA balanced the considerations for and against flow control, including the impact on early reductions, and determined a 2005 flow control date should be established. As discussed above, EPA maintains that the determination (and the underlying balancing of these considerations and the underlying rationale) in the Section 126 rule to set a later flow control date are not applicable here. Further, even with the possibility of triggering flow control in 2005, there is still an incentive to make early reductions and obtain compliance supplement pool allowances since, under flow control, the use of banked allowances for compliance is not barred but rather is on a 2-for-1 basis.

attainment date for ozone shall be as expeditiously as practicable but not later than [certain statutorily prescribed attainment dates].” 42 U.S.C. 7511; see also 42 U.S.C. 7502(a)(2)(A). As discussed above, the state trading budgets under the NO<sub>x</sub> SIP Call reflect the emission reductions mandated under the NO<sub>x</sub> SIP Call in order to prevent significant contribution to nonattainment in downwind states. Flow control reduces the likelihood of total emissions in any given ozone season in the NO<sub>x</sub> SIP Call region exceeding the total of the state trading budgets by more than 10% and in that way promotes achievement of attainment as expeditiously as practicable. The later the flow control date, the greater the number of ozone seasons that lack this provision preventing, or at least minimizing, excessive use of banked allowances and total emissions in excess of the state budgets. Moreover, emission reductions in 2005 and 2006 may both help some nonattainment areas achieve attainment and help some areas achieve reasonable further progress toward attainment. See 63 FR 57449–50.<sup>9</sup> The NO<sub>x</sub> SIP Call balanced various factors, including the potential benefits of banking and the potential problems from excessive banking, and determined that flow control protection should begin in the second year of the trading program. See 63 FR 25934–44; and 40 CFR 51.121(b)(2)(iii)(D) and (E).<sup>10</sup> Allowing a later flow control date would run contrary to the overarching objective of expeditious as practicable attainment.<sup>11</sup>

*Comment:* A number of commenters suggested that if EPA continues to apply

<sup>9</sup> EPA notes that the NO<sub>x</sub> SIP Call covers a larger number of states, and its emission limitations are aimed at preventing significant contribution to a larger number of states with nonattainment areas, than the Section 126 rule.

<sup>10</sup> In the January 18, 2000 Part 97 preamble, EPA stated that adoption of the third year of the program as the flow control date “strikes an appropriate balance” between concerns over the feasibility of installing controls by May 1, 2003 and the environmental goal of the program. 65 FR 2717. This is echoed in the December 1999 response-to-comments document (at 71), which stated that a 2006 flow control date will not “jeopardize the environmental goal” of this program. As discussed above, EPA maintains that the determination (and the underlying balancing of these considerations and the underlying rationale) in the Section 126 rule to set a later flow control date are not applicable here. See, e.g., n.8.

<sup>11</sup> Commenters’ claim that, since EPA does not expect flow control to be triggered in 2005, the potential effect of a 2006 flow control date on expeditious attainment should be ignored. This claim is without merit. Despite EPA’s expectations, there is the potential for flow control to be triggered in 2005. In fact, commenters stated that they believe that such triggering in 2005 is “relatively likely”; indeed, if they did not believe it might occur, they would not be objecting to a 2005 flow control date.

the NO<sub>x</sub> SIP Call to Georgia and Missouri, and sets dates for the commencement of their emission control requirements (such as a trading program based on Part 96), those states will have flow control dates later than 2005 and that this supports allowing Virginia to have a flow control date later than 2005.

*EPA’s Response:* EPA rejects this claim as entirely speculative. In addressing whether and, if so, how to apply the NO<sub>x</sub> SIP Call to Georgia and Missouri, EPA will address how to handle the flow control requirements and will take into account the problems discussed above that would result from some states having later flow control dates than other states.

### III. Final Action

EPA is approving the Commonwealth of Virginia’s Regulation for Emissions Trading, 9 VAC Chapter 140, part I—NO<sub>x</sub> Budget Trading Program submitted as a SIP revision on June 25, 2002, with the following exception: the provisions of Virginia’s NO<sub>x</sub> allowance banking regulation set forth in 9 VAC 5–140–550 are conditionally approved. Except as noted, EPA is approving Virginia’s NO<sub>x</sub> Budget Trading Program because it substantively satisfies the requirements of the NO<sub>x</sub> SIP Call Phase I. For Virginia’s NO<sub>x</sub> allowance banking provisions to become fully approvable, Virginia must correct the deficiency identified in this action and submit the change as a SIP revision within one year from the effective date of today’s action. Because the VADEQ has begun the regulatory process to change the flow control trigger date from 2006 to 2005, and has provided a written commitment to EPA that the so revised regulation will be submitted as a SIP revision within the one year deadline, EPA will record, as soon as practicable after EPA’s conditional approval becomes effective, the allowance allocations provided under Virginia’s rule. If Virginia fails to fulfil its commitment, the conditional approval of the allowance banking provisions will convert to a disapproval, and EPA will, at that time, address the effect of that disapproval on the Commonwealth’s NO<sub>x</sub> Budget Trading Program.

### IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative

burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia’s legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia’s Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. \* \* \*” The opinion concludes that “[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1–1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1997 opinion states that the quoted language renders this statute inapplicable to

enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its [\*] program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

## V. Statutory and Executive Order Reviews

### A. General Requirements

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

### B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

### C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 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 approving Virginia’s NO<sub>x</sub> Trading Program, but conditionally approving its banking provisions, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 26, 2003.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

### PART 52—[AMENDED]

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

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

### Subpart VV—Virginia

■ 2. In Section 52.2420, the table in paragraph (c) is amended by adding the entry Chapter 140 to 9 VAC 5, to read as follows:

#### § 52.2420 Identification of plan.

\* \* \* \* \*

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/Subject	State effective date	EPA approval date	Explanation (former SIP section)
Chapter 140	NO <sub>x</sub> Budget Trading Program [Part I]			
<b>Part I.—Emission Standards</b>				
Article 1	NO <sub>x</sub> Budget Trading Program General Provisions			
5-140-10	Purpose	7/17/02	7/08/03 and Federal Register page citation]	
5-140-20	Definitions	7/17/02	7/08/03 and Federal Register page citation]	
5-140-30	Measurements, abbreviations, and acronyms ..	7/17/02	7/08/03 and Federal Register page citation]	
5-140-31	Federal Regulations Incorporated by reference	7/17/02	7/08/03 and Federal Register page citation]	
5-140-40	Applicability	7/17/02	7/08/03 and Federal Register page citation]	
5-140-50	Retired unit exemption	7/17/02	7/08/03 and Federal Register page citation]	
5-140-60	Standard requirements.	7/17/02	7/08/03 and Federal Register page citation]	
5-140-70	Computation of time	7/17/02	7/08/03 and Federal Register page citation]	
5-140-100	Authorization and responsibilities of the NO <sub>x</sub> authorized representative.	7/17/02	7/08/03 and Federal Register page citation]	
5-140-110	Alternate NO <sub>x</sub> authorized account representative.	7/17/02	7/08/03 and Federal Register page citation]	
5-140-120	Changing the NO <sub>x</sub> authorized account representative and alternate NO <sub>x</sub> authorized account Register representative; page changes in the owners and operators.	7/17/02	7/08/03 and Federal Register page citation]	
5-140-130	Account certificate of representation	7/17/02	7/08/03 and Federal Register page citation]	
5-140-140	Objections concerning the NO <sub>x</sub> authorized account and representative.	7/17/02	7/08/03 and Federal Register page citation]	
Article 3	Permits			
5-140-200	General NO <sub>x</sub> Budget permit requirements .....	7/17/02	7/08/03 and Federal Register page citation]	
5-140-210	Submission of NO <sub>x</sub> Budget permit applications	7/17/02	7/08/03 and Federal Register page citation]	
5-140-220	Information requirements for NO <sub>x</sub> Budget permit applications.	7/17/02	7/08/03 and Federal Register page citation]	
5-140-230	NO <sub>x</sub> Budget permit contents	7/17/02	7/08/03 and Federal Register page citation]	
5-140-240	Effective date of initial NO <sub>x</sub> Budget permit .....	7/17/02	7/08/03 and Federal Register page citation]	
5-140-250	NO <sub>x</sub> Budget permit revisions	7/17/02	7/08/03 and Federal Register page citation]	
Article 4	Compliance Certification			
5-140-300	Compliance certification report	7/17/02	7/08/03 and Federal Register page citation]	
5-140-310	Permitting authority's and administrator's and action on compliance certifications.	7/17/02	7/08/03 and Federal Register page citation]	
Article 5	NO <sub>x</sub> Allowance Allocations			
5-140-400	State trading program budget	7/17/02	7/08/03 and Federal Register page citation]	
5-140-410	Timing requirements for NO <sub>x</sub> allowance allocations.	7/17/02	7/08/03 and Federal Register page citation]	
5-140-420	NO <sub>x</sub> allowance allocations	7/17/02	7/08/03 and Federal Register page citation]	
5-140-430	Compliance Supplement Pool	7/17/02	7/08/03 and Federal Register page citation]	
Article 6	NO <sub>x</sub> Allowance Tracking System			
5-140-500	NO <sub>x</sub> Allowance Tracking System accounts .....	7/17/02	7/08/03 and Federal Register page citation]	
5-140-510	Establishment of accounts	7/17/02	7/08/03 and Federal Register page citation]	
5-140-520	NO <sub>x</sub> Allowance Tracking System responsibilities of NO <sub>x</sub> authorized account representative.	7/17/02	7/08/03 and Federal Register page citation]	

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/Subject	State effective date	EPA approval date	Explanation (former SIP section)
5-140-530	Recordation of NO <sub>x</sub> allowance allocations	7/17/02	7/08/03 and Federal Register page citation]	Conditionally Approved
5-140-540	Compliance	7/17/02	7/08/03 and Federal Register page citation]	
5-140-550	Banking	7/17/02	7/08/03 and Federal Register page citation]	
5-140-560	Account error	7/17/02	7/08/03 and Federal Register page citation]	
5-140-570	Closing of general accounts	7/17/02	7/08/03 and Federal Register page citation]	
Article 7	NO <sub>x</sub> Allowance Transfers			
5-140-600	Scope and submission of NO <sub>x</sub> allowance transfers.	7/17/02	7/08/03 and Federal Register page citation]	
5-140-610	EPA recordation	7/17/02	7/08/03 and Federal Register page citation]	
5-140-620	Notification	7/17/0	7/08/03 and Federal Register page citation]	
Article 8	Monitoring and Reporting			
5-140-700	General Requirements	7/17/02	7/08/03 and Federal Register page citation]	
5-140-710	Initial certification and recertification procedures.	7/17/02	7/08/03 and Federal Register page citation]	
5-140-720	Out of control periods	7/17/02	7/08/03 and Federal Register page citation]	
5-140-730	Notifications	7/17/02	7/08/03 and Federal Register page citation]	
5-140-740	Recordkeeping and reporting	7/17/02	7/08/03 and Federal Register page citation]	
5-140-750	Petitions	7/17/02	7/08/03 and Federal Register page citation]	
5-140-760	Additional requirements to provide heat input data for allocation purposes.	7/17/02	7/08/03 and Federal Register page citation]	
Article 9	Individual Unit Opt-ins			
5-140-800	Applicability	7/17/02	7/08/03 and Federal Register page citation]	
5-140-810	General	7/17/02	7/08/03 and Federal Register page citation]	
5-140-820	NO <sub>x</sub> authorized account representative	7/17/02	7/08/03 and Federal Register page citation]	
5-140-830	Applying for NO <sub>x</sub> Budget opt-in permit	7/17/02	7/08/03 and Federal Register page citation]	
5-140-840	Opt-in process	7/17/02	7/08/03 and Federal Register page citation]	
5-140-850	NO <sub>x</sub> Budget opt-in permit contents	7/17/02	7/08/03 and Federal Register page citation]	
5-140-860	Withdrawal from NO <sub>x</sub> Budget Trading Program.	7/17/02	7/08/03 and Federal Register page citation]	
5-140-870	Change in regulatory status	7/17/02	7/08/03 and Federal Register page citation]	
5-140-880	NO <sub>x</sub> allowance allocations to opt-in units	7/17/02	7/08/03 and Federal Register page citation]	
Article 10	State Trading Program Budget and Compliance Pool			
5-140-900	State trading program budget	7/17/02	7/08/03 and Federal Register page citation]	
5-140-910	Compliance supplement pool budget	7/17/02	7/08/03 and Federal Register page citation]	
5-140-920	Total electric generating unit allocations	7/17/02	7/08/03 and Federal Register page citation]	
5-140-930	Total non-electric generating unit allocations	7/17/02	7/08/03 and Federal Register page citation]	
*	*	*	*	*

\* \* \* \* \*

■ 3. Section 52.2450 is amended by adding paragraph (c) to read as follows:

**§ 52.2450 Conditional approval.**  
 \* \* \* \* \*  
 (c) Virginia's banking provision set forth in 9 VAC 5-140-550 under its

NO<sub>x</sub> SIP Trading program is approved with the following contingency: Virginia must correct the flow control trigger date from 2006 to 2005 and submit the

change as a SIP revision within one year from August 7, 2003.

[FR Doc. 03-17100 Filed 7-7-03; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 70

[NE 178-1178a; FRL-7523-1]

#### Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Nebraska

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is announcing approval of revisions to the Nebraska State Implementation Plan (SIP) and Operating Permits Program. On September 7, 2001, and May 10, 2002, the state updated its air program rules to be consistent with Federal requirements, to revise definitions, and to clarify applicability, reporting, and monitoring requirements. Approval of these revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's revised air program rules.

**DATES:** This direct final rule will be effective September 8, 2003, unless EPA receives adverse comments by August 7, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or E-mail him at [kaiser.wayne@epa.gov](mailto:kaiser.wayne@epa.gov).

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Wayne Kaiser at (913) 551-7603.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is the part 70 Operating Permits Program?

What is being addressed in this document? Have the requirements for approval of a SIP revision and part 70 program revision been met?

What action is EPA taking?

#### What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by us. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

#### What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by us under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgations of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the

CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

#### What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

#### What Is the Part 70 Operating Permits Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM<sub>10</sub>; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies operating permits program are also subject to public notice, comment, and our approval.

#### What Is Being Addressed in This Document?

The state of Nebraska has requested that we approve as a revision to the Nebraska SIP, part 70 Operating Permits Program and section 112(l) air toxics

program two recently adopted sets of revisions to Title 129. The first revision set was submitted to us on May 10, 2002, and included revisions to Chapters 1, 4, 5, 6, 20, 29, and 34. The second set of revisions was submitted on November 5, 2002, and included revisions to Chapters 1, 2, 4, 5, 6, 17, 20, 21, and 31. An overview of the revisions are discussed below.

#### *Revisions Submitted on May 10, 2002*

**Chapter 1—Definitions.** A definition of “deviation” was added since this term is used in other rules; an exception clause was added to the definition of “incineration,” which exempts “a furnace used by law enforcement personnel to dispose of ammunition, fireworks or similar flammable or explosive materials”; and the definition of “Volatile organic compound (VOC)” was revised to add “methyl acetate” to the list of exempt VOCs. This revision is consistent with EPA’s list of exempt VOCs at 40 CFR 51.100(s).

**Chapter 4—Ambient Air Quality Standards.** In 1997 EPA promulgated new standards for fine particulate matter (PM<sub>2.5</sub>) and ozone. The state has adopted these ambient standards and also the data interpretation procedures of Appendix I and Appendix N of 40 CFR part 50 for ozone and particulate matter.

**Chapter 5—Operating Permits.** Revisions to this rule include clarifying the applicability of non-major sources to the Class II operating permits program; clarifying the deferral of sources from the Class I operating permits program; and clarifying the reporting requirements for certain emergency generators. The revision to Section 001.02 will not be acted on because this section relates only to the Class II permit program and was not previously Federally approved.

**Chapter 6—Emissions Reporting, When Required.** The annual deadline for submitting the emissions inventory reporting form was changed from July 1 to April 1.

**Chapter 20—Particulate Emissions; Limitations and Standards (Exceptions Due to Breakdowns or Scheduled Maintenance: See Chapter 35).** An exception was added, in conjunction with the revision to the “incinerator” definition in Chapter 1, which exempts from the opacity requirements of Chapter 20 incinerators used by law enforcement personnel to dispose of ammunition or explosive materials. Also, paragraph 007 was revised to clarify the applicability of the rule.

**Chapter 29—Operating Permit Emissions Fees.** A provision of this rule was revised to remove a sunset

provision subjecting certain electric generation units to a lower emission fee. These units will now pay emissions fees beginning with calendar year 2001 emissions.

**Chapter 34—Emission Sources; Testing; Monitoring.** Paragraph 005 was revised to decrease from forever, to five years, the time period for which certain large steam generators, requesting exemption from operating a continuous opacity monitoring system, must have a clean opacity compliance record.

Upon review by EPA, it was determined that this revision is inconsistent with the provisions of 40 CFR part 51, Appendix P—Minimum Emission Monitoring Requirements, paragraph 2.1.1.2. That paragraph provides a limited exemption from opacity monitoring for sources which have “never” been found in violation of a visible emission standard. The state revision allows the exemption for sources which have not been found in violation for the past five years, which is less stringent than the Federal requirement. Consequently, we are taking no action on this provision of the state submittal. The state has agreed to revise its rule to make it consistent with the Federal provision in the near future.

#### *Revisions Submitted on November 5, 2002*

**Chapter 1—Definitions.** The following definitions were clarified: “applicable requirement,” “fuel burning equipment,” and the exemption for “incinerators” from opacity limits is only for incinerators owned and operated by law enforcement agencies being solely used to dispose of ammunition, fireworks, or similar flammable or explosive materials. A definition for “Maximum Achievable Control Technology (MACT)” was added to define the MACT emission limitations for new and existing sources.

**Chapter 2—Definition of Major Source.** Fugitive emissions must be considered when determining if a source is major for hazardous air pollutants with this revision and the major source definition was revised to be consistent in both Title V and the NSR/PSD programs.

**Chapter 6—Emissions Reporting; When Required.** Sources are now allowed to submit their own form if acceptable to the Department and it was clarified that appropriate methods need to be used in calculating actual emissions.

**Chapter 17—Construction Permits; When Required.** The change consistently clarified that fugitive emissions must be included in calculating levels of hazardous air

pollutants and defines the source categories that must include fugitive emissions when determining the net change in potential emissions.

**Chapter 20—Particulate Emissions; Limitations and Standards (Exceptions Due to Breakdowns or Scheduled Maintenance: See Chapter 35).** This revision clarifies that furnaces exempted from the opacity standard for disposal of ammunition and other flammable or explosive materials applies only when being solely used for this purpose.

**Chapter 31—Compliance Assurance Monitoring.** The reference to Title 40 of the Code of Federal Regulations was updated to July 1, 2001.

The revisions to Chapters 4, 5, and 21 are administrative in nature, including correcting typographical errors and deleting obsolete references.

Further discussion and background information is contained in the technical support document prepared for this action, which is available from the EPA contact listed above.

#### **Have the Requirements for Approval of a SIP Revision and Part 70 Program Revision Been Met?**

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this notice, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. Finally, the submittal meets the substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR part 70.

#### **What Action Is EPA Taking?**

EPA is processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial, and make regulatory revisions required by state statute. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

*Final action:* EPA is approving as an amendment to the Nebraska SIP revisions to Title 129, Chapters 1, 4, 5, 6, 20, and 34 (except Chapter 5, 001.02), submitted on May 10, 2002, and revisions to Title 129, Chapters 1, 2, 4, 5, 6, 17, 20, and 21, submitted on November 5, 2002, pursuant to section 110.

EPA is also approving as a program revision to the state's part 70 Operating Permits Program revisions to Title 129, Chapters 1, 5, 6, and 29, submitted on May 10, 2002, and revisions to Title 129, Chapters 1, 2, 5, 6, and 31 submitted on November 5, 2002, pursuant to Part 70. Finally, EPA is approving pursuant to 112(l) revisions to Chapter 5.

#### Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the

relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 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

##### 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

##### 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating Permits, Reporting and Recordkeeping requirements.

Dated: June 26, 2003.

**William Rice,**

*Acting Regional Administrator, Region 7.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart CC—Nebraska

■ 2. Section 52.1420 is amended by:

- a. Revising paragraph (b)(3); and
- b. In the table to paragraph (c) by revising the entries for: 129-1, 129-2, 129-4, 129-5, 129-6, 129-17, 129-20, and 129-21.

The revisions read as follows:

##### § 52.1420 Identification of plan.

\* \* \* \* \*

(b) \* \* \*

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region VII, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; the Office of **Federal Register**, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA Air and Radiation Docket and Information Center, Room B-108, 1301 Constitution Avenue, NW. (Mail Code 6102T), Washington, DC 20460.

(c) \* \* \*

EPA—APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Comments
<b>State of Nebraska Department of Environmental Quality</b>				
129-1	Definitions	4/1/02 7/10/02	[7/8/03 and FR citation].	
129-2	Definition of Major Source	7/10/02	[7/8/03 and FR citation].	
* * *				
129-4	Ambient Air Quality Standards	4/1/02 7/10/02	[July 8, 2003 and FR citation].	
129-5	Operating Permit	4/1/02 7/10/02	[7/8/03 and FR citation].	Section 001.02 is not SIP approved.
129-6	Emissions Reporting	4/1/02 7/10/02	[7/8/03 and FR citation].	
* * *				
129-17	Construction Permits—When Required.	7/10/02	[7/8/03 and FR citation].	Refer to January 23, 2002, NDEQ letter to EPA regarding change to 129-17-014. Approved by EPA on May 29, 2002.
* * *				
129-20	Particulate Emissions; Limitations and Standards (Exceptions Due to Breakdowns of Scheduled Maintenance: See Chapter 35).	4/1/02 7/10/02	[7/8/03 and FR citation].	
129-21	Controls for Transferring, Conveying, Railcar and Truck Loading at Rock Processing Operations in Cass County.	7/10/02	[7/08/03 and FR citation].	
* * *				

**PART 70—[AMENDED]**

■ The authority citation for Part 70 continues to read as follows:

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

**Appendix A—[Amended]**

■ 2. Appendix A to Part 70 is amended by adding paragraph (f) under Nebraska; City of Omaha; Lincoln-Lancaster County Health Department to read as follows:

**Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs**

\* \* \* \* \*

Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

\* \* \* \* \*

(f) The Nebraska Department of Environmental Quality submitted the following program revisions on May 10, 2002, NDEQ Title 129, Chapters 1, 5, 6, and 29; and on November 5, 2002, NDEQ Title 129, Chapters 1, 2, 5, 6, and 31, approval effective September 8, 2003.

\* \* \* \* \*

[FR Doc. 03-17098 Filed 7-7-03; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

[IA 186-1186a; FRL-7523-4]

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants; State of Iowa**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a revision to Iowa's rule for controlling emissions from existing sources subject to the section 111(d) emission guidelines. This revision updates the adoption by reference of Federal requirements applicable to these sources. Approval of this revision will ensure that the state requirements are consistent with and equivalent to the Federal regulations.

**DATES:** This direct final rule will be effective September 8, 2003, unless EPA receives adverse comments by August 7, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or e-mail him at [kaiser.wayne@epa.gov](mailto:kaiser.wayne@epa.gov).

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Wayne Kaiser at (913) 551-7603, or by e-mail at [kaiser.wayne@epa.gov](mailto:kaiser.wayne@epa.gov).

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

Information regarding this action is presented in the following order:

- What is a 111(d) plan?
- What changes did the state make to its emission guidelines rule?
- What action are we taking?

**What Is a 111(d) Plan?**

Section 111(d) of the Clean Air Act (CAA or Act) requires states to submit plans to control certain pollutants (designated pollutants) at existing

facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

The state has adopted these requirements in state rule 567–23.5(1)—Emission guidelines, and has submitted a request that we approve an update of this rule pursuant to section 111(d).

#### What Changes Did the State Make to Its Emission Guidelines Rule?

The state adopted a revision to this rule, which was effective in the state on April 24, 2002. The introductory paragraph of 23.1(5)—Emission guidelines, adopts by reference an updated version of general requirements of 40 CFR part 60, which apply to all emission guidelines. This includes: reference test methods (appendix A), performance specifications (appendix B), determination of emission rate change (appendix C), quality assurance procedures (appendix F), and the general provisions (subpart A).

In this rule update, the state has simply updated the reference date to 40 CFR part 60, from November 24, 1998, to July 23, 2001. The revised rule now reads: 23.1(5)—Emission guidelines. The emission guidelines and compliance times for existing sources, as defined in 40 Code of Federal Regulations part 60 as amended through July 23, 2001, shall apply to the following affected facilities. The corresponding 40 CFR part 60 subpart designation is in parentheses. The control of the designated pollutants will be in accordance with federal standards established in sections 111 and 129 of the Act and 40 CFR part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the applicable subpart(s) for the existing source. Reference test methods (appendix A), performance specifications (appendix B), determination of emission rate change (appendix C), quality assurance procedures (appendix F) and the general provisions (subpart A) of 40 CFR part 60 also apply to the affected facilities.

The rule continues with paragraph 23.1(5)a—Emission guidelines for municipal solid waste landfills (subpart Cc), and paragraph 23.1(5)b, Emission guidelines for hospital/medical/

infectious waste incinerators (subpart Ce). Thus, the updated requirements of 40 CFR part 60, adopted by reference in the paragraph above, apply to these sources.

#### What Action Are We Taking?

We are approving Iowa's revision to rule 23.1(5). We are processing this action as a final action because the revision makes a routine change to the existing rule which is noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

#### Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d) submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a submission, to use VCS in place of a submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 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 62**

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

Dated: June 26, 2003.

**William Rice,**

*Acting Regional Administrator, Region 7.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 62—[AMENDED]**

■ 1. The authority citation for part 62 continues to read as follows:

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

**Subpart Q—Iowa**

■ 2. Subpart Q is amended by adding a new § 62.3840 under the undesignated center heading to read as follows:

**§ 62.3840 Standards of Performance for New Stationary Sources.**

Rule 567–23.1(5), Emission guidelines, which adopts by reference 40 CFR part 60, subpart A and appendices A–C, and F, as amended through July 23, 2001, is approved.

[FR Doc. 03–17101 Filed 7–7–03; 8:45 am]

**BILLING CODE 6560–50–P**

# Proposed Rules

Federal Register

Vol. 68, No. 130

Tuesday, July 8, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 02–056–1]

#### Karnal Bunt; Revision of Domestic Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend our Karnal bunt regulations to incorporate updates and improvements identified as a result of our review of their provisions. The proposed changes include clarifying our method for determining Karnal bunt infestation and the circumstances under which a field or area would be classified as a regulated area, as well as adding provisions and criteria for the release of fields or areas from regulation; modifying the restrictions that apply to the planting of wheat, durum wheat, and triticale seed originating in regulated areas; and modifying cleaning and disinfection requirements for certain equipment and storage facilities involved in the harvesting, planting, or storage of Karnal bunt-positive host crops or seeds, as well as providing for the disposal of chemically treated, spore-positive seed. These proposed changes would improve the clarity and effectiveness of the regulations, thus helping to prevent the spread of Karnal bunt within the United States.

**DATES:** We will consider all comments we receive on or before September 8, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–056–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–

1238. Please state that your comment refers to Docket No. 02–056–1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 02–056–1” on the subject line.

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

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Spaide, Senior Program Manager, Surveillance and Emergency Programs Planning and Coordination, PPD, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–7819.

#### SUPPLEMENTARY INFORMATION:

##### Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the movement of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine. Therefore, in the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

The domestic quarantine and other regulations regarding Karnal bunt are set forth in “Subpart—Karnal Bunt” (7 CFR 301.89–1 through 301.89–16, referred to below as the regulations). Among other

things, the regulations describe articles and areas regulated for Karnal bunt; criteria for classifying areas or fields as regulated areas; requirements for planting wheat, durum wheat, and triticale in regulated areas; restrictions on movement of regulated articles from regulated areas; permitting, cleaning, disinfection, and treatment requirements; and requirements for growers, handlers, seed companies, and other entities seeking compensation from the USDA to mitigate losses or expenses incurred because of Karnal bunt. The regulations are designed to prevent the artificial spread of Karnal bunt.

We have conducted a review of our regulations. As a result of this review, we are proposing to incorporate changes aimed at improving the clarity, transparency, and effectiveness of the regulations. More specifically, the proposed changes would include the following: Clarifying our method for determining Karnal bunt infestation; adding or removing several definitions; adding or removing certain articles from the list of regulated articles; clarifying the circumstances under which a field or area would be classified as a regulated area, as well as adding provisions and criteria for the release of fields or areas from regulation; modifying the restrictions that apply to the planting of wheat, durum wheat, and triticale seed originating in regulated areas; and modifying cleaning and disinfection requirements for mechanized harvesting equipment, seed conditioning equipment, and storage facilities involved in the harvesting, planting, or storage of Karnal bunt-positive host crops or seed, as well as adding a requirement for the disposal of chemically treated, spore-positive seed.

##### Definitions

In § 301.89–1, we are proposing to remove two of the existing definitions, amend three, and add six new ones. We would remove the definition of *farm tools*, as farm tools are no longer considered regulated articles and that term is no longer used in the regulations. We would also remove the definition of *milling products and byproducts*, as we are proposing in this document to remove milling products and byproducts from the list of regulated articles.

We would amend the definition of *contaminated seed* to specify that seed will be determined to be contaminated based on the presence of bunted kernels or teliospores. The regulations in § 301.89–4 currently provide that seed originating in a regulated area must be tested and found free of spores and bunted kernels before it may be planted in a regulated area; our proposed change to the definition of *contaminated seed* would reflect that standard. Similarly, we would amend the definition of *infestation (infected)* to specifically identify bunted kernels in grain and bunted kernels or teliospores in seed as identifiable stages of development of *Tilletia indica*, the presence of which will lead to a determination of infestation. The current definition of *infestation (infested)* would remain the same, but for identifying the stages of development of *Tilletia indica*. Again, including the bunted kernel standard for grain and the bunted kernel/teliospore standards for seed in the definition of *infestation (infected)* would make that definition consistent with the standards used elsewhere in the regulations. We would also amend the definition of *mechanized cultivating equipment and mechanized harvesting equipment* by adding grain buggies, trucks, and swathers as examples of equipment used for harvesting purposes and by removing cotton harvesters as one of those examples. Cotton harvesters are at low risk for becoming contaminated with the Karnal bunt pathogen, whereas grain buggies, trucks, and swathers used in connection with the harvest of wheat, durum wheat, or triticale are at greater risk of contamination.

We would add definitions for *grain*, *hay*, *host crops*, *plant*, *seed*, and *straw*. We are proposing to include all of these articles on the list of regulated articles in § 301.89–2, so including their definitions would aid users in understanding and complying with the regulations. We would define *grain* as wheat, durum wheat, and triticale used for consumption or processing, while *seed* would be defined as wheat, durum wheat, and triticale used for propagation. We propose to define *host crops* as consisting of plants or plant parts, including grain, seed, or hay, of wheat, durum wheat, and triticale. We propose to define *plant* as any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed. This is the definition provided in the Plant Protection Act (7 U.S.C. 7701 *et seq.*). We would define *hay* as consisting of

host crops cut and dried for feeding to livestock. The definition would also note that hay cut after reaching the dough stage may contain mature kernels of the host crop. *Straw* would be defined as the vegetative material left after the harvest of host crops. This proposed definition would also refer to the common uses of straw as animal feed, bedding, mulch, or for erosion control.

#### Regulated Articles

We are proposing several changes to the list of regulated articles in § 301.89–2 of the regulations. Currently, paragraph (a) of that section identifies conveyances such as trucks, railroad cars, and other containers used to move wheat, durum wheat, or triticale as regulated articles, and paragraph (b) identifies grain elevators, equipment, and structures used to store or handle those commodities as regulated articles. We would amend these paragraphs to specify that the conveyances listed in paragraph (a) and the equipment and structures listed in paragraph (b) would be regulated articles only if used to move or to store and handle the grain of host crops produced in a regulated area that test positive for Karnal bunt due to the presence of bunted kernels.

Current paragraph (c) of § 301.89–2 lists milling products or byproducts other than flour as regulated articles. We would remove this paragraph and would no longer regulate milling products or byproducts. Such products and byproducts are believed to present a low risk of spreading Karnal bunt because the milling process would have eliminated bunted kernels.

We are proposing to add hay cut after the dough stage to the list of regulated plants or plant parts in current paragraph (d). As noted in the proposed definition of *hay* discussed previously, hay cut after reaching the dough stage may contain mature kernels of the host crop and could, therefore, serve as a means of spreading Karnal bunt. We would also amend that paragraph to specify that the listed plants or plant parts would be considered regulated articles only if they were produced in a regulated area, and would provide exceptions for certain straw, stalks, and seed heads that have been processed or manufactured prior to movement and are intended to be used indoors for decorative purposes. We consider these items to present a low risk of transmitting Karnal bunt because of their end use as indoor decorative material and already exempt those articles from the certificate/limited permit requirements of § 301.89–5. Because we would specify that these articles are not regulated articles, it

would no longer be necessary to provide an exemption for them in § 301.89–5.

Current paragraphs (f) through (h), which identify as regulated articles root crops with soil, soil from areas where field crops are produced, and manure from animals that have fed on untreated or raw wheat, durum wheat, or triticale, would be removed. Bunted kernels are not associated with these articles, and while they may contain spores of *Tilletia indica*, we regulate only seed for spores. In addition, the end uses of these articles make them unlikely to transmit Karnal bunt. Root crops, for example, would go to market after harvesting and would not be replanted.

Current paragraph (i) lists mechanized harvesting equipment, when used in the production of wheat, durum wheat, and triticale that tests positive for Karnal bunt, as a regulated article. To reflect the standards used elsewhere in the regulations, as described in the proposed definition of *infestation (infected)* in § 301.89–1, we would amend that paragraph to specify that a positive test result for Karnal bunt would be determined by the presence of bunted kernels. Similarly, we would amend current paragraph (j), which lists seed conditioning equipment used in the production of wheat, durum wheat, and triticale as a regulated article, to specify that the seed conditioning equipment would be considered a regulated article only if it had been used in the production of wheat, durum wheat, and triticale found to contain the spores of *Tilletia indica*. We would also amend this paragraph to include storage/handling equipment.

Current paragraph (k) provides that any product, article, or means of conveyance not covered in the previous paragraphs will be considered to be a regulated article when an inspector determines that the product, article, or means of conveyance presents a risk of spreading Karnal bunt due to its proximity to an infestation of Karnal bunt and the person in possession of the product, article, or means of conveyance has been notified that it is regulated under the regulations. We would amend that paragraph by removing the language pertaining to the proximity of the product, article, or means of conveyance to an infestation of Karnal bunt and would replace it with a statement specifying that the inspector's determination of risk would be based upon appropriate testing and the intended use of the product, article, or means of conveyance.

Because, as discussed previously, we are proposing to remove paragraph (c) and paragraphs (f) through (h), it would be necessary to redesignate paragraphs

(d) and (e) as paragraphs (c) and (d), respectively, and paragraphs (i) through (k) as paragraphs (e) through (g), respectively.

#### Regulated Areas

In § 301.89–3, paragraphs (a) through (e) provide criteria for the designation of States or areas of States as regulated areas for Karnal bunt, and paragraph (f) describes the boundaries of regulated areas. Current paragraph (e)(3) indicates that a field or area will be classified as a regulated area if it contains at least one field that was found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted kernel. We would remove the reference to spores so that the paragraph would be consistent with the other provisions in paragraph (e), which classify fields or areas as regulated areas based on the presence of bunted kernels. Grain would be tested for spores as well as bunted kernels only if intended for use as seed.

We are also proposing to add a new paragraph to § 301.89–3 that would provide conditions under which a field known to have been infected with Karnal bunt, as well as any non-infected acreage surrounding the field, could be released from regulation. Under these proposed conditions, such a field would be eligible for release from regulation if it is no longer being used for crop production or if it has been subjected to any one of the following management practices each year for 5 consecutive years (the practice used may vary from year to year): (1) Planted with a cultivated non-host crop, (2) tilled once annually, or (3) planted with a host crop that tests negative, through the absence of bunted kernels, for Karnal bunt. These criteria are consistent with emerging technical information about Karnal bunt. We would add these proposed conditions to § 301.89–3 as paragraph (f), while the current paragraph (f), which describes the boundaries of the currently regulated areas, would be redesignated as paragraph (g). A reference in paragraph (d) to the current paragraph (f) would be amended to reflect this redesignation.

#### Planting

We would amend the planting restrictions contained in § 301.89–4. Under paragraph (a) of that section, all wheat seed, durum wheat seed, and triticale seed originating within a regulated area must be tested and found free from bunted wheat kernels and spores before it may be planted within a regulated area. Current paragraph (b) prohibits the planting of wheat, durum

wheat, and triticale outside a regulated area if they originated inside a regulated area. We are proposing to amend § 301.89–4 by removing current paragraph (b) and by allowing wheat, durum wheat, or triticale that originates in a regulated area and that has been tested and found free of bunted kernels and spores to be used as seed in fields outside the regulated area. We believe that wheat, durum wheat, or triticale that has been tested and found free of bunted kernels and spores would not pose a risk of disease transmission, so there would be no need to prohibit its planting outside a regulated area. (As indicated, planting inside a regulated area is currently, and would continue to be, allowed.)

#### Movement of Regulated Articles From Regulated Areas

Section 301.89–5 provides conditions under which regulated articles may be moved from regulated areas. Paragraph (a)(4) of that section provides that straw/stalks/seed heads for decorative purposes that have been processed or manufactured prior to movement and are intended for use indoors can be moved from a regulated area without a certificate or limited permit. Because, as noted earlier, we are proposing to amend § 301.89–2(d) to exclude these articles from the list of regulated articles, we are proposing to remove § 301.89–5(a)(4).

#### Issuance of a Certificate or Limited Permit

Section 301.89–6 provides criteria for the issuance of certificates or limited permits for the movement of regulated articles outside regulated areas. Current paragraph (b) states that to be eligible for movement under a certificate, grain from a field within a regulated area must be tested prior to its movement from the field or before it is commingled with other grains and found free from bunted kernels. If bunted kernels are found, the grain will be eligible for movement only under a limited permit issued in accordance with paragraph (c). Paragraph (b) goes on to provide that no wheat, durum wheat, or triticale moved out of a regulated area under a certificate may be used for planting outside the regulated area.

We are proposing to amend § 301.89–6(b) to add references to hay cut after reaching the dough stage in the first and second sentences, in keeping with our proposal to add such hay to the list of regulated articles in § 301.89–2. The second sentence of proposed paragraph (b) would indicate that if bunted kernels are found in grain or hay that comes from a field within a regulated area, the

grain or hay could only be moved out of the regulated area under a limited permit issued in accordance with paragraph (c) of § 301.89–6, and the field of production will be considered positive for Karnal bunt. As noted earlier, the presence of bunted kernels indicates infestation. We would also remove the provision in paragraph (b) prohibiting the planting of regulated articles outside regulated areas because, as discussed earlier, our proposed § 301.89–4 would allow such planting under certain conditions.

We are also proposing to amend paragraph (c) of § 301.89–6. That paragraph currently describes the criteria for issuing limited permits for the movement of regulated articles within or outside regulated areas. Under our proposal, we would no longer require limited permits for movement of regulated articles within regulated areas. This restriction, while appropriate for an eradication program, generally is not needed for a control program like the current Karnal bunt program when a commodity is moving only within a regulated area.

#### Cleaning, Disinfection, and Disposal

We would revise § 301.89–12 to add or amend provisions relating to the cleaning and, when necessary, disinfection of certain regulated articles for which treatments are prescribed in § 301.89–13 and to provide for the disposal of certain seed. Current § 301.89–12 states that mechanized harvesting equipment that has been used to harvest host crops that test positive for Karnal bunt and seed conditioning equipment that has been used in the production of any host crops must be cleaned and disinfected in accordance with § 301.89–13(a) prior to movement from a regulated area. Our revised § 301.89–12 would be considerably broader in scope.

Proposed paragraph (a) states that mechanized harvesting equipment that has been used to harvest host crops that test positive for Karnal bunt based on the presence of bunted kernels must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with § 301.89–13 prior to movement from a regulated area. Because cleaning alone may suffice to remove bunted kernels from such equipment, we would no longer require disinfection in all cases, but inspectors would retain the authority to require disinfection when necessary. Proposed paragraph (a) also accords with our proposed new definition of *infestation (infected)* in § 301.89–1 by indicating that the

determination of host-crop infestation is based on the presence of bunted kernels.

Seed conditioning equipment would be provided for separately in proposed paragraph (b), which states that seed conditioning equipment that was used in the conditioning of seed containing spores of *Tilletia indica* must be cleaned and disinfected in accordance with § 301.89–13 prior to handling seed that has tested negative for spores or to being moved from a regulated area. We would retain the disinfection requirement for seed conditioning equipment because disinfection is thought to be necessary to deactivate spores.

A new paragraph (c) would state that all grain storage facilities, including on-farm storage, used to store seed that has tested bunted kernel or spore positive or grain that has tested bunted-kernel positive must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with § 301.89–13 if the facilities will be used to store grain or seed in the future. As is the case with mechanized harvesting equipment, cleaning alone may sometimes suffice to decontaminate grain storage facilities. The decision to require disinfection as well would be left to the inspector.

A new paragraph (d) would provide exceptions to the cleaning and disinfection requirements for certain conveyances used to move bunted-kernel-positive host crops, including trucks, railroad cars, and other containers, if the conveyances are self-cleaning. In order to be considered self-cleaning, the conveyances would have to have sloping metal sides leading directly to a bottom door or slide chute.

Finally, a new paragraph (e) would state that spore-positive wheat, durum wheat, or triticale seed that has been treated with any chemical that renders it unfit for human or animal consumption would have to be disposed of by means of burial under a minimum of 24 inches of soil in a non-agricultural area that will not be cultivated or in an approved landfill. Spore-positive seed cannot be used for planting, and fungicide or other chemical treatments not approved for use in feed renders the seed unfit for use as feed. Thus, disposal by burial is necessary to prevent the seed from being used for any purpose.

### Treatments

Current paragraph (a) of § 301.89–13 describes approved cleaning and disinfection techniques for conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures used for storing and handling wheat, durum wheat, or triticale for

which cleaning and disinfection are required. We would amend the paragraph to coincide with the changes to the cleaning and disinfection requirements that we are proposing in § 301.89–12. The proposed paragraph would treat cleaning and disinfection separately, stating that all conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures used for storing and handling wheat, durum wheat, or triticale required to be cleaned under the regulations must be cleaned by removing all soil and plant debris and that if disinfection is required in addition to cleaning, the articles must be disinfected by one of the methods specified in § 301.89–13, unless a particular treatment is designated by an inspector. This paragraph would become the introductory text of our proposed § 301.89–13.

The disinfection method specified in current paragraph (a)(1) involves wetting all surfaces of the regulated articles to the point of runoff with a solution of 1.5 percent sodium hypochlorite—*e.g.*, with a solution of sodium hypochlorite mixed with water applied at the rate of 1 gallon of household chlorine bleach (5.2 percent sodium hypochlorite) mixed with 2.5 gallons of water—and letting stand for 15 minutes. We would amend this paragraph to indicate that the bleach used must be Ultra Clorox brand regular bleach (6 percent sodium hypochlorite) or CPPC Ultra Bleach 2 (6.15 percent sodium hypochlorite). These are the only two bleach products that are approved for such use by the Environmental Protection Agency.

The minimum temperature for the hot water and detergent treatment, which is specified in current paragraph (a)(3) as 180 °F, would be changed to 170 °F, which has been determined to be the temperature needed to inactivate Karnal bunt. A temperature of 170 °F is also specified for the treatment described in current paragraph (a)(2), which would remain unchanged.

The Federal quarantine exemption permitting the use of methyl bromide for treatment of Karnal bunt has been withdrawn. Therefore, we are proposing to remove current paragraph (a)(4), which specifies fumigation with methyl bromide as a disinfection method for the conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures covered under this section, and paragraph (b), which specifies fumigation with methyl bromide as a treatment for soil.

Current paragraph (c), which specifies a treatment for millfeed that has

resulted from the milling of Karnal bunt-positive wheat, would be removed. Millfeed, like other milling products and byproducts, would no longer be considered a regulated article under this proposed rule.

Finally, we would remove the current paragraph (e), which contains treatment requirements for seed used for germ plasm or research purposes. Because we have eliminated the requirement for fungicide treatment of seed as of May 1, 2002, and are proposing, in § 301.89–4, to allow the movement of bunted kernel- and spore-negative seed from regulated areas, these treatment requirements would no longer apply.

For greater clarity, we would redesignate the bleach treatment in current paragraph (a)(1) as paragraph (a), the steam treatment in current paragraph (a)(2) as paragraph (b), and the hot water and detergent treatment in current paragraph (a)(3) as paragraph (c).

### Miscellaneous

Section 301.89–14, which deals with compensation for the 1995–1996 crop season, is outdated and, therefore, would be removed and reserved.

In addition to the changes described above, we propose to make some nonsubstantive editorial changes to the regulations. These changes would include the updating of the addresses given in some footnotes.

The intent of this proposed rule is to improve the clarity, transparency, and effectiveness of our Karnal bunt regulations in order to help to prevent the spread of Karnal bunt within the United States.

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

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

This proposed rule is intended to improve the clarity, transparency, and effectiveness of our Karnal bunt regulations. This proposal is the result of a review of the regulations.

Of the proposed substantive changes to the regulations, four stand out as having the potential to have the most economic impact: (1) Adding provisions for removing fields or areas from the list of regulated areas, (2) modifying seed planting restrictions, (3) removing animal manure from the list of regulated articles, and (4) modifying cleaning and disinfecting requirements for seed conditioning equipment. These four

changes—all of which would have a favorable impact on any affected entities—are discussed individually in the paragraphs that follow.

#### **Adding Provisions for Removing Fields or Areas From the List of Regulated Areas**

The current regulations do not contain criteria for the removal of fields or areas from the list of regulated areas, although we have removed some fields or areas from regulation in the past on a case-by-case basis. This proposed rule would establish uniform criteria for the removal of fields or areas from regulation.

Under the current regulations, even wheat testing Karnal bunt-negative is not eligible for a phytosanitary certificate with an additional declaration if it was grown in fields that previously tested Karnal bunt-positive—a situation that adversely impacts the wheat's marketability and value.<sup>1</sup> By allowing wheat from those fields to become eligible for such a certificate (if certain conditions are met), the proposed rule would yield potential—and in some cases immediate—economic benefits for affected producers.

In San Saba and McCulloch Counties, TX, there are approximately 28 producers with fields that previously tested positive for Karnal bunt—including about 8 that would be immediately eligible for deregulation since they have already satisfied the proposed conditions for release. It is estimated that these 28 producers would have received, collectively, at least about \$295,000 more for their wheat this past crop season if it had been eligible for export—an average of about \$10,500 per producer. These dollar estimates are based on a price differential of at least \$1.80 per bushel between uncertified wheat sold for animal feed and certified wheat in Texas sold for the export market.<sup>2</sup>

This proposed rule also has the potential to enable the approximately 25 producers in 4 north Texas counties (Young, Throckmorton, Archer, and Baylor) with fields in a regulated area to recover lost revenues. Based on their estimated production capacity of about 81,000 bushels of wheat per crop season, the proposed rule, by allowing

the 25 growers to obtain the phytosanitary certificate with the additional declaration needed to market their wheat for export, has the potential to enable them to recover \$145,000 or more in annual revenues, based on current prices.<sup>3</sup>

Growers in Arizona and California would also benefit. The proposed rule would enable the approximately 67 producers in Arizona with fields that previously tested Karnal bunt-positive, to recover, collectively, revenues estimated at about \$1,433,000 per year. The four producers in California with fields that previously tested positive would stand to recover, collectively, about \$210,000 per year in lost revenues.<sup>4</sup>

#### **Modifying Seed Planting Requirements**

Under the current regulations, wheat seed grown in regulated areas cannot be planted outside those areas. Under the proposed rule, such seed would be eligible for planting outside the regulated areas if it were tested and found free of both bunted kernels and spores.

Seed producers in regulated areas would benefit because they would be able to sell their seed outside those areas, recapturing markets that they had previously lost. Furthermore, by removing a disincentive for certified seed producers to operate in regulated areas, the proposed rule also has the potential to benefit owners of seed conditioning equipment who operate in those areas.

Even producers who do not sell seed outside the regulated area stand to benefit. In Texas, for example, it is not uncommon for producers to hold back a quantity of grain for use as seed in the next planting season. With the proposed changes in effect, producers in regulated areas would be able to use their grain as seed in fields that they operate outside the regulated area—instead of having to purchase higher-priced commercial seed for use in those fields. In San Saba and McCulloch Counties, TX, it is estimated that 14 producers would have saved a total of about \$60,000 this past crop season if they had been able to use their grain as seed in fields that they operated outside the regulated area.<sup>5</sup> It is estimated that about half of the approximately 450 wheat producers in the regulated areas of northern Texas

would benefit to at least some extent from this aspect of the proposed rule.

#### **Removing Animal Manure From the List of Regulated Articles**

Currently, manure from animals that have fed on untreated or raw wheat is a regulated article under § 301.89–2. Although not set forth in the regulations, it has been our practice to require a 5-day “clean-out” period for livestock that have been fed untreated or raw wheat before the animals can be moved from the regulated area. During the clean-out period, livestock can be fed only Karnal bunt-negative wheat or a non-host crop. The proposal would remove animal manure from the list of regulated articles in § 301.89–2, effectively eliminating the clean-out requirement.

This aspect of the proposed rule would benefit livestock producers, since the clean-out requirement may compel them to switch their animals to an alternative, but less desirable, feed crop during the 5-day period. A change in feeding rations during the clean-out period can adversely impact weight gain, which, in turn, can adversely affect animal prices. In northern Texas, where this proposed rule has the potential to have the most impact, it has been estimated that cattle can lose up to 20 percent of their weight in the first week following a feed-crop change. For a single head of cattle weighing 700 lbs. before clean out, therefore, the clean-out requirement can translate into a loss of up to \$109 (based on the current price of about \$0.78/lb).

Livestock producers would further benefit because clean-out can also involve gathering the animals and transporting them to a new location, such as a new pasture, during the 5-day period. The time and expense associated with gathering and transporting cattle to a new location for clean-out would vary among individual livestock producers, depending on such factors as the distance to the new location, the cost for the use of the new location, and the equipment needed for transport to the new location.

To date in northern Texas, only a few cattle producers have had to clean out their animals, since most moved their animals before the wheat reached the soft dough stage. However, there are at least 500 cattle producers in northern Texas who would potentially benefit from this aspect of the proposed rule, including some who move up to about 25,000 head annually.<sup>6</sup>

<sup>1</sup> Major foreign importers will not accept wheat from the United States that does not have such an additional declaration. Furthermore, many U.S. elevators will not commingle wheat from previously tested positive fields with wheat destined for the export market.

<sup>2</sup> Source: George Nash (APHIS). Approximately 70 percent of the wheat produced in Texas is exported.

<sup>3</sup> Source: Barte Smith (APHIS).

<sup>4</sup> Dollar estimates are derived from data provided by Michael Hennessey and Cindy Umbdenstock (APHIS). Dollar estimates assume a price differential of \$1.80/bushel between uncertified and certified wheat.

<sup>5</sup> George Nash (APHIS).

<sup>6</sup> Source: Barte Smith (APHIS).

### Modifying Cleaning and Disinfecting Requirements for Seed Conditioning Equipment

Under the current regulations, seed conditioning equipment used in the production of any host crop must be cleaned and disinfected (using USDA-approved methods) prior to being moved from the regulated area. (Cleaning means the removal of all soil and plant debris, and disinfecting means the treatment by one of three approved methods, including steam and hot water and detergent.)

Under the proposal, only seed conditioning equipment that was used to condition seed that was tested and found to contain spores or bunted kernels would have to be cleaned and disinfected prior to being moved from a regulated area (or prior to handling spore-negative seed).

As a result of this proposed rule, fewer pieces of portable seed conditioning equipment would have to be cleaned and disinfected. The affected entities would benefit, because a single cleaning and disinfecting is estimated to cost at least \$150. However, the number of entities potentially affected by this aspect of the proposed rule, and the potential impact on each, is unknown.

#### Economic Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. This proposed rule should have an overall beneficial impact on the entities affected by the regulations, especially wheat producers. However, we do not expect it would have a significant economic impact on a substantial number of entities, large or small.

Parts of three States (Texas, Arizona, and California) are currently regulated for Karnal bunt. In Texas, there are approximately 285,000 agricultural acres and about 550 wheat producers under regulation. The equivalent figures for Arizona and California are, respectively, 465,000 acres (120 producers) and 105,000 acres (18 producers).

Wheat producers that would be affected by this proposal are likely to be small in size, when judged by the U.S. Small Business Administration's (SBA's) standards. This assumption is based on composite data for providers of the same and similar services. In 1997, Arizona had a total of 6,135 farms of all types. Of those farms, 89 percent had annual sales that year of less than \$500,000, well below the SBA's small entity threshold of \$750,000 for wheat

farms. Similarly, the comparable percentages of small entities for Texas (194,301 total farms) and California (74,126 total farms) were 98 percent, and 89 percent, respectively.

For some of the affected entities, especially the smaller ones, the benefits of this proposed rule change could be substantial. However, the number of entities that would experience substantial benefits should be small relative to all entities potentially affected by this proposed rule.

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

#### Executive Order 12372

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

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

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

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

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

Accordingly, we propose to amend 7 CFR part 301 as follows:

### PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

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

2. Section 301.89–1 would be amended by removing the definitions for *farm tools* and *milling products and byproducts* and by adding, in alphabetical order, definitions for *grain*, *hay*, *host crops*, *plant*, *seed*, and *straw* and revising the definitions for *contaminated seed*, *infestation (infected)*, and *mechanized cultivating equipment and mechanized harvesting equipment* to read as follows:

#### § 301.89–1 Definitions.

\* \* \* \* \*

*Contaminated seed.* Seed from sources in which the Karnal bunt pathogen (*Tilletia indica* (Mitra) Mundkur) has been determined to exist by the presence of bunted kernels or teliospores.

\* \* \* \* \*

*Grain.* Wheat, durum wheat, and triticale used for consumption or processing.

\* \* \* \* \*

*Hay.* Host crops cut and dried for feeding to livestock. Hay cut after reaching the dough stage may contain mature kernels of the host crop.

*Host crops.* Plants or plant parts, including grain, seed, or hay, of wheat, durum wheat, and triticale.

*Infestation (infected).* The presence of Karnal bunt, or any identifiable stage of development (*i.e.*, bunted kernels in grain, bunted kernels or teliospores in seed) of the fungus *Tilletia indica* (Mitra) Mundkur, or the existence of circumstances that make it reasonable to believe that Karnal bunt is present.

\* \* \* \* \*

*Mechanized cultivating equipment and mechanized harvesting equipment.* Mechanized equipment used for soil tillage, including tillage attachments for farm tractors—*e.g.*, tractors, disks, plows, harrows, planters, and subsoilers; mechanized equipment used for harvesting purposes—*e.g.*, combines, grain buggies, trucks, swathers, and hay balers.

\* \* \* \* \*

*Plant.* Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

*Seed.* Wheat, durum wheat, and triticale used for propagation.

\* \* \* \* \*

*Straw.* The vegetative material left after the harvest of host crops. Straw is generally used as animal feed, bedding, mulch, or for erosion control.

3. Section 301.89–2 would be revised to read as follows:

**§ 301.89-2 Regulated articles.**

The following are regulated articles:

(a) Conveyances, including trucks, railroad cars, and other containers used to move host crops produced in a regulated area that have tested positive for Karnal bunt through the presence of bunted kernels;

(b) Grain elevators/equipment/structures used for storing and handling host crops produced in a regulated area that have tested positive for Karnal bunt through the presence of bunted kernels;

(c) Plants or plant parts (including grain, seed, and straw) and hay cut after reaching the dough stage of all varieties of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*) that are produced in a regulated area, except for straw/stalks/seed heads for decorative purposes that have been processed or manufactured prior to movement and are intended for use indoors;

(d) *Tilletia indica* (Mitra) Mundkur;

(e) Mechanized harvesting equipment that has been used in the production of wheat, durum wheat, or triticale that has tested positive for Karnal bunt through the presence of bunted kernels;

(f) Seed conditioning equipment and storage/handling equipment that has been used in the production of wheat, durum wheat, and triticale found to contain the spores of *Tilletia indica*; and

(g) Any other product, article, or means of conveyance when:

(1) An inspector determines that it presents a risk of spreading Karnal bunt based on appropriate testing and the intended use of the product, article, or means of conveyance; and

(2) The person in possession of the product, article, or means of conveyance has been notified that it is regulated under this subpart.

4. Section 301.89-3 would be amended as follows:

a. In paragraph (d), by revising the fourth sentence to read as set forth below.

b. By revising paragraph (e)(3) to read as set forth below.

c. By redesignating paragraph (f) as paragraph (g) and adding a new paragraph (f) to read as set forth below.

d. In newly redesignated paragraph (g), by revising the introductory text to read as set forth below.

**§ 301.89-3 Regulated areas.**

\* \* \* As soon as practicable, this area either will be added to the list of designated regulated areas in paragraph (g) of this section, or the Administrator will terminate the designation. \* \* \*

(e) \* \* \*

(3) It is a distinct definable area that contains at least one field that has been determined to be associated with grain at a handling facility containing a bunted kernel of a host crop (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to the field associated with the bunted kernel at the handling facility).

(f) A field known to have been infected with Karnal bunt, as well as any non-infected acreage surrounding the field, will be released from regulation if:

(1) The field is no longer being used for crop production; or

(2) Each year for a period of 5 consecutive years, the field is subjected to any one of the following management practices (the practice used may vary from year to year):

(i) Planted with a cultivated non-host crop;

(ii) Tilled once annually; or

(iii) Planted with a host crop that tests negative, through the absence of bunted kernels, for Karnal bunt.

(g) The following areas or fields are designated as regulated areas (maps of the regulated areas may be obtained by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 98, Riverdale, MD 20737-1236):

\* \* \* \* \*

5. Section 301.89-4 would be revised to read as follows:

**§ 301.89-4 Planting.**

Any wheat, durum wheat, or triticale that originates within a regulated area must be tested and found free from bunted wheat kernels and spores before it may be used as seed within or outside a regulated area.

**§ 301.89-5 [Amended]**

6. Section 301.89-5 would be amended as follows:

a. In paragraph (a)(3), footnote 1, by removing the words "Domestic and Emergency Operations, 4700 River Road Unit 134" and adding the words "Surveillance and Emergency Programs Planning and Coordination, 4700 River Road Unit 98" in their place.

b. By removing paragraph (a)(4).

7. Section 301.89-6 would be amended as follows:

a. In the introductory text of paragraph (a), footnote 2, by removing the words "Domestic and Emergency Operations, 4700 River Road Unit 134" and adding the words "Surveillance and Emergency Programs Planning and Coordination, 4700 River Road Unit 98" in their place and by removing the

words " , or from the Karnal Bunt Project, 3658 E. Chipman Rd. Phoenix, Arizona 85040".

b. By revising paragraph (b) and the introductory text of paragraph (c) to read as set forth below.

**§ 301.89-6 Issuance of a certificate or limited permit.**

\* \* \* \* \*

(b) To be eligible for movement under a certificate, hay cut after the dough stage or grain from a field within a regulated area must be tested prior to its movement from the field or before it is commingled with similar commodities and must be found free from bunted kernels. If bunted kernels are found, the grain or hay will be eligible for movement only under a limited permit issued in accordance with paragraph (c) of this section, and the field of production will be considered positive for Karnal bunt.

(c) An inspector or a person operating under a compliance agreement will issue a limited permit for the movement outside the regulated area of a regulated article not eligible for a certificate if the inspector determines that the regulated article:

\* \* \* \* \*

8. Section 301.89-7 would be amended by revising footnote 4 to read as follows:

**§ 301.89-7 Compliance agreements.**

\* \* \* \* \*

<sup>4</sup> Compliance agreements may be initiated by contacting a local office of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices of Plant Protection and Quarantine may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Surveillance and Emergency Program Planning and Coordination, 4700 River Road Unit 98, Riverdale, Maryland 20737-1236.

9. Section 301.89-12 would be revised to read as follows:

**§ 301.89-12 Cleaning, disinfection, and disposal.**

(a) Mechanized harvesting equipment that has been used to harvest host crops that test positive for Karnal bunt based on the presence of bunted kernels must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with § 301.89-13 prior to movement from a regulated area.

(b) Seed conditioning equipment that was used in the conditioning of seed that was tested and found to contain

spores or bunted kernels of *Tilletia indica* must be cleaned and disinfected in accordance with § 301.89–13 prior to being used in the conditioning of seed that has tested negative for the spores of *Tilletia indica* or to being moved from a regulated area.

(c) Any grain storage facility, including on-farm storage, that is used to store seed that has tested bunted-kernel or spore positive or grain that has tested bunted-kernel positive must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with § 301.89–13 if the facility will be used to store grain or seed in the future.

(d) Conveyances used to move bunted-kernel-positive host crops, including trucks, railroad cars, and other containers, that have sloping metal sides leading directly to a bottom door or slide chute, are self cleaning and will not be required to be cleaned and disinfected.

(e) Spore-positive wheat, durum wheat, or triticale seed that has been treated with any chemical that renders it unfit for human or animal consumption must be disposed of by means of burial under a minimum of 24 inches of soil in a non-agricultural area that will not be cultivated or in an approved landfill.

10. Section 301.89–13 would be revised to read as follows:

**§ 301.89–13 Treatments.**

All conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures used for storing and handling wheat, durum wheat, or triticale required to be cleaned under this subpart must be cleaned by removing all soil and plant debris. If disinfection is required by an inspector in addition to cleaning, the articles must be disinfected by one of the methods specified in paragraph (a), (b), or (c) of this section, unless a particular treatment is designated by an inspector. The treatment used must be that specified by an inspector:

(a) Wetting all surfaces to the point of runoff with one of the following 1.5 percent sodium hypochlorite solutions and letting stand for 15 minutes, then thoroughly washing down all surfaces after 15 minutes to minimize corrosion:

(1) One part Ultra Clorox brand regular bleach (6 percent sodium hypochlorite; EPA Reg. No. 5813–50) in 3 parts water; or

(2) One part CPPC Ultra Bleach 2 (6.15 percent sodium hypochlorite; EPA Reg. No. 67619–8) in 3.1 parts water.

(b) Applying steam to all surfaces until the point of runoff, and so that a

critical temperature of 170 °F is reached at the point of contact.

(c) Cleaning with a solution of hot water and detergent, applied under pressure of at least 30 pounds per square inch, at a minimum temperature of 170 °F.

**§ 301.89–14 [Removed and Reserved]**

11. Section 301.89–14 would be removed and reserved.

Done in Washington, DC, this 1st day of July 2003.

**Kevin Shea,**

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

[FR Doc. 03–17202 Filed 7–7–03; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 373**

**9 CFR Part 60**

[Docket No. 02–062–1]

**RIN 0579–AB50**

**Cost-Sharing for Animal and Plant Health Emergency Programs**

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing new regulations that would establish criteria to determine the Federal share of financial responsibility relative to States and other cooperators in an emergency in which an animal or plant pest or disease threatens the agricultural production of the United States. The increasing frequency of new pest and disease incursions, the variation in cost-sharing arrangements among past and present emergency programs, and constraints on Federal and State resources necessitate a more consistent and predictable approach to cost allocation among program participants. The cost-sharing arrangements provided in this proposed rule would apply to most emergency program activities, including the payment of compensation, that are authorized under the Plant Protection Act and the Animal Health Protection Act. This would include funding provided to respond to an emergency, as well as funding included in the annual budget request for ongoing actions previously funded through emergency authority. The intent of this proposal is to facilitate long-term resource planning and funding

decisions by both the Federal Government and cooperators. Since infestations can have a national impact, as well as affect State and local governments, industry, and producers, and remedial actions will benefit all affected interests, there needs to be a way to determine the appropriate allocation of responsibility in combating these infestations. The purpose of this rulemaking is to describe the criteria that would be used to determine the appropriate levels of responsibility between the Federal Government and cooperators.

**DATES:** We will consider all comments that we receive on or before September 8, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–062–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–062–1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 02–062–1” on the subject line.

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

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Shea, Director, Policy and Program Development, APHIS, 4700 River Road, Unit 116, Riverdale, MD 20737–1237; (301) 734–5136.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Emergency Program Authorities and Operations*

The Plant Protection Act (7 U.S.C. 7701–7772) and the Animal Health

Protection Act (7 U.S.C. 8301–8317) assign to the Federal Government responsibility to prevent the introduction, spread, and establishment of plant pests, noxious weeds, and pests and diseases of livestock in the United States.<sup>1</sup> These Acts authorize the Secretary of Agriculture (Secretary) to regulate animals and plants, their products, and other articles in foreign and interstate commerce; to hold, treat, and destroy such articles; and to cooperate with various entities, including State and local governments and industry groups (cooperators), to carry out programs to detect, control, and eradicate pests and diseases. These Acts also provide the Secretary additional regulatory and funding authority, including the payment of compensation, in cases of pest and disease emergencies.

The occurrence of pests or diseases that are either foreign to or not widely prevalent in the United States poses a serious threat to the health and economic viability of U.S. animal and plant resources. These outbreaks are generally easier and less costly to control and eradicate if action is taken immediately following detection. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) provides national leadership in implementing the Secretary’s authorities, including emergency authorities, to detect, control, and eradicate invasive pests and diseases. APHIS frequently

conducts these emergency programs in conjunction with affected States and other cooperators.

*Emergency Program Costs; Recent Trends; Constraints on Federal Resources*

The cost of activities carried out under emergency program authorities to detect, control, and eradicate pests and diseases generally has been shared by APHIS and the State(s). These cost-sharing arrangements may also include industries, organizations, and groups that benefit from or are affected by these animal and plant protection activities. The allocation of emergency program costs among APHIS and other cooperators has varied depending upon the particular pest or disease, as well as other factors, such as the location of the outbreak or occurrence. For example, cooperative programs for eradicating fruit flies have historically operated on an equal cost-sharing basis with the affected States. In the recent outbreak of plum pox virus, a new pest in the United States, the State of Pennsylvania assumed a significant portion of the financial obligation for the operational program within the State, while APHIS contributed to the financing of activities to guard against the spread of the pest to other stone fruit producing States. However, in the case of Asian longhorned beetle (ALB), APHIS has assumed most of the cost of the operational program.

A close examination of these programs reveals that cost allocations have been implicitly based on at least three factors: The size of the outbreak area, the area at risk beyond the initial outbreak, and the nature of the pest. APHIS’ actions to eradicate the plum pox virus and ALB outbreaks were based on the technical feasibility in carrying out each action (presented by the small size of the initial outbreak areas) and the risk of spread to nonaffected areas in the absence of early and rapid response by the Federal Government. The Federal share of costs for both pest outbreaks has been greater than the cooperators’ share as the resources at risk in the nonaffected areas were much larger than those in the affected areas. The nature of the pest is an additional factor taken into consideration in determining the Federal cost share level in an emergency program. As a proportion of the total cost, the Federal share of the plum pox control program is smaller than the Federal share of the ALB emergency program. This reflects the greater responsibility of the Federal Government in safeguarding public resources as the pest in the ALB case largely affects non-commercial, urban trees and forests.

In recent years, the number of infestations, as well as the average and total cost of eradication programs to the Federal Government have increased significantly, as the following Table 1 illustrates:

TABLE 1.—EMERGENCY FUNDING TRANSFERRED FROM THE COMMODITY CREDIT CORPORATION

	FY 1981–86	FY 1987–92	FY 1993–98	FY 1999–2003
Total funding (\$ in millions) .....	41	66	136	1,234
Average annual funding (\$ in millions) .....	7	11	23	264
No. of pest infestations .....	3	4	4	19
No. of times annual funding for an infestation was:				
\$10 million or more .....	1	1	5	27
\$25 million or more .....	0	1	0	14
\$50 million or more .....	0	0	0	7

We believe that a better defined, more consistent approach to cost sharing and the allocation of financial responsibility among the Federal Government, State(s), and other cooperators would improve planning and funding decisions in emergency programs. In response to this need, and as explained in greater detail below, we are proposing that predetermined cost-sharing percentages apply to certain emergency program activities.

*Emergency Program Activities Subject to Cost-Sharing*

There are a number of activities conducted as part of an emergency program, beginning with the detection of the pest or disease, that we believe should be subject to a predetermined cost-sharing arrangement. These would include such activities as:

- Delimiting surveys and diagnostics.
- Control or eradication operations (e.g., chemical, biological, and/or

mechanical treatment regimens, including animal, plant, and product destruction and/or disposal).

- Research and methods development specific to outbreaks, if such activities are anticipated to rapidly contribute to the success of the control or eradication operations.

- Public information activities specific to outbreaks and designed to contribute to the success of the control or eradication operations.

<sup>1</sup> The Plant Protection Act and the Animal Health Protection Act give specific meaning to the terms “plant pest” and “noxious weed,” and “pest” and

“disease” of “livestock.” In this Supplementary Information, we frequently use the term “pests and

diseases” or “pests or diseases” to encompass the terms found in the Acts.

- The payment of compensation.

Allocating the financial responsibility among the Federal government, State(s), and other cooperators would depend on the nature of the pest or disease, the extent of areas affected by the pest or disease versus currently nonaffected, but potentially threatened areas, the amount of time that has elapsed since the commencement of the emergency program, and the ability of States and local cooperators to conduct and/or fund the activities, as discussed later.

We believe that the costs for enforcement of regulations on interstate and intrastate movements in conjunction with specific emergency programs should be allocated directly to APHIS and the States as appropriate. We recognize that in practice, however, these activities may be indistinguishable from one another, and that these activities could be subject to a predetermined cost-sharing arrangement on a case-by-case basis. We also recognize that compensation payments are sometimes used in conjunction with other emergency program activities (e.g., to encourage expedited reporting of an infestation, thereby contributing to control or eradication of the pest or disease). As described in the following section, we invite comments on the inclusion of the cost of these payments in a predetermined cost-sharing arrangement.

#### *Compensation*

In some emergency programs, compensation payments are made to producers and other persons for the destruction of animals and materials affected by pest or disease, or for related cleaning and disinfection costs. Since the Federal Government and States often share the payment of these costs, our proposal to establish predetermined cost-sharing arrangements for emergency programs would also apply to compensation payments to producers and other affected persons. If the emergency program includes the payment of compensation, then the cost-sharing percentage would be applied either to the emergency program costs in total (including payments of compensation) or to the compensation and non-compensation components separately, at the discretion of the Secretary.

By applying the proposed cost-sharing criteria to the payment of compensation, this proposed rule, if implemented, could affect other APHIS regulations that cover the payment of compensation and other emergency program costs for specific animal and plant pests and diseases. The rule portion of this document does not specify what those

potential changes would be. However, the final rule, if implemented, would include any necessary changes to other APHIS regulations.

#### *Factors Affecting the Federal Share of Emergency Program Costs*

We have identified certain factors that we believe should influence the relative levels of Federal and cooperator support in emergency program activities covered by our proposal.

#### *Priority Pests and Diseases*

Of particular concern are highly contagious, virulent diseases, such as foot-and-mouth disease, and other pests or diseases that can spread rapidly, and quickly affect production, markets, and/or the environment over a large area. Also of concern are pests or diseases that, while not contagious (or as contagious), affect human health with resulting effects on the marketing of agricultural products. Full, immediate, and sustained application of Federal resources generally is required to eliminate these pests and diseases or minimize their effects. Our proposed rule, as discussed below, would refer to these pests and diseases as "priority pests and diseases." We believe that the following pests and diseases would likely fall into this category:

- Foot-and-mouth disease
- Hog cholera (classical swine fever)
- Highly pathogenic avian influenza
- Exotic Newcastle disease
- Rinderpest
- African swine fever
- Contagious bovine pleuropneumonia
- Lumpy skin disease
- Bovine spongiform encephalopathy
- Downy mildew of corn
- Wheat rust

#### *The Extent of Affected Versus Nonaffected Areas*

Pest and disease outbreaks usually (if inspection, monitoring, and surveillance programs are effective) begin at only one or a few loci. The Federal government has a statutory responsibility under the Plant Protection Act and the Animal Health Protection Act to protect susceptible animal, plant, and environmental resources that are free of the pest or disease by preventing its interstate spread and taking actions to eliminate the outbreak. When a pest or disease outbreak occurs, program specialists conduct assessments of its potential rate of spread and consequences. We believe that the Federal share of emergency program costs should be higher in situations where the areas or resources affected by the pest or disease occurrence are small,

but the nonaffected areas or resources at risk are high. While there are innumerable such scenarios, we believe that the nonaffected areas or resources at risk in these situations should be at least 10 times greater than the affected areas or resources. Nonaffected areas or resources at risk would include those areas where the pest or disease could spread within 1 year in the absence of any action to control or eradicate the pest or disease. For larger outbreaks in which many States are affected (particularly States with commercial interests) and participating in the emergency program, the Federal share of program costs should be lower.

#### *Timing of Emergency Program Operations—Financial Resources of Cooperators*

Long-standing relationships between APHIS and State and industry cooperators usually enable an effective programmatic response to serious outbreaks. However, cooperator contributions are frequently in-kind or intangible, especially in the early stages of a program. States or other cooperators may lack financial resources of the magnitude required, or they may lack the capability to quickly access those resources.

In situations where the success of detection, control, or eradication operations is especially time sensitive and program objectives may be achieved in a relatively short period of time, leading to lower total program costs, we believe that the Federal government should be prepared to provide more financial support early in the program to ensure a timely and cost-effective response to a pest or disease occurrence. We also believe that even in emergency programs of longer anticipated duration, for reasons stated above, our cooperators may not be able to provide their full share during the program's early stages. In these situations, we would expect that cooperator contributions would increase after the emergency program has been in operation for several years.

As we have said, we believe that the Federal government has a responsibility to take leadership in rapidly responding to a pest or disease occurrence. We are committed to carrying out that responsibility. We also believe that States and other cooperators have and should continue to share in that responsibility. In that regard, it is our desire that our cooperators continue to develop the capacity, including funding, to be full participants in emergency programs.

We intend to continue to work with our cooperators to develop emergency response capabilities, including

commitment and capacity for cost sharing. In recent years, APHIS has worked with States to develop Standards for State Animal Health Emergency Management Systems. These standards include a standard addressing the adequacy of funding mechanisms and the sufficiency of funding to meet animal health emergency needs. APHIS and the States should work toward achieving performance goals for the development of the standards and tie financial support of State involvement in a given program activity to meeting these goals. We intend to carry out similar efforts to help strengthen Federal and State plant health emergency management systems.

#### *Cost-Sharing Percentages*

We believe that, as a starting point, the Federal share of covered emergency program costs should be up to 50 percent. We believe that the following factors could cause an increase in this percentage:

- If higher Federal involvement in the early stages of an emergency program would lead to lower total program costs.
- If the areas or value of resources at risk (e.g., nonaffected areas) are very large compared to the affected area.
- If a State or other cooperator lacks financial resources.
- If the emergency involves a priority pest or disease.

We also believe that if the pest or disease directly affects one or more State commercial interests within the affected area, then the Federal share would be slightly lower.

#### *Duration of Programs*

We propose that Federal funding would continue for no more than 10 years for new emergency programs or 5 years for programs already underway, unless the Secretary determines that Federal payments for a longer period are necessary. We would also provide that if the same pest or disease occurs in a location that is geographically separate from the original outbreak, or reoccurs in the area of the original outbreak following a prescribed time period after eradication is completed, as determined by a USDA scientific assessment, then it could be considered a new outbreak and subject to new cost-sharing and program duration requirements.

#### *Proposed Rule*

Based on the general principles just discussed, we are proposing regulations that would establish criteria to determine the Federal share of emergency program costs relative to States and other cooperators. The regulations would be in two new parts

in the Code of Federal Regulations (CFR), one part in the plant-related provisions of title 7, chapter III, and one part in the animal-related provisions of title 9, chapter I, subchapter B.

The two new parts, "Cost Sharing for Plant Health Emergency Programs" to appear at 7 CFR part 373, and "Cost Sharing for Animal Health Emergency Programs" to appear at 9 CFR part 60, would be constructed similarly: Each would contain a section that provides definitions for specific terms used in the part; a section that authorizes the Administrator of APHIS, USDA (Administrator) to assign "priority" status to certain pests and diseases; a section that provides criteria for determining the Federal share of emergency program costs; a section on funding shortfalls and other funding adjustments among cooperating parties; a section on activities not subject to cost-sharing; and a section that clarifies the authority of the Secretary to implement agreements with respect to funding responsibilities of APHIS and other cooperators in carrying out an emergency program. These two parts are almost identical in structure and content except that 7 CFR part 373 would cover emergency program activities carried out under the authority of the Plant Protection Act, and 9 CFR part 60 would cover emergency program activities carried out under the authority of the Animal Health Protection Act.

#### *Definitions*

Both 7 CFR part 373 and 9 CFR part 60 would begin with a definition section, § 373.1 and § 60.1, respectively. The terms defined in each section would be the same: *Administrator*, *commencement of the emergency program*, *cooperator(s)*, *emergency program*, *emergency program costs*, *Federal base percentage*, *OMB*, *Secretary*, and *State*.

Proposed §§ 373.1 and 60.1 would define *Administrator* as the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person authorized to act for the Administrator.

In proposed §§ 373.1 and 60.1, the term *commencement of the emergency program* would refer to the date that the Secretary determines an emergency exists or the date that emergency funding is approved, whichever comes first.

In proposed § 373.1, a *cooperator(s)* would refer to a State or political subdivision of a State, a domestic organization or association, or other person who participates in an emergency program with the Federal

government. To parallel the statutory language found in the Animal Health Protection Act, proposed § 60.1 would vary slightly from § 373.1 by also referring to Indian tribes.

In proposed § 373.1, an *emergency program* would refer to those activities carried out under the authority of the Plant Protection Act in connection with an emergency, including delimiting surveys; testing and related diagnostic activities; regulatory enforcement; chemical, biological, mechanical, and other detection, control, and eradication activities, including destruction and disposal of plants, plant products, and other articles; the payment of compensation; and research, methods development, and public information activities carried out specifically in connection with an emergency. The proposed definition of *emergency program* in § 60.1 would parallel the proposed definition of *emergency program* in § 373.1 except that § 60.1 would refer to the authority of the Animal Health Protection Act instead of the Plant Protection Act.

Proposed §§ 373.1 and 60.1 would define *emergency program costs* as financial, personnel, and other resources necessary to carry out an emergency program, without regard to the entity or individual that provides the resources or the manner in which they are provided.

Proposed §§ 373.1 would define *Federal base percentage* as the initial percentage share of emergency program costs the Secretary is authorized to pay in connection with an emergency involving a plant pest or noxious weed, while proposed § 60.1 would define the same term as the initial percentage share of emergency program costs the Secretary is authorized to pay in connection with an emergency involving a pest or disease of livestock.

In proposed §§ 373.1 and 60.1, *OMB* would refer to the Office of Management and Budget of the United States Government.

Proposed §§ 373.1 and 60.1 would define *State* as each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Finally, proposed §§ 373.1 and 60.1 would define *Secretary* as the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture authorized to act for the Secretary.

#### *Priority Pests and Diseases*

In proposed § 373.2, the Administrator would be authorized to

designate certain plant pests and noxious weeds as priority plant pests and noxious weeds. In making such a determination, the Administrator would consider the degree of contagion and the human health and market effects of the plant pest or noxious weed and other relevant factors. The Administrator may notify the public from time to time, through publication of a list in the **Federal Register**, of the priority plant pests and noxious weeds. Proposed § 60.2 would contain a similar provision providing the Administrator with the authority to designate certain pests and diseases of livestock as priority pests and diseases of livestock. Assuming the final rule is implemented, we intend to publish a notice that would list those pests, noxious weeds, and diseases that we consider to be priority pests and diseases at the time of publication of the final rule.

#### *Federal Share of Emergency Program Costs*

Proposed §§ 373.3 and 60.3 would set forth criteria and cost-sharing percentages that would be used to determine the Federal share of emergency program costs. Both sections are almost identical in construction, other than referring to plant pests or noxious weeds (in the case of proposed § 373.3) or pests or diseases of livestock (in the case of proposed § 60.3).

Proposed § 373.3(a) would provide that, in connection with an emergency involving a plant pest or noxious weed and upon agreement of the States or political subdivisions of States, domestic organizations or associations, or other persons to participate in an emergency program, the Secretary would be authorized to pay, subject to the availability of funding, emergency program costs as provided under proposed § 373.3(b). Paragraph (a) of § 373.3 would also provide that such payments could be made for no more than 10 years (or, for emergency programs currently underway, for no more than 5 years after the effective date of the final rule), unless the Secretary determines that payments for a longer period are necessary. However, if the same pest or disease occurs in a location that is geographically separate from the original outbreak, or reoccurs in the area of the original outbreak following a prescribed time period after eradication is completed, as determined by a USDA scientific assessment, then it could be considered a new outbreak and subject to new cost-sharing and program duration requirements. Proposed § 60.3(a) would provide the same requirements. However, in order to parallel the statutory language found in

the Animal Health Protection Act, § 60.3(a) would vary slightly from § 373.3(a) by also referring to Indian tribes among the list of cooperators.

Proposed §§ 373.3(b) and 60.3(b) set forth the basic criteria for determining the Federal share of costs in an emergency program. In connection with an emergency involving a plant pest or noxious weed (in the case of proposed 7 CFR part 373), or a pest or disease of livestock (in the case of proposed 9 CFR part 60), the Secretary could make payments of Federal funds of up to 50 percent of emergency program costs. We would refer to this percentage figure as the "Federal base percentage." Further, the Secretary, in consultation with the Office of Management and Budget (OMB), could increase or decrease the Federal share of emergency program costs relative to the Federal base percentage as follows:

- *Timing of program and its effect on total program costs.* If the Secretary determines that a higher level of Federal involvement in the early stages of an emergency program would lead to lower total emergency program costs, then the Secretary, in consultation with OMB, could increase the Federal share of emergency program costs by up to 30 percent above the Federal base percentage during the first 8 months after commencement of the emergency program, and could increase the Federal share of emergency program costs by up to 15 percent above the Federal base percentage from the ninth month through the 24th month after commencement of the emergency program.

- *The extent of affected versus nonaffected areas.* If the Secretary determines that the area or value of resources at risk in the United States is at least 10 times greater than the area or value of resources covered by the emergency program, then the Secretary, in consultation with OMB, could increase the Federal share of emergency program costs by up to 20 percent above the Federal base percentage. The area or value of resources at risk in the United States would include those areas where the pest or disease could spread within 1 year in the absence of any action to control or eradicate the pest or disease. We invite comment on the criteria that would be used in making such a determination.

- *Lack of financial resources.* If the Secretary determines that a State or other cooperator lacks the financial resources required to cover its share of emergency program costs, or lacks the capability to quickly access those resources, then the Secretary, in consultation with OMB, could increase

the Federal share of emergency program costs by up to 10 percent above the Federal base percentage during the first 24 months after commencement of the emergency program. In order to qualify for this additional Federal funding, the cooperator would have to demonstrate either that a funding body, such as the State legislature, was unable to meet in time to provide the necessary resources, or that the affected State or local area was experiencing a significant and unexpected reduction in resources. We invite comment on the proposed criteria for determining a cooperator's lack of financial resources, as well as the need for and effect of limiting this higher Federal share in the case of a priority pest or disease to the first 24 months of the emergency program.

- *Commercial interest.* If the Secretary determines that the pest or disease directly affects one or more State commercial interests within the area covered by the emergency program, then the Secretary, in consultation with OMB, could reduce the Federal share of emergency program costs by up to 3 percent under the Federal base percentage.

- *Priority pests and diseases.* If the emergency involves a priority plant pest or noxious weed (in the case of proposed 7 CFR part 373) or a priority pest or disease of livestock (in the case of proposed 9 CFR part 60), then the Secretary, in consultation with OMB, could pay up to 100 percent of the total emergency program costs authorized under proposed part 373 or proposed part 60 during the first 24 months after commencement of the emergency program. We invite comment on the need for and effect of limiting this higher Federal share in the case of a priority pest or disease to the first 24 months of the emergency program.

- *Certain emergency program activities.* We believe that particular emergency situations may necessitate deviation from the cost-sharing percentages just discussed, either for an entire emergency program or for particular activities of an emergency program. Therefore, we are proposing that the Secretary may determine, in consultation with OMB and the cooperating entities, that an emergency program or certain activities within that emergency program be excluded from the percentage calculations provided under proposed §§ 373.3(b) and 60.3(b) or, alternatively, be subject to a different Federal share of emergency program costs. We expect that such authority would be exercised infrequently.

- *Percentages are cumulative.* Any applicable percentage changes to the Federal share of emergency program

costs, as just discussed, would be cumulative, but could not exceed 100 percent of total emergency program costs authorized under proposed 7 CFR part 373 or proposed 9 CFR part 60.

- *Payment of compensation.* If the emergency program includes the payment of compensation, then the cost-sharing percentage would be applied either to the emergency program costs in total (including payments of compensation) or to the compensation and non-compensation components separately, at the discretion of the Secretary.

The funding percentages provided in proposed §§ 373.3 and 60.3 would serve as guidelines for the Federal government, States, and other cooperator participants to facilitate long-term cooperator resource planning and funding decisions, and may vary slightly in actual application. The Federal share percentages would not be dependent on the source of funds (e.g., transfers from the Commodity Credit Corporation, annual appropriations, user fees). Traditionally, however, the source of Federal funds in the event of an emergency is the Commodity Credit Corporation.

Proposed §§ 373.3(c) and 60.3(c) would provide that the Federal share of emergency program costs, as determined under proposed §§ 373.3(b) and 60.3(b), would be subject to periodic review by the Secretary, in consultation with OMB, as conditions warrant.

We recognize the uncertainties inherent in formulating the specific percentages and thresholds in our proposed cost-sharing arrangements, and we invite comment and suggestions on alternatives to those proposed here. We also recognize that implementing predetermined cost-sharing arrangements such as we are proposing is a complex undertaking, involving many entities and a variety of legal authorities and organizational capabilities. We solicit your comments on the length of time necessary to implement these arrangements. We anticipate that a minimum of 60 days would be necessary to implement these arrangements once the applicable requirements are published as a final rule.

#### *Shortfalls in Obligations and Other Funding Adjustments*

Proposed §§ 373.4 and 60.4 would provide that the cost allocation assigned to the Federal government and each cooperator would be based on cumulative funding over the duration of the emergency program. Should the Federal government or any cooperator fail to provide adequate program

funding to meet their funding obligation for a given year, then such funding shortfall would have to be made up prior to the end of the emergency program. Similarly, should the shortfall in funding by the Federal government or any cooperator require other parties to provide funding that exceeds their obligation in any given year, then those parties making excess payments in one year would have the latitude to reduce their payments in subsequent years in an amount that equals the amount of excess payment.

Proposed §§ 373.4 and 60.4 would also provide that, to the extent that actual funding levels change, the difference (plus or minus) would be applied to the calculation of cumulative funding as soon as practicable. In addition, if approved by APHIS in consultation with cooperators, any in-kind payment (i.e., in the form of services, equipment, etc.) provided by a cooperator could be counted towards their funding obligation if the in-kind payment represents an expense that is not a normal program cost to the cooperator and directly affects emergency program objectives.

#### *Activities Not Subject to Cost Sharing*

Under proposed §§ 373.5 and 60.5, certain activities conducted by APHIS and other Federal entities that relate to the control and eradication of pests and diseases would not be subject to the cost-sharing requirements in this proposal. Specifically, the Federal government would provide full funding and cost-sharing criteria would not apply to control and eradication activities that do not directly affect the targeted area, pest, or disease that is the focus of the emergency program. For example, this would include national surveys and diagnostics; research not specific to the outbreak; public awareness not related to the outbreak; control and eradication programs in other countries; preclearance of passengers, cargo and means of conveyance; and port-of-entry inspection of passengers, cargo and means of conveyance.

#### *Implementing Agreements*

As discussed previously under proposed §§ 373.3(a) and 60.3(a), the payment of Federal funds by the Secretary for emergency program costs would depend, in part, upon the "agreement" of the States or other cooperators to participate in the emergency program.

Proposed §§ 373.6 and 60.6 would provide that the Secretary may, as a condition of providing the Federal funding pursuant to proposed § 373.3

(in the case of emergencies involving plant pests and noxious weeds) or § 60.3 (in the case of emergencies involving pests and diseases of livestock), enter into agreements with cooperating entities. Such agreements would cover the particular responsibilities of the cooperating parties, including funding obligations, in conducting the emergency program.

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

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB.

Below is an economic analysis for the proposed rule that would establish criteria for determining the share of financial responsibility of the Federal government, States, and other cooperators should an outbreak of an animal or plant pest or disease occur in the United States. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act.

Under the Plant Protection Act (7 U.S.C. 7701–7772) and the Animal Health Protection Act (7 U.S.C. 8301–8317), the Secretary of Agriculture is authorized to regulate plants and animals, their products, and other articles in foreign and interstate commerce; to hold, treat, and destroy such articles; and to cooperate with various entities, including State and local governments and industry groups (cooperators), to carry out programs to detect, control, and eradicate plant pests, noxious weeds, and pests and diseases of livestock. These Acts also provide the Secretary additional regulatory and funding authority, including the payment of compensation, in cases of pest and disease emergencies.

#### *Economic Analysis*

The Federal Government, primarily through APHIS, has the statutory responsibility to prevent the introduction, spread and establishment of pests or diseases of plants and animals in the United States. APHIS frequently conducts prevention, detection, control and eradication programs in conjunction with State counterparts. In a cooperative arrangement, the program funding is generally shared by APHIS and the State, where each party is financially responsible for a portion of the program

costs. The funding allocations in these arrangements have varied depending upon the specific pest or disease and its location. There appears to be a lack of consistent basis for determining how the financial responsibility between the Federal Government and its cooperator is allocated. This has raised questions regarding the appropriate Federal role in light of the large increase in emergency funding transfers by APHIS over the past few years.

This proposed rule sets forth specific cost-sharing percentages to apply to certain emergency program activities, including the payment of compensation. Greater certainty about cost-sharing would facilitate improved planning and funding decisions by the Federal government and its cooperators regarding future plant and animal pest and disease emergency programs.

#### *Need for Regulation*

The public good aspect of pest and disease management suggests that prevention, detection, control, and eradication programs are most effectively delivered under governmental guidance. These governmental actions confer direct benefits to affected entities and the public at large. Without such actions by the Federal Government, States, and other cooperators, it is unlikely that affected individuals could or would take sufficient actions to prevent the establishment and spread of exotic pests and diseases of plants and livestock.

Some animal pests and diseases threaten not only livestock but also wildlife populations that inhabit public land. Certain animal pests and diseases may also be transmitted to humans. Because of the interstate movement of livestock and poultry through marketing and distribution channels, animal pests and diseases are further able to spread rapidly beyond a localized area. Rapid response by the Federal Government, States, and other cooperators at the first sign of a pest or disease outbreak is critical to prevent widespread losses. Greater funding certainty would be one way to enhance the timeliness and effectiveness of responses to pest or disease outbreaks.

APHIS, from its inception over 30 years ago, has participated in a variety of emergency programs with cooperators to detect, control, and eradicate pests and diseases of plants and animals. In the early 1990s, emergency programs involving new pest and disease outbreaks were largely associated with fruit fly incursions. When a pest was introduced into the United States on several occasions in the same geographical locations, such as

Mediterranean fruit fly (Medfly) in Florida and California, Federal and State roles became more defined with each reintroduction. Memoranda-of-understanding as well as work plans and cost-sharing formulas were agreed upon on an annual basis. However, since the mid-1990's, there has been a dramatic increase in the number of new pest and disease occurrences beginning with the discovery of Karnal bunt in 1995. The cost to the Federal government has correspondingly risen as it responds to these emergency outbreaks. Given today's highly mobile environment and global agricultural economy, the threat to U.S. agricultural and nonagricultural resources from new pest and disease incursions is ever present. The need for a more consistent and predictable cost allocation approach among program participants is warranted in a world of constrained resources.

Recent occurrences of the highly contagious foot-and-mouth (FMD) disease in the United Kingdom and other countries demonstrate the need for advanced planning to minimize delays in eradicating an outbreak of serious livestock diseases such as FMD. The specific cost-sharing percentages between the Federal government and its cooperators as set forth in this proposed rule would eliminate uncertainty in program funding allocations, which could delay eradication activities. The fixed-formula approach to cost-sharing as set forth in this proposed rule would make resource planning decisions simpler for all parties and lessen the chances for delays in eradication.

#### *Economic Impact*

The intent of the proposed rule is to lessen funding uncertainties in conducting emergency programs. An examination of the funding of past emergency programs reveals that cost allocations have often been based implicitly on three factors: The size of the outbreak, the area at risk beyond the initial outbreak, and the commercial interest at stake. The specific percentages for cost sharing as provided for in this proposed rule incorporate these implicit elements. Particular pest or disease outbreaks may necessitate deviations from these percentages. As compared to the current flexible cost arrangement, some redistribution of costs among cooperators may occur due to the greater specificity in cost-sharing percentages. The most significant change in this proposed rule would be the provision that stipulates that the amount of Federal contribution should be based on a specified duration of an infestation or disease occurrence. The

Federal government would be less obligated financially for emergency programs that are extended in time.

This proposed rule specifies a base Federal share of up to 50 percent (*i.e.*, Federal base percentage). If the funding is for an emergency situation which has occurred within the previous 8 months, an additional allotment of up to 30 percent could be added to the Federal base percentage. For emergency programs that are 9 months to 2 years in duration, the Federal contribution could be increased by up to 15 percent above the Federal base percentage. A deduction of up to 3 percent could be applied in situations where the pest or disease affects one or more commercial interests within an area covered by the emergency program.

Pest and disease outbreaks may occur in States that lack the resources or the incentive to make large expenditures. Further consideration may be given to States that are financially unable to contribute. In such cases, the Federal share may increase by up to 10 percent. Up to 20 percent could also be allotted by the Federal government in situations where the pest or disease threat outside the outbreak area may be significant. Such was the case with the recent outbreak of the Asian longhorned beetle, which affected urban trees in New York and Illinois. Should this pest spread to forest trees in the affected States and beyond, the impact could be economically and environmentally devastating.

The application of the cost-sharing percentages as specified in this proposed rule is anticipated to increase the costs to the Federal government in the first 2 years of a pest or disease outbreak because of the Federal additional share (*i.e.*, up to 30 percent and 15 percent) paid, but may lower costs in subsequent years. Table 2 shows that in FY 1999, APHIS spent about \$46 million in emergency funds for three pest outbreaks that would have been subject to the cost-sharing provisions as proposed in this rule. The actual Federal share comprised 55 percent of total program costs. Cooperators contributed the remaining 45 percent of overall program costs (\$37 million). Due to the detection of citrus canker in the previous year, under the proposed rule, the Federal cost share in FY 1999 would have been slightly higher by 2 percent. For FY 2000, the overall Federal contribution to emergency programs, if allocated according to the criteria specified in this proposed rule, would have been lower by nearly \$12 million, and the Federal cost-share would have fallen by about 5 percent. In FY 2001, the cost savings

would have been larger. Applying the Federal cost-share rate according to the criteria specified in the proposed rule would have saved about \$64 million in FY 2001, lowering the overall Federal share from 78 percent (the actual cost share percentage in that year) to 58 percent.

The adoption of the proposed rule is anticipated to yield savings to the Federal Government in future years

largely due to the limits placed on Federal financial contributions to long-term emergency programs, especially those involving commodities with commercial interests. As an emergency situation dissipates, a greater share of the funding of these extended programs should appropriately be assumed by the affected States and other cooperators who, with time, would be in a better position to obtain the necessary

resources to address a long-term pest or disease situation.

Additionally, the increased program effectiveness that is expected to result from more reliable State participation and funding certainty would yield economic and environmental benefits over the long run. These gains are expected to balance the costs to State cooperators from redistribution.

TABLE 2.—DISTRIBUTION OF THE FEDERAL SHARE IN EMERGENCY PROGRAMS, ACTUAL AND UNDER PROPOSED RULE (\$ millions)<sup>1</sup>

Program	Actual federal share			Actual non-Federal share	Total program cost	Proposed Federal percentage share	Federal share under proposed rule	Savings under proposed rule
	Operations	Compensation	Total					
<b>FY 1999</b>								
ALB <sup>2,3</sup> .....	9,010	0	9,010	2,572	11,582	75	8,687	324
Citrus canker .....	25,000	0	25,000	22,441	47,441	57	27,041	-2,041
Medfly .....	11,935	0	11,935	12,353	24,288	47	11,415	520
Total .....	45,945	0	45,945	37,366	83,311	.....	47,143	-1,198
% of total .....	.....	.....	55%	.....	.....	.....	57%	.....
<b>FY 2000</b>								
ALB <sup>2,3</sup> .....	16,180	0	16,180	1,555	17,735	60	10,641	5,539
Belgian sheep .....	1,400	700	2,100	0	2,100	77	1,617	483
Citrus canker .....	81,821	9,000	90,821	53,981	144,739	57	82,501	8,320
Pierce's disease .....	22,289	0	22,289	32,423	54,712	62	33,921	-11,632
Plum pox virus .....	3,653	13,200	16,853	6,800	23,653	62	14,665	2,188
Scrapie <sup>3</sup> .....	11,791	1,200	12,991	0	12,991	47	6,106	6,885
Total .....	137,134	24,100	161,234	94,696	255,930	.....	149,451	11,783
% of total .....	.....	.....	63%	.....	.....	.....	58%	.....
<b>FY 2001</b>								
ALB <sup>2,3</sup> .....	51,698	0	51,698	2,654	54,352	60	32,611	19,087
Belgian sheep .....	1,578	0	1,578	0	1,578	62	978	600
Bovine TB <sup>4</sup> .....	14,524	45,600	60,124	10,400	70,524	47	33,146	26,978
Citrus canker .....	59,574	57,872	117,446	41,235	158,681	62	98,382	19,064
Chronic wasting disease .....	701	1,950	2,651	2,200	4,851	72	3,493	-842
Karnal bunt .....	1,223	6,100	7,323	2,000	9,323	47	4,382	2,941
Plum pox virus .....	2,112	0	2,112	2,500	4,612	62	2,859	-747
Rabies .....	4,200	0	4,200	8,886	13,086	52	6,805	-2,605
Total .....	135,610	111,522	247,132	69,875	317,007	.....	182,657	64,475
% of total .....	.....	.....	78%	.....	.....	.....	58%	.....

<sup>1</sup> Unless otherwise indicated, Federal expenditures for emergency programs are based on transfer funds from the CCC. These figures represent funds available for use in a fiscal year.

<sup>2</sup> ALB = Asian longhorned beetle.

<sup>3</sup> The actual Federal share included funds from CCC transfers and agency-level appropriated funds available for emergency activities.

<sup>4</sup> TB = Tuberculosis.

*Economic Effects on Small Entities*

The Regulatory Flexibility Act requires that agencies specifically consider the economic effect of their rules on small entities. The Small Business Administration (SBA) has established guidelines for determining when establishments are to be considered small under the Act. This proposed rule is not expected to directly

affect commercial entities as defined by the SBA.

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

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance

under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with

this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Executive Order 13132

We have reviewed this proposed rule under Executive Order 13132 and determined that it does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The provisions contained in this proposed rule would not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

The Administrator has examined the federalism implications of the requirements in this proposal, *i.e.*, criteria for determining the Federal share of emergency program costs relative to States and other cooperators in the event of animal or plant pest or disease outbreak in the United States. The Administrator believes that this action adheres to Constitutional principles for the exercise of Federal power and is clearly authorized by statutory authorities delegated to APHIS.

This proposed action focuses primarily on the criteria and cost-sharing percentages that would be used to determine the Federal share of emergency program costs. The proposed rule does not absolutely impose any new compliance costs on States or local governments or require that States or local governments incur new costs in support of emergency programs to prevent, detect, control, or eradicate disease.

APHIS already conducts cooperative control and eradication programs in conjunction with State counterparts and other cooperators. In a cooperative arrangement, program funding is generally shared by APHIS and the State, with each party being financially responsible for a portion of the program costs. The cost-sharing arrangements generally have been the result of case-by-case negotiations between APHIS and cooperators. The funding allocations in these arrangements have varied depending on the specific pest or disease and its location. We believe that establishing criteria, including predetermined percentages of the Federal share of program costs, will foster greater certainty about emergency program cost sharing and facilitate improved planning and funding decisions by the Federal government and its cooperators.

State and local governments have the opportunity to comment on this proposed rule, and we encourage them to submit comments on federalism concerns or any other issues.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, tribal governments, and the private sector. Under section 202 of the UMRA, APHIS 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, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires APHIS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

We do not expect, based on historical data, that this proposed rule would contain Federal mandates (under the regulatory provisions of Title II of the UMRA) that may result in new expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02-062-1. Please send a copy of your comments to: (1) Docket No. 02-062-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The Secretary of Agriculture may, as a condition of providing Federal funding under proposed 7 CFR part 373 and proposed 9 CFR part 60, enter into agreements with States and other cooperating entities. Such agreements would specify the particular responsibilities, including funding obligations, of the Federal Government and cooperators in conducting the emergency program. Such agreements also could impose other information collection and recordkeeping requirements on affected States or other cooperating entities. We are therefore asking OMB to approve, for 3 years, our use of this information collection.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

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

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

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

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

**Note:** Our estimate below shows a minimal burden of 1 hour total because the need for States or other cooperating entities to enter into such agreements, as described above, would be at the Secretary's discretion. Further, the scope and nature of the potential information collection or recordkeeping burden, if any, would depend on the particular agreement. Therefore, we currently are not collecting information until the Secretary enters into such agreements with cooperators. At that time, we will describe any specific burden, as well as the estimated number of respondents and estimated burden accordingly based on the number of expected respondents.

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 1.0 hour per response.

*Respondents:* States and other cooperating entities who enter into agreements with the Secretary of Agriculture in connection with an emergency program involving a plant

pest or noxious weed or a pest or disease of livestock.

*Estimated annual number of respondents: 1.*

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

*Estimated annual number of responses: 1.*

*Estimated total annual burden on respondents: 1 hour.*

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

### Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

### List of Subjects

#### 7 CFR Part 373

Indemnity payments, Plant diseases and pests, Plant products, Plants (Agriculture).

#### 9 CFR Part 60

Animal diseases and pests, Indemnity payments, Livestock, Poultry and poultry products.

Accordingly, we propose to amend 7 CFR chapter III by adding a new part 373, and to amend 9 CFR chapter I, subchapter B, by adding a new part 60 to read as follows:

### PART 373—COST SHARING FOR PLANT HEALTH EMERGENCY PROGRAMS

Sec.

373.1 Definitions.

373.2 Priority plant pests and noxious weeds.

373.3 Federal share of emergency program costs.

373.4 Shortfall in obligations and other funding adjustments.

373.5 Activities not subject to cost sharing.

373.6 Implementing agreements.

**Authority:** 7 U.S.C. 7701-7772; 7 CFR 2.22, 2.80, and 371.3.

#### § 373.1 Definitions.

**Administrator.** The Administrator of the Animal and Plant Health Inspection Service, United States Department of

Agriculture, or any person authorized to act for the Administrator.

**Commencement of the emergency program.** The date that the Secretary determines an emergency exists or the date that emergency funding is approved, whichever comes first.

**Cooperator(s).** A State or political subdivision of a State, a domestic organization or association, or other person who participates in an emergency program with the Federal Government.

**Emergency program.** Activities carried out under the authority of the Plant Protection Act (7 U.S.C. 7701-7772) in connection with an emergency, including delimiting surveys; testing and related diagnostic activities; regulatory enforcement; chemical, biological, mechanical, and other detection, control, and eradication activities, including destruction and disposal of plants, plant products, and other articles; the payment of compensation; and research, methods development, and public information activities carried out specifically in connection with an emergency.

**Emergency program costs.** Financial, personnel, and other resources necessary to carry out an emergency program, without regard to the entity or individual that provides the resources or the manner in which they are provided.

**Federal base percentage.** The initial percentage share of emergency program costs the Secretary is authorized to pay in connection with an emergency involving a plant pest or noxious weed.

**OMB.** The Office of Management and Budget of the United States Government.

**Secretary.** The Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture authorized to act for the Secretary.

**State.** Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

#### § 373.2 Priority plant pests and noxious weeds.

The Administrator may identify certain plant pests and noxious weeds as priority plant pests and noxious weeds. In making such an identification, the Administrator shall consider the degree of contagion and the human health and market effects of the plant pest or noxious weed and other relevant factors. The Administrator may notify the public from time to time, through publication of a list in the **Federal**

**Register**, of the priority plant pests and noxious weeds.

#### § 373.3 Federal share of emergency program costs.

(a) **General.** In connection with an emergency involving a plant pest or noxious weed and upon agreement of the States or political subdivisions of States, domestic organizations or associations, or other persons to participate in an emergency program, the Secretary may pay, subject to the availability of funding, emergency program costs as provided in paragraph (b) of this section. Unless the Secretary determines that payments for a longer period are necessary, such payments may be made for no more than 10 years for any emergency program, or, for emergency programs begun prior to [effective date of final rule], for no more than 5 years after that date. However, if the same plant pest or noxious weed occurs in a location that is geographically separate from the original outbreak, or reoccurs in the area of the original outbreak following a prescribed time period after eradication is completed, as determined by a USDA scientific assessment, then it could be considered a new outbreak and subject to new cost-sharing and program duration requirements.

(b) **Determining Federal share of costs.** In connection with an emergency involving a plant pest or noxious weed, the Secretary may make payments of Federal funds of up to 50 percent (*i.e.*, Federal base percentage) of emergency program costs. Further, the Secretary, in consultation with OMB, may increase or decrease the Federal share of emergency program costs relative to the Federal base percentage as follows:

(1) **Timing of program and its effect on total program costs.** If the Secretary determines that a higher level of Federal involvement in the early stages of an emergency program would lead to lower total emergency program costs, then the Secretary, in consultation with OMB, may increase the Federal share of emergency program costs by up to 30 percent above the Federal base percentage during the first 8 months after commencement of the emergency program, and may increase the Federal share of emergency program costs by up to 15 percent above the Federal base percentage from the ninth month through the 24th month after commencement of the emergency program.

(2) **The extent of affected versus nonaffected areas.** If the Secretary determines that the area or value of resources at risk in the United States is at least 10 times greater than the area or

value of resources covered by the emergency program, then the Secretary, in consultation with OMB, may increase the Federal share of emergency program costs by up to 20 percent above the Federal base percentage. The area or value of resources at risk in the United States includes those areas where the plant pest or noxious weed could spread within 1 year in the absence of any action to control or eradicate the pest or disease.

(3) *Lack of financial resources.* If the Secretary determines that a State or other cooperator lacks the financial resources required to cover its share of emergency program costs, or lacks the capability to quickly access those resources, then the Secretary, in consultation with OMB, may increase the Federal share of emergency program costs by up to 10 percent above the Federal base percentage during the first 24 months after commencement of the emergency program. To qualify for this additional Federal funding, the cooperator must demonstrate either that a funding body, such as the State legislature, is unable to meet in time to provide the necessary resources, or that the affected State or local area is experiencing a significant and unexpected reduction in resources.

(4) *Commercial interest.* If the Secretary determines that the plant pest or noxious weed directly affects one or more State commercial interests within the area covered by the emergency program, then the Secretary, in consultation with OMB, may reduce the Federal share of emergency program costs by up to 3 percent under the Federal base percentage.

(5) *Priority plant pests and noxious weeds.* If the emergency involves a priority plant pest or noxious weed, as provided in § 373.2 of this part, then the Secretary, in consultation with OMB, may pay up to 100 percent of the total emergency program costs authorized under this part during the first 24 months after commencement of the emergency program.

(6) *Certain emergency program activities.* The Secretary may determine, in consultation with OMB and the cooperating entities listed in paragraph (a) of this section, that an emergency program or certain activities within that emergency program be excluded from the percentage calculations provided in this paragraph, or, alternatively, be subject to a different Federal share of emergency program costs.

(7) *Percentages are cumulative.* Any applicable percentage changes to the Federal share of emergency program costs, as provided in paragraphs (b)(1) through (b)(6) of this section may be

cumulative, but may not exceed 100 percent of total emergency program costs authorized under this part.

(8) *Payment of compensation.* If the emergency program includes the payment of compensation, then the cost-sharing percentage will be applied either to the emergency program costs in total (including payments of compensation) or to the compensation and non-compensation components separately, at the discretion of the Secretary.

(c) *Periodic review.* The Federal share of emergency program costs, as determined under paragraph (b) of this section, is subject to periodic review by the Secretary, in consultation with OMB, as conditions warrant.

#### § 373.4 Shortfall in obligations and other funding adjustments.

(a) The cost allocation assigned to the Federal Government and each cooperator is to be based on cumulative funding over the duration of the emergency program. Should the Federal Government or any cooperator fail to provide adequate program funding to meet their funding obligation for a given year, then such funding shortfall must be made up prior to the end of the emergency program. Similarly, should the shortfall in funding by one or more parties require other parties to provide funding that exceeds their obligation in any given year, then those parties making excess payments in one year will have the latitude to reduce their payments in subsequent years in an amount that equals the amount of excess payment.

(b) To the extent that actual funding levels change, the difference (plus or minus) is to be applied to the calculation of cumulative funding as soon as practicable. In addition, if approved by APHIS in consultation with cooperators, any in-kind payment (*i.e.*, in the form of services, equipment, etc.) provided by a cooperator will be counted towards their funding obligation if the in-kind payment represents an expense that is not a normal program cost to the cooperator and directly affects emergency program objectives.

#### § 373.5 Activities not subject to cost sharing.

The Federal Government will provide full funding and cost-sharing criteria will not apply to control and eradication activities that do not directly affect the targeted area, pest, or disease that is the focus of the emergency program. This would include, for example, national surveys and diagnostics; research not specific to the outbreak; public

awareness not related to the outbreak; control and eradication programs in other countries; preclearance of passengers, cargo and means of conveyance; and port-of-entry inspection of passengers, cargo and means of conveyance.

#### § 373.6 Implementing agreements.

The Secretary may, as a condition of providing the Federal funding pursuant to § 373.3, enter into agreements with cooperating entities. Such agreements will specify the particular responsibilities, including funding responsibilities, of the Federal Government and cooperators in conducting the emergency program.

### PART 60—COST SHARING FOR ANIMAL HEALTH EMERGENCY PROGRAMS

Sec.

- 60.1 Definitions.
- 60.2 Priority pests and diseases of livestock.
- 60.3 Federal share of emergency program costs.
- 60.4 Shortfall in obligations and other funding adjustments.
- 60.5 Activities not subject to cost sharing.
- 60.6 Implementing agreements.

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

#### § 60.1 Definitions.

*Administrator.* The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person authorized to act for the Administrator.

*Commencement of the emergency program.* The date that the Secretary determines an emergency exists or the date that emergency funding is approved, whichever comes first.

*Cooperator(s).* A State or political subdivision of a State, a domestic organization or association, Indian tribe, or other person who participates in an emergency program with the Federal Government.

*Emergency program.* Activities carried out under the authority of the Animal Health Protection Act in connection with an emergency, including delimiting surveys; testing and related diagnostic activities; regulatory enforcement; chemical, biological, mechanical, and other detection, control, and eradication activities, including destruction of animals, animal products, and other articles; the payment of compensation; and research, methods development, and public information activities carried out specifically in connection with an emergency.

*Emergency program costs.* Financial, personnel, and other resources

necessary to carry out an emergency program, without regard to the entity or individual that provides the resources or the manner in which they are provided.

*Federal base percentage.* The initial percentage share of emergency program costs the Secretary is authorized to pay in connection with an emergency involving a pest or disease of livestock.

*OMB.* The Office of Management and Budget of the United States Government.

*Secretary.* The Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture authorized to act for the Secretary.

*State.* Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, and the Virgin Islands of the United States, or any other territory or possession of the United States.

#### **§ 60.2 Priority pests and diseases of livestock.**

The Administrator may identify certain pests and diseases of livestock as priority pests and diseases of livestock. In making such an identification, the Administrator shall consider the degree of contagion and the human health and market effects of the pest or disease of livestock and other relevant factors. The Administrator may notify the public from time to time, through publication of a list in the **Federal Register**, of the priority pests and diseases of livestock.

#### **§ 60.3 Federal share of emergency program costs.**

(a) *General.* In connection with an emergency involving a pest or disease of livestock and upon agreement of the States or political subdivisions of States, domestic organizations or associations, Indian tribes, or other persons to participate in an emergency program, the Secretary may pay, subject to the availability of funding, emergency program costs as provided in paragraph (b) of this section. Unless the Secretary determines that payments for a longer period are necessary, such payments may be made for no more than 10 years for any emergency program, or, for emergency programs begun prior to [effective date of final rule] for no more than 5 years after that date. However, if the same pest or disease of livestock occurs in a location that is geographically separate from the original outbreak, or reoccurs in the area of the original outbreak following a prescribed time period after eradication is completed, as determined by a USDA scientific assessment, then it could be considered a new outbreak and subject

to new cost-sharing and program duration requirements.

(b) *Determining Federal share of costs.* In connection with an emergency involving a pest or disease of livestock, the Secretary may make payments of Federal funds of up to 50 percent (*i.e.*, Federal base percentage) of emergency program costs. Further, the Secretary, in consultation with OMB, may increase or decrease the Federal share of emergency program costs relative to the Federal base percentage as follows:

(1) *Timing of program and its effect on total program costs.* If the Secretary determines that a higher level of Federal involvement in the early stages of an emergency program would lead to lower total emergency program costs, then the Secretary, in consultation with OMB, may increase the Federal share of emergency program costs by up to 30 percent above the Federal base percentage during the first 8 months after commencement of the emergency program, or, alternatively, may increase the Federal share of emergency program costs by up to 15 percent above the Federal base percentage from the ninth month through the 24th month after commencement of the emergency program.

(2) *The extent of affected versus nonaffected areas.* If the Secretary determines that the area or value of resources at risk in the United States is at least 10 times greater than the area or value of resources covered by the emergency program, then the Secretary, in consultation with OMB, may increase the Federal share of emergency program costs by up to 20 percent above the Federal base percentage. The area or value of resources at risk in the United States includes those areas where the pest or disease of livestock could spread within 1 year in the absence of any action to control or eradicate the pest or disease.

(3) *Lack of financial resources.* If the Secretary determines that a State or other cooperator lacks the financial resources required to cover its share of emergency program costs, or lacks the capability to quickly access those resources, then the Secretary, in consultation with OMB, may increase the Federal share of emergency program costs by up to 10 percent above the Federal base percentage during the first 24 months after commencement of the emergency program. To qualify for this additional Federal funding, the cooperator must demonstrate either that a funding body, such as the State legislature, is unable to meet in time to provide the necessary resources, or that the affected State or local area is

experiencing a significant and unexpected reduction in resources.

(4) *Commercial interest.* If the Secretary determines that the pest or disease of livestock directly affects one or more State commercial interests within the area covered by the emergency program, then the Secretary, in consultation with OMB, may reduce the Federal share of emergency program costs by up to 3 percent under the Federal base percentage.

(5) *Priority pests or diseases of livestock.* If the emergency involves a priority pest or disease of livestock, as provided in § 60.2 of this part, then the Secretary, in consultation with OMB, may pay up to 100 percent of the total emergency program costs authorized under this part during the first 24 months after commencement of the emergency program.

(6) *Certain emergency program activities.* The Secretary may determine, in consultation with OMB and the cooperating entities listed in paragraph (a) of this section, that an emergency program or certain activities within that emergency program be excluded from the percentage calculations provided in this paragraph, or, alternatively, be subject to a different Federal share of emergency program costs.

(7) *Percentages are cumulative.* Any applicable percentage changes to the Federal share of emergency program costs, as provided in paragraphs (b)(1) through (b)(6) of this section, may be cumulative, but may not exceed 100 percent of total emergency program costs authorized under this part.

(8) *Payment of compensation.* If the emergency program includes the payment of compensation, then the cost-sharing percentage will be applied either to the emergency program costs in total (including payments of compensation) or to the compensation and non-compensation components separately, at the discretion of the Secretary.

(c) *Periodic review.* The Federal share of emergency program costs, as determined under paragraph (b) of this section, is subject to periodic review by the Secretary, in consultation with OMB, as conditions warrant.

#### **§ 60.4 Shortfall in obligations and other funding adjustments.**

(a) The cost allocation assigned to the Federal Government and each cooperator is to be based on cumulative funding over the duration of the emergency program. Should the Federal Government or any cooperator fail to provide adequate program funding to meet their funding obligation for a given year, then such funding shortfall must

be made up prior to the end of the emergency program. Similarly, should the shortfall in funding by one or more parties require other parties to provide funding that exceeds their obligation in any given year, then those parties making excess payments in one year will have the latitude to reduce their payments in subsequent years in an amount that equals the amount of excess payment.

(b) To the extent that actual funding levels change, the difference (plus or minus) is to be applied to the calculation of cumulative funding as soon as practicable. In addition, if approved by APHIS in consultation with cooperators, any in-kind payment (*i.e.*, in the form of services, equipment, etc.) provided by a cooperator will be counted towards their funding obligation if the in-kind payment represents an expense that is not a normal program cost to the cooperator and directly affects emergency program objectives.

#### **§ 60.5 Activities not subject to cost sharing.**

The Federal Government will provide full funding and cost-sharing criteria will not apply to control and eradication activities that do not directly affect the targeted area, pest, or disease that is the focus of the emergency program. This would include, for example, national surveys and diagnostics; research not specific to the outbreak; public awareness not related to the outbreak; control and eradication programs in other countries; preclearance of passengers, cargo and means of conveyance; and port-of-entry inspection of passengers, cargo and means of conveyance.

#### **§ 60.6 Implementing agreements.**

The Secretary may, as a condition of providing the Federal funding pursuant to § 60.3, enter into agreements with cooperating entities. Such agreements will specify the particular responsibilities, including funding responsibilities, of the Federal Government and cooperators in conducting the emergency program.

Done in Washington, DC, this 1st day of July 2003.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 03-17042 Filed 7-7-03; 8:45 am]

**BILLING CODE 3410-34-P**

## **DEPARTMENT OF ENERGY**

### **10 CFR Chs. II, III, and X**

**RIN 1904-AA78**

#### **Semiannual Regulatory Agenda; Clarification**

**AGENCY:** Department of Energy.

**ACTION:** Semiannual Regulatory Agenda; clarification.

**SUMMARY:** The Department of Energy is clarifying its discussion of one of the items (Residential Furnaces, Boilers, and Mobile Home Furnaces) in the Semiannual Regulatory Agenda, 68 FR 30192, 30195 (May 27, 2003).

**DATES:** This correction is made as of July 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** For information on Energy Efficiency Standards for Residential Furnaces, Boilers, and Mobile Home Furnaces contact: Mohammed Khan, Room 1J-018, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, *mohammed.khan@hq.doe.gov*, (202) 586-7892. For information on the Regulatory Agenda in general, please contact: Richard L. Farman, Room 6E-078, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, *richard.farman@hq.doe.gov*, (202) 586-8145.

**SUPPLEMENTARY INFORMATION:** In the fall of 2002, DOE designated the Energy Efficiency Standards for Residential Furnaces, Boilers, and Mobile Home Furnaces as high priority in *The FY2003 Priority Setting Summary Report and Actions Proposed*, which the Office of Building Technologies Program, U.S. Department of Energy, published on August 22, 2002.

In the Department of Energy's most recent Semiannual Regulatory Agenda notice, 68 FR 30195 (May 27, 2003), the Department inadvertently noted in its discussion of the Energy Efficiency Standards for Residential Furnaces, Boilers, and Mobile Home Furnaces that "the Department is reclassifying this action as low priority, pending further review."

The Department of Energy has not reclassified this action as a low priority and remains committed to getting public input before making decisions on the priorities for its rulemakings. As the Office of Building Technologies Program described in its 1996 Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products (Process Rule), 61 FR 36974, 36976, 36982 (July 15,

1996), the program will prepare an analysis of pending or prospective rulemakings at least once a year. The program will invite the public to review and comment on the program's priority analysis prior to making any changes to its priority designation. As noted in the Semiannual Regulatory Agenda published May 27, 2003, the program will be seeking comments from stakeholders regarding the priority status of Residential Furnaces, Boilers, and Mobile Home Furnaces. In addition, the program will be seeking comments on its prioritization of all current rulemakings this summer. The program fully intends to follow the Process Rule and provide stakeholders with an opportunity to comment.

Issued in Washington, DC, on July 2, 2003.

**Douglas L. Faulkner,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 03-17196 Filed 7-7-03; 8:45 am]

**BILLING CODE 6450-01-P**

## **SMALL BUSINESS ADMINISTRATION**

### **13 CFR Part 120**

**RIN 3245-AE41**

#### **Development Company Loan (504) Program Changes**

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Proposed rule.

**SUMMARY:** In response to an Advanced Notice of Proposed Rulemaking ("ANPRM") published by the U.S. Small Business Administration ("SBA" or "the Agency") on December 6, 2002, SBA solicited comments on the Certified Development Company ("CDC") Loan Program (the "CDC Program" or the "504 Program"). Based on the comments received and due to SBA's desire to improve 504 Program delivery to small businesses, SBA proposes to amend the regulations governing the 504 Program.

The most significant regulations that SBA proposes to change are those governing a CDC's area of operations; a CDC's organizational structure; the requirements for a new CDC or a CDC requesting to expand its territory; the "adequately served" standard; and whether a CDC may participate in other SBA loan programs. Also, to allow for greater delegation of authority to CDCs, the proposed rule includes expanded sections on the Accredited Lender Program ("ALP"), the Premier Certified Lender Program ("PCLP") and a simplification and clarification of the

enforcement provisions for CDCs. In addition, SBA proposes to increase the "job opportunity average" and to permit CDCs to approve more projects that do not meet the job creation criteria but do meet other statutory goals. The proposed amendments also clarify the regulations governing fees that a small business may and may not be charged.

**DATES:** Comments must be received on or before August 7, 2003.

**ADDRESSES:** Address written comments to James E. Rivera, Associate Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416. You also may submit comments via e-mail to [proprule@sba.gov](mailto:proprule@sba.gov). You also may submit comments electronically to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Gail H. Hepler, Chief, 504 Loan Policy Branch, (202) 205-7530.

**SUPPLEMENTARY INFORMATION:**

**Statutory Basis of the 504 Program**

The 504 Program, Title V of the Small Business Investment Act ("Act"), 15 U.S.C. 695, was established by Public Law 85-699 on August 21, 1958. A "development company" was defined as an enterprise formed for the purpose of furthering economic development of its community and environs, and with authority to promote and assist the growth and development of small business concerns in the areas covered by their operations. The law further stated that a local development company is a corporation chartered under any applicable State corporation law to operate in a specified area within a State and be composed of and controlled by persons residing or doing business in the locality. The program was amended in 1980 due to changing business conditions for small businesses. During the late 1970s and early 1980s, the prime interest rate and unemployment rate reached historically high levels. It was generally believed that long-term, fixed-rate money was not available at a reasonable cost to small businesses because of these high prevailing rates and that this was hindering job creation. Congress enacted section 503 of the Act in 1980. The 503 and 504 Programs were intended to provide long-term, fixed-rate financing to small businesses at favorable terms that were unavailable in the commercial marketplace. Congress specified in the Act that this program "foster economic development and create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns \* \* \*". The

statute authorizes SBA to guarantee debentures backing long-term, fixed-asset loans ("504 Loans") made by CDCs. It also authorizes SBA to pool the guarantees and sell interests in the pools to investors.

**Rulemaking History**

On December 6, 2002, SBA published the ANPRM to solicit comments on the 504 Program. SBA posed specific questions requesting comments on a wide range of topics including the overall 504 Program's effectiveness; CDC organizational structure; ways to increase the 504 Program's geographic coverage to ensure that all small businesses have access to long-term fixed-rate financing; 504 loan and debenture structure; CDC performance requirements; operational and logistical issues; economic development; and CDC participation in other SBA programs. SBA received more than 1,900 responses from lenders, borrowers, government and community organizations, and CDCs.

**Discussion of Comments Received in Response to ANPRM**

In response to the questions in the ANPRM as to whether the need for the 504 Program still exists, the overwhelming majority of commenters supported the continued need for the program. The comments included approximately 600 letters from banks and other lenders and 590 letters from 504 Program borrowers. A national lender explained as follows:

Nationally, we rely on the 504 Loan Program in many of our markets because conventional real estate financing offers numerous obstacles to small business financing including the following: loan-to-value of 75% or less—more cash out of pocket for the borrower, 20-30% down-payment requirements, shorter amortization periods, ineligibility of special purpose (use) properties, balloon payments, exposure to short-term interest rates, multiple loan and pricing covenants and financial reporting requirements. For our customers the 504 Loan Program continues to be the most viable alternative to conventional small business loan products.

Emphasizing program benefits from the perspective of the lender, a banker stated:

There are a number of unique benefits for our bank and our borrowers when we participate in the 504 loan program. It allows us to continue to serve the banking needs of our small business customers while mitigating a degree of risk that always accompanies small business lending \* \* \*. The 504 allows them to get a long-term, fixed rate financing through support from the government guaranty. With our bank in a first lien position with typically a 50% loan-to-

value ratio, our collateral risk is substantially reduced. The program also allows us to fund projects too large for our lending limit. There is also an active secondary market for 504 first mortgage loans. Most importantly, 504 enables us to meet customer credit needs and retain our business customer's primary banking relationship \* \* \*. The CDC's expertise and working relationship with the SBA means that we save valuable lender time and expense by the CDC handling the application paperwork required for a government loan. The CDC is truly the program expert and monitors the changing rules, regulations and procedures for the 504 loan program \* \* \*. Additionally, the 504 loan program has strengthened our small business community by allowing companies to grow and expand. We are heroes in the eyes of our small business borrowers and we like being able to keep our customers happy while maintaining our loan portfolio at a manageable risk level.

Another response from a bank added the following:

The program also allows us to fund projects too large for our lending limit. Additionally, we can limit our exposure to certain industries \* \* \*. There is also an active secondary market for 504 first mortgage loans, so we can meet our board's liquidity requirements and, in turn, make even more small business loans.

Addressing the question of compatibility of the 504 Program with the loan programs authorized by section 7(a) of the Small Business Act, 15 U.S.C. 632 *et seq.* ("7(a) Program"), a lender stated:

The 504 Program, along with the 7(a) program and a (state) working capital loan program, work to complement each other in our market. The 504 fits quite well in its market niche of providing long-term fixed-rate financing to larger companies for plant and major equipment purchases. It is appropriately targeted to reach those companies in their growth cycle to create jobs, expand the tax base, and improve their communities. Both the 7(a) and State programs target, for the most part, smaller credits to provide working capital and financing for smaller equipment purchases. The 7(a) program is also frequently used for real estate purchases where a variable rate loan is preferred, because of the lack of a prepayment penalty, or where job creation is not the purpose or the targeted outcome. Taken together, along with some specialized private sector programs, the needs of small businesses are, for the most part, being met in our market and filling a void in conventional lending.

Regarding the 504 program's contribution to the economic development of communities, a typical comment follows:

The 504 Program is critical in all economic cycles but of greatest significance in today's economy. The ability of a small business to buy needed equipment and real estate to grow while preserving capital to fund expansion and job growth is crucial in

today's economy. No other program provides these benefits to small businesses \* \* \* By virtue of its structure, providing a financing package that requires participation of a private sector lender, federal resources are leveraged. The program has always been available, regardless of economic cycle, and provides a high level of security to the participating private sector lender. This security is even more critical in a down economy and may mean the difference between financing with 504 or no financing available.

Other economic development benefits to the local communities from the CDC Program in addition to the long-term, fixed-rate financing are mentioned by many writers. One writer stated that:

To the extent that there are surplus reserves or revenues, they should be employed to accomplish our primary objective, the 504 Program, either through increased marketing in our existing area of operations or in a new, underserved market. Secondly, surpluses should be utilized for needed local economic development activities. We believe that was the intent, resulting in a separate CDC program and industry in the first place.

Another writer echoed the larger economic development goals of CDCs:

The 504 program has been the genesis for the creation of many other forms of local economic development and job creation. Unlike commercial lenders who distribute profits to shareholders, CDCs invariably invest, either directly or through affiliated companies, into their areas of operations. This was the basis for congressional creation of the 504 Program. 504 Program revenues have led to creation of new local revolving loan funds, economic development grant programs, job training programs, micro-loan programs, and many other small business assistance programs provided by CDCs. All of these programs are targeted at the intent of Congress: job creation in local communities.

There also was overwhelmingly negative response from banks, 504 borrowers, and CDCs to the questions about permitting a CDC to establish a 7(a) lender or permitting a 7(a) lender to establish a CDC. One writer explained that:

The Development Company Loan program \* \* \* was created by Congress to be an economic development tool, and measured the success by jobs. The 7(a) program was created by Congress to assist small businesses with capital not available from other resources, or the "lender of last resort." The 7(a) loan program may and probably does create jobs \* \* \*

but no economic development goal is required for a 7(a) loan to be approved. Another writer summarized his opposition as follows:

7a lenders, due to their for-profit structure, have significantly different goals and objectives that are often in conflict with the economic development goals of the non-

profit CDC industry. The independence of CDCs is critical to the maintenance of their unique economic and community development mission \* \* \*. The primary objective of the development company must be of benefit to the community as measured by increased employment, payroll, business volume, and corresponding factors rather than monetary profits to its shareholders \* \* \*. CDCs help to create a level playing field between large and small banks by providing expertise to small and rural banks that cannot afford in-house SBA lending departments.

Another writer adds that:

CDCs should build strength with adequate capital reserves just like any good business. We certainly expect it of our borrowers. To the extent that there are surplus reserves or revenues, they should be employed to accomplish our primary objective, the 504 Program, either through increased marketing in our existing area of operations or in a new, underserved market. Secondly, surpluses should be utilized for needed local economic development activities. We believe that was the intent, resulting in a separate CDC program and industry in the first place \* \* \*. Not only is the 7(a) program not economic development, a conflict could occur as a result of such an affiliation.

In summary, the comments supported the continuation of the 504 Program. The comments also suggested some policy changes to the 504 Program to permit increased access to capital for small businesses. The most frequently suggested changes dealt with the structure of CDCs, including their designated areas of operations. These suggestions included liberalizing the rules governing a CDC's membership requirements, changing the definition of a CDC's area of operations, and changing the definition of when a county is adequately served by existing CDCs. The comments also supported the distinct economic development aspect of the 504 Program by overwhelmingly opposing a CDC's investing in or being affiliated with a 7(a) lender.

#### **Overview of Proposed Changes to the 504 Regulations**

SBA believes the proposed regulatory changes will improve 504 Program delivery to small business customers by increasing customer choice of service; increase third party lender choice of CDCs; facilitate the formation of new CDCs; facilitate the expansion of existing CDCs; and increase the number of CDCs able to take advantage of special initiatives for rural areas. By allowing market-driven forces to determine availability of 504 Program service, small businesses will have greater opportunity to negotiate the best total financing package including fees, as well as receive increased service by CDCs. In addition, the 504 Program will

be more responsive to changes in market conditions.

To allow for greater delegation of authority to CDCs, this proposed rule includes expanded sections on the ALP and the PCLP. This proposed rule also simplifies and clarifies the enforcement provisions for CDCs. In addition, SBA proposes to amend the "job opportunity average," which will permit CDCs to approve more projects that do not meet the job creation criteria but do meet other statutory goals such as increasing manufacturers' productivity and competitiveness through re-tooling, robotics or modernization. Proposed amendments also clarify the regulations governing fees that a small business may and may not be charged. The regulations covered by the proposed rule are 13 CFR, subpart A, § 120.102 and § 120.140, and subpart H, §§ 120.800 through 120.984.

The 504 Program from 1986 to 2002 has created or retained more than 1.5 million jobs, averaging approximately \$13,600 of debenture per job. However, the 504 Program has not used all of its available budgetary authority for many years. The 504 Program's authorization level for fiscal year 2002, for example, was \$4.5 billion compared to the total approval level of \$2.5 billion.

SBA has decided to take steps to increase the availability of the long-term, fixed-rate financing offered by the 504 Program that is vital for our nation's small business community. This proposed rule begins this process by establishing the State in which a CDC is incorporated as the CDC's minimum area of operations. Currently, each CDC is assigned a specific, local area, typically several counties. Only one CDC per State is permitted to be a statewide CDC. In some cases, there are geographic areas that do not have CDC coverage. Although CDCs' areas of operations often overlap, SBA believes that establishing statewide areas of operations for all CDCs will increase the availability of 504 Program assistance to small businesses. SBA also believes that it is empowering the CDCs' boards to determine what is the optimal area of operations within the State for the CDC to market and service effectively.

Next, SBA is proposing to eliminate the "adequately served" standard. Currently, a county meets the standard of "adequately served" when the CDC that includes the county in its area of operations averages at least one 504 loan approval in that county per 100,000 population per year averaged over two years. In such cases, the county is unavailable both to an existing CDC applying to expand its operations to include that county, and to a new CDC

applying to include that county in its proposed area of operations. In addition, the regulations currently do not permit a new CDC, or a CDC applying to expand its area of operations, to apply for a particular county if that county has become part of another CDC's area of operations within the previous 24 months. Eliminating this standard will encourage new CDC applications and expansion applications from existing CDCs. SBA is proposing to allow the marketplace to determine the maximum number of CDCs that can co-exist within a State. With these changes SBA anticipates that small businesses, as well as lenders, will have greater choice in and access to capital.

To facilitate these changes, SBA is proposing to streamline a CDC's organizational structure by modifying the CDCs' general membership requirements. Currently, a CDC is required to have a general membership that covers the CDC's entire area of operations. In the proposed rule, SBA would no longer require that a CDC's membership cover the entire area of operations, but rather would require that the CDC's members each actively support economic development within all or some portion of the CDC's area of operations. The CDC's board of directors would make the decision on how widely disbursed the CDC's general membership needs to be to meet the objective of local economic development. SBA also is proposing to modify the regulations governing contracting for staff to facilitate a CDC's contracting for "back office" work with a contractor located outside of the CDC's area of operations. SBA believes that this will permit certain economies of scale by providing additional sources of expertise in 504 packaging, processing, servicing and liquidation.

For CDCs that apply to cross State lines as a multi-state CDC, the CDC also will be able to determine the maximum geographic coverage its general membership in the new State needs to be. Also for multi-state CDCs, SBA is proposing to relax the requirements for board representation from the new State by eliminating the current requirement that at least three of the CDC's board members must come from the new State. In addition, SBA is proposing to allow a CDC that currently has ALP or PCLP authority in its State of incorporation to use that authority in its expanded area. To ensure that only those CDCs with demonstrated strong underwriting are permitted to expand beyond their State of incorporation, SBA is clarifying the requirement that the expanding CDC must meet SBA's portfolio performance benchmarks. Taken together, SBA

believes that these changes in a CDC's area of operations, elimination of the concept of "adequately served," elimination of the requirement that a CDC's membership cover the entire area of operations, the clarification regarding contracting, and the changes in the expansion requirements for CDCs will result in the 504 Program becoming more relevant in today's dynamic financial services marketplace.

SBA agrees with the opinion of the majority of writers that the 504 Program should remain separate from the 7(a) Program. The proposed rule introduces a new regulation that prohibits a CDC from investing in or being affiliated with a 7(a) lender.

The concept of permitting a CDC to invest in a Small Business Investment Company ("SBIC") generally was supported by the commenters. Many writers viewed such an investment as economic development as long as the SBIC and the CDC were not affiliates. However, SBA's current regulations prohibit a CDC from owning an equity interest in a business that has received or is applying to receive SBA financing (§ 120.140). Since SBICs typically have an ownership interest in the businesses that they assist, a CDC that has invested in an SBIC also would have an ownership interest in the small business receiving financing from the SBIC and could potentially violate this regulation by providing financing directly to that small business. In addition, SBA's regulations state that a CDC must operate in its Area of Operations. SBA interprets this requirement to apply to all CDC activities that use funds generated from the 504 Program. In light of these concerns, at this time SBA proposes to prohibit a CDC from investing in an SBIC. The proposed rule would not require a CDC with an existing investment in an SBIC to liquidate such investment.

#### Section-by-Section Analysis

SBA proposes to add a definition of "SOP" to § 120.102, the definitions section applicable to the entire part 120.

SBA proposes to amend § 120.140 to delete references to Associate Development Companies ("ADC") (see discussion of § 120.850).

SBA proposed to change the headings for § 120.800 and § 120.801 to make their format consistent with the other section headings in subpart H.

SBA proposed some changes to the definitions in § 120.802. The definition of "Area of Operations" would be modified to add that the minimum area of operations for a CDC is the State in which the CDC is incorporated. This change would permit more access to

capital as well as choices for small businesses. In response to the ANPRM, several commentors suggested that a CDC's area of operations be SBA district-wide. However, SBA agrees with the reasoning of one commentor regarding the district-wide proposal:

(The district-wide proposal) presents two problems. First, it would not eliminate some current monopolies. \* \* \* Secondly, it produces something of a double standard. In some 41 states, all CDCs would be statewide by virtue of the fact that there is only one district office in each of those states. That leaves 9 states requiring special regulations and monitoring by the SBA. The statewide CDC proposal eliminates these problems and provides a single, national standard and is therefore preferable.

The definition of "Local Economic Area" would be revised slightly to make it consistent with the revised, statewide "Area of Operations" definition. In addition, the definition for "Associate Development Company" would be deleted. This change is discussed in the analysis of revisions proposed for § 120.850. Other regulations in subpart H of part 120 use the terms "Designated Attorney," "Lead SBA Office" and "Priority CDC." For clarification, this proposed rule would add definitions for those terms.

In § 120.810, application for certification as a CDC, SBA is proposing changes to the policies governing new CDC applications to reflect the change in the definition of a CDC's "Area of Operations" to a minimum of statewide. Additionally, it deletes the current restrictions that permit existing CDCs to exclude geographic areas from being considered for a new CDC. SBA is permitting the marketplace to determine the optimum number of CDCs that may be supported.

Because of these changes and in order to streamline the application process, SBA would delete § 120.811, public notice of CDC certification application, which requires public notice as well as direct notice to existing CDCs. SBA believes the application process, SBA oversight, and the marketplace will be enough to ensure that the process will lead to improved economic development. This proposed rule would add a clarification that an applicant CDC must demonstrate financial capability to meet the upfront costs of the program until the CDC's operations meet the breakeven point. This is to ensure that the CDC will be staffed sufficiently to meet the requirements of marketing, processing, closing, and servicing 504 Loans.

Section 120.812, probationary period for newly certified CDCs, proposes revisions that would clarify how SBA

will process a CDC's petition for permanent CDC status, and that the probationary period commences on the date of certification. Also SBA proposes to delete all references to ADCs in connection with the proposed elimination of the ADC program (see discussion of § 120.850).

In § 120.820, CDC non-profit status, SBA proposes to describe what SBA means by the term "good standing." While this is a term SBA has used over the years in administering the 504 Program, SBA has not fully defined it previously. Following discussions between SBA program officials and the CDC industry, SBA proposes several criteria that constitute good standing for the 504 Program. SBA intends to apply the term generally to all CDCs.

Section 120.821, CDC Area of Operations, would be revised to delete the limitation of one statewide CDC since all CDCs' areas of operations will be at least statewide (see discussion of definition of "Area of Operations" in § 120.802).

Section 120.822, CDC membership, would be revised to streamline CDC membership qualifications by deleting the requirement that a CDC's membership must be representative of its entire area of operations. Currently, a CDC must have representation from each of the four groups (*i.e.*, government organizations, financial institutions, community organizations, and businesses) for its entire area of operations. With this change, SBA still would require that each of the four groups be represented in the membership, but would no longer require that such members represent the entire area of operations. It will be up to the CDC's board to determine how broadly-based geographically the membership needs to be to meet the CDC's economic development objectives. The CDC's board may choose to have a membership that represents only a county, or some counties, while another CDC's board may choose to have a membership that represents the entire State.

In addition, SBA would clarify the intent of the regulation by adding that a CDC must not use its employees and staff to meet the membership requirements. The membership requirement is designed to be filled by local community leaders volunteering to assist in providing economic development in their communities through the formation of a CDC. The membership elects the CDC's board from among its members. The board, in turn, hires paid professional staff to operate the CDC on a daily basis. SBA also proposes to eliminate the

requirement that SBA pre-approve the CDC's members representing government organizations, and to add small business development companies ("SBDCs") and another type of community organization that may be a source of members for a CDC.

Section 120.824, professional management and staff, would be revised to delete the provision that describes the circumstances under which a rural CDC with insufficient loan volume may be managed by another CDC located in the same area of operations. This provision has not been used and appears to be unnecessary. In addition, the proposed change would clarify the requirements regarding CDC staff provided under contract including deleting the requirement that a contractor must live or do business in the CDC's area of operations. SBA believes that a CDC may wish to contract for certain services, such as "back office" staff support, with individuals or organizations that are outside of the CDC's area of operations.

Section 120.826, basic requirements for operating a CDC, would be slightly reworded for clarity. The responsibilities currently described in § 120.827(a) would be moved to this section because SBA considers them to be basic requirements for operating a CDC. In addition, SBA proposes to clarify that all CDCs must comply with all of the 504 Program requirements imposed by statute, regulation, SOP, policy and procedural notice, loan authorization, debenture, or any agreement between SBA and the CDC, some of which is currently in § 120.827(a).

Section 120.827, other services a CDC may provide to small businesses, would be revised to focus this section only on, and clarify what is meant by, "other services" that a CDC may provide to a small business, as well as describe the regulations to which the CDC will be subject if it does provide such other services.

Section 120.828, minimum level of 504 loan activity and restrictions on portfolio concentrations, would be reworded to clarify the minimum level of 504 loan activity a CDC must maintain. In addition, this section would cover the requirement concerning portfolio concentrations currently contained in § 120.827(a) and the heading to the section would be revised accordingly.

Section 120.829, job opportunity average a CDC must maintain, would modify the job opportunity average a CDC must maintain by changing it to an amount specified by SBA by means of a notice published in the **Federal**

**Register**. Currently, the average is preventing many CDCs from accepting 504 loan applications from small businesses for loans that would not create jobs but would meet other statutory 504 Program objectives, such as loans to increase business efficiency through technology. In addition, the present ratio has been in effect since 1990 and does not take into account the inflationary factors in the cost of land, real estate acquisition, construction, and machinery and equipment since that time. Finally, SBA is proposing to clarify that a new CDC is permitted two years from the date it is certified to meet the job portfolio requirement.

Section 120.830, reports a CDC must submit, would be revised to change the submission requirement for CDC annual reports from 90 days to 120 days after the end of the CDC's fiscal year to permit CDCs more time to provide financial statements with the required level of review. This proposed rule also clarifies the requirement by adding that the annual report must include financial statements of any affiliate or subsidiary of the CDC. In addition, it would add some clarifying language regarding the submission requirements for changes to directors or staff.

Section 120.835, application to expand an area of operations, would be revised. Most of the applications SBA receives are for expansions of a CDC's area of operations within its State of incorporation. The expansion request usually is for several counties in which there currently are one or more CDCs that include those counties in their areas of operations. Since the proposed rule gives all CDCs a minimum area of operations of the State in which they are incorporated, and since SBA is allowing the marketplace to determine the optimum number of CDCs, much of the current regulatory language is no longer required (refer to § 120.802 and § 120.810 for further discussion). SBA proposes that the only applications for expansion that it would consider would be when the CDC requests to expand beyond its State of incorporation. In this section, SBA also proposes to add the requirement that such applicants must be ALP-qualified. There are two reasons for this. The first is to limit expansions beyond State lines to only those CDCs who have met certain volume, closing, and portfolio quality standards. The second is to reflect the proposed change in the regulations governing multi-state expansions that would permit a CDC to use in the expanded area any unilateral authority it has already received in its State of incorporation (see discussion of proposed changes to § 120.837). To further streamline the application

process, SBA is proposing to delete the requirement that a multi-state CDC have at least three members from each State on its board. SBA believes that the general membership requirements (*see* § 120.822) and loan committee requirements (*see* § 120.823) for the State into which it is expanding are sufficient to demonstrate the CDC's commitment to local economic development in that State. Additionally, SBA is proposing to delete the requirement for public notice and for direct notice to all other CDCs in the proposed area of operations since SBA is permitting the marketplace to determine the optimum number of CDCs that can be supported.

Section 120.836, public notice, and opportunity for response, would be deleted. SBA believes that the requirement would not be needed for the same reasons discussed in § 120.811.

Section 120.837, SBA decision on application for a new CDC or for an existing CDC to expand an area of operations, proposes to streamline the process by changing the paragraph on a multi-state CDC to permit any unilateral authority that a CDC has in its State of incorporation to be carried over into the additional State in which it is approved to operate as a multi-state CDC and clarifying SBA's decision process.

Section 120.838, expiration of existing, temporary expansions, was a short-term regulation to manage the conversion of existing temporary expansions into permanent expansions by March 1, 1996. Because of the changes proposed to the rules covering areas of operation, SBA believes this section is no longer required and proposes its removal.

Section 120.839, case-by-case extensions, proposes to give a district office the authority to make a decision concerning whether SBA will allow a CDC to make a 504 Loan outside of its area of operations, and by adding as a new basis for such decision the situation in which a State may not have a CDC. (For example, currently Alaska has no CDC.) In addition, SBA is proposing to delete the exception that would require the Associate Administrator for Financial Assistance ("AA/FA") to approve because the exception has never been used and SBA's experience indicates that it is unnecessary.

In section 120.840, accredited lenders program, SBA proposes to substantially revise this section to describe the ALP, the benefits a CDC will receive through the ALP, how to apply for the ALP, and how SBA will process the application.

In new § 120.841, SBA proposes to establish more detailed qualifications

for the ALP. The standards will be consistent with section 507 of the Act and coordinate with eligibility requirements for CDC participation in the PCLP (*see* § 120.845 discussion below). These changes will make it easier for SBA to provide consistent and objective evaluation of a CDC application to participate in the ALP.

Section 120.845, premier certified lenders program, would be revised. The PCLP is now a permanent program pursuant to section 508 of the Act. SBA proposes to add considerably more detail to § 120.845 and move some of its revised and expanded provisions to new §§ 120.846–120.848. Since CDCs participating in the PCLP must be approved to participate under the ALP or be "ALP qualified," SBA proposes to add some of the PCLP requirements to § 120.841.

The PCLP is designed to take advantage of the proven loan processing and servicing skills of SBA's most proficient and most active CDCs. It is a relatively new program (started in 1994 as a pilot program) with a somewhat limited operating history. Because SBA transfers substantial additional authority to CDCs, the PCLP carries potentially significant risk to SBA and the 504 Program. Therefore, SBA intends to closely monitor and control its implementation and expansion. As a result, SBA will continue to work with the CDC industry to develop and publish enhanced operating policies and procedures as experience with the PCLP develops. While SBA intends to transfer as much authority and responsibility to PCLP CDCs as reasonably prudent, the extent of that delegation will continue to be refined over time. These refinements likely will address such issues as the type of 504 Loans eligible for the PCLP, the amount of prior SBA review applicable to each loan, program participation criteria, and other factors.

For example, while SBA believes that the PCLP may be most appropriately applied to routine 504 Loans and that particularly complex or problematic loans may need to be processed through standard 504 Program procedures, SBA will continue to study and analyze this issue and develop further guidance as appropriate. With respect to SBA's prior review of a 504 Loan at the loan approval stage, SBA is interested in limiting/minimizing its involvement in reviewing 504 Loans. While initially SBA expects to continue to review loan eligibility while delegating virtually all credit decisions to PCLP CDCs, SBA will consider expanding or reducing that authority as warranted by the results of the program.

Participation in the PCLP, pursuant to section 508(b) of the Act, is limited to those CDCs that are active in the 504 Program; are in good standing with SBA; have demonstrated the ability to properly analyze, close and service 504 Loans; and have been active as ALP CDCs. Section 508(b)(2)(A) of the Act allows SBA to waive the requirement for those non-ALP CDCs that meet the ALP participation criteria. However, rather than developing a waiver process, SBA proposes incorporating the ALP participation criteria into the PCLP participation criteria (*see* § 120.845(c)(1)).

Based on the guidance in the statute, and following extensive discussion with the CDC industry, SBA developed more specific factors to be used in evaluating a CDC's level of activity; ability to properly analyze, close, service and liquidate 504 Loans; and good standing. Each factor represents a major and essential CDC function, and each carries significant risk to SBA and the 504 Program. Because SBA delegates substantial authority and autonomy to PCLP CDCs, it considers each factor important, and a substantive deficiency in any one may preclude participation in the PCLP. SBA will use information from onsite compliance reviews, operational reviews and other program management and oversight activities, including the review of 504 loan applications to SBA, to make the determination regarding eligibility for PCLP status.

Congress, SBA and the CDC industry recognize that the success of the PCLP is highly dependent on the extent to which PCLP CDCs are familiar with SBA's credit and eligibility standards and its loan processing, closing, servicing and liquidation policies and procedures. These policies and procedures are highly complex and require processing a substantial volume of 504 Loans over an extended period of time to remain proficient. Also, SBA needs access to a significant number of a CDC's loans to evaluate its proficiency. SBA notes that the ALP requires that its participants must have processed at least 20 504 Loans in the most recent three years (*see* proposed § 120.841(b)). When considering the minimum 504 Loan volume requirement for participation in the PCLP, SBA considered the concern of smaller and rural CDCs that a high minimum 504 Loan volume requirement could exclude them from being a PCLP CDC. SBA discussed those concerns with the CDC industry and concluded that proficiency in 504 Loan policies and procedures can only be developed and maintained from regularly processing a significant

number of 504 Loans. In addition, one of the main purposes of the PCLP was to improve the efficiency and expedite the loan processing of higher volume CDCs, which were being disproportionately impacted by the longer turn-around time in SBA's district offices. Also, for low volume CDCs, any potential efficiency benefits from participating in the PCLP would more than likely be offset by the cost and effort required to develop and maintain the high level of 504 Loan proficiency required in a staff that rarely processes an SBA 504 Loan. (About half of all CDCs process less than six 504 Loan applications per year.) After considering these issues, SBA proposes to require that ALP and PCLP applicants must have received approval for at least twenty 504 Loans in the most recent three years and have a portfolio of at least 30 active 504 Loans. (SBA proposes to define an "active" 504 Loan as a loan that was approved and closed by the CDC and has a status of either current, delinquent, or in liquidation.)

To assist in determining the proficiency of a PCLP applicant to effectively process and administer 504 Loans, SBA proposes that SBA conducted oversight reviews of a PCLP applicant must have found the applicant to be at least generally in compliance with SBA's regulations, policies and procedures. In addition, SBA will need to assess the applicant's current proficiency, so these reviews must be relatively recent (within the past 12 months). While SBA has policy and procedural guidance in place generally requiring annual SBA oversight review, CDCs may occasionally request a postponement of those reviews. Applicants to the PCLP must recognize the need for current SBA review data and coordinate with their Lead SBA Office to ensure that the CDC is available and prepared for any required oversight reviews.

SBA has developed comprehensive management information systems to timely track and analyze the performance of a CDC's 504 Loan portfolio. As a result of an extensive examination and analysis of these performance data, SBA has determined that portfolio currency, delinquency, default, liquidation and loss rates are important measures of the quality of a CDC's portfolio and the effectiveness and diligence of its loan analysis, closing and servicing. Therefore, SBA has established benchmarks for each of these measures, which the large majority of CDCs regularly achieve. SBA proposes that PCLP applicants must meet SBA's established portfolio benchmarks.

SBA and the CDC industry recognize that the training and experience of the PCLP applicant's staff are critical determinants of the quality and effectiveness of its 504 Loan program administration as well as its diligence in applying SBA's 504 Loan credit and eligibility standards. As a result, the CDC industry has developed appropriate credit, packaging, loan closing and loan servicing training programs, which the staff of many CDCs attend. As a result, SBA proposes that the principal staff of PCLP applicants possess adequate 504 Loan training and experience.

Under the PCLP, SBA delegates authority and a certain level of autonomy to PCLP CDCs to process, close and service 504 Loans with only limited prior SBA review. As a result, SBA proposes that applicants to the PCLP must demonstrate a particularly thorough understanding of and an applied diligence to SBA's 504 Loan credit and eligibility standards and its 504 Loan processing, closing and servicing policies and procedures. A failure to consistently apply appropriate credit analyses and standards and loan processing, closing and servicing policies or procedures exposes SBA and the taxpayer to excessive risk of loss and negatively impacts the availability of SBA financing to the small business community. A CDC's failure to adequately apply SBA's 504 Loan eligibility standards could result in 504 Loan approvals to small businesses that are expressly prohibited by statute or regulation from receiving SBA loans.

Section 508(b)(2)(A) requires that PCLP CDCs be in good standing with SBA. SBA interprets that requirement to mean both in good standing with the State in which the CDC is incorporated (as discussed in § 120.820), and in compliance with the 504 Program requirements imposed by statute, regulation, SOP, policy and procedural notice, loan authorization, debenture, or any agreement between SBA and the CDC. Under the PCLP, due to the higher level of authority delegated to the PCLP CDCs and the potential risk to the Agency, SBA expects a significantly higher level of compliance with both of these requirements by PCLP CDCs, with only very rare deviation. SBA sees a similar distinction between non-PCLP CDCs generally meeting SBA's five established portfolio benchmarks versus virtually absolute compliance by PCLP CDCs with those benchmarks.

The Lead SBA Office would consider the CDC's initial application to the PCLP, and will forward the application package, including a recommendation regarding the applicant's qualifications,

to SBA's PCLP Processing Center, which then will forward the package with its recommendation to the AA/FA for final action. PCLP applicants are expected to coordinate with their Lead SBA Office early in their consideration of the PCLP to realistically assess its requirements and their prospects for admission. When officially applying for the PCLP, an applicant will need to provide certain essential information and documentation to assist SBA in ascertaining its qualifications, including a resolution from its Boards of Directors; resumes on key staff for 504 Loan processing, servicing, liquidation, and litigation; documentation of any required insurance; and information about the qualifications of its closing attorney. While SBA will generally confer PCLP status for a period of two years, under some conditions (such as borderline performance benchmarks, certain compliance review deficiencies, etc.) SBA may determine that a lesser period is appropriate.

Section 120.846, requirements for maintaining and renewing PCLP status, would be added. Pursuant to section 508(b)(3) of the Act, in order to retain its PCLP status, a PCLP CDC must continue to meet the eligibility requirements of the PCLP, as proposed in § 120.845. While level of activity is one of those criteria, section 508(i) of the Act requires that PCLP CDCs establish a goal of processing a minimum of 50 percent of their 504 Loan applications using PCLP procedures. SBA considered establishing a requirement that PCLP CDCs process at least 30 percent of their 504 Loans using PCLP procedures immediately after becoming a PCLP CDC and gradually increasing that requirement as the PCLP CDCs matures. However, following discussions with the CDC industry, SBA determined that immediately establishing such an absolute minimum could discourage participation in what is a developing program with a variety of relatively new concepts and procedures. Nevertheless, SBA recognizes that the legislation authorizing PCLP mandates that PCLP CDCs be active CDC lenders and establish a goal of processing a minimum of 50 percent of their 504 Loans using PCLP procedures. As a result, while SBA still expects PCLP CDCs to process a substantial proportion of their 504 Loans using PCLP procedures and strive to reach their 50 percent goal as mandated by statute, SBA will not immediately require an absolute minimum. Thus, as the PCLP matures, SBA intends to publish procedural guidance gradually

incorporating and increasing the minimum number and percent of 504 Loans that PCLP CDCs must process using PCLP procedures.

Due to the delegation of authority under the PCLP, and the associated risk of loss, SBA expects PCLP CDCs to develop, implement and actively monitor effective internal control systems and processes that will ensure continued conformance with the requirements of the PCLP. These systems should provide PCLP CDCs with early information on their performance. SBA also has developed management control systems to monitor individual PCLP CDCs, specifically the portfolio benchmark data and the management oversight reviews, and SBA provides this information to PCLP CDCs. With these internal and external control systems, SBA expects PCLP CDCs to constantly monitor their performance as a CDC and as a PCLP CDC and to be in a position to take appropriate and timely corrective action when necessary. Due to the risk inherent in the delegation of authority under the PCLP, SBA will move to timely suspend, terminate or decline to renew the PCLP status of PCLP CDCs that do not comply with the requirements of the PCLP. Significant problems with respect to liquidation and litigation activities by either a PCLP CDC or its contractor may, at SBA's option, also lead to suspension, termination, or the non-renewal of PCLP status. In egregious cases of a PCLP CDC's failure to comply with PCLP requirements, SBA also can issue an immediate suspension, under the proposed rule. In recommending a suspension or termination from the PCLP, SBA proposes to provide timely written notice to the PCLP CDC of its intention and the basis for the recommendation. The proposed regulations also delineate a PCLP CDC's appeal rights and reapplication time frames.

Section 120.847, requirements for the loan loss reserve fund, would be added. To mitigate some of the potential risk of delegating additional authority to PCLP CDCs, pursuant to section 508(c)(1) of the Act, PCLP CDCs must establish and make deposits to a Loan Loss Reserve Fund ("LLRF"). The LLRF is a restricted account established for the purpose of accumulating deposits and limiting withdrawals to those SBA specifically authorizes. The PCLP CDC may use the deposits to reimburse SBA for 10 percent of any loss sustained by SBA as a result of a default in the payment of principal or interest on a debenture issued by the PCLP CDC using PCLP procedures ("PCLP debenture").

Pursuant to section 508(c)(3) of the Act, the LLRF must be composed of: (1) Segregated deposit accounts at one or more federally insured depository institutions subject to a collateral assignment to SBA; (2) irrevocable letters of credit in favor of SBA; or (3) some combination of the above. Due to the characteristics and cost of letters of credit, and in consultation with the CDC industry, SBA has determined that letters of credit do not currently represent a feasible option for PCLP CDCs. Consequently, SBA is not addressing letters of credit in this proposed rule. However, SBA will continue to explore this option with the CDC industry, and will promulgate regulations addressing letters of credit to the extent this becomes a feasible option.

Pursuant to section 508(b)(2)(c) of the Act, PCLP CDCs must reimburse SBA for 10 percent of any loss SBA incurs in connection with a default on a PCLP debenture and the regulation proposes what is to be included in SBA's loss. The statute and proposed rule also require that the LLRF maintain a deposit equal to one percent of the original principal amount of each PCLP debenture.

The LLRF must be a deposit account with a federally insured depository institution selected by the PCLP CDC. Following discussions with the CDC industry, SBA is aware that alternative accounts and financial instruments may offer greater returns on the LLRF. However, the Act restricts LLRFs to federally insured depository institutions and that language as well as other applicable law greatly limit the investment alternatives. This proposed regulation elaborates on what constitutes a deposit account acceptable to SBA. Also, to simplify the administration of the LLRF, this proposed regulation would allow PCLP CDCs to pool loss reserves in a single segregated account. SBA generally does not anticipate that PCLP CDCs will incur significant fees in connection with their LLRFs, although PCLP CDCs will need to be mindful of breakage fees, should they place funds into certificates of deposit ("CDs"). This proposed regulation goes on to make clear that the PCLP CDC will be responsible for any fees, costs and expenses incurred in connection with the LLRF.

Pursuant to section 508(c)(3) of the Act, any LLRF established by a PCLP CDC must be subject to a collateral assignment in favor of, and in a format acceptable to, SBA. Accordingly, a PCLP CDC must give SBA a first priority perfected security interest in each LLRF. The PCLP CDC must grant the security

interest pursuant to a security agreement between the PCLP CDC and SBA, and the security interest must be subject to a control agreement between SBA, the PCLP CDC, and the applicable depository institution. The control agreement will include provisions requiring a depository institution to follow instructions from SBA regarding withdrawals without further consent from the PCLP CDC. The laws governing security interests in deposit accounts are complex, vary by jurisdiction and are undergoing change. Therefore, when establishing a LLRF, a PCLP CDC must coordinate with the Lead SBA Office to develop, execute and deliver the required documentation. SBA field counsel will have a model control agreement, which they may need to modify to meet local legal requirements. This proposed rule provides that the CDC must provide to the Lead SBA office a fully executed original copy of the security and control agreements which the Lead SBA Office will retain in its files. All associated documents must meet SBA requirements and occasional changes may be necessary. If a depository institution will not enter into or modify a control agreement or violates the terms of any such agreement, the PCLP CDC cannot maintain a LLRF with that institution.

Pursuant to section 508(c)(4) of the Act, PCLP CDCs are allowed to make required deposits to the LLRF associated with each loan in as many as three deposits, but specifies the minimum amount and timing of those deposits. This proposed rule sets forth the amount and timing of those deposits.

Due to its management control and oversight responsibilities, SBA must ensure that LLRFs (1) are properly established, (2) contain the required reserve amounts and (3) are appropriately administered and controlled. Periodic reporting by PCLP CDCs to SBA on the amount of funds maintained in LLRFs is critical to ensuring that LLRFs are properly established and maintained. However, while LLRFs must contain deposits equal to one percent of each PCLP debenture, the deposits associated with each PCLP debenture may be made in as many as three installments. Also, during the normal course of a PCLP CDC's operations, LLRFs will be subject to a variety of other deposits and withdrawals (e.g., withdrawals associated with loans paid in full and defaults). As a result, reporting and reconciling LLRFs might become quite complex. SBA is concerned with the potential burden such reporting could represent to PCLP CDCs. SBA continues to work with the CDC industry to

develop and test efficient and effective reporting procedures, and will publish appropriate procedural guidance as those procedures are finalized.

SBA proposes to allow PCLP CDCs to withdraw any funds from the LLRFs that exceed required minimums, at SBA's discretion. The proposed § 120.847(g) provides that requests for withdrawals must be forwarded to the Lead SBA Office, which will check the balances to ensure the required minimums are maintained and authorize withdrawals as appropriate.

Proposed § 120.847(h) would provide that when a PCLP CDC has submitted a liquidation wrap-up report to SBA, or SBA otherwise has determined that all reasonable collection efforts have been exhausted, the Lead SBA Office will calculate the SBA's loss and notify the PCLP CDC of the amount of any reimbursement obligation and provide appropriate supporting documentation. The proposed rule sets forth procedures so that PCLP CDCs may appeal any problems or disagreements regarding the calculation of SBA's loss.

Proposed § 120.847(i) would require PCLP CDCs to reimburse SBA for 10 percent of any loss and states that the reimbursement may come from the LLRF or from other funds provided by the PCLP CDC. There could also be instances where a PCLP CDC would not have sufficient funds in its LLRF to reimburse SBA for 10 percent of SBA's loss, and the regulation proposes to provide the PCLP CDC a reasonable period of time after SBA demand to reimburse the Agency.

Pursuant to section 508(c)(5), the proposed regulations would also require that should a PCLP CDC's LLRF drop below the required minimum, the PCLP CDC must replenish the LLRF within 30 days of the time that it realizes this deficiency or of a notice from SBA that the LLRF is deficient. Thus, if a depository institution offsets from any LLRFs maintained with the institution any amounts owing by the PCLP CDC to it, the PCLP CDC must replenish the LLRF to the full amount then required within 30 days.

Section 120.848, requirements of PCLP loan processing, closing, servicing, liquidating and litigating, would be added. SBA believes that the PCLP can be most prudently implemented and expanded if SBA focuses, at least initially, on expediting the processing of routine CDC loan applications under the PCLP and handling complex or problematic eligibility issues using standard 504 Loan procedures. However, SBA will continue to study and analyze this issue

and develop further guidance as the PCLP progresses.

Pursuant to § 508(e) of the Act, PCLP CDCs are permitted to approve, authorize, and close 504 Loans, subject to standards established by SBA. Proposed § 120.848 provides additional guidance and notes that all 504 Program requirements apply to 504 Loans processed by PCLP CDCs. PCLP CDCs are specifically authorized to determine a 504 Loan applicant's credit-worthiness and are permitted to establish the terms and conditions under which the loan will be made. The PCLP CDC also will be authorized to take other processing actions as may be delegated by SBA to PCLP CDCs. However, because SBA's management control and oversight responsibilities require a systematic review of a PCLP CDC's 504 loan processing proficiency, SBA must periodically review the processing actions of PCLP CDCs to ensure the PCLP CDC is using appropriate and reasonable procedures. PCLP CDCs are thus expected to retain in their loan files copies of all documents associated with their processing actions. SBA may occasionally review these documents on site or request that they be forwarded to SBA for review. If SBA identifies significant problems or deviations from SBA's 504 Program requirements, SBA will take appropriate corrective action, including possible removal from the PCLP.

The proposed rule also would require the authorized PCLP CDC official to sign all required documents and forward them to SBA's designated loan processing center for assignment of a loan number, subject to the availability of funds.

The PCLP CDC then would be expected to take appropriate action to close the loan and to prepare the closing documents for the corresponding debenture its closing counsel must issue an opinion stating the legal sufficiency of all closing documents, that all documentation has been obtained to comply with the loan terms and conditions established by the PCLP CDC and that the loan closing complies with all legal requirements and all 504 Program requirements for the PCLP. These actions are complex and will require the opinion of a qualified loan closing counsel. SBA counsel will close the PCLP debenture.

Pursuant to section 508(e) of the Act, SBA may delegate to PCLP CDCs responsibility for servicing 504 Loans, subject to terms and conditions as established by SBA. To enhance the efficiency of the PCLP, SBA intends to delegate most routine servicing actions to PCLP CDCs. However, SBA retains

management oversight responsibility for the effectiveness of the PCLP. Therefore, SBA will continue to monitor the quality and effectiveness of PCLP CDC servicing activities through onsite reviews and other evaluation activities. As a result, should significant problems develop, or when it substantially benefits SBA or the PCLP CDC, SBA may elect to handle some or all servicing actions associated with a particular 504 Loan or a particular PCLP CDC portfolio. However, SBA anticipates such actions to be rare and unusual. In delegating servicing authority to PCLP CDCs, SBA proposes that PCLP CDCs must use prudent and commercially reasonable standards and practices, as well as comply with all 504 Program requirements.

SBA is proposing to delete §§ 120.850–120.852, concerning ADCs, and to eliminate the ADC designation. First, SBA is seeking to eliminate redundancy in the regulations. One aspect of the ADC program was that it established requirements for organizations to qualify to contract with CDCs for 504-related services. However, § 120.824 permits CDCs to contract for 504-related services and governs such contracts. Second, these regulations established one of the grounds (not meeting the minimum required level of 504 Loan approval activity) for removing a CDC from the 504 Program. In the proposed rule, all grounds for taking enforcement action against a CDC would be combined under one regulation, § 120.854.

Section 120.855, CDC ethical requirements, would be redesignated as § 120.851, and reworded to clarify its meaning and to remove the reference to ADCs (see § 120.850 discussion).

Proposed new § 120.852 would prohibit a CDC from investing in or being affiliated with a 7(a) lender or an SBIC, which SBA believes will help to avoid apparent conflicts of interest and serve the economic development mission of the CDC. The proposed rule would not require a CDC with an existing investment in an SBIC to liquidate such investment. As part of the ANPRM, SBA asked the question whether SBA should permit a CDC to establish a 7(a) lender or permit a 7(a) lender to establish a CDC. The overwhelming response was that two programs should remain separate.

Proposed new § 120.853 is identical to existing § 120.973 except that it would eliminate references to ADCs.

Proposed new § 120.854, grounds for taking enforcement action against a CDC, § 120.855, types of enforcement actions, and § 120.856, enforcement procedures, would consolidate existing

§ 120.852 and §§ 120.982–120.984 and would clarify the grounds required for SBA enforcement actions against CDCs as well as SBA's and CDCs' rights and responsibilities in such actions. Section 120.981, voluntary transfer and surrender of CDC certification, would be redesignated as § 120.857 to move it under the new heading.

Section 120.861, job creation or retention, is revised (see discussion of proposed revisions to § 120.829 for a description of the changes to the job requirement criteria). The change in the criteria will be published in a **Federal Register** notice from time to time.

Section 120.862, other economic development objective, includes two technical changes. The first is the Agency-wide replacement of "SIC" codes with "NAICS" codes when identifying the types of small businesses eligible to receive SBA assistance. The second is to correct the cross-reference to the regulation that describes a minority for purposes of the public policy goal of assisting minority-owned businesses. The proposed changes also reflect the statutory changes to section 501(d) of the Act, which added women-owned and veteran-owned businesses to the public policy goals.

Section 120.870, leasing project property, would eliminate references to 504 project property being leased by the CDC to the borrower.

Section 120.880, basic eligibility requirements, proposes simplifying changes by replacing the actual size standards with a cross-reference to the size standard regulation. As the size standard regulations change, so will this regulation without requiring it to be rewritten.

Section 120.882, eligible project costs for 504 loans, proposes clarifying eligible costs that may be included in 504 project costs.

Section 120.883, eligible administrative costs for 504 loans, proposes changes clarifying eligible administrative costs that may be paid from the proceeds of the 504 Loan and debenture.

Section 120.892 would be revised to require a 504 loan borrower to provide to the CDC current financial statements within 120 days of 504 loan closing, instead of within 90 days.

SBA proposes to change the headings of §§ 120.900 and 120.910 to make their form consistent with the other section headings in subpart H.

Section 120.911, land contributions, proposes to make a technical correction to the regulation by deleting the reference to CDCs. CDCs do not contribute land for a 504 loan.

Section 120.913, limitations on any SBIC contributions, proposes changes to clarify the heading, and to add a cross-reference and clarify the section.

Section 120.923, policies on subordination, proposes changing the section heading and consolidating existing §§ 120.923 and 120.924.

Section 120.925, preferences, proposes adding a cross-reference to another SBA regulation governing preferences.

Section 120.926, referral fee, proposes modifying the language by adding "reasonable" in describing the referral fee that a CDC may charge a third party lender. The proposed changes also emphasize that neither the lender nor the CDC can charge this fee to the borrower.

Section 120.930, amount, proposes eliminating the requirement that SBA must approve 504 loans between \$25,000 and \$50,000 on an exception basis. SBA does not believe that it ever has declined such a request.

Section 120.931, 504 lending limits, proposes increasing the dollar amounts to reflect the changes to section 502(2) of the Act that became effective December 21, 2000.

Section 120.933, maturity, proposes creating flexibility in debenture maturities. This will permit SBA to consider other maturities besides 10 and 20 years at some future date.

Section 120.934, collateral, proposes clarifying the paragraph by rearranging and re-wording the sentences.

Section 120.935, deposit, proposes changing the heading.

SBA proposes to delete section 120.936, subordination to CDC. SBA believes that this regulation is a holdover from the former 501 and 502 programs. SBA knows of no instance when a CDC has requested a subordination on its 504 Loans.

Section 120.960, responsibility for closing, proposes clarifying language that describes the circumstances under which SBA can decline to close a debenture or cancel its guarantee of the debenture prior to sale.

Section 120.970, servicing of 504 loans and debentures, proposes clarifying language regarding a CDC's responsibility in servicing a 504 loan.

Section 120.971, allowable fees paid by borrower, proposes clarifying language regarding the loan closing fees that a CDC may charge.

Section 120.972, third party lender participation fee and CDC fee, proposes revising the heading, deleting the language "from the Third Party Lender" from paragraph (a), and slightly clarifying paragraph (b). SBA accepts the third party lender participation fee

from the third party lender, the 504 borrower, or the CDC.

SBA proposes to remove §§ 120.980–120.984.

### Specific Comments Requested

SBA is considering reordering the entire subpart H, and SBA invites comments specifically responding to this proposal. SBA is considering whether renumbering the regulations within subpart H would better highlight the purposes of the 504 Program and the requirements pertaining to 504 Loans. SBA is considering reordering the sections into the following topic areas in the following new order:

Purpose  
How a 504 project is financed  
Definitions  
Project economic development goals  
Loan-making policies specific to 504 loans  
Leasing policies specific to 504 loans  
Interim financing  
Permanent financing  
Borrower's contribution  
Third party loans 504 loans and debentures  
Fees  
504 loan and debenture closings  
Servicing  
Debenture sales and service agents  
CDC requirements  
Accredited lenders program (ALP)  
Premier certified lenders program (PCLP)  
Other CDC requirements  
SBA oversight of CDCs  
CDC transfer, suspension, and revocation  
Enforceability of 501, 502, and 503 loan and other laws

SBA would be interested in comments concerning whether renumbering the sections using this scheme would enhance the organization of the Subpart enough to outweigh any confusion it might create in the CDC industry and among borrowers, borrower counsel, and CDC counsel. SBA also would be interested in any other re-ordering proposals commenters may have.

SBA also generally invites comment on all aspects of this proposed rule, including the underlying policies. SBA may rely on its own expertise in promulgating the final rule. Submitted comments will be available to any person or entity upon request.

### Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

*Executive Order 13132:* For the purposes of Executive Order 13132, SBA determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

*Executive Order 12866:* The Office of Management and Budget (OMB) has

determined that this proposed rule constitutes a significant regulatory action under Executive Order 12866. SBA believes there is a need for this regulatory action for the reasons stated in the preamble to this proposed rule. SBA believes the proposed regulatory changes will improve 504 Program delivery to small business customers by increasing customer choice of service; increase third party lender choice of CDCs; facilitate the formation of new CDCs; facilitate the expansion of existing CDCs; and increase the number of CDCs able to take advantage of special initiatives for rural areas. By allowing market-driven forces to determine availability of 504 Program service, small business will have greater opportunity to negotiate the best total financing package, including fees, as well as receive increased service by CDCs. In addition, the 504 Program will be more responsive to changes in market conditions. SBA believes that there are no viable alternatives to these changes that would produce similar positive results without imposing an additional burden on SBA or the public. However, SBA requests comment from members of the public who believe there are viable alternatives that would achieve the same objectives with no greater burden.

In FY2002, OMB developed the Program Assessment Rating Tool (PART) to establish a systematic, consistent process for rating the performance of programs across the federal government. The 504 Program was evaluated under the PART criteria in FY2002. The PART review revealed that SBA needs to increase the availability of CDCs within the 504 Program to improve customer access to loans. Additionally, increasing the availability of CDCs will enable borrowers to determine which of SBA's loan programs best meet their needs. SBA expects that this proposed rule will address this recommendation of OMB.

SBA does not have sufficient data to establish a baseline in order to measure the costs and benefits of this proposed rule on the affected public. However, SBA has data on the cost to SBA of the 504 Program. In FY2002, the cost of the 504 Program to SBA was approximately \$15 million. The majority of the cost of the Program, 82% or \$12.6 million, was for the cost of the field office staff support that reviewed and approved loan applications and conducted marketing and outreach to generate new loans. The cost of the 504 Program to SBA also includes the cost of reviewing and analyzing CDC requests to expand their areas of operations by SBA's field office and Headquarters staff. SBA

would expect this cost to decline substantially as a result of this proposed rule because it permits all CDCs to operate at least throughout their State of incorporation. Other data on the program can be found at [www.sba.gov](http://www.sba.gov). SBA requests data from the public that would enable SBA to determine existing regulatory costs of the program to the public and changed costs and benefits as a result of the proposed rule.

*Regulatory Flexibility Act:* This proposed rule directly affects all CDCs, of which there are approximately 270. SBA has determined that CDCs fall under the size standard for NAICS 522298, All Other Nondepository Credit Intermediation. The size standard is \$6 million in average annual receipts. SBA estimates that at least 95 percent of the CDCs do not exceed this size standard and are therefore considered small entities by this definition. Thus, SBA has determined that this proposed rule will have an impact on a substantial number of small entities. However, SBA has determined that such impact will not be significant.

The effect of the proposed rule will be to "level the playing field" by allowing CDCs more flexibility to choose the optimal area of operations within their State of incorporation. Currently, each CDC has a specific area of operations that is approved by SBA. The typical area of operations is several counties within the CDC's State of incorporation. If a CDC wishes to apply to expand into neighboring counties, it can only do so if those counties are available.

Currently, a county is available to a new CDC or a CDC requesting to expand its area of operations if the CDC(s) that include that county in its area of operations is not meeting a threshold of one 504 approval per year per 100,000 population averaged over two years. If the existing CDC is meeting this threshold of activity, both an applicant wishing to become a CDC and a CDC wishing to expand its area of operations is barred from including that county in their request. The proposed rule levels the playing field by eliminating this threshold and by permitting all CDCs to operate anywhere in their State of incorporation. SBA believes that some CDCs will choose to continue to operate in those counties they presently operate in while others will choose to expand their market area into neighboring counties or throughout the State. It has been SBA's experience with CDCs that are permitted to compete with other CDCs in the same market area, that the market of eligible 504 Loan projects itself expands, resulting in a benefit for the affected CDCs as well as a benefit to small business borrowers.

This proposed rule will also permit new CDCs the opportunity to market in areas that may produce more 504 loans sooner. This in turn will permit the new CDC to reach a breakeven point sooner in its operations and continue to meet the required 504 activity of two 504 approvals per year. Currently it is estimated that it takes a CDC at least two years at a cost of \$200,000 or more to reach the 504 activity level where the 504 fee income covers the CDC's expenses. SBA believes that smaller, rural CDCs will derive a similar benefit by having a greater opportunity to meet the required 504 loan activity level. Since 1993, SBA has had to revoke certifications from more than 100 CDCs and transfer their 504 loan portfolios and fees to other, active CDCs due to their failure to meet the required 504 activity level of two 504 loan approvals per year averaged over two years. Most of these CDCs have been located in rural areas where there are a limited number of potential 504 Loan projects. This proposed rule will enable those small, rural CDCs the opportunity to expand their market area by doing projects in more populous areas, resulting in their more easily meeting the 504 loan activity level. At the same time those CDCs that currently have exclusive areas that include populous urban areas resulting in substantial 504 loan activity may seek to expand their market areas into the less lucrative rural areas. The expected result is that future 504 borrowers will benefit from an increase in choice among CDCs.

In addition, SBA expects the impact of the proposed rule will be a reduction in the overall paperwork burden for CDCs since CDCs will no longer have to apply to SBA to expand their area of operations within their State of incorporation. SBA received and approved approximately 11 expansion requests during 2002. All were for CDCs requesting expansions into neighboring counties within the CDC's State of incorporation. The burden hours for a new CDC or a CDC wishing to expand to complete an application is estimated to be 10 hours. None of the applications for an expansion would have been necessary under the proposed rule. In addition, applicants requesting to become CDCs also will be permitted to establish their optimal area of operations within their State of incorporation without being excluded from areas that currently have one or more CDCs. SBA receives one or two applications to become a CDC per year. The burden hours for an application will be reduced by approximately one hour due to the changes in the general

membership requirements that will allow an applicant more flexibility in meeting this requirement. SBA asserts that the economic impact of the reduction in paperwork, if any, will be minimal to small entities.

Finally, it has been SBA's experience that the more CDCs that market the 504 program in a particular area, the higher the 504 Loan volume in that area. SBA believes that this is due to the additional marketing initiatives by the CDCs which creates an increased awareness of the 504 Program among the local lending community and improves their willingness to participate because they have a choice. SBA also believes having multiple CDCs in the area improves the service provided by the CDCs, which also makes the 504 Program more useful to the commercial banking community. As more and more bankers successfully use the program, they discuss it and provide information about it to other bankers which increases the impact of the marketing efforts of the CDCs. A similar phenomenon occurred in the banking industry. Over the years, bankers participating in SBA's 7(a) program have always been willing to come to bankers' meetings to describe their activity with other bankers. They do this because they recognize that as more people are aware of the program, the size of the market will increase. They may not have as high a percentage of the market but will have a smaller percentage of a bigger market resulting in more overall loan activity for the lender.

Accordingly, SBA hereby determines that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612. SBA invites comment from members of the public who believe there will be a significant economic impact on a substantial number of small entities.

*Paperwork Reduction Act:* SBA has determined that this proposed rule imposes additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35. This collection of information relates to two different reporting requirements: (1) The PCLP application and (2) the PCLP Loan Loss Reserve Fund reporting requirements. We include below an estimate of the time necessary to review the instructions, search data, fill in the forms, and gather, maintain and report the required data.

SBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper

performance of SBA's functions, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Please send comments by the closing date for comment for this proposed rule to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503 and to LeAnn Oliver, Deputy Associate Administrator for Financial Assistance, Office of Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

#### A. Application

*Title:* CDC Checklist for Submitting PCLP Guarantee Requests (Part A); Supplemental Information for PCLP Processing (Part B); Eligibility Information Required for PCLP Submissions (Part C); How to Apply for a PCLP Number from SBA (instructions); and Instructions for "Supplemental Information for PCLP Processing" (No SBA form no. yet) (An application for OMB clearance is being submitted under separate cover.)

*Summary:* The PCLP application form is designed for PCLP CDCs. Under PCLP, the CDC is delegated the authority to (1) determine whether the proposed borrower poses an acceptable credit risk and (2) limiting SBA's determination of eligibility to a checklist filled in by the CDC. The other forms that make a complete PCLP application package are data collection forms to enable SBA to enter descriptive information about the borrower into SBA's database, and two pages of "Application for Section 504 Loan," SBA Form 1244 (OMB Approval No. 3245-0071) that include information about the borrower as well as the signature page regarding CDC Agreements and Certifications.

*Need and Purpose:* Under standard SBA 504 Loan processing, SBA extensively analyzes the financing proposal and supporting documentation such as personal and business financial statements, cash flow projections and documentation to support an eligibility determination. These activities are designed to control and limit the risk associated with the 504 Program and

SBA's guaranty, but they do require significant SBA resources. The time between submission of the 504 application to SBA and SBA making a decision to approve or deny the application can be several days to several weeks. If the loan defaults, SBA assumes 100 percent of the cost associated with the purchase of the debenture as well as costs associated with collection and liquidation activities. Under the PCLP, the CDC makes the credit decision regarding the application and submits an abbreviated eligibility checklist for SBA's review to determine eligibility. The time between submission of an application by the PCLP CDC and SBA making a decision is generally an hour or less. In exchange for this quick turn-around time by SBA, the PCLP CDC assumes 10 percent of any loss to SBA on any loan processed under the PCLP.

*Description of Respondents:* CDCs that qualify as PCLP CDCs. There are approximately 270 CDCs. Of those, 26 CDCs are PCLP CDCs. The number of PCLP CDCs has remained relatively static for several years. In FY 2002, 14 percent of the number of loans and 15 percent of the approved dollars were processed PCLP. For fiscal year 2003, year-to-date (through May 9, 2003), the percentage has dropped to 12 percent in the number of loans and 12 percent of the approved dollars.

SBA estimates the burden of this collection of information as follows: A PCLP CDC will complete these forms for each PCLP loan it processes. SBA estimates that the time needed to complete this collection is 45 minutes. SBA estimates that the cost to complete this collection will be approximately \$20 per hour due to the clerical nature of most of the completion. Total estimated aggregated burden per annum is estimated to be approximately 700 hours per annum costing an aggregated \$14,000 per year.

#### B. LTRF Compliance Information

*Title:* LTRF Compliance Information (No SBA Form Number)

*Summary:* The LTRF compliance information will document the PCLP CDC's meeting of the LTRF deposit requirements.

*Need and Purpose:* Proposed § 120.847(f) of SBA regulations states that each PCLP CDC must periodically report to SBA the amounts in its LTRF in a form that will readily facilitate reconciliation of the amounts maintained in its LTRF with the amounts required. This will require the PCLP CDC to keep track of the face amount of each PCLP debenture and then determine and record the amount

that must be contributed into its LLRF. Pursuant to the proposed regulations (§ 120.847(e)) the PCLP CDC has several deadlines related to when those contributions relating to each PCLP debenture must be made. There are three relevant deadlines for each PCLP debenture. The PCLP CDC must also keep track of its contributions to the LLRF.

*Description of Respondents:* There are approximately 270 CDCs. Of those, there are approximately 26 PCLP CDCs, or less than 10 percent of all CDCs.

SBA estimates the burden of this collection of information as follows: one hour per PCLP debenture. PCLP debenture volume will vary significantly among participants. We expect that few PCLP CDCs will issue more than 50 PCLP debentures annually. That would mean an aggregate burden of no more than 50 hours per year. SBA estimates that the added cost would be minimal, because existing PCLP CDC support staff and ordinary bank records will cover the labor costs. At an estimate of \$10 per hour, the reporting requirements would not likely exceed \$500 per year for any PCLP CDC.

*Executive Order 12988:* For purposes of Executive Order 12988, SBA determines that this proposed rule is drafted, to the extent practicable, to accord with the standards set forth in paragraph 3 of that Order.

#### List of Subjects in 13 CFR Part 120

Loan Programs—business, Reporting and recordkeeping requirements, Small business.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 120 as follows:

#### PART 120—BUSINESS LOANS

1. The authority citation for part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 636(a) and (h), 696(3) and 697(a)(2).

2. Amend § 120.10 by adding a definition of “SOP” to read as follows:

##### § 120.10 Definitions.

\* \* \* \* \*

*SOPs* are SBA Standard Operating Procedures, as issued and revised by SBA from time to time.

#### Subpart A—Policies Applying to All Business Loans

2. Revise the first sentence of the introductory text of § 120.140 to read as follows:

##### § 120.140 What ethical requirements apply to participants?

Lenders, Intermediaries, and CDCs (in this section, collectively referred to as “Participants”), must act ethically and exhibit good character. \* \* \*

#### Subpart H—Development Company Loan Program (504)

3. Revise the heading of § 120.800 to read as follows:

##### § 120.800 The purpose of the 504 program.

4. Revise the heading of § 120.801 to read as follows:

##### § 120.801 How a 504 Project is financed.

5. Amend § 120.802 by removing the definition of “Associate Development Company”; revising the definition of “Area of Operations”; adding definitions of “Designated Attorney”, “Lead SBA Office”, “Priority CDC”, and revising the first sentence of the definition of “Local Economic Area”, to read as follows:

##### § 120.802 Definitions.

\* \* \* \* \*

*Area of Operations* is the geographic area where SBA has approved a CDC’s request to provide 504 program services to small businesses on a permanent basis. The minimum Area of Operations is the State in which the CDC is incorporated.

\* \* \* \* \*

*Designated Attorney* is the CDC closing attorney that SBA has approved to close loans under an expedited closing process for a Priority CDC.

\* \* \* \* \*

*Lead SBA Office* is the SBA District Office designated by SBA as the primary liaison between SBA and a CDC and with responsibility for managing SBA’s relationship with that CDC.

\* \* \* \* \*

*Local Economic Area* is an area, as determined by SBA, that is in a State other than the State in which an existing CDC (or an applicant applying to become a CDC) is incorporated, is contiguous to the CDC’s existing Area of Operations (or the applicant’s proposed Area of Operations) of its State of incorporation, and is a part of a local trade area that is contiguous to the CDC’s Area of Operations (or applicant’s proposed Area of Operations) of its State of incorporation. \* \* \*

*Priority CDC* is a CDC certified to participate on a permanent basis in the 504 program (see § 120.812) that SBA has approved to participate in an expedited 504 loan and Debenture closing process.

\* \* \* \* \*

6. Revise § 120.810 to read as follows:

##### § 120.810 Applications for certification as a CDC.

(a) An applicant for certification as a CDC must apply to the SBA District Office serving the jurisdiction in which the applicant has or proposes to locate its headquarters (see § 101.103 of this chapter).

(b) The applicant must apply for an Area of Operations. The applicant’s proposed Area of Operations must include the entire State in which the applicant is incorporated, and may include Local Economic Areas. An applicant may not apply to cover an area as a Multi-State CDC.

(c) The applicant must demonstrate that it satisfies the CDC certification and operational requirements in §§ 120.820, and § 120.822 through 120.824. The applicant also must include an operating budget, approved by the applicant’s Board of Directors, which demonstrates the required financial ability (as described in § 120.825), and a plan to meet CDC operational requirements (without specializing in a particular industry) in § 120.821, and §§ 120.826 through 120.830.

(d) The District Office will forward the application and its recommendation to the AA/FA, who will make the final decision. SBA will notify the CDC in writing of its decision, and, if the petition is declined, the reasons for the decision. The procedures of §§ 120.855 through 120.857 do not apply to the denial of an application.

##### § 120.811 [Removed]

7. Remove § 120.811.

8. Revise § 120.812 to read as follows:

##### § 120.812 Probationary period for newly certified CDCs.

(a) Newly certified CDCs will be on probation for a period of two years from the date of certification, at the end of which the CDC must petition the Lead SBA Office for:

(1) Permanent CDC status; or

(2) A single, one-year extension of probation.

(b) SBA will consider the failure to file a petition before the end of the probationary period as a withdrawal from the 504 program. If the CDC elects withdrawal, SBA will direct the CDC to transfer all funded and/or approved loans to another CDC, SBA, or another servicer approved by SBA.

(c) The Lead SBA Office will send the petition and its recommendation to the AA/FA, who will make the final decision. SBA will determine permanent CDC status or an extension of probation, in part, based upon the

CDC's compliance with the certification and operational requirements in §§ 120.820 through 120.830.

(d) SBA will notify the CDC in writing of its decision, and, if the petition is declined, the reasons for the decision. The procedures of §§ 120.855 through 120.857 do not apply to a denial of a petition for permanent CDC status.

9. Revise § 120.820 to read as follows:

**§ 120.820 CDC non-profit status and good standing.**

A CDC must be a non-profit corporation, except that for-profit CDCs certified by SBA prior to January 1, 1987 may retain their certifications. An SBIC may not become a CDC. A CDC must be in good standing based upon the following criteria:

(a) In good standing in the State in which the CDC is incorporated and any other State in which the CDC conducts business.

(b) In compliance with all laws, including taxation requirements, in the State in which the CDC is incorporated and any other State in which the CDC conducts business.

10. Revise § 120.821 to read as follows:

**§ 120.821 CDC Area of Operations.**

A CDC must operate only within its designated Area of Operations approved by SBA except as provided in § 120.839.

11. Revise § 120.822 to read as follows:

**§ 120.822 CDC membership.**

(a) *CDC Membership.* A CDC must have at least 25 members (or stockholders for for-profit CDCs approved prior to January 1, 1987). The CDC membership must meet annually. No person or entity can own or control more than 10 percent of the CDC's voting membership (or stock). No employee or staff of the CDC can qualify as a member of the CDC for the purpose of meeting the membership requirements. The CDC membership must include representatives from all the groups listed in paragraph (b) of this section.

(b) *Membership groups.* Members must be responsible for actively supporting economic development in the Area of Operations and must be from one of the following groups:

- (1) Government organizations responsible for economic development in the Area of Operations;
- (2) Financial institutions that provide commercial long term fixed asset financing in the Area of Operations;
- (3) Community organizations dedicated to economic development in the Area of Operations such as

chambers of commerce, foundations, trade associations, colleges, universities, or small business development centers (as defined in section 21(a)(1) of the Act, 15 U.S.C. 648(a)(1)); and

(4) Businesses in the Area of Operations.

(c) A CDC that is incorporated in one State and is operating as a Multi-State CDC in another State must meet the membership requirements for each State.

12. Amend § 120.824 by revising the second sentence in the introductory text and paragraph (a) to read as follows:

**§ 120.824 Professional management and staff.**

\* \* \* CDCs may obtain, under written contract, management, marketing, packaging, processing, closing, servicing or liquidation services provided by qualified individuals and entities under the following circumstances:

(a) The CDC must have at least one salaried professional employee that is employed directly (not a contractor or an Associate of a contractor) full-time to manage the CDC. The CDC manager must be hired by the CDC's board of directors and subject to termination only by the board. A CDC may petition SBA to waive the requirement of the manager being employed directly if another non-profit entity that has the economic development of the CDC's Area of Operations as one of its principal activities will contribute the management of the CDC. The management contributed by the other entity also may work on and operate that entity's economic development programs, but must be available to small businesses interested in the 504 program and to 504 loan borrowers during regular business hours.

\* \* \* \* \*  
13. Revise § 120.826 to read as follows:

**§ 120.826 Basic requirements for operating a CDC.**

A CDC must operate in accordance with all 504 program requirements imposed by statute, regulation, SOPs, SBA policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA. In its Area of Operations, a CDC must market the 504 program, package and process 504 loan applications, close and service 504 loans, and if authorized by SBA, liquidate and litigate 504 loans. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records and submit the reports required by SBA.

14. Revise § 120.827 to read as follows:

**§ 120.827 Other services a CDC may provide to small businesses.**

A CDC may provide a small business with assistance unrelated to the 504 loan program as long as the CDC does not make such assistance a condition of the CDC accepting from that small business an application for a 504 loan. An example of other services a CDC may provide is assisting a small business in applying for a 7(a) loan (as described in § 120.2). A CDC is subject to part 103 of this chapter when providing such assistance.

15. Revise § 120.828 to read as follows:

**§ 120.828 Minimum level of 504 loan activity and restrictions on portfolio concentrations.**

(a) A CDC is required to receive SBA approval of at least four 504 loan approvals during two consecutive fiscal years.

(b) A CDC's 504 loan portfolio must be diversified by business sector.

16. Amend § 120.829 by revising paragraph (a) to read as follows:

**§ 120.829 Job Opportunity average a CDC must maintain.**

(a) A CDC's portfolio must maintain a minimum average of one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a **Federal Register** notice. Such Job Opportunity average remains in effect until changed by subsequent **Federal Register** publication. A CDC is permitted two years from its certification date to meet this average.

\* \* \* \* \*

17. Revise paragraphs (a) and (b) of, and add a new paragraph (g) to, § 120.830 to read as follows:

**§ 120.830 Reports a CDC must submit.**

\* \* \* \* \*

(a) An annual report within 120 days after the end of the CDC's fiscal year (to include financial statements of the CDC and any affiliates or subsidiaries of the CDC), and such interim reports as SBA may require;

(b) For each new associate and staff, a Statement of Personal History (for use by non-bank lenders and CDCs) and other information required by SBA;

\* \* \* \* \*

(g) Other reports as required by SBA.

18. Revise § 120.835 to read as follows:

**§ 120.835 Application to expand an Area of Operations.**

(a) *General.* A CDC that has been certified to participate in the 504 program may apply to expand its Area of Operations if it meets all requirements to be an Accredited Lender Program (ALP) CDC, as set forth in § 120.840(c), and demonstrates that it can competently fulfill its 504 program responsibilities in the proposed area.

(b) *Local Economic Area Expansion.* A CDC seeking to expand its Area of Operations into a Local Economic Area must apply in writing to the Lead SBA Office.

(c) *Multi-State CDC Expansion.* A CDC seeking to become a Multi-State CDC must apply to the SBA District Office that services the area within each State where the CDC intends to locate its principal office for that State. A CDC may apply to be a Multi-State CDC only if:

(1) The State the CDC seeks to expand into is contiguous to the State of the CDC's incorporation;

(2) The CDC demonstrates that its membership meets the requirements in § 120.822 separately for its State of incorporation and for each additional State in which it seeks to operate as a Multi-State CDC; and

(3) The CDC has a loan committee meeting the requirements of § 120.823.

**§ 120.836 [Removed]**

19. Remove § 120.836.

20. Amend § 120.837 by revising paragraph (b) and adding a new paragraph (c) to read as follows:

**§ 120.837 SBA decision on application to become a Multi-State CDC.**

\* \* \* \* \*

(b) SBA will notify the CDC of its decision in writing, and if the application is denied for some, or all, of the requested states, the reasons for its decision. The procedures set forth in §§ 120.855 through 120.857 will not apply to the denial of a Multi-State application.

(c) If a CDC is approved to operate as a Multi-State CDC, the CDC's ALP, PCLP, or Priority CDC authority will carry over into every additional State in which it is approved to operate as a Multi-State CDC.

**§ 120.838 [Removed]**

21. Remove § 120.838.

22. Revise § 120.839 to read as follows:

**§ 120.839 Case-by-case application to make a 504 loan outside of a CDC's Area of Operations.**

A CDC may apply to make a 504 loan for a Project outside its Area of

Operations to the District Office serving the area in which the Project will be located. The applicant CDC must demonstrate that it can adequately fulfill its 504 program responsibilities for the 504 loan. The District Office may approve the application if:

(a) The applicant CDC has previously assisted the business to obtain a 504 loan; or

(b) The existing CDC or CDCs serving the area agree to permit the applicant CDC to make the 504 loan; or

(c) There is no CDC within the Area of Operations.

23. Revise § 120.840 to read as follows:

**§ 120.840 Accredited Lenders Program (ALP).**

(a) *General.* Under the ALP program, SBA designates qualified CDCs as ALP CDCs, gives them increased authority to process, close, and service 504 loans, and provides expedited processing of loan approval and servicing actions.

(b) *Application.* A CDC must apply for ALP status to the Lead SBA Office. The Lead SBA Office will send its recommendation and the application to the AA/FA for final decision.

(c) *Eligibility.* In order for a CDC to be eligible to receive ALP status, its application must show that it meets the criteria set forth in § 120.841.

(d) *Additional application requirements.* The CDC's application must include the following:

(1) Certified copy of the CDC's Board of Directors' resolution authorizing the application for ALP status.

(2) Summary of the experience of each of the CDC's loan processing, closing, and servicing staff members with significant authority.

(3) Name, address, and summary of experience of Designated Attorney.

(4) Documentation of any SBA required insurance.

(5) Any other documentation required by SBA.

(e) *Term of ALP designation.* SBA generally will designate a CDC as an ALP CDC for a two-year period. SBA may renew the designation for an additional two-year period if the CDC continues to meet the ALP program eligibility requirements. The procedures of §§ 120.855 through 120.857 do not apply to the non-renewal of ALP status.

(f) *SBA approval or decline decision.* SBA will notify the CDC in writing of an approval or decline of either an ALP application or of an ALP renewal. If the SBA approves the CDC's application, the ALP CDC may exercise its ALP authority in its entire Area of Operations. If an application or renewal is declined, SBA will notify the CDC of the reasons for the decision.

24. Add a new § 120.841 to read as follows:

**§ 120.841 Qualifications for the ALP.**

An applicant for ALP status must show that it meets the following criteria:

(a) *CDC staff experience.* Key staff must have at least two years of experience processing and servicing 504 loans prior to the date of the application.

(b) *Number of 504 loans approved and size of portfolio.* SBA must have approved at least 20 504 loan applications by the CDC in the most recent three years, and the CDC must have a portfolio of at least 30 active 504 loans. (An "active" 504 loan is a loan that was approved and closed by the CDC and has a status of either current, delinquent, or in liquidation.)

(c) *Current reviews in compliance.* SBA-conducted oversight reviews must be current (within past 12 months) for applicants for ALP status, and these reviews must have found the CDC to be in compliance with 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA.

(d) *Adequate performance on SBA portfolio benchmarks.* SBA's CDC portfolio benchmarks are important measures of the quality of a CDC's portfolio and the effectiveness of its loan analysis, closing and servicing. At the time of the CDC's application for ALP status the CDC's portfolio must meet SBA's established portfolio benchmarks.

(e) *Staff experience.* The CDC's principal loan officers must have three full years of 504 loan processing, closing and servicing experience or two years experience plus satisfactory completion of the CDC industry's approved credit, packaging, loan closing and loan servicing training programs.

(f) *Record of compliance with 504 program requirements.* The CDC must have a record of conforming to SBA's policies and procedures and of satisfactorily underwriting, closing and servicing 504 loans, including:

(1) Submission of satisfactory 504 loan analyses and applications, and all required, and properly completed, loan documents.

(2) Careful and thorough analysis and screening of all 504 loan applications for conformance with SBA credit and eligibility standards.

(3) Proper and diligent completion of required 504 loan closing documents and compliance with SBA 504 loan closing policies and procedures.

(4) Compliance with SBA loan servicing policies and procedures.

(5) Compliance with the certification and operational requirements as set forth in §§ 120.820–120.830.

(6) Submission of timely, complete and acceptable annual reports.

(7) Compliance with CDC ethical requirements (*see* § 120.851).

(g) *Priority CDC.* The CDC must be a Priority CDC with a Designated Attorney and SBA required insurance.

(h) *Record of Cooperation.* The CDC must have a record of effective communication and a cooperative relationship with all SBA offices including district offices and SBA's loan processing and servicing centers.

25. Revise § 120.845 and add new §§ 120.846–120.848 to read as follows:

**§ 120.845 Premier Certified Lenders Program (PCLP).**

(a) *General.* Under the PCLP, SBA designates qualified CDCs as PCLP CDCs and delegates to them increased authority to process, close, service, and liquidate 504 loans. SBA also may give PCLP CDCs increased authority to litigate 504 loans.

(b) *Application.* A CDC must apply for PCLP status to the Lead SBA Office. The Lead SBA Office will send its written recommendation and the application to SBA's PCLP Loan Processing Center, which will review these materials and forward them with a recommendation to the AA/FA for final decision.

(c) *Eligibility.* In order for a CDC to be eligible to receive PCLP status, its application must show that it meets the following criteria:

(1) The CDC must be an ALP CDC in compliance with 504 program requirements imposed by statute, regulation, SOP, policy and procedural notices, Debentures, loan authorizations, and any agreement between SBA and the CDC or meet the criteria to be an ALP CDC set forth in § 120.841(a)–(h).

(2) The CDC can adequately comply with SBA liquidation and litigation requirements.

(d) *Additional application requirements.* The application must include the following:

(1) Certified copy of the CDC's Board of Directors' resolution authorizing the application for PCLP status.

(2) Summary of the experience of each of the CDC's loan processing, closing, servicing and liquidation staff members with significant authority.

(3) Name, address and summary of experience of Designated Attorney.

(4) Documentation of any SBA required insurance.

(5) Any other documentation required by SBA.

(e) *Term of designation.* If approved, SBA generally will confer PCLP status for a period of two years. However, if SBA deems it appropriate, it may confer PCLP status for a period of less than two years.

(f) *Area of Operations for PCLP CDCs.* If the SBA approves the CDC's application, the PCLP CDC may exercise its PCLP authority in its entire Area of Operations.

(g) *SBA approval or decline decision.* SBA will notify the CDC in writing of an approval or decline of a PCLP application. If an application is declined, SBA will notify the CDC of the reasons for the decision.

**§ 120.846 Requirements for maintaining and renewing PCLP status.**

(a) To maintain its status as a PCLP CDC, a CDC must continue to:

(1) Meet the PCLP eligibility requirements in § 120.845 .

(2) Timely conform with all requirements and deadlines set forth in SBA's regulations and policy and procedural guidance concerning properly establishing, funding and reporting a PCLP Loan Loss Reserve Fund (LLRF).

(3) Substantially comply with all 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA.

(4) Remain an active CDC.

(5) In accordance with statutory requirements set forth in 508(i) of Title V, 15 U.S.C. 697e(i), establish a goal of processing at least 50 percent of its 504 loans using PCLP procedures.

(b) SBA will notify the PCLP CDC in writing of a renewal or non-renewal of PCLP status. If PCLP status is not renewed, SBA will notify the CDC of the reasons for the decision. The procedures of §§ 120.855 through 120.857 do not apply to the non-renewal of PCLP status.

**§ 120.847 Requirements for the Loan Loss Reserve Fund (LLRF).**

(a) *General.* PCLP CDCs must establish and maintain a LLRF (or multiple accounts which together constitute one LLRF) which complies with paragraphs (b) through (g) of this section. A PCLP CDC must use the LLRF to reimburse the SBA for 10 percent of any loss sustained by SBA as a result of a default in the payment of principal or interest on a Debenture it issued under the PCLP ("PCLP Debenture"). A CDC that is participating in the PCLP as of January 1, 2004, and a CDC that has participated in the PCLP in the past but which does not have PCLP status as of

that date, must establish a LLRF within 30 days of that date to cover potential losses for all 504 loans made in connection with PCLP Debentures that remain outstanding as of that date. A CDC that receives PCLP status after that date must establish and maintain a LLRF prior to closing any 504 loans processed under its PCLP status. The LLRF is the accumulation of deposits that a PCLP CDC must establish and maintain for each PCLP Debenture that it issues. PCLP CDCs must coordinate with their Lead SBA Office to ensure that the LLRF is properly established, that all necessary documentation is executed and delivered by all parties in a timely fashion, and that all required deposits are made.

(b) *PCLP CDC Exposure and LLRF deposit requirements.* A PCLP CDC's "Exposure" is defined as its reimbursement obligation to SBA with respect to default in the payment of any PCLP Debenture. The amount of a PCLP CDC's Exposure is 10 percent of any loss (including attorney's fees; litigation costs; and care of collateral, appraisal and other liquidation costs and expenses) sustained by SBA as a result of a default in the payment of principal or interest on a PCLP Debenture. For each PCLP Debenture a PCLP CDC issues, it must establish and maintain an LLRF equal to one percent of the original principal amount (the face amount) of the PCLP Debenture. The amount the PCLP CDC must maintain in the LLRF for each PCLP Debenture remains the same even as the principal balance of the PCLP Debenture is paid down over time.

(c) *Establishing a LLRF.* The LLRF must be a deposit account (or accounts) with a federally insured depository institution selected by the PCLP CDC. A "deposit account" is a demand, time, savings, or passbook account, including a certificate of deposit (CD) which is either uncertificated or, if certificated, non-transferable. A "deposit account" is not an investment account and must not contain securities or other investment properties. A deposit account may contain only cash and CDs credited to that account. A PCLP CDC may pool its deposits for multiple PCLP Debentures in a single account in one institution. The LLRF must be segregated from the PCLP CDC's other operating accounts. The PCLP CDC is responsible for all fees, costs and expenses incurred in connection with establishing, managing and maintaining the LLRF, including fees associated with transferring funds or early withdrawal of CDs, and related income tax expenses.

(d) *Creating and perfecting a security interest in a LLRF.* A PCLP CDC must

give SBA a first priority, perfected security interest in the LLRF to secure the PCLP CDC's obligation to reimburse SBA for the PCLP CDC's Exposure under all of its outstanding PCLP Debentures. (If a PCLP CDC's LLRF is comprised of multiple deposit accounts, it must give SBA this security interest with respect to each such account.) The PCLP CDC must grant to SBA the security interest in the LLRF pursuant to a security agreement between the PCLP CDC and SBA, and a control agreement between the PCLP CDC, SBA, and the applicable depository institution. The control agreement must include provisions requiring the depository institution to follow SBA instructions regarding withdrawal from the account without a requirement for obtaining further consent from the PCLP CDC, and must restrict the PCLP CDC's ability to make withdrawals from the account without SBA consent. When establishing the LLRF, a PCLP CDC must coordinate with its Lead SBA Office to execute and deliver the required documentation. The PCLP CDC must provide to the Lead SBA Office a fully executed original of the security and control agreements. All documents must be satisfactory to SBA in both form and substance.

(e) *Schedule for contributions to a LLRF.* The PCLP CDC must contribute to the LLRF the required deposits for each PCLP Debenture in accordance with the following schedule:

(1) At least 50 percent of the required deposits to the LLRF on or about the date that it issues the PCLP Debenture.

(2) At least an additional 25 percent of the required deposits to the LLRF no later than one year after it issues the PCLP Debenture.

(3) Any remainder of the required deposits to the LLRF no later than two years after it issues the PCLP Debenture.

(f) *LLRF reporting requirements.* Each PCLP CDC must periodically report to SBA the amount in the LLRF in a form that will readily facilitate reconciliation of the amount maintained in the LLRF with the amount required to meet a PCLP CDC's Exposure for its entire portfolio of PCLP Debentures.

(g) *Withdrawal of excess funds.* Interest and other funds in the LLRF that exceed the required minimums as set forth in paragraph (b) of this section, within the time frames set forth in paragraph (e) of this section, accrue to the benefit of the PCLP CDC. PCLP CDCs are authorized to withdraw excess funds, including interest, from the LLRF if such funds exceed the required minimums set forth in paragraph (b) of this section. The PCLP CDC must forward requests for withdrawals to the

Lead SBA Office, which will verify the existence and amount of excess funds and notify the financial institution to transfer the excess funds to the PCLP CDC.

(h) *Determining SBA loss.* When a PCLP CDC has concluded the liquidation of a defaulted 504 loan made with the proceeds of a PCLP Debenture and has submitted a liquidation wrap-up report to SBA, or when SBA otherwise determines that the PCLP CDC has exhausted all reasonable collection efforts with respect to that 504 loan, SBA will determine the amount of the loss to SBA. SBA will notify the PCLP CDC of the amount of its reimbursement obligation to SBA (if any) and will explain how SBA calculated the loss.

(1) If the PCLP CDC agrees with SBA's calculations of the loss, it must reimburse SBA for ten percent of the amount of that loss no later than 30 days after SBA's notification to the PCLP CDC of the CDC's reimbursement obligation.

(2) If the PCLP CDC disputes SBA's calculations, it must reimburse SBA for ten percent of any loss amount that is not in dispute no later than 30 days after SBA's notification to the PCLP CDC of the CDC's reimbursement obligation. No later than 30 days after SBA's notification, the PCLP CDC may submit to the AA/FA or his or her delegate a written appeal of any disagreement regarding the calculation of SBA's loss. The PCLP CDC must include with that appeal an explanation of its reasons for the disagreement. Upon the AA/FA's final decision as to the disputed amount of the loss, the PCLP CDC must promptly reimburse SBA for ten percent of that amount.

(i) *Reimbursing SBA for loss.* A PCLP CDC may use funds in the LLRF or other funds to reimburse SBA for the PCLP CDC's Exposure on a defaulted PCLP Debenture. If a PCLP CDC does not satisfy the entire reimbursement obligation within 30 days after SBA's notification to the PCLP CDC's of its reimbursement obligation, SBA may cause funds in the LLRF to be transferred to SBA in order to cover the PCLP CDC's Exposure, unless the PCLP CDC has filed an appeal under paragraph (h)(2) of this section. If the PCLP CDC has filed such an appeal, SBA may cause such a transfer of funds to SBA 30 days after the AA/FA's or his or her delegate's decision. If the LLRF does not contain sufficient funds to reimburse SBA for any unpaid Exposure with respect to any PCLP Debenture, the PCLP CDC must pay SBA the difference within 30 days after demand for payment by SBA.

(j) *Insufficient funding of LLRF.* A PCLP CDC must diligently monitor the LLRF to ensure that it contains sufficient funds to cover its Exposure for its entire portfolio of PCLP Debentures. If, at any time, the LLRF does not contain sufficient funds, the PCLP CDC must, within 30 days of the earlier of the date it becomes aware of this deficiency or the date it receives notification from SBA of this deficiency, make additional contributions to the LLRF to make up this difference.

**§ 120.848 Requirements for 504 loan processing, closing, servicing, liquidating, and litigating by PCLP CDCs.**

(a) *General.* In processing, closing, servicing, liquidating and litigating 504 loans under the PCLP ("PCLP Loans"), the PCLP CDC must comply with 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA and in accordance with prudent and commercially reasonable lending standards.

(b) *Documentation of decision making.* For each PCLP Loan, the PCLP CDC must document in its files the basis for its decisions with respect to loan processing, closing, servicing, liquidating, and litigating.

(c) *Processing requirements.* SBA expects PCLP CDCs to handle most 504 loan processing situations, although SBA may require that the PCLP CDC process 504 loans involving complex or problematic eligibility issues through the Lead SBA Office using standard 504 loan processing procedures. The PCLP CDC is responsible for properly determining borrower creditworthiness and establishing the terms and conditions under which the PCLP Loan will be made. The PCLP CDC also is responsible for properly undertaking such other processing actions as SBA may delegate to the PCLP CDC.

(d) *Submission of loan documents.* A PCLP CDC must notify SBA of its approval of a 504 loan by submitting to SBA's PCLP Loan Processing Center all documentation required by SBA, including SBA's PCLP eligibility checklist, signed by an authorized representative of the PCLP CDC. The PCLP Loan Processing Center will review these documents to determine whether the PCLP CDC has identified any problems with the PCLP Loan approval, and whether SBA funds are available for the PCLP Loan. If appropriate, the PCLP Processing Center will notify the PCLP CDC of the loan number assigned to the loan.

(e) *Loan and Debenture closing.* After receiving notification from SBA PCLP

Loan Processing Center, the PCLP CDC is responsible for properly undertaking all actions necessary to close the PCLP Loan and Debenture in accordance with the expedited loan closing procedures applicable to a Priority CDC and with § 120.960.

(f) *Servicing, liquidation and litigation responsibilities.* The PCLP CDC generally must service, liquidate and litigate its entire portfolio of PCLP Loans, although SBA may in certain circumstances elect to handle such duties with respect to a particular PCLP Loan or Loans.

(g) *Making a 504 loan previously considered by another CDC.* A PCLP CDC also may utilize its PCLP status to process a 504 loan application from an applicant whose application was declined or rejected by another CDC operating in that same Area of Operations, if the applicant is located within that area and as long as SBA has not previously declined that applicant's 504 loan application. This may include the processing of a 504 loan application from an applicant that has withdrawn its application from another CDC.

26. Revise § 120.850 to read as follows:

**§ 120.850 Expiration of Associate Development Company designation.**

The designation of Associate Development Company (ADC) will cease to exist on January 1, 2004. After that date, former ADCs may continue to contract with CDCs as Lender Service Providers (see part 103 of this chapter) or to perform other services.

27. Add new undesignated center heading before § 120.851 to read as follows:

**Other CDC Requirements**

28. Revise § 120.851 to read as follows:

**§ 120.851 CDC ethical requirements.**

CDCs and their Associates must act ethically and exhibit good character. They must meet all of the ethical requirements of § 120.140. In addition, they are subject to the following:

(a) Any benefit flowing to a CDC's Associate or his or her employer from activities as an Associate must be merely incidental (this requirement does not prevent an Associate or an Associate's employer from providing interim financing as described in § 120.890 or Third Party Loans as described in § 120.920, as long as such activity does not violate § 120.140); and

(b) A CDC's Associate may not be an officer, director, or manager of more than one CDC.

29. Revise § 120.852 to read as follows:

**§ 120.852 Restrictions regarding CDC participation in the Small Business Investment Company (SBIC) program and the 7(a) loan program.**

(a) *7(a) loan program.* A CDC must not invest in or be an Affiliate of a Lender participating in the 7(a) loan program described in § 120.2(a). (For a definition of Affiliation, refer to § 121.103 of this chapter.)

(b) *SBIC program.* A CDC must not directly or indirectly invest in a Licensee (as defined in § 107.50 of this Title) licensed by SBA under the SBIC program authorized in Part A of Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*

30. Add a new undesignated center heading immediately preceding new § 120.853 to read as follows:

**SBA Oversight**

31. Redesignate § 120.973 as § 120.853 and revise redesignated § 120.853 to read as follows:

**§ 120.853 Oversight and evaluation of CDCs.**

SBA may conduct an operational review of a CDC. The SBA Office of Inspector General may also conduct, supervise or coordinate audits pursuant to the Inspector General Act. The CDC must cooperate and make its staff, records, and facilities available.

32. Add a new undesignated center heading immediately preceding new § 120.854 to read as follows:

**SBA Enforcement Actions**

**§ 120.855 [Removed]**

33. Remove § 120.855.

33a. Add §§ 120.854–120.856 to read as follows:

**§ 120.854 Grounds for taking enforcement action against a CDC.**

The AA/FA or his or her authorized delegate may undertake one or more of the enforcement actions set forth in § 120.855 with respect to a CDC, based upon a determination that one or more of the following grounds exist:

(a) The CDC has failed to receive SBA approval for at least four 504 loans during two consecutive fiscal years;

(b) The CDC has failed to comply materially with any requirement imposed by statute, regulation, SOP, policy and procedural notice, any agreement the CDC has executed with SBA, or the terms of a Debenture or loan authorization.

(c) The CDC has made a material false statement or has failed to disclose a material fact to SBA:

(1) With respect to a 504 loan;

(2) In applying to SBA for authority to participate in the 504 program or for any

change in the CDC's participation in the 504 program; or

(3) In any report or other disclosure of information that SBA requires.

(d) The CDC is not performing underwriting, closing, servicing, liquidation, litigation, or other actions with respect to 504 loans in a commercially reasonable or prudent manner. Supporting evidence may include but is not limited to failure to meet one or more of the portfolio benchmarks.

(e) The CDC fails to correct an underwriting, closing, servicing, liquidation, litigation, or reporting deficiency, or fails to take other corrective action, after receiving notice from SBA of a deficiency or the need to take corrective action, within the time period specified in SBA's notice of deficiency.

(f) The CDC has engaged in a pattern of uncooperative behavior or taken an action that SBA determines is deleterious to the 504 program, that undermines SBA's management and administration of the 504 program, or that is not consistent with standards of good conduct.

**§ 120.855 Types of enforcement actions.**

(a) *Enforcement.* Upon a determination that one or more of the grounds set forth in § 120.854 exist, the AA/FA or his or her authorized delegate may undertake, in SBA's sole discretion, one or more of the following enforcement actions:

(1) Suspend or terminate the CDC's authority to participate in the 504 program or to participate as an ALP CDC or PCLP CDC, or in any pilot or program within the 504 program established by SBA. Any such suspension will be for a term determined by SBA in its sole discretion.

(2) Suspend or terminate the CDC's authority to perform underwriting, closing, servicing, liquidation, or litigation on one or more 504 loans or to perform any other function in connection with the 504 program. Any such suspension will be for a term determined by SBA in its sole discretion.

(3) Require the CDC to transfer some or all of its existing 504 loan portfolio and/or some or all of its pending 504 loan applications, to SBA, another CDC, or any other entity designated by SBA. Any such transfer may be on a temporary or permanent basis, in SBA's sole discretion.

(4) Instruct the CSA to withhold payment of servicing, late and/or other fee(s) to the CDC and, if SBA has experienced financial loss as a result of the CDC's failure to comply with any

SBA requirement or of the CDC's imprudent or commercially unreasonable action, direct the CSA to submit all or some of such payments to SBA to compensate for any such loss.

(b) *Immediate suspension.* If SBA determines that one or more grounds set forth in § 120.854 exist and further determines that immediate action is necessary to prevent the risk of significant loss to SBA or to prevent significant impairment of the integrity of the 504 program, the AA/FA may issue a written notice of immediate suspension to a CDC, suspending all or certain activities of a CDC pertaining to the 504 program, and such suspension will be effective as of the date of the notice. Any such suspension will be for a term determined by SBA in its sole discretion. SBA may combine a notice of immediate suspension with any enforcement action set forth in paragraph (a) of this section.

#### § 120.856 Enforcement procedures.

(a) *SBA's notice to CDC of enforcement action.* Prior to undertaking an enforcement action set forth in § 120.855(a), the AA/FA or his or her authorized delegate must issue a written notice to the affected CDC identifying the proposed enforcement action, setting forth the reasons for the proposed action and, if a suspension also is proposed, stating the term of the proposed suspension.

(b) *SBA's notice to CDC of immediate suspension.* If the AA/FA or his or her authorized delegate undertakes an immediate suspension pursuant to § 120.855(b), he or she must issue a written notice to the affected CDC identifying the scope and term of the suspension, and setting forth the reasons for the proposed action.

(c) *CDC's opportunity to object.* A CDC that desires to contest a proposed enforcement action or an immediate suspension must file, within 30 calendar days of the notice or within some other term established by SBA in its notice, a written objection with the AA/FA or other SBA official identified in the notice. The objection must set forth in detail all grounds known to the CDC to contest the proposed action or immediate suspension and all mitigating factors, and must include documentation that the CDC believes is most supportive of its objection. A CDC must exhaust this administrative remedy in order to preserve its objection to a proposed enforcement action or an immediate suspension.

(d) *SBA's decision on CDC's objection to proposed action.* If the affected CDC files a timely written objection to a proposed enforcement action or

immediate suspension, the AA/FA or his or her authorized delegate must issue a notice of decision to the affected CDC advising whether SBA is undertaking the proposed enforcement action or continuing the immediate suspension. If SBA is undertaking the enforcement action or continuing the immediate suspension, the notice of decision must set forth the grounds for the decision. SBA will issue a notice of decision whenever it deems appropriate. Prior to issuing a notice of decision, SBA in its sole discretion can request additional information from the affected CDC or other parties and conduct any other investigation it deems appropriate. If SBA determines, in its sole discretion, to consider an untimely objection, it must issue a notice of decision pursuant to this paragraph (d).

(e) *SBA's notice of final agency decision.* If SBA chooses not to consider an untimely objection or if the affected CDC fails to file a written objection to a proposed enforcement action or an immediate suspension, and if SBA continues to believe that such proposed enforcement action or immediate suspension is appropriate, the AA/FA or his or her authorized delegate must issue a notice of decision to the affected CDC that SBA is undertaking one or more of the proposed enforcement actions against the CDC or that SBA will continue to pursue an immediate suspension of the CDC. Such a notice of decision need not state any grounds for the action other than to reference the CDC's failure to file a timely objection, and represents the final agency decision. If the affected CDC fails to file a written objection to an immediate suspension, SBA need not issue any further notice to the CDC.

(f) *Appeal to OHA.* A CDC may appeal from an SBA notice of decision issued pursuant to paragraphs (d) and/or (e) of this section, to the SBA Office of Hearings and Appeals (OHA). The rules and procedures set forth in part 134 of this chapter will govern such appeals. OHA must limit its review to a determination of whether SBA's decision was arbitrary, capricious or contrary to law, or without procedure required by law, in accordance with the legal precedent established under 5 U.S.C. 706(2)(A) or 5 U.S.C. 706(2)(D). OHA must limit its review to the record that the AA/FA or his or her authorized delegate, and any other SBA officials directly involved with the decision, considered in making the final decision. OHA must not consider any argument, fact or other information presented by the affected CDC, unless the CDC previously submitted that information

to SBA in or with the affected CDC's objection or in response to a request for information from SBA. A decision by OHA is the final agency decision.

#### § 120.857 Voluntary transfer and surrender of CDC certification. [Redesignated from § 120.981]

33b. Redesignate § 120.981 as § 120.857.

34. Revise § 120.861 to read as follows:

#### § 120.861 Job creation or retention.

A Project must create or retain one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a **Federal Register** notice. Such Job Opportunity average remains in effect until changed by subsequent **Federal Register** publication.

35. Amend § 120.862 as follows:

a. By revising the parenthetical at the end of paragraph (a)(4);

b. By revising paragraph (b)(2);

c. By redesignating paragraphs (b)(3) through (b)(7) as (b)(5) through (b)(9);

d. By adding new paragraphs (b)(3) and (b)(4); and

e. By revising redesignated paragraph (b)(5). The revisions and additions read as follows:

#### § 120.862 Other economic development objectives.

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \* (North American Industry Classification System (NAICS), Sectors 31–33); or

\* \* \* \* \*

(b) \* \* \*

(2) Expansion of exports;

(3) Expansion of small businesses owned and controlled by women as defined in section 29(a)(3) of the Act, 15 U.S.C. 656(a)(3);

(4) Expansion of small businesses owned and controlled by veterans (especially service-disabled veterans) as defined in section 3(q) of the Act, 15 U.S.C. 632(q);

(5) Expansion of minority enterprise development (*see* § 124.103(b) of this chapter for minority groups who qualify for this description);

\* \* \* \* \*

36. Amend § 120.870 as follows:

a. By removing paragraph (b);

b. By redesignating paragraph (c) as paragraph (b); and

c. By revising paragraph (a) to read as follows:

#### § 120.870 Leasing Project Property.

(a) A Borrower may use the proceeds of a 504 loan to acquire, construct, or modify buildings and improvements,

and/or to purchase and install machinery and equipment located on land leased to the Borrower by an unrelated lessor if:

\* \* \* \* \*

37. Revise the heading of § 120.871 to read as follows:

**§ 120.871 Leasing part of Project Property to another business.**

38. Amend § 120.880 by revising paragraph (b) to read as follows:

**§ 120.880 Basic eligibility requirements.**

\* \* \* \* \*

(b) Together with its Affiliates, meet one of the size standards set forth in § 121.301(b) of this chapter.

39. Revise paragraph (c) of § 120.882 to read as follows:

**§ 120.882 Eligible Project costs for 504 loans.**

\* \* \* \* \*

(c) Professional fees directly attributable and essential to the Project, such as title insurance, opinion of title, architectural and engineering costs, appraisals, environmental studies, hazard and flood insurance, recording fees, and legal fees related to zoning, permits, or platting (see § 120.971(a)(2) for limitations on legal fees associated with 504 loan and Debenture closing); and

\* \* \* \* \*

40. Revise paragraph (d) of § 120.883 to read as follows:

**§ 120.883 Eligible administrative costs for 504 loans.**

\* \* \* \* \*

(d) Borrower's out-of-pocket costs associated with 504 loan and Debenture closing other than legal fees (for example, certifications and the copying costs associated with them, overnight delivery, postage, and messenger services) but not to include fees and costs described in § 120.882(c);

\* \* \* \* \*

41. Amend § 120.892(b) by revising the phrase "90 days" to read "120 days".

42. Revise the heading of § 120.900 to read as follows:

**§ 120.900 Sources of permanent financing.**

43. Revise the heading of § 120.910 to read as follows:

**§ 120.910 Borrower contributions.**

44. Revise § 120.911 to read as follows:

**§ 120.911 Land contributions.**

The Borrower's contribution may be land (including buildings, structures and other site improvements which will

be part of the Project Property) previously acquired by the Borrower.

45. Revise § 120.913 to read as follows:

**§ 120.913 Limitations on any contributions by a Licensee.**

Subject to part 107 of this chapter, a Licensee may provide financing for all or part of the Borrower's contribution to the Project. SBA will consider Licensee funds to be derived from Federal sources if the Licensee has Leverage (as defined in § 107.50 of this chapter). If the Licensee does not have Leverage, SBA will consider the investment to be from private funds. Licensee financing must be subordinated to the 504 loan and must not be repaid at a faster rate than the Debenture. (Refer to § 120.930(a) for additional limitations.)

46. Amend § 120.923 by revising the heading and redesignating § 120.924 as paragraph (c) of § 120.923 to read as follows:

**§ 120.923 Policies on subordination.**

\* \* \* \* \*

47. Revise § 120.925 by adding a parenthetical at the end to read as follows:

**§ 120.925 Preference.**

\* \* \* (See § 120.10 for a definition of Preference.)

48. Revise § 120.926 to read as follows:

**§ 120.926 Referral fee.**

The CDC can receive a reasonable referral fee from the Third Party Lender if the CDC secured the Third Party Lender for the Borrower under a written contract between the CDC and the Third Party Lender. Both the CDC and the Third Party Lender are prohibited from charging this fee to the Borrower. If a CDC charges a referral fee, the CDC will be construed as a Referral Agent under part 103 of this chapter.

49. Revise paragraph (b) of § 120.930 to read as follows:

**§ 120.930 Amount.**

\* \* \* \* \*

(b) A 504 loan must not be less than \$25,000.

\* \* \* \* \*

50. Revise § 120.931 to read as follows:

**§ 120.931 504 lending limits.**

The outstanding balance of all SBA financial assistance to a Borrower and its affiliates under the 504 program covered by this part must not exceed \$1,000,000 (or \$1,300,000 if one or more of the public policy goals enumerated in § 120.862(b) applies to the Project).

51. Revise § 120.933 to read as follows:

**§ 120.933 Maturity.**

From time to time, SBA will publish in the **Federal Register** the available maturities for a 504 loan and the Debenture that funds it. Such available maturities remain in effect until changed by subsequent **Federal Register** publication.

52. Revise § 120.934 to read as follows:

**§ 120.934 Collateral.**

The CDC usually takes a second lien position on the Project Property to secure the 504 loan. Sometimes additional collateral is required. (In rare circumstances, SBA may permit other collateral substituted for Project Property.) All collateral must be insured against such hazards and risks as SBA may require, with provisions for notice to SBA and the CDC in the event of impending lapse of coverage.

53. Revise the heading of § 120.935 to read as follows:

**§ 120.935 Deposit from the Borrower that a CDC may require.**

**§ 120.936 [Removed]**

54. Remove § 120.936.

55. Revise § 120.960 to read as follows:

**§ 120.960 Responsibility for closing.**

(a) The CDC is responsible for the 504 loan closing.

(b) The Debenture closing is the joint responsibility of the CDC and SBA.

(c) SBA may, within its sole discretion, decline to close the Debenture; direct the transfer of the 504 loan to another CDC; or cancel its guarantee of the Debenture, prior to sale, if any of the following occur:

(1) The CDC has failed to comply with any requirement imposed by statute, regulation, SOP, policy and procedural notice, any agreement the CDC has executed with SBA, or the terms of a Debenture or loan authorization.

(2) The CDC has failed to make or close the 504 loan or prepare the Debenture closing in a prudent or commercially reasonable manner.

(3) The CDC's improper action or inaction places SBA at risk.

(4) The CDC has failed to use required SBA forms or electronic versions of those forms.

(5) The CDC, Third Party Lender or Borrower has failed to timely disclose to SBA a material fact regarding the Project or 504 loan.

(6) The CDC, Third Party Lender or Borrower has misrepresented a material fact to SBA regarding the Project or 504 loan.

(7) SBA determines that there has been a material adverse change, such as deterioration in the Borrower's financial condition, since the 504 loan was approved, or that approving the closing of the Debenture will put SBA at unacceptable financial risk.

56. Revise the undesignated center heading immediately preceding § 120.970 to read as follows:

#### Servicing

57. Revise § 120.970 to read as follows:

#### § 120.970 Servicing of 504 loans and Debentures.

(a) In servicing 504 loans, CDCs must comply with 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA, and in accordance with prudent and commercially reasonable lending standards.

(b) The CDC is responsible for routine servicing including receipt and review of the Borrower's or Operating Company's financial statements on an annual or more frequent basis and monitoring the status of the Borrower and 504 loan collateral.

(c) The CDC is responsible for assuring that the Borrower makes all required insurance premium payments, pays all taxes when due, and files renewals and extension of security interests on collateral for the 504 loan, as required.

(d) The CDC must timely respond to Borrower requests for loan modifications.

(e) For any 504 loan that is more than three months past due, the CDC must promptly request that SBA purchase the Debenture unless the 504 loan has an SBA-approved deferment or is in compliance with an SBA-approved plan to allow the Borrower to catch up on delinquent loan payments.

(f) The CDC must cooperate with SBA to cure defaults and initiate workouts.

(g) SBA may negotiate agreements with CDCs to liquidate 504 loans.

58. Add a new undesignated center heading immediately preceding § 120.971 to read as follows:

#### Fees

59. Revise paragraphs (a) introductory text, and (a)(2) of § 120.971 to read as follows:

#### § 120.971 Allowable fees paid by Borrower.

(a) *CDC fees.* The fees a CDC may charge the Borrower in connection with

a 504 loan and Debenture are limited to the following:

\* \* \* \* \*

(2) *Closing fee.* The CDC may charge a reasonable closing fee sufficient to reimburse it for the expenses of its in-house or outside legal counsel, and other miscellaneous closing costs (CDC Closing Fee). Some closing costs may be funded out of the Debenture proceeds (see § 120.883 for limitations);

\* \* \* \* \*

60. Revise § 120.972 to read as follows:

#### § 120.972 Third Party Lender participation fee and CDC fee.

(a) *Participation fee.* For loans approved by SBA after September 30, 1996, SBA must collect a one-time fee equal to 50 basis points on the Third Party Lender's participation in a Project when the Third Party Lender occupies a senior credit position to SBA in the Project.

(b) *CDC fee.* For loans approved by SBA after September 30, 1996, SBA must collect an annual fee from the CDC equal to 0.125 percent of the outstanding principal balance of the Debenture. The fee must be paid from the servicing fees collected by the CDC and cannot be paid from any additional fees imposed on the Borrower.

61. Remove the undesignated center heading immediately preceding § 120.980 and §§ 120.980, 120.982 through 120.984.

Dated: June 27, 2003.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 03-16862 Filed 7-7-03; 8:45 am]

**BILLING CODE 8025-01-U**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001-NE-21-AD]

RIN 2120-AA64

#### Airworthiness Directives; General Electric Company CF34-3A1, -3B, and -3B1 Turbofan Engines

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

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

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to revise an existing airworthiness directive (AD) applicable to General Electric Company (GE) CF34-3A1, -3B,

and -3B1 turbofan engines with scavenge screens part numbers (P/Ns) 4047T95P01 and 5054T86G02 installed in the B-sump oil scavenge system. That AD currently requires initial and repetitive visual inspections and cleaning of the B-sump scavenge screens until a screenless fitting is installed. This proposal requires the same initial and repetitive visual inspections and cleaning of the B-sump scavenge screens until a screenless fitting is installed. This proposal also corrects a typographical error, and introduces a less restrictive terminating action schedule. This proposal is prompted by the need to correct a typographical error and by the need to introduce a less restrictive terminating action schedule. The actions specified by the proposed AD are intended to prevent B-sump scavenge screen blockage due to coking which could result in ignition of B-sump oil in the secondary air system, fan drive shaft separation, and uncontained engine failure.

**DATES:** Comments must be received by September 8, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-NE-21-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 the proposed rule may be obtained from GE Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910; Attention: CF34 Product Support Engineering, Mail Zone: 34017; telephone (781) 594-6323; fax (781) 594-0600. 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.

**FOR FURTHER INFORMATION CONTACT:** Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7146; fax (781) 238-7199.

#### 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 action 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 comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NE-21-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-NE-21-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

#### Discussion

On March 6, 2003, the FAA issued AD 2003-05-10, Amendment 39-13086 (68 FR 12806, March 18, 2003), to require initial and repetitive visual inspections and cleaning of the B-sump scavenge screens until a screenless fitting is installed. That action was prompted by six reports of B-sump oil scavenge system failure causing engine in-flight shutdowns. That condition, if not corrected, could result in ignition of B-sump oil in the secondary air system, fan drive shaft separation, and uncontained engine failure.

Since AD 2003-05-10 was issued, the FAA has recognized that a typographical error needs to be corrected in the Differences Between This AD and the Manufacturer's Service Information paragraph, and that a less restrictive terminating action schedule needs to be established.

#### Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of GE Aircraft Engines (GE) Alert Service Bulletin (ASB) CF34-AL S/B 79-A0014, Revision 3, dated January 31, 2003; and ASB CF34-BJ S/B 79-A0015, Revision 3, dated January 31, 2003; that describe procedures for initial and repetitive visual inspections and cleaning of the B-sump scavenge screens. The FAA has also reviewed and approved GE ASB CF34-AL S/B 79-A0016 and ASB CF34-BJ S/B 79-A0017, both dated June 17, 2002. These ASBs describe the procedures for introducing the screenless B-sump scavenge fittings and for reworking to eliminate the screens from the existing scavenge screen fittings located at the forward and aft end of the lube and scavenge pump assembly, thereby terminating the repetitive inspections.

#### Differences Between This Proposed AD and the Manufacturer's Service Information

GE ASB CF34-AL S/B 79-A0014, Revision 3, dated January 31, 2003, recommends for engines with more than 4,000 hours time-since-new (TSN) or more than 1,000 hours time-since-last-shop-visit (TSLSV), initial visual inspections and cleaning of the B-sump scavenge screens "by the next A-check". GE ASB CF34-BJ S/B 79-A0015, Revision 3, dated January 31, 2003, recommends for engines with more than 4,000 hours TSN or more than 1,000 hours TSLSV, initial visual inspections and cleaning of the B-sump scavenge screens within 300 hours for the CF34-3A1 engine model or within 400 hours for the CF34-3B engine model. However, this proposed AD would require initial visual inspections and cleaning of the B-sump scavenge screens within 500 hours after the effective date of this proposed AD. The time intervals have been changed from those cited in the ASBs to provide consistency for all engine models and to eliminate the use of aircraft maintenance terminology. The times are approximately equivalent to the A-check intervals.

GE ASBs CF34-AL S/B 79-A0016, dated June 17, 2002; and CF34-BJ S/B 79-A0017, dated June 17, 2002; recommend for engines with more than 4,000 hours TSN or more than 1,000 hours TSLSV, replacement of existing scavenge screens P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump oil scavenge system, with screenless fittings "by the next A-check". However, this proposed AD would require installation of screenless fittings, or fittings that have been reworked to remove the

screens, in the B-sump oil scavenge system within 500 hours after the effective date of this proposed AD. The installation requirement has been changed from that cited in the ASBs to eliminate the use of aircraft maintenance terminology. The time is approximately equivalent to the A-check interval.

#### FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other GE CF34-3A1, -3B, and -3B1 turbofan engines of the same type design, this proposed AD is being issued to prevent B-sump scavenge screen blockage due to coking, which could result in ignition of B-sump oil in the secondary air system, fan drive shaft separation, and uncontained engine failure. This proposed AD would require:

- Initial visual inspection and cleaning of the scavenge screens, P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump oil scavenge system.
- Repetitive visual inspection and cleaning of the scavenge screens, P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump oil scavenge system, within 200 hours time-since-last inspection (TSLI) if no coking is found.
- Repetitive visual inspection and cleaning of the scavenge screens, P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump scavenge system, within 100 hours TSLI if any coking is found.
- Replacement of existing scavenge screens, P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump oil scavenge system, with screenless fittings.

The actions must be done in accordance with the service bulletins described previously.

#### Economic Analysis

There are approximately 940 engines of the affected design in the worldwide fleet. The FAA estimates that 576 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 10.0 work hours per engine to perform the proposed actions, and that the average labor rate is \$65 per work hour. Required parts would cost approximately \$1,050 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be \$979,200.

#### Regulatory Analysis

This proposed 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 proposed rule.

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 removing Amendment 39–13086 (68 FR 12806, March 18, 2003), and by adding a new airworthiness directive, to read as follows:

**General Electric Company:** Docket No. 2001–NE–21–AD. Revises AD 2003–05–10, Amendment 39–13086.

**Applicability:** This airworthiness directive (AD) is applicable to General Electric Company (GE) CF34–3A1, –3B, and –3B1 turbofan engines with scavenge screens part numbers (P/Ns) 4047T95P01 and 5054T86G02 installed in the B-sump oil scavenge system. These engines are installed on, but not limited to, Bombardier Inc. (Canadair) Model CL–600–2A12, CL–600–2B16, and CL–600–2B19 airplanes.

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

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

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

To prevent B-sump scavenge screen blockage due to coking, which could result in ignition of B-sump oil in the secondary air system, fan drive shaft separation, and uncontained engine failure, do the following:

#### Initial Inspection and Cleaning of B-Sump Screens

(a) Perform an initial visual inspection and cleaning of scavenge screens, P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump oil scavenge system, in accordance with Paragraphs 3A through 3B of the Accomplishment Instructions of GE Aircraft Engines (GE) Alert Service Bulletin (ASB) CF34–AL S/B 79–A0014, Revision 3, dated January 31, 2003; or ASB CF34–BJ S/B 79–A0015, Revision 3, dated January 31, 2003; and the following table:

#### INITIAL INSPECTION AND CLEANING SCHEDULE

Engine hours time-since-new (TSN) or time-since-last-shop-visit (TSLSV)	Inspect and clean
(1) Fewer than 4,000 hours TSN or fewer than 4,000 hours TSLSV if it can be confirmed that both the B-sump scavenge screens were cleaned and the B-sump and combustor frame (strut tubes) were removed from the engine and cleaned at that prior shop visit.	Before 4,000 hours TSN or TSLSV.
(2) Fewer than 1,000 hours TSLSV if it can NOT be confirmed that both the B-sump scavenge screens were cleaned and the B-sump and combustor frame (strut tubes) were removed from the engine and cleaned at that prior shop visit.	Before 1,000 hours TSLSV.
(3) 4,000 hours or greater TSN or 4,000 hours or greater TSLSV if it can be confirmed that both the B-sump scavenge screens were cleaned and the B-sump and combustor frame (strut tubes) were removed from the engine and cleaned at that prior shop visit, or 1,000 hours or greater TSLSV if it can NOT be confirmed that both the B-sump scavenge screens were cleaned and the B-sump and combustor frame (strut tubes) were removed from the engine and cleaned at that prior shop visit.	Within 500 hours time-in-service (TIS) after the effective date of this AD.

#### Repetitive Inspections and Cleaning

(b) Perform repetitive visual inspections and cleaning of scavenge screens, P/Ns 4047T95P01 and 5054T86G02, installed in the B-sump oil scavenge system, in accordance with Paragraphs 3A through 3B of the Accomplishment Instructions of GE ASB CF34–AL S/B 79–A0014, Revision 3, dated January 31, 2003; and ASB CF34–BJ S/B 79–A0015, Revision 3, dated January 31, 2003; and the following:

(1) At intervals not to exceed 200 hours time-since-last-inspection (TSLI), if no coke is found in screens during initial or any prior inspections, or

(2) At intervals not to exceed 100 hours TSLI, if coke is found in screens during initial or any prior inspections.

#### Terminating Actions

(c) Install new screenless fittings or fittings that have been reworked to remove the screens, in the B-sump oil scavenge system, in accordance with GE ASB CF34–AL S/B 79–A0016, dated June 17, 2002; or ASB CF34–BJ S/B 79–A0017, dated June 17, 2002, and the following schedule:

(1) For engines with more than 4,000 hours TSN, within 500 hours TIS after the effective date of the AD, or within 1,000 hours TSLSV, whichever occurs first.

(2) For engines with less than or equal to 4,000 hours TSN, prior to 4,500 hours TSN.

This constitutes terminating action to the inspections required in paragraph (b) of this AD.

#### Alternative Methods of Compliance

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

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

**Special Flight Permits**

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

Issued in Burlington, Massachusetts, on June 30, 2003.

**Francis A. Favara,**

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

[FR Doc. 03-17178 Filed 7-7-03; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****21 CFR Part 1301**

[Docket No. DEA-196P]

RIN 1117-AA73

**Reports by Registrants of Theft or Significant Loss of Controlled Substances**

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of proposed rulemaking; guidance.

**SUMMARY:** DEA is proposing the amendment of its regulations to clarify its policy regarding reports by registrants of theft or significant loss of controlled substances. There has been some confusion as to what constitutes a significant loss, and when and how initial notice of a theft or loss should be provided to DEA. This Notice of Proposed Rulemaking proposes the clarification of DEA regulations and provides guidance to registrants regarding the theft, significant loss and explained loss of controlled substances.

**DATES:** Written comments must be postmarked on or before September 8, 2003.

**ADDRESSES:** Comments should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

**FOR FURTHER INFORMATION CONTACT:** Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307-7297.

**SUPPLEMENTARY INFORMATION:**

**Background**

DEA is publishing this Notice of Proposed Rulemaking (NPRM) to

propose the clarification of its policies and procedures regarding the reporting by registrants of the theft or significant loss of controlled substances.

Title 21, Code of Federal Regulations, § 1301.74(c) "Other security controls for non-practitioners; narcotic treatment programs and compounders for narcotic treatment programs." requires that: "The registrant shall notify the Field Division Office of the Administration in his area of any theft or significant loss of any controlled substances upon discovery of such theft or loss. The supplier shall be responsible for reporting in-transit losses of controlled substances by the common or contract carrier selected pursuant to § 1301.74(e), upon discovery of such theft or loss. The registrant shall also complete DEA Form 106 regarding such theft or loss. Thefts must be reported whether or not the controlled substances are subsequently recovered and/or the responsible parties are identified and action taken against them."

Title 21, Code of Federal Regulations, § 1301.76(b) "Other security controls for practitioners." further requires that: "The registrant shall notify the Field Division Office of the Administration in his area of the theft or significant loss of any controlled substances upon discovery of such loss or theft. The registrant shall also complete DEA (or BND) Form 106 regarding such loss or theft."

A number of questions have arisen regarding the meaning of certain terms in these paragraphs. Specifically, there seems to be confusion within the regulated industry as to the exact meaning of the phrase "upon discovery". Therefore, as further discussed below, DEA is proposing the amendment of the regulations to insert the word "immediately" before the phrase "upon discovery" to clarify this point. Further, DEA is proposing the amendment of its regulations to list certain factors which registrants should consider when determining whether a loss of controlled substances is significant. Finally, this document provides guidance to registrants on the reporting of breakage, spillage or other explained losses of controlled substances. No regulatory amendments are being proposed regarding this guidance.

**Theft or Other Unexplained Significant Loss of Controlled Substances**

*What Is a DEA Registrant Required To Do When a Theft or Significant Loss Is Discovered?*

Every DEA registrant is required to notify the DEA field office in their area

of any theft or significant loss of controlled substances upon its discovery. DEA has always viewed "upon discovery" to mean that notification should occur immediately and without delay. Every DEA registrant (practitioner, pharmacy, hospital/clinic, manufacturer, distributor, etc.) must comply with this requirement, and such compliance cannot be overridden by an internal corporate policy that is contrary to the notification requirement. For example, a DEA-registered pharmacy must provide notice to the local DEA field office when a theft or significant loss is discovered. This requirement is not satisfied by the reporting of the theft or significant loss internally to individuals in corporate management. DEA must be notified directly and immediately of the theft or significant loss of the controlled substances. A corporation that owns/operates multiple registered sites and wishes to channel all notifications through a central point such as corporate loss prevention, corporate security, or other corporate entity may do so but must still fulfill the requirement to provide notice to DEA immediately upon discovery by the actual registrant. However, this immediate notification does not always occur. Therefore, DEA is proposing the amendment of its regulations to insert the word "immediately" before the phrase "upon discovery" to clarify this point.

The purpose of immediate notification is to provide an opportunity for DEA, state, or local participation in the investigative process when warranted, and to create a record that the theft or significant loss was properly reported. It also alerts law enforcement to more broadly based circumstances and patterns of which the individual registrant may be unaware. This notification is considered part of a good-faith effort on the part of the regulated industries to maintain effective controls against the diversion of controlled substances, as required by 21 CFR 1301.71(a). Lack of prompt notification could prevent effective investigation and prosecution of individuals involved in the diversion of controlled substances. Withholding or failing to provide information is a violation of the law and regulations (21 U.S.C. 821, 21 U.S.C. 842(a)(5), 21 CFR 1301.74(c), 1301.76(b)).

*How Should Notice of a Theft or Significant Loss Be Provided?*

The regulations require that notice of a theft or significant loss must be reported to DEA upon its discovery. As noted above, DEA has always viewed "upon discovery" to mean that

notification should occur immediately and without delay. Where circumstances of the theft or significant loss are immediately known, a DEA Form 106, Report of Theft or Loss of Controlled Substances, should be used to detail the circumstances of that theft or significant loss. When details concerning the specific circumstances surrounding the theft or loss are unknown at the time of discovery, DEA recommends initial notice be provided by faxing a short statement to DEA advising of the theft or significant loss. While such initial notice may alternatively be mailed, delays occurring due to the mailing process may hinder investigative efforts by DEA. A DEA Form 106, Report of Theft or Loss of Controlled Substances, is not immediately necessary. The registrant may then make efforts to determine the facts involved by conducting inventories, internal audits, and/or investigations using internal or law enforcement resources, as appropriate. The DEA Form 106 should be submitted once the circumstances surrounding the theft or significant loss are clear. The DEA Form 106 must document the circumstances of the theft or significant loss and the quantities of controlled substances involved. DEA recognizes that some time may elapse between the time initial notice of a theft or loss is provided and the conclusion of the investigation. DEA suggests that if an investigation takes more than two months to complete, registrants provide updates regarding the investigation to DEA. The conduct of an investigation does not obviate the need for immediate notification of the theft or significant loss by the registrant to the local DEA field office. If, after an investigation of the circumstances surrounding the disappearance of the material, it is determined that no theft or significant loss occurred, no DEA Form 106 need be filed. However, DEA recommends the registrant advise DEA that a DEA Form 106 is not needed or will not be filed regarding the incident.

*What Other Actions Should a Registrant Take When a Theft or Significant Loss Occurs?*

The theft of controlled substances from a registrant is a criminal act, and a source of controlled substances diversion requiring notification of DEA. Although not specifically required by DEA law or regulations, the registrant should also notify local law enforcement and state regulatory agencies. Prompt notification of law enforcement agencies will allow them to investigate the incident and prosecute those responsible for the diversion.

Complete accountability by a registrant for all controlled substances handled is a fundamental requirement of the closed distribution system mandated by the Controlled Substances Act (CSA). The CSA requires: “\* \* \* every registrant under this title manufacturing, distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by him, \* \* \*.” (21 U.S.C. 827(a)(3)). No registrant should disregard any unexplained shortage of controlled substances. Registrants should treat an individual theft or significant loss seriously and should monitor occurrences so that patterns do not remain undetected. Record keeping must be accurate and complete so as to serve as a reliable reporting and recording device.

DEA has become aware of instances in which registrants have used a DEA Form 106 to document or explain minor inventory discrepancies, thereby “balancing the books.” DEA wishes to stress that the DEA Form 106 should be used only to document thefts or significant losses of controlled substances. Minor inventory discrepancies, not attributable to theft, should not be reported to DEA or recorded on a DEA Form 106. Rather, registrants should make appropriate notations of minor inventory discrepancies in their records, indicating the amount of variance between the physical count and the amount accounted for through records. Such discrepancies need not be reported to DEA if they are not significant or actual losses. If a registrant is unsure of the significance of a loss after considering the factors described below, the registrant should file the report. Any continuing pattern of loss of seemingly insignificant quantities should always be considered significant.

*What Specific Regulations Does This Rulemaking Propose To Amend?*

Specifically, this rulemaking proposes the amendment of 21 CFR 1301.74(c) and 1301.76(b) to insert the word “immediately” before the phrase “upon discovery” to clarify the points raised in the previous discussion. Although not specifically mentioned in the previous discussion, such reports include the report by a supplier of in-transit thefts or losses of controlled substances by the common or contract carrier selected by the supplier pursuant to 21 CFR 1301.74(e). Further, this rulemaking proposes a minor technical correction to § 1301.76(b) to remove the reference to

BND Form 106, as this form is no longer used.

**Significant Loss of Controlled Substances**

*What Constitutes a Significant Loss?*

Questions have arisen as to exactly what constitutes a “significant loss.” There is no single objective standard which can be established and applied to all registrants to determine whether a loss is significant. Any unexplained loss or discrepancy should be reviewed within the context of a registrant’s business activity and environment. What constitutes a significant loss for one registrant may be construed as comparatively insignificant for another. For example, the loss by a pharmacy of a 100-count bottle of controlled substance tablets would be viewed as significant, whereas the same loss by a full line distributor may be viewed differently, particularly if the loss is an unexplained inventory discrepancy that may have resulted from a picking error. A manufacturer may experience continuous losses in the manufacturing process due to atmospheric changes, mixing procedures, etc. Such losses may not be deemed by the registrant to be significant, and may be recorded in batch records. Conversely, for registrants other than manufacturers, the repeated loss of small quantities of controlled substances over a period of time may indicate a significant aggregate problem which must be reported to DEA, even though the individual quantity of each occurrence is not significant.

When determining whether a loss is significant, a registrant should consider, among others, the following factors:

- (1) The actual quantity of controlled substances lost in relation to the type of business;
- (2) A pattern of such losses, and the results of efforts taken to resolve them; and, if known,
- (3) Local trends and other indicators of the diversion potential of the missing material.

Specific questions which a registrant should ask to identify whether a loss is significant include, but are not limited to:

- (1) Has a pattern of loss been identified? Would this pattern result in a substantial loss of controlled substances over that period of time?
- (2) Are specific controlled substances being lost, and do the losses appear to be random?
- (3) Are the specific controlled substances likely candidates for diversion?
- (4) Can losses of controlled substances be associated with access to those

controlled substances by specific individuals? Can losses be attributed to unique activities which may take place involving the controlled substances?

Individual registrants should examine both their business activities and the external environment in which those business activities are conducted to determine whether unexplained losses of controlled substances are significant. When in doubt, registrants should err on the side of caution in alerting the appropriate law enforcement authorities, including DEA, of thefts and losses of controlled substances.

#### *What Specific Regulations Does This Rulemaking Propose To Amend?*

Specifically, this rulemaking proposes the amendment of 21 CFR 1301.74(c) and 1301.76(b) to include the factors listed above as factors which a registrant should consider when determining whether a loss is significant and, thus, must be reported to DEA. DEA encourages registrants to use other criteria, as well as those factors listed above, which they have found to be useful in the evaluation of losses of controlled substances when determining whether such losses are significant, but is proposing the provision of these factors as the minimum which registrants should consider.

#### **Guidance Regarding Breakage, Spillage and Other Explained Loss of Controlled Substances**

##### *What Is Required of a DEA Registrant When Breakage or Spillage Occurs?*

DEA has encountered instances in which registrants have attempted to report spillages or explained losses of controlled substances on a DEA Form 106. The breakage, spillage or other witnessed controlled substance losses do not require the immediate notification of DEA. If controlled substance containers are broken or damaged, or controlled substances spilled, the substances are not considered "lost" because they can be accounted for. When breakage, spillage or damage of controlled substances occurs, the affected controlled substances must be disposed of according to DEA requirements.

If there is breakage, spillage or other damage to controlled substances, but the controlled substances are still recoverable, then the registrant has two options for disposing of the controlled substances. The registrant may dispose of the controlled substances by either (1) Contacting their local DEA field office and receiving permission from that office to dispose of the controlled substances pursuant to 21 CFR 1307.21,

or (2) the registrant may send those controlled substances to a firm registered with DEA to handle returns/disposals.

If the registrant receives permission from DEA to dispose of the controlled substances pursuant to 21 CFR 1307.21, then that registrant must complete a DEA Form 41, Registrants Inventory of Drugs Surrendered, explaining the circumstances of the breakage. Two individuals who witnessed the breakage, spillage or damage must sign the DEA Form 41, indicating what they witnessed. Registrants must submit three copies of the DEA Form 41 to their local DEA field office (21 CFR 1307.21(a)(1)). Registrants are also required to maintain a copy of the DEA Form 41 in their records.

If the registrant sends the controlled substances to a DEA registered disposer, then the registrant must complete the necessary paperwork showing the distribution of the damaged controlled substances to the registered disposer.

If the breakage or spillage is clearly observed but the controlled substances are not recoverable, then the registrant must document the circumstances of the breakage in their inventory records. Two individuals who witnessed the breakage must sign the inventory records, indicating what they witnessed. These records must be maintained in the registrant's files.

#### **Regulatory Certifications**

##### *Regulatory Flexibility Act*

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation seeks to clarify existing DEA regulations regarding the reporting of thefts and losses of controlled substances. No new recordkeeping or reporting requirements are proposed in this rulemaking.

##### *Executive Order 12866*

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget. This rulemaking merely seeks to clarify existing DEA regulations, policies and procedures.

##### *Executive Order 12988*

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

##### *Executive Order 13132*

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

##### *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 will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

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

This rule is not a major rule as defined by section 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.

#### **List of Subjects in 21 CFR Part 1301**

Administrative practice and procedure, Drug traffic control, Security measures.

For the reasons set out above, 21 CFR part 1301 is proposed to be amended as follows:

#### **PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES**

1. The authority citation for part 1301 continues to read as follows:

**Authority:** 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.74 is amended by revising paragraph (c) to read as follows:

**§ 1301.74 Other security controls for non-practitioners; narcotic treatment programs and compounds for narcotic treatment programs.**

\* \* \* \* \*

(c) The registrant shall notify the Field Division Office of the Administration in his area of any theft or significant loss of any controlled substances immediately upon discovery of such theft or loss. The supplier shall be responsible for reporting in-transit losses of controlled substances by the common or contract carrier selected pursuant to § 1301.74(e), immediately upon discovery of such theft or loss. The registrant shall also complete DEA Form 106 regarding such theft or loss. Thefts must be reported whether or not the controlled substances are subsequently recovered and/or the responsible parties are identified and action taken against them. When determining whether a loss is significant, a registrant should consider, among others, the following factors:

(1) The actual quantity of controlled substances lost in relation to the type of business;

(2) The specific controlled substances lost;

(3) Whether the loss of the controlled substances can be associated with access to those controlled substances by specific individuals, or whether the loss can be attributed to unique activities which may take place involving the controlled substances;

(4) A pattern of such losses over a specific time period, whether the losses appear to be random, and the results of efforts taken to resolve the losses; and, if known,

(5) Whether the specific controlled substances are likely candidates for diversion;

(6) Local trends and other indicators of the diversion potential of the missing material.

\* \* \* \* \*

3. Section 1301.76 is amended by revising paragraph (b) to read as follows:

**§ 1301.76 Other security controls for practitioners.**

\* \* \* \* \*

(b) The registrant shall notify the Field Division Office of the Administration in his area of the theft or significant loss of any controlled substances immediately upon discovery of such loss or theft. The registrant shall also complete DEA Form 106 regarding such loss or theft. When determining whether a loss is significant, a registrant should consider, among others, the following factors:

(1) The actual quantity of controlled substances lost in relation to the type of business;

(2) The specific controlled substances lost;

(3) Whether the loss of the controlled substances can be associated with access to those controlled substances by specific individuals, or whether the loss can be attributed to unique activities which may take place involving the controlled substances;

(4) A pattern of such losses over a specific time period, whether the losses appear to be random, and the results of efforts taken to resolve the losses; and, if known,

(5) Whether the specific controlled substances are likely candidates for diversion;

(6) Local trends and other indicators of the diversion potential of the missing material.

\* \* \* \* \*

Dated: June 25, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 03-17127 Filed 7-7-03; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG-130262-03]**

**RIN 1545-BC28**

**Guidance Under Section 1502; Stock Basis After a Group Structure Change**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations under section 1502 that relate to stock basis after a group structure change. These proposed regulations affect corporations filing consolidated returns.

**DATES:** Written or electronic comments and requests for a public hearing must be received by October 6, 2003.

**ADDRESSES:** Send submissions to: CC:PA:RU (REG-130262-03), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG-130262-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044.

Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs).

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, Marlene Oppenheim or Ross Poulsen, (202) 622-7770; concerning submission of comments and/or requests for a public hearing, Sonya Cruse, (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background and Explanation of Provisions**

Section 1.1502-31 applies if one corporation (P) succeeds another corporation (T) under the principles of § 1.1502-75(d)(2) or (3) as the common parent of a consolidated group in a group structure change. If a corporation acquires stock of the former common parent in a group structure change, the basis of the members in the former common parent's stock immediately after the group structure change is generally redetermined to reflect the former common parent's net asset basis. In general, the group structure change regulations were designed to prevent disparate basis consequences resulting from different forms of transactions that effect a restructuring of a consolidated group that continues to exist following the restructuring.

The IRS and Treasury are concerned that the application of the net asset basis rule may produce inappropriate results on the disposition of stock acquired in a transaction in which, under generally applicable rules, the basis of the acquired stock would otherwise be determined by reference to the acquiror's cost for the stock. Accordingly, this document proposes to modify the application of the provisions of § 1.1502-31 to permit the basis of stock acquired in a recognition transaction to reflect the cost of the acquired stock.

In particular, this document excepts from the application of the net asset basis rule stock acquired in a transaction in which gain or loss was recognized in whole. These regulations are proposed to apply to group structure changes that occur after the date these regulations are published as temporary or final regulations in the **Federal Register**. With respect to group structure changes that occur on or before the date these regulations are published as temporary or final regulations in the **Federal Register** and during consolidated return years beginning on or after January 1, 1995, these regulations are proposed to apply at the election of the group.

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 is hereby certified that these regulations do not have a significant impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily will affect affiliated groups of corporations, which tend to be larger businesses. Moreover, the number of taxpayers affected is minimal and the regulations will simplify basis determinations. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the proposed regulations. All comments will be available for public inspection and copying. A public hearing will 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 public hearing will be published in the Federal Register.

Drafting Information

The principal authors of these regulations are Marlene Oppenheim and Ross Poulsen, Office of Associate Chief Counsel (Corporate). 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 Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1502-31 is amended by revising paragraphs (b)(2), (d)(2)(ii), (g), and (h) to read as follows:

§ 1.1502-31 Stock basis after a group structure change.

\* \* \* \* \*

(b) \* \* \*

(2) Stock acquisitions. If a corporation acquires stock of the former common parent in a transaction that is a group structure change, the basis of the members in the former common parent's stock immediately after the group structure change (including any stock of the former common parent owned before the group structure change) that has, or would otherwise have, a basis determined in whole or in part by reference to the basis of the property exchanged for such stock is redetermined in accordance with the results for an asset acquisition described in paragraph (b)(1) of this section. For example, if all of T's stock is contributed to P in a group structure change to which section 351 applies, P's basis in T's stock is T's net asset basis, rather than the amount determined under section 362. Similarly, if S merges into T in a group structure change described in section 368(a)(2)(E) and P acquires all of the T stock, P's basis in T's stock is the basis that P would have in S's stock under paragraph (b)(1) of this section if T had merged into S in a group structure change described in section 368(a)(2)(D).

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) Stock acquisitions. If less than all of the former common parent's stock is subject to the redetermination described in paragraph (b)(2) of this section, the percentage of the former common parent's net asset basis taken into account in the redetermination equals the percentage (by fair market value) of the former common parent's stock subject to the redetermination. For example, if P owns less than all of the former common parent's stock immediately after the group structure change and the basis of such stock would otherwise be determined in whole or in part by reference to the basis of the property exchanged for such stock, only an allocable part of the basis determined under this section is reflected in the shares owned by P (and the amount allocable to shares owned by nonmembers has no effect on the basis of their shares). Alternatively, if P acquired 10 percent of the former common parent's stock in a transaction in which the stock basis was determined by P's cost, and P later acquires the remaining 90 percent of the former common parent's stock in a separate transaction that is described in paragraph (b)(2) of this section, P retains

its cost basis in its original stock and the basis of P's newly acquired shares reflects only an allocable part of the former common parent's net asset basis.

\* \* \* \* \*

(g) Examples. For purposes of the examples in this section, unless otherwise stated, all corporations have only one class of stock outstanding, the tax year of all persons is the calendar year, all persons use the accrual method of accounting, the facts set forth the only corporate activity, all transactions are between unrelated persons, and tax liabilities are disregarded. The principles of this section are illustrated by the following examples:

Example 1. Forward triangular merger. (i) Facts. P is the common parent of one group and T is the common parent of another. T has assets with an aggregate basis of \$60 and fair market value of \$100 and no liabilities. T's shareholders have an aggregate basis of \$50 in T's stock. In Year 1, pursuant to a plan, P forms S and T merges into S with the T shareholders receiving \$100 of P stock in exchange for their T stock. The transaction is a reorganization described in section 368(a)(2)(D). The transaction is also a reverse acquisition under § 1.1502-75(d)(3) because the T shareholders, as a result of owning T's stock, own more than 50% of the value of P's stock immediately after the transaction. Thus, the transaction is a group structure change under § 1.1502-33(f)(1), and P's earnings and profits are adjusted to reflect T's earnings and profits immediately before T ceases to be the common parent of the T group.

(ii) Analysis. Under paragraph (b)(1) of this section, P's basis in S's stock is adjusted to reflect T's net asset basis. Under paragraph (c) of this section, T's net asset basis is \$60, the basis T would have in the stock of a subsidiary under section 358 if T had transferred all of its assets and liabilities to the subsidiary in a transaction to which section 351 applies. Thus, P has a \$60 basis in S's stock.

(iii) Pre-existing S. The facts are the same as in paragraph (i) of this Example 1, except that P has owned the stock of S for several years and P has a \$50 basis in the S stock before the merger with T. Under paragraph (b)(1) of this section, P's \$50 basis in S's stock is adjusted to reflect T's net asset basis. Thus, P's basis in S's stock is \$110 (\$50 plus \$60).

(iv) Excess loss account included in former common parent's net asset basis. The facts are the same as in paragraph (i) of this Example 1, except that T has two assets, an operating asset with an \$80 basis and \$90 fair market value, and stock of a subsidiary with a \$20 excess loss account and \$10 fair market value. Under paragraph (c) of this section, T's net asset basis is \$60 (\$80 minus \$20). See sections 351 and 358, and § 1.1502-19. Consequently, P has a \$60 basis in S's stock. Under section 362 and § 1.1502-19, S has an \$80 basis in the operating asset and a \$20 excess loss account in the stock of the subsidiary.

(v) *Liabilities in excess of basis.* The facts are the same as in paragraph (i) of this *Example 1*, except that T's assets have a fair market value of \$170 (and \$60 basis) and are subject to \$70 of liabilities. Under paragraph (c) of this section, T's net asset basis is negative \$10 (\$60 minus \$70). See sections 351 and 358, and §§ 1.1502-19 and 1.1502-80(d). Thus, P has a \$10 excess loss account in S's stock. Under section 362, S has a \$60 basis in its assets (which are subject to \$70 of liabilities). (Under paragraph (a)(2) of this section, because the liabilities are taken into account in determining net asset basis under paragraph (c) of this section, the liabilities are not also taken into account as consideration not provided by P under paragraph (d)(1) of this section.)

(vi) *Consideration provided by S.* The facts are the same as in paragraph (i) of this *Example 1*, except that P forms S with a \$100 contribution at the beginning of Year 1, and during Year 6, pursuant to a plan, S purchases \$100 of P stock and T merges into S with the T shareholders receiving P stock in exchange for their T stock. Under paragraph (b)(1) of this section, P's \$100 basis in S's stock is increased by \$60 to reflect T's net asset basis. Under paragraph (d)(1) of this section, P's basis in S's stock is decreased by \$100 (the fair market value of the P stock) because the P stock purchased by S and used in the transaction is consideration not provided by P.

(vii) *Appreciated asset provided by S.* The facts are the same as in paragraph (i) of this *Example 1*, except that P has owned the stock of S for several years, and the shareholders of T receive \$60 of P stock and an asset of S with a \$30 adjusted basis and \$40 fair market value. S recognizes a \$10 gain from the asset under section 1001. Under paragraph (b)(1) of this section, P's basis in S's stock is increased by \$60 to reflect T's net asset basis. Under paragraph (d)(1) of this section, P's basis in S's stock is decreased by \$40 (the fair market value of the asset provided by S). In addition, P's basis in S's stock is increased under § 1.1502-32(b) by S's \$10 gain.

(viii) *Depreciated asset provided by S.* The facts are the same as in paragraph (i) of this *Example 1*, except that P has owned the stock of S for several years, and the shareholders of T receive \$60 of P stock and an asset of S with a \$50 adjusted basis and \$40 fair market value. S recognizes a \$10 loss from the asset under section 1001. Under paragraph (b)(1) of this section, P's basis in S's stock is increased by \$60 to reflect T's net asset basis. Under paragraph (d)(1) of this section, P's basis in S's stock is decreased by \$40 (the fair market value of the asset provided by S). In addition, S's \$10 loss is taken into account under § 1.1502-32(b) in determining P's basis adjustments under that section.

*Example 2. Stock acquisition.* (i) *Facts.* P is the common parent of one group and T is the common parent of another. T has assets with an aggregate basis of \$60 and fair market value of \$100 and no liabilities. T's shareholders have an aggregate basis of \$50 in T's stock. Pursuant to a plan, P forms S and S acquires all of T's stock in exchange for P stock in a transaction described in

section 368(a)(1)(B). The transaction is also a reverse acquisition under § 1.1502-75(d)(3). Thus, the transaction is a group structure change under § 1.1502-33(f)(1), and the earnings and profits of P and S are adjusted to reflect T's earnings and profits immediately before T ceases to be the common parent of the T group.

(ii) *Analysis.* Under paragraph (d)(4) of this section, although S is not the new common parent of the T group, adjustments must be made to S's basis in T's stock in accordance with the principles of this section. Although S's basis in T's stock would ordinarily be determined under section 362 by reference to the basis of T's shareholders in T's stock immediately before the group structure change, under the principles of paragraph (b)(2) of this section, S's basis in T's stock is determined by reference to T's net asset basis. Thus, S's basis in T's stock is \$60.

(iii) *Higher-tier adjustments.* Under paragraph (d)(4) of this section, P's basis in S's stock is increased by \$60 (to be consistent with the adjustment to S's basis in T's stock).

(iv) *Cross ownership.* The facts are the same as in paragraph (i) of this *Example 2*, except that several years ago S purchased 10% of T's stock from an unrelated person for cash and, pursuant to the plan, S acquires the remaining 90% of T's stock in exchange for P stock. S's basis in the initial 10% of T's stock is not redetermined under this section. However, S's basis in the additional 90% of T's stock is redetermined under this section. S's basis in that stock is adjusted to \$54 (90% of T's net asset basis).

(v) *Allocable share.* The facts are the same as in paragraph (i) of this *Example 2*, except that P owns only 90% of S's stock immediately after the group structure change. S's basis in T's stock is the same as in paragraph (ii) of this *Example 2*. Under paragraph (d)(2) of this section, P's basis in its S stock is increased by \$54 (90% of S's \$60 adjustment).

*Example 3. Taxable stock acquisition.* (i) *Facts.* P is the common parent of one group and T is the common parent of another. T has assets with an aggregate basis of \$60 and fair market value of \$100 and no liabilities. T's shareholders have an aggregate basis of \$50 in T's stock. Pursuant to a plan, P acquires all of T's stock in exchange for \$70 of P's stock and \$30 in a transaction that is a group structure change under § 1.1502-33(f)(1). P's basis in its acquired T stock is not determined in whole or in part by reference to the basis of the property exchanged for such stock. (Because of P's use of cash, the acquisition is not a transaction described in section 368(a)(1)(B).)

(ii) *Analysis.* The rules of this section do not apply to determine P's basis in T's stock. Therefore, P's basis in T's stock is \$100.

(h) *Effective dates—(1) General rule.* This section applies to group structure changes that occur after the date these regulations are published as temporary or final regulations in the **Federal Register**. However, after the date these regulations are published as temporary or final regulations in the **Federal Register**, a group may apply this section to group structure changes that occur on

or before the date these regulations are published as temporary or final regulations in the **Federal Register** and in consolidated return years beginning on or after January 1, 1995.

(2) *Prior law.* For group structure changes that occur on or before the date these regulations are published as temporary or final regulations in the **Federal Register** and in consolidated return years beginning on or after January 1, 1995, with respect to which the group does not elect to apply the provisions of this section, see § 1.1502-31 as contained in the 26 CFR part 1 edition revised as of April 1, 2003. For group structure changes that occur in consolidated return years beginning before January 1, 1995, see § 1.1502-31T as contained in the 26 CFR part 1 edition revised as of April 1, 1994.

**Robert E. Wenzel,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 03-17091 Filed 7-7-03; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-112039-03]

RIN 1545-BC35

#### Elimination of Forms of Distribution in Defined Contribution Plans

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that would modify the circumstances under which certain forms of distribution previously available are permitted to be eliminated from qualified defined contribution plans. These proposed regulations affect qualified retirement plan sponsors, administrators, and participants. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written and electronic comments and requests for a public hearing must be received by October 6, 2003.

**ADDRESSES:** Send submissions to: CC:PA:RU (REG-112039-03), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG-112039-03), Courier's Desk, Internal Revenue

Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at: [www.irs.gov/regs](http://www.irs.gov/regs).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Vernon S. Carter, 202-622-6060 (not a toll-free number); concerning submissions or hearing requests, Guy Traynor, 202-622-7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Explanation of Provisions**

This document contains proposed amendments to 26 CFR part 1 under section 411(d)(6) of the Internal Revenue Code of 1986 (Code) as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (115 Stat. 117). Section 411(d)(6)(A) of the Code generally provides that a plan will not be treated as satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. Section 411(d)(6)(B) prior to amendment by EGTRRA provided that an amendment is treated as reducing an accrued benefit if, with respect to benefits accrued before the amendment is adopted, the amendment has the effect of either eliminating or reducing an early retirement benefit or a retirement-type subsidy, or, except as provided by regulations, eliminating an optional form of benefit.

The IRS published TD 8900 in the **Federal Register** on September 6, 2000 (65 FR 53901). TD 8900, which amended § 1.411(d)-4 of the Income Tax Regulations, added paragraph (e) of Q&A-2 to provide for additional circumstances under which a defined contribution plan can be amended to eliminate or restrict a participant's right to receive payment of accrued benefits under certain optional forms of benefit.

Section 1.411(d)-4, Q&A-2(e)(1) provides that a defined contribution plan may be amended to eliminate or restrict a participant's right to receive payment of accrued benefits under a particular optional form of benefit without violating the section 411(d)(6) anti-cutback rules if, once the plan amendment takes effect for a participant, the alternative forms of payment that remain available to the participant include payment in a single-sum distribution form that is "otherwise identical" to the eliminated or restricted optional form of benefit. The amendment cannot apply to a participant for any distribution with an annuity starting date before the earlier of the 90th day after the participant receives a summary that reflects the

plan amendment and that satisfies Department of Labor's requirements for a summary of material modifications under 29 CFR 2520.104b-3, or the first day of the second plan year following the plan year in which the amendment is adopted. Section § 1.411(d)-4, Q&A-2(e)(2) provides that a single-sum distribution form is "otherwise identical" to the optional form of benefit that is being eliminated or restricted only if it is identical in all respects (or would be identical except that it provides greater rights to the participant), except for the timing of payments after commencement. A single-sum distribution form is not "otherwise identical" to a specified installment form of benefit if the single-sum form:

- Is not available for distribution on any date on which the installment form could have commenced;
- is not available in the same medium as the installment form; or
- imposes any additional condition of eligibility.

Further, an otherwise identical distribution form need not retain any rights or features of the eliminated or restricted optional form of benefit to the extent those rights or features would not be protected from elimination under the anti-cutback rules. The single-sum distribution form would not, however, be disqualified from being an otherwise identical distribution form if the single-sum form provides greater rights to participants than did the eliminated or restricted optional form of benefits.

Section 645(a)(1) of EGTRRA revised section 411(d)(6) in a manner that is similar to § 1.411(d)-4, Q&A-2(e), but without the advance notice condition. Section 411(d)(6)(E) of the Code provides that, except to the extent provided in regulations, a defined contribution plan is not treated as reducing a participant's accrued benefit where a plan amendment eliminates a form of distribution previously available under the plan if a single-sum distribution is available to the participant at the same time as the form of distribution eliminated by the amendment, and the single-sum distribution is based on the same or greater portion of the participant's account as the form of distribution eliminated by the amendment.

To reflect the addition of section 411(d)(6)(E) by EGTRRA, these proposed regulations would amend § 1.411(d)-4, Q&A-2(e). Under these amendments, the regulations would retain the rules under which a defined contribution plan may be amended to eliminate or restrict a participant's right

to receive payment of accrued benefits under a particular optional form of benefit without violating the section 411(d)(6) anti-cutback rules if, once the plan amendment takes effect for a participant, the alternative forms of payment that remain available to the participant include payment in a single-sum distribution. However, these proposed regulations would remove the 90-day notice condition previously applicable to these plan amendments.<sup>1</sup>

Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of the Employee Retirement Income Security Act of 1974 (ERISA), as well as the Code. Section 204(g)(2) of ERISA, as amended by EGTRRA, provides a parallel rule to section 411(d)(6)(E) of the Code that applies under Title I of ERISA, and authorizes the Secretary of the Treasury to provide exception to this parallel ERISA requirement. Therefore, these regulations apply for purposes of the parallel requirements of sections 204(g)(2) of ERISA, as well as for section 411(d)(6)(E) of the Code.

**Effective Date and Applicability Date**

The proposed regulations are proposed to apply on the date of publication of final regulations in the **Federal Register**.

**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 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, 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.

<sup>1</sup> The Department of Labor has advised Treasury and the IRS that it should be noted that plans covered by Title I of ERISA will continue to be subject to the requirement under Title I that plan amendments be described in a timely summary of material modifications (SMM) or a revised summary plan description (SPD) to be distributed to plan participants and beneficiaries in accordance with applicable Department of Labor disclosure rules (see 29 CFR 2520.104b-3)."

**Drafting Information**

The principal author of these regulations is Vernon S. Carter of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

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

Income taxes, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

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

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

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

Section 1.411(d)-4, Q&A-2(e) also issued under 26 U.S.C. 411(d)(6)(E). \* \* \*

**Par. 2.** Section 1.411(d)-4, Q&A-2(e) is revised to read as follows:

**§ 1.411(d)-4 Section 411(d)(6) protected benefits.**

\* \* \* \* \*

A-2: \* \* \*

(e) *Permitted plan amendments affecting alternative forms of payment under defined contribution plans—(1) General rule.* A defined contribution plan does not violate the requirements of section 411(d)(6) merely because the plan is amended to eliminate or restrict the ability of a participant to receive payment of accrued benefits under a particular optional form of benefit if, after the plan amendment is effective with respect to the participant, the alternative forms of payment available to the participant include payment in a single-sum distribution form that is otherwise identical to the optional form of benefit that is being eliminated or restricted.

(2) *Otherwise identical single-sum distribution.* For purposes of this paragraph (e), a single-sum distribution form is otherwise identical to an optional form of benefit that is eliminated or restricted pursuant to paragraph (e)(1) of this Q&A-2 only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the participant) except with respect to the timing of payments after commencement. For example, a single-sum distribution form is not otherwise identical to a specified installment form of benefit if the single-sum distribution form is not available for distribution on the date on which the installment form

would have been available for commencement, is not available in the same medium of distribution as the installment form, or imposes any condition of eligibility that did not apply to the installment form. However, an otherwise identical distribution form need not retain rights or features of the optional form of benefit that is eliminated or restricted to the extent that those rights or features would not be protected from elimination or restriction under section 411(d)(6) or this section.

(3) *Example.* The following example illustrates the application of this paragraph (e):

*Example.* (i) P is a participant in Plan M, a qualified profit-sharing plan with a calendar plan year that is invested in mutual funds. The distribution forms available to P under Plan M include a distribution of P's vested account balance under Plan M in the form of distribution of various annuity contract forms (including a single life annuity and a joint and survivor annuity). The annuity payments under the annuity contract forms begin as of the first day of the month following P's severance from employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)). P has not previously elected payment of benefits in the form of a life annuity, and Plan M is not a direct or indirect transferee of any plan that is a defined benefit plan or a defined contribution plan that is subject to section 412. Distributions on the death of a participant are made in accordance with plan provisions that comply with section 401(a)(11)(B)(iii)(I). On May 2, 2004, Plan M is amended so that, after the amendment is effective, P is no longer entitled to any distribution in the form of the distribution of an annuity contract. However, after the amendment is effective, P is entitled to receive a single-sum cash distribution of P's vested account balance under Plan M payable as of the first day of the month following P's severance from employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)). The amendment does not apply to P if P elects to have annuity payments begin before July 1, 2004.

(ii) Plan M does not violate the requirements of section 411(d)(6) (or section 401(a)(11)) merely because, as of July 1, 2004, the plan amendment has eliminated P's option to receive a distribution in any of the various annuity contract forms previously available.

(4) *Effective date.* This paragraph (e) is applicable on the date of publication of final regulations in the **Federal Register**.

\* \* \* \* \*

**Robert E. Wenzel,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 03-17089 Filed 7-7-03; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG-209377-89]

RIN 1545-BA69

**At-Risk Limitations; Interest Other Than That of a Creditor**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the treatment, for purposes of the at-risk limitations, of amounts borrowed from a person who has an interest in an activity other than that of a creditor or from a person related to a person (other than the borrower) with such an interest. Proposed regulations published in 1979 provide that amounts borrowed from a person who has an interest in an activity other than that of a creditor do not increase the amount at risk in certain enumerated activities. These proposed regulations extend this rule to all activities subject to the at-risk limitations. In addition, the rule is conformed to the current statutory language providing for its application to amounts borrowed from persons related to a person (other than the borrower) with an interest other than that of a creditor. These proposed regulations affect taxpayers subject to the at-risk limitations and provide them with guidance necessary to comply with the law.

**DATES:** Written or electronic comments and requests for a public hearing must be received no later than October 6, 2003.

**ADDRESSES:** Send submissions to: CC:PA:RU (REG-209377-89), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG-209377-89), 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: <http://www.irs.gov/regs>.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Tara P. Volungis or Christopher L. Trump, 202-622-3080; concerning submissions and requests for a public hearing, [INSERT NAME], 202-622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Background**

This document proposes amendments to 26 CFR part 1 to provide additional rules under section 465 of the Internal Revenue Code of 1986 (Code), as amended. Section 465 was added to the Code by section 204 of the Tax Reform Act of 1976 (Public Law 94-455, 90 Stat. 1531). Section 465 limits the deductibility of losses to a taxpayer's economic investment (the amount at risk) in the activity at the close of a taxable year. A taxpayer is generally considered at risk in an activity to the extent of cash and the adjusted basis of property contributed by the taxpayer to the activity. In general, a taxpayer's amount at risk also includes any amounts borrowed for use in the activity if the taxpayer is personally liable for repayment or if property other than property used in the activity is pledged as security.

As originally enacted, section 465 applied to certain enumerated activities described in section 465(c)(1) (old activities). Subsequent amendments made by section 201 of the Revenue Act of 1978 (Public Law 95-600, 92 Stat. 2814) extended the at-risk rules to other activities described in section 465(c)(3)(A) (new activities).

On June 5, 1979, the IRS published in the **Federal Register** (44 FR 32235) proposed regulations (LR-166-76) relating to the treatment of investments in old activities under section 465 of the Code (the previously proposed regulations). Section 1.465-8 of the previously proposed regulations provides that amounts borrowed by a taxpayer for use in an old activity do not increase the taxpayer's amount at risk if the lender has an interest in the activity other than that of a creditor. Section 1.465-20 of the previously proposed regulations provides rules for the treatment of amounts borrowed from certain persons and amounts protected against loss. This document proposes to amend §§ 1.465-8 and 1.465-20 of the previously proposed regulations.

**Explanation of Provisions***I. Application of Section 465(b)(3) to New Activities*

Under section 465(b)(3), amounts borrowed for use in an activity will not increase the borrower's amount at risk in the activity if the lender has an interest other than that of a creditor in the activity (a disqualifying interest) or if the lender is related to a person (other than the borrower) who has a disqualifying interest in the activity. The rule applies even if the borrower is

personally liable for the repayment of the loan or the loan is secured by property not used in the activity.

Section 465(c)(3)(D) provides that section 465(b)(3) will apply to new activities only to the extent provided in regulations prescribed by the Secretary. The Tax Court in *Alexander v. Commissioner*, 95 T.C. 467 (1990), held that, until regulations are issued, section 465(b)(3) cannot be applied to a new activity. These proposed regulations will apply section 465(b)(3) to the new activities described in section 465(c)(3)(A).

*II. Related Persons*

As originally enacted, section 465(b)(3) also applied to any borrowing from persons related to the taxpayer under section 267(b). Section 432(c) of the Deficit Reduction Act of 1984 (Public Law 98-369, 98 Stat. 814) eliminated this rule but provided, instead, that a taxpayer's amount at risk is not increased by amounts borrowed from a person related to a person (other than the taxpayer) who has a disqualifying interest in the activity. These proposed regulations change § 1.465-20 of the previously proposed regulations to reflect the amendment made by the Deficit Reduction Act of 1984.

*III. Scope of § 1.465-8*

These proposed regulations modify the previously proposed regulations to reflect section 465(b)(3)(B)(ii), which provides that, for purposes of determining a corporation's amount at risk, an interest as a shareholder is not a disqualifying interest. Thus, amounts borrowed by a corporation from its shareholders may increase the corporation's amount at risk.

These proposed regulations also modify the previously proposed regulations to reflect section 465(b)(6)(A), which provides that "qualified nonrecourse financing," if borrowed for use in an activity of holding real property and secured by real property used in the activity, is not subject to the limitations of section 465(b)(3). In addition, these proposed regulations expand the exception to include financing that, if it were nonrecourse, would be financing described in section 465(b)(6)(B). This expansion of the exception ensures that recourse financing is treated no worse than qualified nonrecourse financing.

*Proposed Effective Date*

The new rules in these regulations are proposed to be applicable to amounts borrowed after the rules are published

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 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 on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the 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 Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will 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 public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal authors of these proposed regulations are Tara P. Volungis and Christopher L. Trump of the Office of Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from Treasury and the IRS participated in their development.

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

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1, which was proposed at 44 FR 32235 (June 5, 1979), is proposed to be amended as follows:

**PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.465–8 also issued under 26 U.S.C. 465. \* \* \*

Section 1.465–20 also issued under 26 U.S.C. 465. \* \* \*

**Par. 2.** Section 1.465–8, as proposed at 44 FR 32238 (June 5, 1979), is amended as follows:

1. Paragraphs (a) and (b)(1) are revised.

2. The last sentence of paragraph (c)(1) is revised.

3. The second sentence of paragraph (d)(1) is revised.

4. Paragraph (e) is added.

The revisions and additions read as follows:

**§ 1.465–8 General rules; interest other than that of a creditor.**

(a) *In general*—(1) *Amounts borrowed.* This section applies to amounts borrowed for use in an activity described in section 465(c)(1) or (c)(3)(A). Amounts borrowed with respect to an activity will not increase the borrower's amount at risk in the activity if the lender has an interest in the activity other than that of a creditor or is related to a person (other than the borrower) who has an interest in the activity other than that of a creditor. This rule applies even if the borrower is personally liable for the repayment of the loan or the loan is secured by property not used in the activity. For additional rules relating to the treatment of amounts borrowed from these persons, see § 1.465–20.

(2) *Certain borrowed amounts excepted.* (i) For purposes of determining a corporation's amount at risk, an interest in the corporation as a shareholder is not an interest in any activity of the corporation. Thus, amounts borrowed by a corporation from a shareholder may increase the corporation's amount at risk.

(ii) For purposes of determining a taxpayer's amount at risk in an activity of holding real property, paragraph (a)(1) of this section does not apply to financing that is secured by real property used in the activity and is either—

(A) Qualified nonrecourse financing described in section 465(b)(6)(B); or

(B) Financing that, if it were nonrecourse, would be financing described in section 465(b)(6)(B).

(b) *Loans for which the borrower is personally liable for repayment*—(1) *General rule.* If a borrower is personally

liable for the repayment of a loan for use in an activity, a person shall be considered a person with an interest in the activity other than that of a creditor only if the person has either a capital interest in the activity or an interest in the net profits of the activity.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \* In the case of such a loan a person shall be considered a person with an interest in the activity other than that of a creditor only if the person has either a capital interest in the activity or an interest in the net profits of the activity.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \* In the case of such a loan a person shall be considered a person with an interest in the activity other than that of a creditor if the person stands to receive financial gain (other than interest) from the activity or from the sale of interests in the activity.

\* \* \* \* \*

\* \* \* \* \*

(e) *Effective date.* This section applies to amounts borrowed after the date this section is published as a final regulation in the **Federal Register**.

**Par. 3.** Section 1.465–20, as proposed at 44 FR 32241 (June 5, 1979), is amended as follows:

1. Paragraphs (a) and (b) are revised.

2. Paragraph (d) is added.

The revisions and additions read as follows:

**§ 1.465–20 Treatment of amounts borrowed from certain persons and amounts protected against loss.**

(a) *General rule.* The following amounts are treated in the same manner as borrowed amounts for which the taxpayer has no personal liability and for which no security is pledged—

(1) Amounts that do not increase the taxpayer's amount at risk because they are borrowed from a person who has an interest in the activity other than that of a creditor or from a person who is related to a person (other than the taxpayer) who has an interest in the activity other than that of a creditor; and

(2) Amounts (whether or not borrowed) that are protected against loss.

(b) *Interest other than that of a creditor; cross reference.* See § 1.465–8 for additional rules relating to amounts borrowed from a person who has an interest in the activity other than that of a creditor or is related to a person (other than the taxpayer) who has an interest in the activity other than that of a creditor.

\* \* \* \* \*

(d) *Effective date.* This section applies to amounts borrowed after the date this section is published as a final regulation in the **Federal Register**.

**Robert E. Wenzel,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 03–17090 Filed 7–7–03; 8:45 am]

**BILLING CODE 4830–01–P**

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**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**30 CFR Parts 250 and 254**

**RIN 1010–AC57**

**Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Incident Reporting Requirements**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This proposed rule revises and clarifies MMS requirements for reporting incidents associated with Outer Continental Shelf (OCS) oil and gas and other mineral operations. It adds a requirement for written reports and proposes the use of two new MMS report forms. The written reports must be submitted electronically. MMS has developed these reporting requirements in conjunction with the U.S. Coast Guard (USCG) and intends them to be as consistent as possible with USCG requirements for incidents where the two agencies have mutual interest and responsibilities. MMS is also working with the USCG to develop a single point electronic reporting system that would allow incident reports submitted through this single point to be sent to both agencies. This will help minimize duplicative reporting required by the two agencies.

**DATES:** We will consider all comments we receive by October 6, 2003. We will begin reviewing comments then and may not fully consider comments we receive after October 6, 2003.

**ADDRESSES:** If you wish to comment, mail or hand-carry comments (three copies) to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team (Comments). If you wish to respond by e-mail, the e-mail address is: [rules.comments@MMS.gov](mailto:rules.comments@MMS.gov). Use the term "Incident Reporting" in your e-mail subject line. Include your name and address in your e-mail message and mark your message for return receipt.

You may submit comments with respect to the information collection burden of the proposed rule either by fax (202) 395-5806 or email (*Ruth\_Solomon@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, Office of Management and Budget; Attention: Desk Officer for the Department of the Interior (OMB control number 1010-0XXX).

**FOR FURTHER INFORMATION CONTACT:**

Melinda Mayes at 703-787-1063 or Staci Atkins at 703-787-1620, Engineering and Operations Division.

**SUPPLEMENTARY INFORMATION:** Current MMS incident reporting requirements at 30 CFR 250.191 do not include detailed reporting thresholds and definitions. This allows a range of interpretations by the lessees/operators as to what should be reported. It is difficult to conduct meaningful incident analyses on data that are not consistently reported. Additionally, MMS does not currently require the submission of written incident reports. This also makes it more difficult to gather consistent information about each incident. The OCS lessees/operators have the best and most immediate access to information about incidents that are associated with their operations.

MMS's top priority is that OCS operations be conducted in a safe and environmentally sound manner. We must continue to identify unsafe equipment and procedures, as well as the human and organizational factors that cause incidents. To do this effectively, we need to upgrade our incident data analysis, investigation, and information publication functions. MMS uses incident data analyses and investigations to identify incident causes and trends. We also use it to evaluate both industry and individual operator performance. With this knowledge, we can develop strategies for promoting safety on the OCS. Strategies may include: developing regulatory initiatives, performing needed research, working with industry to develop new standards, conducting risk-based inspections, holding joint MMS/industry workshops to address specific safety issues, working with individual lessees/operators to address particular safety concerns, or other appropriate actions. Publishing information on incident causes and trends also allows industry to identify potentially unsafe equipment, conditions, or procedures so that lessees and operators can take appropriate steps to improve the safety of their operations.

Current MMS incident reporting requirements are not consistent with the

USCG reporting requirements for OCS activities. This creates confusion for OCS lessees/operators in determining what incidents to report to each agency and makes it more difficult for MMS and the USCG to coordinate their respective responsibilities on the OCS as agreed to in a Memorandum of Understanding (MOU) signed December 16, 1998. The purpose of the MOU is to minimize duplication and promote consistent regulation of OCS facilities. This proposed rule will help achieve that goal in the area of incident investigation, data collection, and analysis.

This proposed rule revises and clarifies MMS requirements for reporting incidents associated with OCS oil and gas and other mineral operations:

- a. Several definitions are added, including the term "incident" which replaces the term "accident" currently used in the regulations;
- b. More specific incident reporting thresholds for various incident types are established;
- c. Written reports are required and must be submitted electronically; and
- d. Two new MMS forms are proposed so that consistent information will be reported to MMS for all incidents.

MMS is working with the USCG to develop a single point electronic reporting system that would allow reports submitted through a single point to fulfill the requirements of both MMS and the USCG.

**Relationship of This Rule to USCG Reporting Requirements**

On December 7, 1999, the USCG published a Notice of Proposed Rulemaking (NPR) (64 FR 68416) amending its regulations at 33 CFR parts 140-147, Outer Continental Shelf Activities. Among many other things, the USCG NPR revises requirements for reporting incidents related to OCS facilities and vessels engaged in OCS activities. After several extensions, the comment period closed on November 30, 2000. MMS has worked with the USCG to ensure that the MMS proposed reporting requirements are as consistent as possible with the USCG's proposed rule.

This MMS proposed rule revises reporting requirements for all incidents that must be reported to MMS. The proposed rule also lists USCG reporting requirements for incidents where the two agencies have mutual interest and responsibility. We listed the USCG requirements so that both agencies' reporting requirements for these incidents can be found in one location. Our goal is for OCS lessees/operators to

be able to submit reports to both agencies through one electronic system for those incidents where the two agencies have mutual interest and responsibility. Since this is an MMS rule, we can require that incidents be reported to MMS, but cannot require that the incidents be reported to the USCG. The USCG's regulations impose that requirement. The USCG will need to take some action that will allow the appropriate segments of its regulated community to report incidents electronically according to the MMS regulation. We have discussed this with the USCG, and we will continue to work closely with the USCG as we review the comments to the proposed rule and finalize the MMS incident reporting regulation.

During the comment period for this rule, MMS will hold a workshop to discuss the rule and the development of an electronic reporting system. We will publish information on the workshop in the **Federal Register**. MMS and USCG encourage your comments on any aspect of this proposed rule and your participation in the workshop.

**Background**

On January 5, 1998, (63 FR 256), MMS and the USCG published proposed revisions to the MMS/USCG MOU in the **Federal Register**.

On February 13, 1998 (63 FR 7335), MMS published a proposed rule to revise MMS regulations for Postlease Operations Safety. The revisions were, among other things, intended to upgrade our incident investigation, data collection, and analysis functions. Some of the comments expressed concerns that were similar to those raised at an April 22, 1998, USCG-sponsored National Offshore Safety Advisory Committee (NOSAC) meeting. At that NOSAC meeting, industry expressed concerns about the duplicative and inconsistent incident reporting requirements of MMS and the USCG and the lack of specific reporting definitions and thresholds contained in the MMS February 1998 proposed rule. Because of these concerns, NOSAC formed an Incident Reporting Subcommittee to develop recommendations for a consistent approach to incident reporting between the two agencies. MMS, USCG, and industry representatives served on this subcommittee.

On May 29, 1998 (63 FR 29478), MMS published a final rule that redesignated sections of 30 CFR part 250 to provide additional section numbers for future revisions. This redesignation did not change any requirements. Former § 250.19, dealing with incident

reporting, was redesignated as § 250.119.

At a November 5, 1998, NOSAC meeting, the Incident Reporting Subcommittee presented a framework and recommendations for MMS and the USCG to use in developing incident reporting regulations. Recommendations included:

- Delay the portion of the final rule for Postlease Operations Safety dealing with incident reporting regulations (to allow MMS and USCG time to address inconsistencies between the two agencies' requirements);

- Improve the cycle time to provide better feedback of incident data (incident analysis, faster safety alerts, trend analysis);

- Establish a USCG/MMS team to focus on the incident reporting process;

- Include stakeholders in the process;
- Use, wherever possible, common definitions for like terms;

- Strive for a process that requires single agency reporting;

- Explore the value of a single form with multiple data needs;

- Investigate alternate reporting methods and timing for reports; and

- Clarify and identify who is responsible for initiating the reports.

MMS and the USCG concurred with the NOSAC Subcommittee's recommendations, and in December 1998 met to begin developing mutually agreeable reporting requirements and an electronic reporting system. The two agencies developed a draft set of requirements and, in June 1999, invited industry representatives from the NOSAC Subcommittee to meet and discuss the draft requirements.

On December 16, 1998, MMS and the USCG signed a new MOU, which was published in the **Federal Register** on January 15, 1999 (64 FR 2660). The purpose of the MOU is to minimize duplication and promote consistent regulation of OCS facilities. In the **Federal Register** notice, we also described several actions that the two agencies would consider in implementing the MOU. Several were related to incident investigation, data collection, and analysis, and they included:

- Work on safety management, including accident investigations to promote safe practices;

- Continue to work on single point reporting;

- Communicate electronically;
- Improve the process of reporting and collecting incident data; and

- Share incident data to prevent accidents, particularly fatalities.

On December 28, 1999 (64 FR 72756), MMS published the final rule for

Postlease Operations Safety (30 CFR 250, subpart A). In the final rule, the section relating to incident reporting, 30 CFR 250.119, was renumbered as 30 CFR 250.191. We addressed a few of the comments on the proposed incident reporting requirements in that final rule. However, we did not make changes to incident reporting requirements (except for rewriting them in plain English) and deferred the issue to a separate rulemaking process, *i.e.*, this MMS proposed rule.

## Discussion of Proposed Changes in This MMS Proposed Rule

### 1. Renumbering

We propose to renumber 30 CFR 250.190 as 250.186.

We propose to revise 30 CFR 250.191 into several sections as follows:

Section 250.187—What is the scope of the incident reporting requirements?

Section 250.188—What incidents must I immediately report to MMS, USCG, National Response Center (NRC), or the Responsible Party?

Section 250.189—What other incidents must I report to MMS?

Section 250.190—What reporting procedures must I follow?

Section 250.191—How does MMS conduct incident investigations?

### 2. Definitions (§ 250.105)

Twelve new definitions are proposed. Five definitions are proposed to clarify specific MMS incident reporting requirements. Seven are proposed to clarify both MMS and USCG requirements.

*Definitions that clarify specific MMS reporting requirements:*

- Collision—We developed this definition to clarify the types of collisions that should be reported. The USCG does not have a definition for collision.

- Gas release—Reporting these incidents is a new proposed requirement, so a definition was added.

- Loss of well control—Loss of well control incidents have the potential to result in very serious consequences from both a safety and environmental standpoint. Because of the potential consequences, MMS needs to investigate and understand the causes of all of these incidents so that appropriate measures to prevent them can be identified. Currently, MMS regulations require reporting of all “blowouts,” and the term “blowout” is undefined.

Because of the seriousness of loss of well control incidents, we believe most of these incidents are already being reported under current MMS regulations. However, a small number of

lessees/operators may not be reporting all types of loss of well control incidents. In particular, some lessees/operators may not be reporting incidents where the well is put on a diverter and subsequently controlled. MMS proposes to replace the term “blowout” with “loss of well control” and has defined “loss of well control” as broadly as possible, including diverter incidents.

- Reportable releases of H<sub>2</sub>S—§ 250.490(l) currently requires lessees/operators to notify MMS of these incidents. We are retaining that requirement and are providing a definition for “Reportable Releases of H<sub>2</sub>S” that uses the same wording found in § 250.490(l).

- Fire—Industry comments on the MMS proposed rule for Postlease Operations Safety (February 13, 1998, 63 FR 7335) requested that MMS provide a definition for fires and identify what types of fires are to be reported. In response to these comments, we are proposing a definition of fire. We started with the definition from the American Petroleum Institute's (API) Recommended Practice 14G, Third Edition, December 1, 1993. It is likely the one used by most OCS lessees/operators. To this definition, MMS has specifically added incidents involving smoke with no visible flame. This addition is in response to industry questions about whether “smoke only” incidents must be reported.

*Definitions needed to clarify both MMS and USCG requirements:*

- Incident—We propose to replace the term “accident” with the term “incident” and have proposed a definition. Current MMS regulations refer to “accidents.” Many people think of an accident as an event that results in serious personal injury or involves significant damage to property, while the term “incident” connotes a broader range of events. This proposed rule, like the current rule, includes reporting of events that result in serious injury or damage to property and events that result in minor or no injuries and little or no property damage. Thus, we believe the term “incident” is more appropriate. We do not intend to require reporting of illnesses and injuries arising from causes other than operational incidents, such as communicable diseases, food poisoning, etc. The definition of “incident” is designed to exclude these types of events.

The current USCG regulations and the USCG proposed rule use the term “casualty” or “marine casualty” to refer to events that must be reported. The definition of incident in this MMS proposed rule includes these terms.

- Mobile Offshore Drilling Unit (MODU)—Current MMS regulations do not include a definition for MODU. The definition proposed in this NPR is taken from the USCG NPR (33 CFR 140.25) with one change. We have eliminated the exclusion of MIDUs (Mobile Inland Drilling Units) that appears in the USCG NPR. The USCG proposed rule specifies the limited locations where MIDUs may operate on the OCS (33 CFR 145.505) and also proposes some requirements for MIDUs that are different than those for MODUs (33 CFR, part 145, Subpart F). Therefore, the USCG proposed rule includes separate definitions for MODUs and MIDUs. However, for the purpose of incident reporting, this distinction is not needed. Therefore, in this MMS NPR we have eliminated the exclusion of MIDUs from the USCG NPR definition of MODUs, so that the reporting requirements apply to both MODUs and MIDUs when they operate on the OCS.

- OCS Activity—A definition of “OCS activity” is added to help define other terms. This proposed definition is taken directly from the MMS/USCG MOU with a minor editorial change.

- OCS Facility—A definition of “OCS facility” is added to clarify reporting requirements for vessels in relation to these facilities. Current MMS regulations include three definitions for facility. However, their applications are limited to specific sections of the 30 CFR part 250 regulations. The USCG proposed rule definition of “facility” (33 CFR 140.25) does not include pipelines, which MMS needs to include in this rulemaking. In this MMS proposed rule, we added a definition for OCS facility that is taken from the MMS/USCG MOU, which does include pipelines. To this definition, we added a phrase that specifies when MODUs are considered to be an OCS facility. We are also correcting a typographical error in

the MMS/USCG MOU definition by replacing the word “and” with the word “or” to indicate that the purpose of an OCS facility is “exploring for, developing, producing, or transporting resources from the OCS.”

- Property Damage—Since some of the proposed incident reporting thresholds are based on the dollar amount of property damage, a definition is needed. At 33 CFR 143.110(a)(6), the USCG NPR incorporates a description of what “property damage” includes. We have used the USCG wording for our proposed definition with minor editorial changes and one additional change. We have replaced the term “facility” with the term “OCS facility.” The USCG NPR includes a definition for “facility,” which is not the same as our proposed definition of “OCS facility.” The definition of “OCS facility” is broader in scope than the USCG proposed rule definition of “facility,” particularly because it includes pipelines and MODUs. For incident reporting purposes, the use of the broader term, “OCS facility,” in relation to property damage is more appropriate and should satisfy the needs of both agencies.

- Vessel—We are proposing reporting of certain incidents involving vessels (boats, barges, etc.) and need to define the term “vessel.” The USCG NPR definition for vessel (33 CFR 140.25) does not specifically exclude atmospheric or pressurized vessels used for containing liquids and gases. We propose to use the definition from the MMS/USCG MOU, which does specifically exclude atmospheric and pressure vessels. We have made minor editorial changes to this definition.

- Vessels engaged in OCS activities—This definition is needed to help identify the scope of the proposed reporting requirements (§ 250.187). There is no definition for these vessels in current MMS or USCG regulations,

proposed USCG regulations, or the MMS/USCG MOU. The definition in this proposed rule is based on a vessel’s distance from an OCS facility.

3. Scope (§ 250.187)

We propose to expand the scope of the current regulations and provide additional guidance. Current regulations do not specify when incidents involving vessels are related to operations on a lease, easement, right-of-way, or other permit. As a result, it is unclear when these incidents must be reported to MMS. Numerous crew, supply, and other vessels transit the OCS daily. They visit OCS facilities to load/unload crew and supplies and to provide fuel and other services to those facilities. The USCG has jurisdiction over vessel operations on the OCS. However, to coordinate response and investigation responsibilities, both MMS and the USCG need to know about incidents where vessels may be involved with or pose a threat to an OCS facility. We have identified these situations as incidents involving “vessels engaged in OCS activities,” and have added a reporting requirement. A definition of “vessels engaged in OCS activities” is also proposed and is based on the distance of the vessel from an OCS facility.

As noted earlier in the preamble, we list the USCG’s reporting requirements in this MMS proposed rule so that reports for both agencies can be made through one electronic system. Since MMS cannot require that incidents be reported to the USCG, the USCG will need to take some action to allow its regulated community to report incidents according to MMS regulations. This issue is also addressed in the scope of this MMS proposed rule.

The following table compares the scope of current MMS regulations and this MMS proposed rule.

SCOPE OF MMS CURRENT AND PROPOSED REGULATIONS

MMS proposed rule	MMS current regulations
<p><b>§ 250.187(a)</b> Incidents that:</p> <p>(1) Occur on the area covered by your lease, easement, right-of-way, or other permit; and</p> <p>(2) Are related to operations resulting from the exercise of your rights under your lease, easement, right-of-way, or permit. This includes incidents involving vessels engaged in OCS activities as defined in § 250.105.</p>	<p><b>250.191(a)</b> [Accidents] connected with any activities or operations on the lease.</p> <p><b>§ 250.191(b)</b> If you hold an easement, right-of-way, or other permit, and your operation is related to the exercise of the easement, right-of-way, or other permit, you must comply with paragraph (a) for any accident occurring on the area covered by the easement, right-of-way, or other permit.</p>
<p><b>§ 250.187(b)</b> You may be required to report incidents described in §§ 250.188 and 250.190 to the USCG under USCG rules. You may use the notifications and reports that you make to MMS under those sections to satisfy USCG incident reporting requirements if and to the extent allowed by USCG regulations.</p>	<p>Not addressed in current regulations.</p>
<p><b>§ 250.187(c)</b></p>	

## SCOPE OF MMS CURRENT AND PROPOSED REGULATIONS—Continued

MMS proposed rule	MMS current regulations
Nothing in this subpart relieves you from making notifications and reports of incidents that may be required by other regulatory agencies.	Not addressed in current regulations.

#### 4. Reporting Thresholds (§ 250.188 through § 250.189)

Three reporting categories are proposed based on the seriousness of the outcome of the incident. Those categories are “Immediate,” “12-Hour,” and “15-Day” and are named for the time when the first notification or report is due. Within each of these categories, reporting thresholds are proposed for various incident types (fires, explosions, injuries, gas releases, etc.).

We are proposing three reporting categories to ensure that MMS and the USCG receive timely notification of incidents so that we may respond appropriately. For incidents in the “Immediate” category, one or both agencies need to be notified right away because they may need to take one or more of the following actions: (1) Be involved in or monitor the ongoing response to the incident; (2) determine if the incident jeopardizes ongoing operational safety and take appropriate action; or (3) initiate an incident investigation. Although incidents in the “12-Hour” category are less serious in terms of outcome, MMS still needs to be notified to determine if any of the actions previously listed are needed. Incidents in the “15-Day” category are not likely to require immediate action from MMS. However, the agency still needs to know about them because they involve unsafe conditions or actions related to offshore operations that we may need to address.

The following discussion summarizes the thresholds we are proposing for each incident type. A table comparing these proposed thresholds with those in the current regulation is found at the end of this discussion.

For some incident types, the proposed overall reporting threshold is the same as in MMS current regulations. For other incident types, reporting thresholds have been modified through proposed definitions or more specific reporting thresholds. Other incident types included in this proposed rule are not specifically addressed in the current regulations. One incident type in the current regulation is not specifically addressed in this proposed rule.

*Incidents—No change to the current reporting thresholds.* Although the language may be different for the

following four incident types, the reporting thresholds remain the same.

- **Death**—Current regulations and the proposed rule both require reporting any death. In the proposed rule, all deaths other than deaths due to natural causes would have to be reported to MMS and would be reported in the “Immediate” category. Although current regulations do not specifically exclude deaths due to natural causes, they do indicate that reportable incidents are those that are connected with any activities or operations on the lease or operations that are related to the exercise of rights under an easement, right-of-way, or other permit. We therefore believe that the reporting threshold in this proposed rule is essentially the same as that in the current regulation.

- **Explosions**—Current regulations and the proposed rule require reporting all explosions. In the proposed rule, explosions are reported in either the “Immediate” or “12 Hour” category, depending on the amount of property damage resulting from the explosion.

- **H<sub>2</sub>S Releases**—The current regulations at § 250.490(l) and the proposed rule require reporting of H<sub>2</sub>S releases. The reporting threshold of both the current and proposed rule is also the same. In the proposed rule, all H<sub>2</sub>S releases are reported in the “Immediate” category.

- **Oil spills**—The reporting threshold in the current regulation and the proposed rule is the same. In the proposed rule, all oil spills are reported in the “Immediate” category.

*Incidents where current reporting thresholds are modified.* Overall reporting thresholds for the following three incident types have been modified.

- **Fires**—Current regulations require reporting of all fires, and the term fire is undefined. As noted earlier, MMS, in response to industry comments, is proposing a definition for fire based on the definition from API Recommended Practice 14G, Third Edition, December 1, 1993. Incidents involving smoke with no visible flame are also included to address questions we have received from the industry. The proposed rule requires reporting of all fires except those that are completely contained in the living quarters and result in \$25,000 or less in property damage. This

exception eliminates the need to report minor fires that pose little risk to safety. In this proposed rule, fires are reported in the “Immediate,” “12-Hour,” or “15-Day” categories, depending on the amount of property damage or number of injuries resulting from the fire.

- **Loss of well control**—Current regulations require reporting of all blowouts, and the term “blowout” is undefined. Because of the potential risks associated with these incidents, the term “loss of well control” is proposed as a substitute for “blowout,” and has been broadly defined to ensure all of these incidents are included. The proposed rule requires that all losses of well control be reported in the “Immediate” category.

- **Injuries**—Current MMS regulations require reporting of all serious injuries, without defining the term “serious.” In this MMS NPR, we have maintained the current MMS requirement to report all serious injuries. We have specified what constitutes a serious injury, using the same criteria that the USCG has included in its NPR. Although the USCG NPR does not include a requirement for reporting less serious injuries, MMS has determined that it is important for us to develop a better understanding of the causes of these incidents as precursors or “near misses” to the more serious injury incidents. To do this, we need to examine more than just the most serious incidents.

Examining the causes of less serious incidents will enable us to work with the industry to identify effective ways for preventing serious injury incidents. When MMS began to prepare this proposed rule, we decided to use the Occupational Safety and Health Administration (OSHA) terms “lost workdays” and “first aid” to define reporting thresholds because these were widely used by the petroleum and other industries and had been in place for many years. For calendar year 1997, many OCS operators submitted incident data for the voluntary MMS/USCG/ Industry performance measures program. Data from the resulting report (Outer Continental Shelf Performance Measures; Safety, Environmental and Regulatory Compliance Indicators from the U.S. Offshore Oil and Gas Industry, Report for 1996–1998), published in August 1999, indicated that there were 507 “lost workday” cases in 1997. In

that same year, MMS received reports for 83 injuries, or only about 16 percent of the "lost workday" cases reported by the performance measures participants.

- "Lost workdays," as defined by OSHA, encompassed relatively minor injuries and illnesses up through the most serious ones. To eliminate the more minor injuries and illnesses included under the OSHA definition of "lost workdays," MMS considered establishing a reporting threshold based on a certain number of "lost workdays." Discussions with offshore industry representatives indicated that the industry keeps basic information about lost workday cases, but that tracking the number of "lost workdays" for each case in order to determine which cases should be reported to MMS would be very burdensome. Therefore, we decided not to set the threshold at a certain number of "lost workdays." Instead, we decided to propose that all "lost workday" cases as defined by OSHA be reported while minimizing the amount of information requested for these incidents.

On January 19, 2001, OSHA published a final rule for occupational injury and illness recording and reporting requirements (29 CFR 1904.7, 66 FR 5916) which became effective on January 1, 2002. In that rule, the term "lost workday" was eliminated. We have adopted the terms from OSHA's final rule that replace "lost workdays." Therefore, to define reporting thresholds for injuries, we are proposing the use of "days away from work" and "restricted work or job transfer" where we originally had decided to use "lost workdays." Similarly, to define a threshold for fires involving injuries, we are proposing OSHA's new term "medical treatment beyond first aid" instead of referring to "first aid" as defined in the previous version of OSHA's regulations. We have adopted these terms as defined by OSHA, to be consistent with these already existing recording requirements and definitions rather than promulgating requirements with different criteria.

In this proposed rule, an injury threshold for each reporting category is proposed. The most serious injuries would be reported in the "Immediate" category, and the reporting threshold is defined by the nature of the injury.

In the "12-Hour" category, we propose the reporting of: (1) incidents resulting in injuries or illnesses to more than one person that involve "days away from work" or "restricted work or job transfer" and (2) all fires resulting in injuries or illnesses to more than one person that involve "medical treatment beyond first aid." Incidents already

reported under the "Immediate" category are excluded.

In the "15-Day" category, we propose the reporting of all incidents resulting in injuries or illnesses to one person that involve "days away from work" or "restricted work or job transfer." Incidents already reported in the "Immediate" or "12-Hour" category are excluded.

*Incident types that are not addressed in the current regulations.* The following eight incident types are not addressed in current MMS regulations. Six of these must be reported to MMS; the others must be reported to the USCG or NRC.

- Collision—Because these incidents have potentially serious consequences, MMS wants to ensure that they are reported. A specific requirement is included to report collisions and sets the reporting threshold at those incidents resulting in more than \$25,000 of property damage. All collisions are reported in either the "Immediate" or "12-Hour" category, depending on whether the amount of property damage is more or less than \$100,000.

- Incidents Involving Property Damage—Although incidents involving property damage alone do not result in serious outcomes in terms of personal injury, they do represent unsafe conditions that have the potential for more serious consequences, including personal injury. Receiving information about these incidents will help MMS identify safety concerns and work with industry on appropriate preventative measures. The dollar amount of property damage is proposed as a reporting threshold for specific incidents such as collisions, fires, and explosions, as well as a general threshold for other incidents. The proposed rule requires that incidents resulting in property damage greater than \$25,000 be reported. They are reported in either the "Immediate" or "12-Hour" category, depending on the amount of property damage.

- Gas Releases—Because of the potential hazard that a release of flammable gas poses to an offshore facility as a precursor to an explosion, MMS needs to determine how often and under what circumstances these incidents are occurring on the OCS. This information will enable us to work with the industry to determine if additional prevention measures are needed. The proposed rule defines gas releases as unintentional releases that without correction could raise gas concentrations to the lower flammable (explosive) limit. Gas releases do not include gas that is vented or flared. These events have their own reporting requirements. In this proposed rule, gas

releases are reported in the "15-day" category.

- Non-weather-related incidents where personnel muster for evacuation—Incidents where personnel prepare for evacuation represent situations that have the potential to become serious. MMS needs to determine how often and under what circumstances these incidents are occurring on the OCS. This information will enable us to identify additional safety concerns that may need to be addressed and to work with the industry on prevention measures. The proposed rule requires that these incidents be reported in the "15-day" category.

- Incidents that impair the operation of an OCS facility's primary firefighting and lifesaving equipment—Firefighting and lifesaving equipment are critical to the protection of offshore operations, personnel, property, and the environment. If this equipment is impaired, MMS and the USCG need to know immediately to coordinate appropriate response. Therefore, we are proposing that these incidents be reported.

- Vessels engaged in OCS activities that are involved in incidents listed in the USCG regulations at 46 CFR 4.05–1(a)(1) through 4.05–1(a)(4)—These incidents involve things such as a vessel's loss of main propulsion, etc., and are the responsibility of the USCG. If such incidents occur near an OCS facility, they have the potential to jeopardize the safety of operations, personnel, or property, on the facility or the surrounding environment. In these situations, both MMS and the USCG need to know about the incident to coordinate appropriate response and investigation actions. As noted earlier, MMS is proposing a definition for "vessels engaged in OCS activities." This definition is based on the vessel being within 500 meters of an OCS facility. Because vessels within this distance have the potential to be involved with or affect the safety of both the vessel and the facility, these incidents would be immediately reported to both agencies.

- Vessels not engaged in OCS activities that are involved in accidents listed in the USCG regulations at 46 CFR 4.05—This NPR is intended to address both MMS and the USCG reporting requirements for incidents where we have mutual interest. However, this NPR also includes a statement that nothing in this subpart would relieve the obligation for any vessel not engaged in OCS activities to provide notices or reports to the USCG as required by 46 CFR 4.05. These incidents are beyond the scope of MMS interest and

responsibility and fall within the USCG's jurisdiction, but we added this statement to ensure that there is no ambiguity between MMS and USCG requirements.

- Hazardous spills—Current regulations do not specifically address reporting of hazardous spills. MMS is interested in these incidents as they relate to the safety of OCS operations and protection of the environment but does not have direct jurisdiction or expertise over hazardous substances.

MMS is able to get initial reports from the NRC for incidents involving these substances. Therefore, this proposed rule reminds lessees/operators that all hazardous spills must be reported to the NRC as currently required by Environmental Protection Agency (EPA) regulations.

*Incident type that is addressed in the current regulation, but not in this NPR.*

- Serious accidents—The current regulation requires reporting of all serious accidents but does not define

this term. We wrote this proposed rule to provide more specific reporting definitions and thresholds. We believe that these definitions and thresholds encompass the incidents that MMS would consider serious. Therefore, the general category of serious incidents is no longer needed, and we have not included it in the proposed rule.

The following table compares the reporting thresholds in current regulations with the ones that are proposed.

REPORTING THRESHOLDS OF MMS PROPOSED AND CURRENT REGULATIONS

MMS proposed rule	MMS current regulations
§ 250.188(a)(1) "Immediate" Category All deaths, except for deaths due to natural causes .....	§ 250.191(a) Any death.
§ 250.188(a)(4) "Immediate" Category All explosions resulting in property damage greater than \$100,000 .....	§ 250.191(a) All explosions.
§ 250.189(a)(2) "12-Hour" Category .....	
All explosions resulting in property damage equal to or less than \$100,000 .....	
§ 250.188(a)(7) "Immediate" Category .....	§ 250.490(l)
All reportable releases of H <sub>2</sub> S. These releases are defined using the same wording as in the current MMS regulation at § 250.490(l).	Reporting required of H <sub>2</sub> S releases, which result in a 15-minute time weighted average atmospheric concentration of H <sub>2</sub> S of 20 ppm or more anywhere on the facility.
§ 250.188(a)(8)–250.188(a)(10) "Immediate" Category .....	§ 250.191(a)
The thresholds for reporting spills utilize the current criteria at § 254.46 and therefore are the same as the current MMS rule.	Report all spills of oil or other liquid pollutants according to 30 CFR Part 254.
§ 250.188(a)(4) "Immediate" Category .....	§ 250.191(a)
All fires resulting in property damage greater than \$100,000 .....	All fires (undefined).
Fire is defined at § 250.105 as: " * * * the phenomenon of combustion manifested in light, flame, and heat' and has the same meaning as in API RP 14G, Third Edition, December 1, 1993. In addition, the term 'fire' as used in this part includes incidents of combustion involving smoke with no visible flame"	
§ 250.189(a)(3) and § 250.189(a)(4) "12-Hour" Category .....	
• § 250.189(a)(3)—All fires (defined at § 250.105) not reported in § 250.188(a) that result in property damage equal to or less than \$100,000 but greater than \$25,000	
• § 250.189(a)(4)—All fires (defined at § 250.105) not reported in § 250.188(a) or § 250.189(a)(3) resulting in injuries or illnesses that involve medical treatment beyond first aid to more than one person	
§ 250.189(a)(6) "15-Day" Category .....	
All other fires (defined at § 250.105) not reported under § 250.188(a) or §§ 250.189(a)(3)—250.189(a)(4), excluding those completely contained in the living quarters	
§ 250.188(a)(3) "Immediate" Category .....	§ 250.191(a)
All losses of well control .....	All blowouts (undefined).
Loss of well control is defined at § 250.105 as either of the following:	
• (1) Uncontrolled flow of formation or other well fluids. The flow may be between two or more exposed formations or it may be at or above the mudline. This includes uncontrolled flow resulting from failures of either surface or subsurface equipment or procedures	
• (2) Flow of formation or other well fluids through a diverter	
§ 250.188(a)(2) "Immediate" Category .....	§ 250.191(a)
Injuries resulting in one or more of the following: .....	Any serious injury (undefined).
• Hospitalization of a person for more than 48 hours within 5 days of the incident;	
• Fractured bone (other than in a finger, toe, or nose);	
• Loss of limb;	
• Severe hemorrhaging;	
• Severe damage to a muscle, nerve, or tendon;	
• Damage to an internal organ; or	
• Evacuation to shore of three or more people	
§ 250.189(a)(1) "12-Hour" Category .....	
• § 250.189(a)(1) All incidents not reported under § 250.188(a) resulting in injuries or illnesses to more than one person that involve either:	
(i) Days away from work; or	
(ii) Restricted work or job transfer	
§ 250.189(a)(5) "15-Day" Category .....	
All incidents not reported under § 250.188(a) or paragraph §§ 250.189(a)(1)–250.189(a)(4) resulting in an injury or illness to one person that involves either:	



Initial and Follow-up written reports must be submitted using the forms CG-2692 and MMS-142 (sections 1-3). For incidents listed in §§ 250.189(a)(5)-250.189(a)(8), a "15-Day" written report

must be submitted on a new MMS form, MMS-143.

The table in § 250.190(a)(4) specifies the forms that must be submitted for the various written report requirements. Forms CG-2692, MMS-142, and MMS-

143 are included in the Appendix to this proposed rule.

A comparison between reporting procedures in the current MMS regulation and the proposed rule is shown in the table below.

MMS proposed rule	MMS current regulations
<b>Who Reports</b>	
§ 250.105 You—defined the same as in the current MMS regulations .....	§ 250.105 You—defined as a lessee, the owner or holder of operating rights, a designated agent of the lessee(s), a pipeline right-of-way holder, or State lessee granted a right-of-use and easement.
§ 250.188(a), § 250.189(a)(1)—§ 250.189(a)(8), For these incidents, "You must notify/submit....".	§ 250.191(a), § 250.191(b), § 250.490(l), and § 254.46 For these incidents, "You must notify/report...."
§ 250.188(b) Notifications and written reports made by the owner, agent, master, operator, or person in charge of a vessel will satisfy the reporting requirements for that vessel.	Not addressed in current MMS regulations.
<b>Oral Notifications Required</b>	
§ 250.188(a)(1)—§ 250.188(a)(6) and § 250.188(a)(11) "Immediate" category These reportable incidents require oral notification to the MMS District Supervisor. Most of these incidents would also be reported to the nearest USCG Marine Safety Office (or Marine Inspection Office or Coast Guard Group Office).	§ 250.191(a) Reportable incidents require notification to the MMS District Supervisor.
§ 250.188(a)(7) "Immediate" category Reportable releases of H <sub>2</sub> S require oral notification to the MMS District Supervisor.	§ 250.490(l) Reportable releases of H <sub>2</sub> S require notification to MMS.
§ 254.188(a)(8), § 254.188(a)(9), § 254.188(a)(10) "Immediate" category All spills require oral notification to the MMS District Supervisor, the NRC, and/or the responsible party (as appropriate for the incident) per § 254.46.	§ 254.46 All spills require notification to the MMS Regional Supervisor, the NRC, and/or the responsible party (as appropriate for the incident).
§ 250.190(a)(2)(i) You must make oral notification within 24 hours and submit the appropriate written reports for incidents that are not reported, but later found to be reportable.	Not addressed in current regulations, except for spills of a barrel or more. Per § 254.46(b)(1): You must report a spill from your facility not originally reported, but subsequently found to be one barrel or more.
§ 250.190(a)(2)(ii) You must make the appropriate oral notifications and submit the appropriate reports for incidents that have been reported, but are later found to be reportable under a different section or paragraph.	Not addressed in current regulations.
§ 250.188(a)(12)—"Immediate" category These incidents require oral notification to the NRC	Not addressed in current regulations.
<b>Written Reports Required</b>	
§ 250.188(a)(1)—§ 250.188(a)(6) and § 250.188(a)(11) "Immediate" category These incidents require written Follow-up Reports to MMS or to the MMS and USCG.	§ 250.191(a), § 250.191(b), No written reports are required for any of these incidents that are reportable under current MMS regulations.
§ 250.188(a)(1)—§ 250.188(a)(4) "Immediate" category These incidents require written Final Reports to MMS.	§ 250.191(a), § 250.191(b), No written reports are required for any of these incidents that are reportable under current MMS regulations.
§ 250.188(a)(1)—§ 250.188(a)(4) "Immediate" category These incidents require written Final Reports to MMS.	
§ 250.189(a)(1)—§ 250.189(a)(4) "12-Hour" category All of these incidents require written Initial and Follow-up Reports to MMS.	
§ 250.189(a)(5)— § 250.189(a)(8) category "15-Day" All of these incidents require written "15-Day" Reports to MMS.	
§ 250.188(a)(7) "Immediate" category Reportable releases of H <sub>2</sub> S require a written Follow-up Report to MMS.	§ 250.490(l) No written report required for reportable releases of H <sub>2</sub> S.
§ 254.188(a)(9) "Immediate" category Written report requirements for spills are the same as in the current MMS regulation, except that spills of 200 barrels or more require a written Final Report to MMS.	§ 254.46(b)(2) Spills of a barrel or more require a written Follow-up Report to the Regional Supervisor, MMS.
§ 250.190(b)(1) If you are submitting reports under § 250.188 to fulfill USCG requirements, you must make a written report for each OCS facility and vessel involved in the incident.	Not addressed in current regulation.
<b>Written Reporting Forms</b>	
§ 250.190(a)(4)(i) "Immediate" category Written reports are submitted to MMS or to both MMS and the USCG. Follow-up Reports to MMS require the use of forms CG-2692 and MMS-142, Sections 1-3. Incidents reported to the MMS under § 250.188(a)(11) only require submission of the CG-2692 for the Follow-up Report.	§ 254.46(b)(2) Only spills of a barrel or more require a written Follow-up report. No particular report form is required.
§ 250.190(a)(4)(ii) "Immediate" category Final Report to MMS must be submitted using the form MMS-142, Sections 1-4.	
§ 250.190(b)(2) Company reports may be used for the Final Report if they include all of the information requested by form MMS-142.	

MMS proposed rule	MMS current regulations
<p>§ 250.190(a)(4)(iii) "12-Hour" Initial Reports must be submitted to MMS on Forms CG-2692 and MMS-142, Sections 1-2.</p> <p>§ 250.190(a)(4)(iv) "12-Hour" category Follow-up Reports must be submitted to MMS on Forms CG-2692 and MMS-142, Sections 1-3.</p> <p>§ 250.190(a)(4)(v) "15-Day" category 15-Day Reports must be submitted to MMS on Form MMS-143.</p>	
<b>Written Report Timing</b>	
<p>§ 250.188 (a) "Immediate" category Follow-up Reports within 5 days; Final Report within 60 days; Follow-up Report for spills of 1 barrel or more within 15 days after the spillage has been stopped.</p> <p>§ 250.190(b)(3) If Final Report is submitted within the timeframe for the Follow-up Report, no additional reporting is required.</p> <p>§§ 250.189(a)(1) 250.189(a)(4) "12-Hour" category Initial Report within 12 hours; Follow-up Report within 5 days.</p> <p>§§ 250.189(a)(5)—250.189(a)(8) "15-Day" category 15-Day Report within 15 days.</p>	<p>§ 254.46(b)(2) Only spills of a barrel or more require a written Follow-up report. The report is due within 15 days after the spillage has been stopped.</p>
<b>Other Requirements</b>	
<p>§ 250.190(a)(3) MMS District Supervisor may require additional information on a case-by-case basis if the District Supervisor concludes that the information is needed to determine the cause of the incident (for all reported incidents).</p> <p>§ 250.190(a)(1) Requires electronic submission of all written reports .....</p> <p>§ 250.190(b)(1) If reports are being submitted under § 250.188 to fulfill USCG requirements, a written report for each OCS facility and vessel involved in the incident is required.</p>	<p>§ 254.46(b)(2) For spills, the Regional Supervisor can require additional information if it is determined that an analysis of the response is necessary.</p> <p>Not addressed in current regulations.</p>

**6. Incident Investigations—Proposed § 250.191**

The proposed revisions to this section include:

- Placement of the information about incident investigations in a separate section;
- Removing the reference to the USCG in relation to incident investigations;
- Removing the reference to the panel's legal advisors; and
- Removing the reference to "no civil and criminal issues."

The first three revisions were made in response to comments on the previous proposed rule on "Postlease Safety Operations," published on February 13, 1998 (63 FR 7335). For additional information, please refer to the "Response to Comments Section."

In the fourth revision, we propose to remove the existing version's reference to "no civil and criminal issues" from this section. We believe that the presence of this language could be misconstrued by some as an exemption from MMS enforcement actions associated with incidents.

The sole purpose of MMS incident investigations is to find the facts relevant to the incident, draw conclusions from the facts with respect to the cause, and make recommendations to prevent incidents in the future. MMS strongly believes that the best way to accomplish this is to conduct our investigations in a non-adversarial manner. MMS incident

investigations are not a forum for either potential plaintiffs or potential defendants in any civil action (tort, etc.) that may arise from the incident. However, regulatory violations may come to light as a result of the investigation, and MMS reserves the right to pursue any such violation according to the Outer Continental Shelf Lands Act and the procedures in 30 CFR 250, Subpart N.

We do not anticipate that removal of this language in the regulation will make any significant difference in the way we conduct our incident investigations.

**7. Hydrogen Sulfide—Conforming Changes to § 250.490**

Revisions to 30 CFR 250.490(l) are proposed so that this section conforms to the proposed reporting requirements. They include:

- Revision of the term "facility" to read "OCS facility";
- Addition of a requirement to submit a written Follow-up Report; and
- Clarification that notifications and reports must be made according to §§ 250.187 through 250.188 and § 250.190.

**8. Oil Spills—Conforming Changes to § 254.46**

Revisions to 30 CFR 254.46 are proposed so that this section conforms to the proposed reporting requirements. They include:

- Clarification that oil spill notifications must be made to the appropriate MMS "District" Supervisor rather than the MMS "Regional" Supervisor;
- Addition of a requirement to submit a written Final Report for spills of 200 barrels or more; and
- Clarification that notifications and reports must be made according to §§ 250.187 through 250.188 and § 250.190.

**Request for Comments on Issues Related to the Proposed Rule**

In addition to comments on the proposed rule, we specifically solicit comments on the following questions:

1. Should MMS require operators to submit information on the total number of hours worked by their employees and contractors offshore? If so, what recommendations do you have for MMS collecting the data, and how can we minimize the collection burden?

The Bureau of Labor Statistics uses a formula based on the total number of hours worked to normalize injury/illness data and calculate incident rates. MMS currently does not require "collection of hours worked" information for offshore workers and, therefore, cannot normalize the raw injury data we receive to produce comparable rates for the OCS. Through the voluntary joint Government/industry OCS Performance Measures Program, MMS does receive total hours worked for company employees and

contractors (about 2/3 of all OCS operators participated in 1998). From these data, we are able to calculate rates for the data submitted. Receiving information on hours worked from all OCS operators would allow MMS to produce normalized injury/illness analyses and trend data for all injury incidents reported to MMS.

2. What kind of information should MMS collect about contractor performance on the OCS?

According to 1998 OCS Performance Measures data, contractors represented about 80 percent of the total hours worked on the OCS and were involved in over 80 percent of the recordable and lost workday injury and illness cases. Gathering and analyzing data specific to contractors and contract operations

might provide insight to operators, contractors, and MMS about ways to decrease injuries to contractors and enhance the safety of contract operations.

3. What specific incident data analyses could MMS publish to help lessees/operators enhance the safety of their operations?

MMS intends to provide OCS lessees, operators, and others with the most useful incident data analyses possible. Are there specific analyses that would be particularly helpful to the industry or other regulators in preventing incidents and promoting safety?

4. What kind of electronic reporting methods are most accessible to you as an OCS lessee/operator? What

recommendations do you have for developing an electronic system?

**Response to Comments On the February 13, 1998, Proposed Rule**

The table below lists the several comments (by organization) we received about incident reporting requirements in response to the February 13, 1998, proposed rule on "Postlease Operations Safety." The "MMS Response" column provides our response with respect to this proposed rule. Letters from Chevron, Independent Petroleum Association of America, National Ocean Industries Association, and Shell Offshore Inc., indicated that they supported the comments submitted jointly by the API/Offshore Operators Committee.

Previous proposed rule section	Comment	Rationale	MMS response
<b>Trustees for Alaska</b>			
§ 250.20(a) .....	We support the requirement for written accident reports		A requirement for written reports is included (§ 250.188–190).
§ 250.20 .....	We encourage the MMS to revise the accident reporting requirements that are being discussed by the USCG National Offshore Safety Advisory Committee Subcommittee which includes MMS members.	Offshore operators should not be required to report incidents using two different forms to two separate Federal Agencies. In addition, the definition of fire is still an issue of confusion between operations, and an explanation may be appropriate in the regulations.	MMS and the USCG participated in the NOSAC Subcommittee and subsequently worked together to develop this MMS proposed rule. The reporting requirements in this MMS proposed regulation are as consistent as possible with the requirements in the USCG's proposed rule, so that the USCG will be able to allow reporting under the MMS regulation for incidents where both agencies have mutual interest and responsibility. The requirement to submit written reports electronically would allow reports submitted through a single point to satisfy the requirements of both agencies.  While proposing the use of an MMS form in conjunction with form CG–2692, most of the information on the MMS form is not duplicative of information requested on form CG–2692. MMS and the USCG agree that a joint incident form would be beneficial to both the industry and our agencies. We will continue to work on developing one.  A definition and reporting thresholds for fires are included (§ 250.105 and § 250.187–190).

Previous proposed rule section	Comment	Rationale	MMS response
<b>International Association of Drilling Contractors</b>			
§ 250.20 .....	We note that the preamble indicates that "MMS will provide more guidance on thresholds for fires, and factors that impair safety, through Notices to Lessees." While we concur that additional guidance should be provided, we are concerned that the reporting burden may be substantially altered in this manner without appropriate review and accounting under the provisions of the Paperwork Reduction Act.		Incident reporting definitions and thresholds are included to specify what we are proposing so you can examine and comment on the potential reporting burden (§ 250.105 and § 250.187–190).
§ 250.20(a) .....	We are opposed to § 250.20 as proposed. We are not fundamentally opposed to MMS requiring the collection and reporting of this information; however, we are opposed to <i>both</i> the MMS and the USCG requiring collection and reporting of duplicative information.	<p>Much of the information required by MMS is already required by the Coast Guard under 33 CFR 146 (casualties) or 33 CFR 151 (oil spills). Such duplicative reporting requirements are contrary to the Presidential Statement of Regulatory Philosophy and Principles as set forth in Executive Order 12866. It is particularly perplexing that the MMS is proposing new information collection requirements with respect to casualties at a time when the Coast Guard has already announced a rewrite of its regulations in 33 CFR 146.</p> <p>After twenty years of joint jurisdiction it is time for the two agencies to coordinate their activities and develop procedures for inter-Agency exchange of information rather than require duplicative reports.</p>	<p>MMS and the USCG have worked to develop reporting requirements in this MMS proposed rule that are as consistent as possible with the USCG proposed rule for incidents where both agencies have mutual interest and responsibility. The electronic reporting proposed in this MMS proposed rule would allow reports submitted through a single point to satisfy the requirements of both agencies.</p> <p>While this MMS proposed rule proposes the use of an MMS form in conjunction with form CG–2692, most of the information on the MMS form is not duplicative of information requested on form CG–2692. MMS and the USCG agree that a joint incident form would be beneficial to both the industry and our agencies. We will continue to work on developing one (§ 250.105 and § 250.187–190).</p>
§ 250.20 .....	For the sake of clarity we would suggest that the provisions regarding investigations be placed in a separate paragraph.	While there is certainly a linkage between MMS (or the Coast Guard) receiving information regarding major fires, major oil spillage, death or serious injury and their mandate to conduct an investigation and make a public report, both Agencies are authorized, on their own discretion, to investigate lesser incidents, reportable or not. This could be made clearer if the regulations regarding investigations were not included within the provisions on reporting.	We made the recommended change. Information on conducting investigations is in a separate section (§ 250.191).

Previous proposed rule section	Comment	Rationale	MMS response
<b>American Petroleum Institute/Offshore Operators Committee</b>			
§ 250.20 .....	Except for requirements to report oil spills, delete all other reporting requirements and incorporate recommendations of the USCG NOSAC Incident Reporting Subcommittee established on April 22, 1998, consisting of MMS, USCG and industry personnel.	Definitions of accidents are inconsistent with those used in SEMP (NTL 98-6N) and those required by the USCG for similar incidents. These proposed regulations in many cases duplicate reporting requirements of the United States Coast Guard. At a meeting of NOSAC in Washington on April 22, 1998, a Subcommittee was established to review and recommend changes to improve the process of defining and reporting incidents to the MMS and the USCG. This effort was endorsed by Carolita Kallaur, Associate Director for Offshore Minerals Management. Recommendations will be completed by October 1998.	MMS and the USCG participated in the NOSAC Subcommittee. In response to the subcommittee's recommendations, the two agencies have worked to make the proposed reporting requirements as consistent as possible with those in the USCG's proposed rule for incidents that are of interest to both agencies. The electronic reporting would allow reports submitted at a single point to satisfy the requirements of both agencies.
§ 250.20(a) .....	Industry has expressed concerns to the MMS that "fires" needs to be better defined since industry has confusion on what needs to be reported. We recommend that the MMS include a description or definition for what a fire is and what types of fires they expect to receive in the reports.	Significant administrative burden would be added to all operators if this proposed regulation was implemented. This would be the most expedient method to resolve this issue and avoid OMB and other intervention in adding this administrative burden to operators and contractors.	Most of the information requested in the MMS form is not duplicative of the information requested in form CG-2692. We will continue to work with the USCG on developing a joint incident reporting form (§ 250.105 and § 250.187-190).
§ 250.20(a) .....	Industry has expressed concerns to the MMS that "fires" needs to be better defined since industry has confusion on what needs to be reported. We recommend that the MMS include a description or definition for what a fire is and what types of fires they expect to receive in the reports.	To avoid uncertainty, the rule should include the definition, especially when the MMS is planning to use fires as one of the criteria included with the disqualification procedures found in this proposed rule in Section 250.12. The preamble states that more guidance will be given in an NTL. We prefer that the language be included in a rule.	Definitions and thresholds are included so that operators/lessees can comment on what is proposed, including fires (§ 250.105 and § 250.187-190).
§ 250.20(a) .....	MMS should include language that allows the Operator to submit this information marked "Confidential" and the MMS to maintain it in such a way without divulging the details that may be involved in legal action.	MMS should respect the confidentiality and sensitivity of information marked "Confidential" as they do with other information they receive from operators.	We did not make the recommended change. MMS protects proprietary information submitted by lessees and operators to protect their competitive interests. Information that might be involved in legal action at some unknown time in the future can only be protected if it falls within one of the exceptions to the Freedom of Information Act and Privacy Act (§ 250.191).
§ 250.20(a)(1) .....	We recommend that this subsection qualify that the operation must be related to the exercise of the easement, right-of-way, or other permit.	It would be impossible for a pipeline right-of-way owner to be aware of any accidents which might happen to occur within the pipeline right-of-way corridor which did not directly influence or impact the exercise of the right-of-way itself.	We included recommended changes in § 250.191(b) of the final rule for Subpart A, Postlease Operations Safety (64 FR 72756, December 28, 1999). Similar language is included at § 250.187(a) in this proposed rule.
§ 250.20(a)(2) .....	We recommend that the final rule qualify the investigative authority so that it is not exercised by both the Department of Transportation's United States Coast Guard, and the Department of Interior's MMS.	The cited portions of the OCS Lands Act specify that either the Secretary of the U.S. Coast Guard may institute investigations, but not both. This limitation must be contained in the regulations in order for them to be lawful.	We included recommended changes in § 250.191(c) of the final rule for Subpart A, Postlease Operations Safety (64 FR 72756, December 28, 1999).

Previous proposed rule section	Comment	Rationale	MMS response
§ 250.20(a)(2) .....	We recommend that [sic] the striking of the provision which only allows panel members and panel experts to address questions to the person giving testimony.	This provision violates the provisions of Section 22(f) of the OCS Lands Act which requires that the production of documents and the handling of testimony and witnesses be analogous to the Federal Rules of Civil Procedures. The Federal Rules of Civil Procedures give the party at risk for citation the opportunity to participate in questioning of witnesses in the course of any hearing.	<p>However, in this proposed rule, we deleted the reference to the USCG because procedures outlined in § 250.191 apply only to MMS investigations. The MOU between MMS and the USCG, signed on December 16, 1998, outlines how the two agencies will coordinate their incident investigation activities conducted under the authority of the OCS Lands Act, as amended (43 U.S.C. 1331 <i>et seq.</i>) (§ 250.191).</p> <p>We did not make the proposed changes. Incident investigations are fact-finding proceedings without adverse parties. The purpose of the investigation is to prepare a public report that determines the cause of the incident. Persons who are not panel members or panel experts may have interests other than finding the cause of the incident. Allowing them to question the person giving testimony could easily lead to an adversarial proceeding. However, in response to the comment, we have deleted the reference to the panel's legal advisors as being one of the categories of people who can question the person giving testimony (§ 250.191(b)). As noted earlier in the Preamble, we also propose to remove the reference to civil or criminal issues (§ 250.191). That proposed deletion does not change MMS's commitment to conduct investigations as fact-finding proceedings in a non-adversarial manner. However, MMS does retain its right to pursue any regulatory violations that may come to light as a result of the incident investigation in a separate penalty proceeding. Procedural safeguards to alleviate the commenters' concerns are already incorporated into MMS regulations (see 30 CFR 250, Subpart N).</p>

**Appendices**

The following appendices will not appear in the Code of Federal Regulations. Appendix A is included for reference. We solicit your comments on

the new MMS forms in Appendices B and C.

**Appendix A—U.S. Coast Guard Form CG-2692, “Report of Marine Accident, Injury or Death”**

**Appendix B—Department of the Interior Form MMS 142, “Report of OCS Incident—Immediate and 12 Hour”**

**Appendix C—Department of the Interior Form MMS-143, “Report of OCS Incident—15 Day”**

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APPENDIX A

OMB Control No. 2115-0003

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-2692 (Rev. 4-97)		<h2 style="margin: 0;">REPORT OF MARINE ACCIDENT, INJURY OR DEATH</h2>				RCS No. G-MOA UNIT CASE NUMBER	
SECTION I. GENERAL INFORMATION							
1. Name of Vessel or Facility		2. Official No.		3. Nationality	4. Call Sign	5. USCG Certificate of Inspection issued at:	
6. Type (Towing, Freight, Fish, Drill, etc.)		7. Length	8. Gross Tons	9. Year Built	10. Propulsion (Steam, diesel, gas, turbine...)		
11. Hull Material (Steel, Wood...)	12. Draft (Ft. - in.) FWD      AFT.		13. If Vessel Classed, By Whom: (ABS, LLOYDS, DNV, BV, etc.)		14. Date (of occurrence)	15. TIME (Local)	
16. Location (See Instruction No. 10A)					17. Estimated Loss of Damage TO:		
18. Name, Address & Telephone No. of Operating Co.					VESSEL _____		
					CARGO _____		
19. Name of Master or Person in Charge		USCG License		20. Name of Pilot		State License	
		<input type="checkbox"/> YES <input type="checkbox"/> NO				<input type="checkbox"/> YES <input type="checkbox"/> NO	
19a. Street Address (City, State, Zip Code)		19b. Telephone Number		20a. Street Address (City, State, Zip Code)		20b. Telephone Number	
21. Casualty Elements (Check as many as needed and explain in Block 44.)							
NO. OF PERSONS ON BOARD _____ <input type="checkbox"/> DEATH - HOW MANY? _____ <input type="checkbox"/> MISSING - HOW MANY? _____ <input type="checkbox"/> INJURED - HOW MANY? _____ <input type="checkbox"/> HAZARDOUS MATERIAL RELEASED OR INVOLVED (Identify Substance and amount in Block 44.)  <input type="checkbox"/> OIL SPILL - ESTIMATE AMOUNT: _____ <input type="checkbox"/> CARGO CONTAINER LOST/DAMAGED <input type="checkbox"/> COLLISION (Identify other vessel or object in Block 44.) <input type="checkbox"/> GROUNDING <input type="checkbox"/> WAKE DAMAGE		<input type="checkbox"/> FLOODING; SWAMPING WITHOUT SINKING <input type="checkbox"/> CAPSIZING (with or without sinking) <input type="checkbox"/> FOUNDERING OR SINKING <input type="checkbox"/> HEAVY WEATHER DAMAGE <input type="checkbox"/> FIRE <input type="checkbox"/> EXPLOSION <input type="checkbox"/> COMMERCIAL DIVING CASUALTY <input type="checkbox"/> ICE DAMAGE <input type="checkbox"/> DAMAGE TO AIDS TO NAVIGATION <input type="checkbox"/> STEERING FAILURE <input type="checkbox"/> MACHINERY OR EQUIPMENT FAILURE <input type="checkbox"/> ELECTRICAL FAILURE <input type="checkbox"/> STRUCTURAL FAILURE		<input type="checkbox"/> FIREFIGHTING OR EMERGENCY EQUIPMENT FAILED OR INADEQUATE (Describe in Block 44.) <input type="checkbox"/> LIFESAVING EQUIPMENT FAILED OR INADEQUATE (Describe in Block 44.) <input type="checkbox"/> BLOW OUT (Petroleum exorption/production) <input type="checkbox"/> ALCOHOL INVOLVEMENT (Describe in Block 44.) <input type="checkbox"/> DRUG INVOLVEMENT (Describe in Block 44.) <input type="checkbox"/> OTHER (Specify) _____			
22. Conditions							
A. Sea or River Conditions (wave height, river stage, etc.)		B. WEATHER	C. TIME	D. VISIBILITY	E. DISTANCE (miles of visibility)	F. AIR TEMPERATURE (F)	
		<input type="checkbox"/> CLEAR <input type="checkbox"/> RAIN <input type="checkbox"/> SNOW <input type="checkbox"/> FOG <input type="checkbox"/> OTHER (Specify) _____	<input type="checkbox"/> DAYLIGHT <input type="checkbox"/> TWILIGHT <input type="checkbox"/> NIGHT	<input type="checkbox"/> GOOD <input type="checkbox"/> FAIR <input type="checkbox"/> POOR	_____	_____	
					G. WIND SPEED & DIRECTION	H. CURRENT SPEED & DIRECTION	
					_____	_____	
23. Navigation Information			SPEED AND COURSE		24. Last Port Where Bound	24a. Time and Date of Departure	
<input type="checkbox"/> MOORED, DOCKED OR FIXED <input type="checkbox"/> ANCHORED <input type="checkbox"/> UNDERWAY OR DRIFTING			_____		_____	_____	
25. FOR TOWING ONLY	25a. NUMBER OF VESSELS TOWED		25b. TOTAL H.P. OF TOWING UNITS	25c. MAXIMUM SIZE OF TOW WITH TOW-BOAT(S)		25d. (Describe in Block 44.)	
	Empty    Loaded    Total			Length    Width		<input type="checkbox"/> PUSHING AHEAD <input type="checkbox"/> TOWING ASTERN <input type="checkbox"/> TOWING ALONGSIDE <input type="checkbox"/> MORE THAN ONE TOW-BOAT ON TOW	
SECTION II. BARGE INFORMATION							
26. Name		26a. Official Number		26b. Type	26c. Length	26d. Gross Tons	
26f. Year Built	26g. <input type="checkbox"/> SINGLE SKIN <input type="checkbox"/> DOUBLE	26h. Draft FWD      AFT		26i. Operating Company			
26j. Damage Amount			26k. Describe Damage to Barge				
BARGE _____							
CARGO _____							
OTHER _____							

PREVIOUS EDITION IS OBSOLETE



**INSTRUCTIONS****FOR COMPLETION OF FORM CG-2692****REPORT OF MARINE ACCIDENT, INJURY OR DEATH****AND FORM CG-2692A, BARGE ADDENDUM****WHEN TO USE THIS FORM**

1. This form satisfies the requirements for written reports of accidents found in the Code of Federal Regulations for vessels, Outer Continental Shelf (OCS) facilities, mobile offshore drilling units (MODUs), and diving. The kinds of accidents that must be reported are described in the following instructions.

**VESSELS**

2. A vessel accident must be reported if it occurs upon the navigable waters of the U.S., its territories or possessions; or whenever an accident involves a U.S. vessel wherever the accident may occur. (Public vessels and recreational vessels are excepted from these reporting requirements.) The accident must also involve one of the following (ref. 46 CFR 4.05-1):

A. All accidental groundings and any intentional grounding which also meets any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

B. Loss of main propulsion or primary steering, or an associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, subsystems, or control systems do not perform the specified or required function;

C. An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route including but not limited to fire, flooding, failure or damage to fixed fire extinguishing systems, lifesaving equipment or bilge pumping systems;

D. Loss of life;

E. Injury causing any person to be incapacitated for a period in excess of 72 hours.

F. An occurrence not meeting any of the above criteria but resulting in damage to property in excess of \$25,000. Damage cost includes the cost of labor and material to restore the property to the condition which existed prior to the casualty, but it does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage.

**MOBILE OFFSHORE DRILLING UNITS**

3. MODUs are vessels and are required to report an accident that results in any of the events listed by Instruction 2-A through 2-F for vessels. Ref. 46 CFR 4.05-1, 46 CFR 109.411)

4. All OCS facilities (except mobile offshore drilling units) engaged in mineral exploration, development or production activities on the Outer Continental Shelf of the U.S. are required by 33 CFR 146.30 to report accidents resulting in:

A. Death;

B. Injury to 5 or more persons in a single incident;

C. Injury causing any person to be incapacitated for more than 72 hours.

D. Damage affecting the usefulness of primary lifesaving or firefighting equipment;

E. Damage to the facility in excess of \$25,000 resulting from a collision by a vessel;

F. Damage to a floating OCS facility in excess of \$25,000.

5. Foreign vessels engaged in mineral exploration, development or production on the U. S. Outer Continental Shelf, other than vessels already required to report by Instructions 2 and 3 above, are required by 33 CFR 146.303 to report casualties that result in any of the following:

A. Death;

B. Injury to 5 or more persons in a single incident;

C. Injury causing any person to be incapacitated for more than 72 hours.

**DIVING**

6. Diving casualties include injury or death that occurs while using underwater breathing apparatus while diving from a vessel or OCS facility.

A. **COMMERCIAL DIVING.** A dive is considered commercial if it is for commercial purposes from a vessel required to have a Coast Guard certificate of inspection, from an OCS facility or in its related safety zone or in a related activity, at a deepwater port or in its safety zone. Casualties that occur during commercial dives are covered by 46 CFR 197.486 if they result in:

1. Loss of life;

2. Injury causing incapacitation over 72 hours;

3. Injury requiring hospitalization over 24 hours.

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 Coast Guard estimates that the average burden for this report is 1 hour. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (G-MOA), U.S. Coast Guard, Washington, DC 20593-0001 or Office of Management and Budget, Paperwork Reduction Project (2115-0003), Washington, DC 20503

## INSTRUCTIONS

### FOR COMPLETION OF FORM CG-2692

### REPORT OF MARINE ACCIDENT, INJURY OF DEATH

### AND FORM CG-2692A, BARGE ADDENDUM

In addition to the information requested on this form, also provide the name of the diving supervisor and, if applicable, a detailed report on gas embolism or decompression sickness as required by 46 CFR 197.410(a)(9).

Exempt from the commercial category are dives for:

1. Marine science research by educational institutions;
2. Research in diving equipment and technology;
3. Search and Rescue controlled by a government agency.

**B. ALL OTHER DIVING.** Diving accidents not covered by Instruction (6-A) but involving vessels subject to Instruction (2), **VESSELS**, must be reported if they result in death or injury causing incapacitation over 72 hours. (Ref. 46 CFR 4.03-1(c)).

#### HAZARDOUS MATERIALS

7. When an accident involves hazardous materials, public and environmental health and safety require immediate action. As soon as any person in charge of a vessel or facility has knowledge of a release or discharge of oil or a hazardous substance, that person is required to immediately notify the U. S. Department of Transportation's National Response Center (telephone toll-free 800-424-8802 - in the Washington, D.C. area call 202-426-2675). Anyone else knowing of a pollution incident is encouraged to use the toll-free telephone number to report it. If etiologic (disease causing) agents are involved, call the U.S. Public Health Service's Center for Disease Control in Atlanta, GA. (telephone 404-633-5313). (Ref. 42 USC 9603; 33 CFR 153; 49 CFR 171.15)

#### COMPLETION OF THIS FORM

8. This form should be filled out as completely and accurately as possible. Please type or print clearly. Fill in all blanks that apply to the kind of accident that has occurred. If a question is not applicable, the abbreviation "NA" should be entered in that space. If an answer is unknown and cannot be obtained, the abbreviation "UNK" should be entered in that space. If "NONE" is the correct response, then enter it in that space.

9. When this form has been completed, deliver or mail it as soon as possible to the Coast Guard Marine Safety or Marine Inspection Office nearest to the location of the casualty or, if at sea, nearest to the port of first arrival.

**NOTICE:** The information collected on this form is routinely available for public inspection. It is needed by the Coast Guard to carry out its responsibility to investigate marine casualties, to identify hazardous conditions or situations and to conduct statistical analysis. The information is used to determine whether new or revised safety initiatives are necessary for the protection of life or property in the marine environment.

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 Coast Guard estimates that the average burden for this report is 1 hour. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (G-MOA), U.S. Coast Guard, Washington, DC 20593-0001 or Office of Management and Budget, Paperwork Reduction Project (2115-0003), Washington, DC 20503

10. Amplifying information for completing the form:

**A. Block 16 - "LOCATION"** - Latitude and longitude to the nearest tenth of a minute should always be entered except in those rivers and waterways where a mile marker system is commonly used. In these cases, the mile number to the nearest tenth of a mile should be entered. If the latitude and longitude, or mile number, are unknown, reference to a known landmark or object (buoy, light, etc.) with distance and bearing to the object is permissible. Always identify the body of water or waterway referred to.

**B. Tug or towboat with tow** - Tugs or towboats with tows under their control should complete all applicable portions of the CG-2692. SECTION II should be completed if a barge causes or sustains damage or meets any other reporting criteria. If additional barges require reporting, the "Barge Addendum," CG-2692A, may be used to provide the information for the additional barges.

**C. Moored/Anchored Barge** - If a barge suffers a casualty while moored or anchored, or breaks away from its moorage, and causes or sustains reportable damages or meets any other reporting criteria, enter the location of its moorage in Block (1) of the CG-2692 and complete the form except for Blocks (2) through (13). The details will be entered in SECTION II for one barge and on the "Barge Addendum" CG-2692A, for additional barges.

**D. SECTION III - Personnel Accident Information** - SECTION III must be completed for a death or injury. In addition, applicable portions of SECTIONS I, II and IV must be completed. If more than one death or injury occurs in a single incident, complete one CG-2692 for one of the persons injured or killed, and attach additional CG-2692's, filling out Blocks (1) and (2) and SECTION III for each additional person.

**E. BLOCK 44** - Describe the sequence of events which led up to this casualty. Include your opinion of the primary cause and any contributing causes of the casualty. Briefly describe damage to your vessel, its cargo, and other vessels/property. Include any recommendations you may have for preventing similar casualties. **ALCOHOL AND DRUG INFORMATION.** Provide the following information with regard to each person determined to be directly involved in the casualty: name, position aboard the vessel, whether or not the person was under the influence of alcohol or drugs at the time of the casualty, and the method used to make this determination. If toxicological testing is conducted the results should be included; if results are not available in a timely manner, provide the results of the toxicological test as soon as practical and indicate that this is the case in block 44 of the casualty form.

OMB Control No. 2115-0003

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-2692A (Rev. 4-97)	<h2 style="margin: 0;">BARGE ADDENDUM</h2>	REPORTS CONTROL SYMBOL G-MOA
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NOTE: This form may be used to report data for barges causing or sustaining damage in the accident described on form CG-2692. This form may only be used in addition to form CG-2692, never alone.

NAME OF VESSEL (Use Same Name as Block 1., of CG-2692).					DATE OF ACCIDENT
<b>FOR BARGE CAUSING OR SUSTAINING DAMAGES</b>					
26. Name	26a. Official Number	26b. Type	26c. Length	26d. Gross Tons	26e. USCG Certificate of Inspection Issued at:
26f. Year Built	26g. <input type="checkbox"/> SINGLE SKIN <input type="checkbox"/> DOUBLE SKIN	26h. Draft FWD                      AFT	26i. Operating Company		
26j. Damage Amount  DAMAGE TO BARGE _____ CARGO _____		26k. Describe Damage to Barge			

<b>FOR BARGE CAUSING OR SUSTAINING DAMAGES</b>					
26. Name	26a. Official Number	26b. Type	26c. Length	26d. Gross Tons	26e. USCG Certificate of Inspection Issued at:
26f. Year Built	26g. <input type="checkbox"/> SINGLE SKIN <input type="checkbox"/> DOUBLE SKIN	26h. Draft FWD                      AFT	26i. Operating Company		
26j. Damage Amount  DAMAGE TO BARGE _____ CARGO _____		26k. Describe Damage to Barge			

<b>FOR BARGE CAUSING OR SUSTAINING DAMAGES</b>					
26. Name	26a. Official Number	26b. Type	26c. Length	26d. Gross Tons	26e. USCG Certificate of Inspection Issued at:
26f. Year Built	26g. <input type="checkbox"/> SINGLE SKIN <input type="checkbox"/> DOUBLE SKIN	26h. Draft FWD                      AFT	26i. Operating Company		
26j. Damage Amount  DAMAGE TO BARGE _____ CARGO _____		26k. Describe Damage to Barge			

<b>FOR BARGE CAUSING OR SUSTAINING DAMAGES</b>					
26. Name	26a. Official Number	26b. Type	26c. Length	26d. Gross Tons	26e. USCG Certificate of Inspection Issued at:
26f. Year Built	26g. <input type="checkbox"/> SINGLE SKIN <input type="checkbox"/> DOUBLE SKIN	26h. Draft FWD                      AFT	26i. Operating Company		
26j. Damage Amount  DAMAGE TO BARGE _____ CARGO _____		26k. Describe Damage to Barge			

<b>FOR BARGE CAUSING OR SUSTAINING DAMAGES</b>					
26. Name	26a. Official Number	26b. Type	26c. Length	26d. Gross Tons	26e. USCG Certificate of Inspection Issued at:
26f. Year Built	26g. <input type="checkbox"/> SINGLE SKIN <input type="checkbox"/> DOUBLE SKIN	26h. Draft FWD                      AFT	26i. Operating Company		
26j. Damage Amount  DAMAGE TO BARGE _____ CARGO _____		26k. Describe Damage to Barge			

SIGNATURE (of person making this report)

PREVIOUS EDITION MAY BE USED



APPENDIX B

U.S. Department of the Interior  
Minerals Management Service

OMB Control Number: 1010-XXXX  
OMB Approval Expires xxxxxxxx xx, xxxx

Report of OCS Incident  
Immediate and 12 Hour

Section 1.

<p>Identify which report is being submitted (Select one):</p> <p>IMMEDIATE REPORTING CATEGORY:      12-HOUR REPORTING CATEGORY:</p> <p><input type="checkbox"/> Follow-up Report (Submit within 5 days)      <input type="checkbox"/> Initial Report (Submit within 12 hours)</p> <p><input type="checkbox"/> Final Report (Submit within 60 days)      <input type="checkbox"/> Follow-up Report (Submit within 5 days)</p>	<p>List any attached documents being submitted with this form:</p> <p>CG-2692    <input type="checkbox"/> Y    <input type="checkbox"/> N</p> <p>Others: _____</p> <p>_____</p>
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Section 2.

<p>1. Date (mm/dd/yyyy): Time (Local):</p> <p>(Same as included in CG-2692, item # 14, 15)</p>	<p>2. Area/Block/Lease (Surface Location):</p>	<p>3. Distance from shore: _____ miles</p>	<p>4. Water Depth at location: _____ feet</p>
<p>5. Name of Vessel or Facility (Same as included in CG-2692, item #1):</p>	<p>6. Type of Facility named in item #5 (Select one):</p> <p><input type="checkbox"/> Fixed      <input type="checkbox"/> Floating</p> <p><input type="checkbox"/> MODU      <input type="checkbox"/> Vessel</p>	<p>7. Rig Name (If different than item #5):</p>	<p>8. Pipeline Segment No. (if known; if not known, locate pipeline by departing and arriving facility):</p>
<p>9. Operating Company (Same as identified in CG-2692, item #18):</p>	<p>10. Affiliation of Person in Charge (As identified in CG-2692, item #19):</p> <p><input type="checkbox"/> Employed by Operator</p> <p><input type="checkbox"/> Employed by Contractor</p>	<p>11. Name of Company for Person in Charge (If contractor checked in item #10):</p>	<p>12. If incident involved a helicopter, provide the name of the Helicopter Company:</p> <p>_____</p>

Section 3.

<p>13. Does a contracting company operate the facility on behalf of the operator?</p> <p><input type="checkbox"/> Y    <input type="checkbox"/> N</p>	<p>14. If Yes in item #13, identify the contracting company (Name, city, state, telephone):</p>	<p>15. Name of other contractor companies involved in the incident (Name, city, state and type of contractor):</p>	
<p>16. Overall operation at time of incident (Select any that apply):</p> <p><input type="checkbox"/> Production      <input type="checkbox"/> Drilling</p> <p><input type="checkbox"/> Workover      <input type="checkbox"/> Completion</p> <p><input type="checkbox"/> Pipeline      <input type="checkbox"/> Vessel</p> <p><input type="checkbox"/> Other _____</p>	<p>17. Specific operation at time of incident (Welding, crane operations, painting, etc):</p>	<p>18. Did incident involve a release of H<sub>2</sub>S? <input type="checkbox"/> Y    <input type="checkbox"/> N</p> <p>If Yes, what was the 15-minute time-weighted average atmospheric concentration of H<sub>2</sub>S? _____ ppm</p>	<p>19. If incident involved injuries, how many of these involved a Lost Workday? _____</p> <p>If incident involved a fatality, was the fatality a result of natural causes? <input type="checkbox"/> Y    <input type="checkbox"/> N</p>
<p>20. Duration of Incident:</p> <p>_____ Seconds</p> <p>_____ Minutes</p> <p>_____ Hours</p> <p>_____ Days</p>	<p>21. If a facility was involved, was it evacuated?</p> <p><input type="checkbox"/> Completely</p> <p><input type="checkbox"/> Partially</p> <p><input type="checkbox"/> Not at all</p>	<p>22. Spilled Product (Select one):</p> <p><input type="checkbox"/> None    <input type="checkbox"/> Oil</p> <p><input type="checkbox"/> Diesel    <input type="checkbox"/> Condensate</p> <p><input type="checkbox"/> Hydraulic fluid</p> <p><input type="checkbox"/> Other _____</p>	<p>23. Volume Spilled (Indicate total volume/hydrocarbon volume):</p> <p>_____/ _____ None</p> <p>_____/ _____ Gals</p> <p>_____/ _____ Bbls</p> <p>_____/ _____ Other _____</p>
<p>24. Slick Size (Indicate slick size and circle yards or miles as appropriate):</p> <p>_____ yards / miles by _____ yards / miles</p>	<p>25. Source of spill product released:</p>	<p>26. Slick Appearance (Select one):</p> <p><input type="checkbox"/> Barely visible</p> <p><input type="checkbox"/> Brown sheen    <input type="checkbox"/> Rainbow Sheen    <input type="checkbox"/> Silvery Sheen</p> <p><input type="checkbox"/> Yellowish Brown    <input type="checkbox"/> Light Brown    <input type="checkbox"/> Dark Brown</p> <p><input type="checkbox"/> Light Black      <input type="checkbox"/> Dark Black</p>	

27. Describe remedial action taken:	28. Was clean-up activated? <input type="checkbox"/> Y <input type="checkbox"/> N If Yes, what was the estimated response time? (From time of spill until equipment reached the site): _____	29. Type of clean-up equipment used : <input type="checkbox"/> Skimmer <input type="checkbox"/> Containment Boom <input type="checkbox"/> Absorption Equipment <input type="checkbox"/> Dispersants <input type="checkbox"/> Other _____	30. Estimated recovery (Indicate volume of hydrocarbon only): _____ gals _____ bbls
31. Property Damage (Describe all property damaged and the nature of that damage for each OCS facility and vessel involved in the incident):		32. Property Damage Amount (List the dollar amount of damage for each OCS facility and vessel involved in the incident):	

**Section 4.**

Additional Information for Fires and Explosions			
33. What precautions or actions were taken to isolate known sources of ignition prior to the incident?	34. Source(s) of Ignition:  Source(s) of Fuel: _____	35. Type of Fuel (Select one or more): <input type="checkbox"/> Gas <input type="checkbox"/> Oil <input type="checkbox"/> Diesel <input type="checkbox"/> Condensate <input type="checkbox"/> Hydraulic <input type="checkbox"/> Other (specify): _____	36. Type of Firefighting Equipment utilized: <input type="checkbox"/> None <input type="checkbox"/> Handheld <input type="checkbox"/> Wheeled Unit <input type="checkbox"/> Fixed Chemical <input type="checkbox"/> Water Spray <input type="checkbox"/> Other (specify): _____

Additional Information for Collisions			
37. If incident involved an OCS facility, is it manned 24 hours per day? <input type="checkbox"/> Y <input type="checkbox"/> N  Was it manned at the time of the collision? <input type="checkbox"/> Y <input type="checkbox"/> N	38. Were the Navigational Aids working properly? <input type="checkbox"/> Y <input type="checkbox"/> N  Were they in use at the time of the collision? <input type="checkbox"/> Y <input type="checkbox"/> N	39. Was the collision within .5 miles of: <input type="checkbox"/> Vessel traffic fairway <input type="checkbox"/> Lightering operation area?  <input type="checkbox"/> Y <input type="checkbox"/> N	40. If Yes in item #34, did the proximity to one of these areas possibly contribute to the incident?  <input type="checkbox"/> Y <input type="checkbox"/> N

Additional Information for Loss of Well Control		
41. Well Name: _____  Well Number (API No.): _____  Lease Number (Bottom hole location, if different than item #2): _____	42. Primary operation ongoing at time of Loss of Well Control (Select one): <input type="checkbox"/> Drilling <input type="checkbox"/> Completion <input type="checkbox"/> Workover <input type="checkbox"/> Production  Were simultaneous operations in progress at the time of the Loss of Well Control? <input type="checkbox"/> Y <input type="checkbox"/> N	43. Fluid Type in hole: <input type="checkbox"/> Condensate <input type="checkbox"/> Gas and condensate <input type="checkbox"/> Oil Base Mud <input type="checkbox"/> Water Base Mud <input type="checkbox"/> Diesel <input type="checkbox"/> Seawater <input type="checkbox"/> Cement <input type="checkbox"/> Completion Fluid <input type="checkbox"/> Other _____  Fluid Weight: _____ ppg

44. BOP Stack Configuration (List components):	45. BOP Size: _____ inches  BOP Pressure Rating: _____ psi	46. Date of last BOP test prior to incident: _____  Pressure of last BOP test prior to incident: _____ psi	
47. Well Control Equipment initially activated (Select one):  <input type="checkbox"/> Annular BOP <input type="checkbox"/> Pipe <input type="checkbox"/> SCSSV <input type="checkbox"/> SSV <input type="checkbox"/> Blind <input type="checkbox"/> Blind Shear <input type="checkbox"/> Other _____	48. If incident occurred during drilling:  Type of Diverter Installed: <input type="checkbox"/> Single Spool <input type="checkbox"/> Dual Spool <input type="checkbox"/> None  Diverter System Valve Size: _____ inches Line Size: _____ inches Was well diverted? <input type="checkbox"/> Y <input type="checkbox"/> N	49. If incident occurred during workover, completion, or production:  Type of SSSV:  Was the tree: <input type="checkbox"/> On <input type="checkbox"/> Off Was surface safety equipment in service? <input type="checkbox"/> Y <input type="checkbox"/> N	50. If incident occurred during or after cementing:  What was the proper waiting on cement time? _____ hours Was it achieved? <input type="checkbox"/> Y <input type="checkbox"/> N  Was casing reciprocated? <input type="checkbox"/> Y <input type="checkbox"/> N Was casing centralized? <input type="checkbox"/> Y <input type="checkbox"/> N

Final Report Conclusions	
51. Describe how the incident happened:	
52. Cause(s) of incident:	53. Recommendations to prevent recurrence of similar incidents:

\_\_\_\_\_  
Signature of person submitting form

\_\_\_\_\_  
Date form is submitted

#### Instructions

1. MMS-142 is to be used for reporting incidents that fall into the "Immediate" or "12-Hour" reporting category as defined in 30 CFR 250.188 and § 250.189(a). Incidents reported under these sections require submission of the U.S. Coast Guard's Form CG-2692 (Rev. 6-87) (or successor) and this form. Additional procedures for reporting incidents under these sections can be found in § 250.190.
2. Identify the type of report being submitted in Section 1.
3. Additional information may be attached and submitted with this form. Attachments should be listed in Section 1.
4. Complete the CG-2692 and MMS-142 as noted below:  
 IMMEDIATE REPORTING CATEGORY: Follow-up Report – Submit CG-2692 and MMS-142, Sections 1-3  
 IMMEDIATE REPORTING CATEGORY: Final Report – Submit MMS-142, Sections 1-4  
 12-HOUR REPORTING CATEGORY: Initial Report – Submit CG-2692 and MMS-142, Sections 1-2  
 12-HOUR REPORTING CATEGORY: Follow-up Report – Submit, MMS-142, Sections 1-3
5. Provide information for all questions. You may indicate "N/A" for not applicable or "none" as appropriate.
6. Information requested in shaded boxes should be supplied as specified from the appropriate question on the CG- 2692.

**PAPERWORK REDUCTION ACT OF 1995 (PRA) STATEMENT:** The PRA (44 U.S.C. 3501 et. seq.) requires us to inform you that we collect this information to obtain knowledge of equipment, procedures, and circumstances involved in OCS incidents. MMS uses the information to identify OCS incident causes and trends in order to improve safety on the OCS through regulation, performance standards, research, cooperative initiatives with industry, and publication of incident information. Responses are mandatory (43 U.S.C. 1334). Proprietary data are covered under 30 CFR 250.196. 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. Public reporting burden for this form is estimated to average 2 3/4 hours per response, including time for reviewing instructions, gathering data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Mail Stop 4230, Minerals Management Service, 1849 C Street, N.W., Washington, D.C. 20240.

APPENDIX C

U.S. Department of the Interior  
Minerals Management Service

OMB Control Number: 1010-XXXXX  
OMB Approval Expires XXXXXXXXXX XX, XXXX

Report of OCS Incident  
15 Day

1. This form is to be used for reporting incidents that fall into the 15-day reporting category as defined in 30 CFR 250.189(b). This includes:
  - Incidents not reported under 30 CFR 250.188 or 30 CFR 250.189(a) that result in lost workdays to one person.
  - All fires not reported under 30 CFR 250.188 or 30 CFR 250.189(a), excluding those completely contained in the living quarters.
  - Gas leaks as defined in 30 CFR 250.105.
  - All non-weather related incidents when personnel muster for evacuation.
2. Additional procedures for reporting incidents under this section can be found in § 250.190.
3. Provide information for all questions. You may indicate "N/A" for not applicable or "none" as appropriate.
4. This report must be submitted within 15 days of the incident.

1. Date (mm/dd/yyyy): Time (Local):	2. Area/Block/Lease (Surface Location):	3. Facility Name:	4. Rig Name (If different than item #3):
5. Pipeline Segment No. (if known; if not known, locate pipeline by departing and arriving facility):	6. Operating Company:	7. Person in Charge at Time of Incident (Name, company, address, telephone):	
8. Type of Incident: <input type="checkbox"/> Fire <input type="checkbox"/> Gas Leak <input type="checkbox"/> Muster for Evacuation <input type="checkbox"/> Injury Involving Lost Workday	9. If Incident Involved a Muster for Evacuation, Was the Facility Subsequently Evacuated? <input type="checkbox"/> Y <input type="checkbox"/> N	11. Property Damage Amount (Total dollar amount resulting from the incident):	12. Person making report (Name, company, telephone):
13. Briefly, describe how the incident occurred (Include the nature of injuries and property damage):			

Signature of person submitting form

Date form is submitted

**PAPERWORK REDUCTION ACT OF 1995 (PRA) STATEMENT:** The PRA (44 U.S.C. 3501 et. seq.) requires us to inform you that we collect this information to obtain knowledge of equipment, procedures, and circumstances involved in OCS incidents. MMS uses the information to identify OCS incident causes and trends in order to improve safety on the OCS through regulation, performance standards, research, cooperative initiatives with industry, and publication of incident information. Responses are mandatory (43 U.S.C. 1334). Proprietary data are covered under 30 CFR 250.196. 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. Public reporting burden for this form is estimated to average 85 minutes per response, including time for reviewing instructions, gathering data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, N.W., Washington, D.C. 20240.

**MMS** Form MMS-143 (Month Year)

### Public Comments Procedures

Our practice is to make comments, including the names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

### Regulatory Planning and Review (Executive Order 12866)

According to the criteria in Executive Order 12866, this rule is not a significant regulatory action.

(1) This proposed rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. Current incident reporting regulations require that MMS be notified of certain types of incidents. This proposed rule revises these requirements by providing more specific definitions and thresholds for which incidents must be reported and by requiring submission of written incident reports. It provides more consistency with USCG reporting requirements for incidents where the two agencies have mutual interest and responsibility. Written reports must be submitted electronically. MMS and the USCG continue to work on changes to their procedures that would allow a report to be sent to both agencies in one submission. The proposed rule will have an economic effect, but it is much less than \$100 million per year. Costs to comply with this proposed rule involve the cost of making the appropriate notifications and reports. These costs include some one-time set-up costs that we have estimated at \$491,000 and an annual incremental reporting cost for making the oral notifications and submitting the written reports over and above the annual reporting cost in the current MMS regulations. The annual incremental reporting cost is estimated at \$64,512. These costs are explained in

the following Regulatory Flexibility Act section.

(2) This proposed rule will not create inconsistencies with other agencies' actions. The only agency affected is the USCG. As noted, MMS and the USCG have worked together on this proposed rule to minimize incident reporting inconsistencies between the two agencies and are working to develop a single point electronic reporting system to streamline the reporting process between the two agencies.

(3) This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. It only deals with incident reporting requirements for OCS lessees/operators and pipeline right-of-way holders.

(4) This proposed rule will not raise novel legal or policy issues. MMS worked with the USCG to make the requirements as consistent as possible with their requirements and is working with them to develop an electronic reporting system that would allow written reports to be submitted through a single point to both agencies. This proposed rule does have a unique feature—it lists USCG reporting requirements for incidents where both agencies have mutual interest and responsibility. We included the USCG requirements so that both MMS and USCG requirements for these incidents can be found in one location. However, this is an MMS proposed rule. It does not require reporting to the USCG. Those requirements are found in the USCG regulations. The USCG will also need to take some action that allows the appropriate segments of their regulated community to report incidents electronically according to the MMS regulation.

We will work closely with the USCG as we review the comments to the proposed rule and finalize the incident reporting regulation. As a result of this continued coordination, we anticipate that at an appropriate time, the USCG will issue a regulation, or other appropriate notice, that describes how electronic reporting under the MMS regulation can be used to satisfy USCG requirements. Once the USCG has issued this notice, submission of the required incident reports through the electronic system should satisfy both MMS and USCG requirements for incidents when both agencies have a mutual interest and responsibility. This should provide for continued coordination between the two agencies, while allowing each agency the flexibility to exercise its statutory responsibilities.

### Regulatory Flexibility (RF) Act

The Department of the Interior certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the RF Act (5 U.S.C. 601 *et seq.*). An RF analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

This rule applies to all lessees/operators and pipeline right-of-way holders operating on the OCS. Lessees/operators fall under the Small Business Administration's North American Industry Classification System (NAICS) code 211111, Crude Petroleum and Natural Gas Extraction. Under this NAICS code, companies with less than 500 employees are considered small businesses. MMS estimates that 130 lessees/operators explore for and produce oil and gas on the OCS; approximately 70 percent of them (91 companies) fall into the small business category.

A pipeline company (non-producer) is a small entity if it is a liquid pipeline company with fewer than 1,500 employees, or a natural gas pipeline company with gross annual receipts of \$25 million or less. MMS's database indicates that there are 88 pipeline right-of-way holders who do not own an interest in any oil and gas leases on the OCS. Fifty-seven of these companies are either major energy companies (large oil and gas or pipeline transmission companies), or wholly owned subsidiaries of these companies. Another 13 entities were either formed by partnerships among major producers and transporters or have "arms-length" contractual relationships with several major producers on the OCS for which they provide transportation services. It is our understanding that in such relationships one of the major partners usually serves as the "managing partner" of the entity so that the entity (whether a partnership or a corporation) is not actually independent in the usual sense. The remaining 18 entities could be categorized as small independent pipeline companies in the sense that they provide transportation services for several non-major oil or gas producers with which they have an "arms-length" but symbiotic business relationship. These companies are represented by NAICS code 213112, "Support Activities for Oil and Gas Operations."

Thus, there are 218 companies affected by this proposed rule, of which 109 would be considered small businesses. The costs to comply with the reporting requirements proposed in

this rule include: (1) some one-time set-up costs and, (2) an annual incremental reporting cost for making the required notifications and written reports over and above the reporting cost in the current MMS regulation. This proposed rule does not include any recordkeeping requirements.

This proposed rule will affect both small and large businesses. All companies, large and small, will incur some one-time costs to modify their incident reporting systems to incorporate the new requirements. And

all companies, both large and small, will have to notify MMS and submit the appropriate reports when they have an incident on the OCS that falls within the scope of the regulation.

Although 109 of these companies are technically small, we believe that only those small businesses that do not have adequate computer equipment (one-time set-up costs) or Internet/email access (annual cost) at the location from where they will initiate or submit their written reports will incur some extra costs. We estimate that only 5 percent of the small

companies (or 11 companies) would incur these costs. These 11 companies might incur \$5,000 per company for one-time set-up costs and \$360 per company for annual Internet/email maintenance. The estimated cost to be paid only by the 11 small companies compared to the estimated total cost for all companies is shown below. These costs are based on the portion of the costs that are over and above costs of the current regulations.

Cost type	Total cost to all companies	Total cost that would be paid only by 11 small companies
Total One Time Set-Up Costs .....	\$491,000	\$55,000
Annual Costs:		
Internet/Email Cost .....	3,960	3,960
Incremental Cost of Notification and submission of Reports .....	60,552	0
Total Annual Incremental Costs .....	64,512	3,960

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734-3247.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This proposed rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

(1) Does not have an annual effect on the economy of \$100 million or more. Costs to comply with these revisions involve some one-time set-up costs and an annual incremental reporting cost (for making the oral notifications and submitting written reports) over and above the cost in the current MMS regulations. The total set-up costs were estimated at \$491,000. The incremental annual reporting costs were estimated at \$64,512.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. The minor costs involved in complying with the revised MMS reporting requirements will not change the way the oil and gas industry conducts business, nor will it affect regional oil and gas prices. Therefore, it

will not cause major cost increases for consumers, the oil and gas industry, or any government agencies.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises. All lessees/operators and pipeline right-of-way holders, regardless of nationality, will have to comply with the reporting requirements of this rule. The rule will not affect competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises.

*Paperwork Reduction Act (PRA) of 1995*

The proposed rule requires information collection. According to section 3507(d) of the PRA we have submitted an information collection request (ICR) (form OMB 83-1) to the OMB for review and approval of the proposed MMS reporting requirements.

The title of the MMS ICR for the proposed rule is "Proposed Rulemaking—30 CFR 250, Subpart A—Incident Reporting Requirements." Potential respondents are approximately 130 Federal OCS lessees and operators, and 88 pipeline right-of-way holders who do not own an interest in any oil and gas leases on the OCS. Responses are mandatory. This collection of information does not include proprietary information and, for MMS reporting purposes, does not include questions of a sensitive nature.

It should be noted that the proposed rule does refer to, but does not require, reporting to the USCG on form CG-2692. OMB has approved the USCG form CG-2692 information collection requirements under OMB Control Number 2115-0003, with a current expiration date of January 31, 2005. To avoid duplicate reporting requirements as much as possible, the proposed rule allows respondents to use form CG-2692 to report certain incidents to MMS. Respondents would submit the form electronically to provide simultaneous transmission to both MMS and USCG. Our ICR to OMB includes the burden for completing this form when it is required by MMS. Although this might result in a small double counting of the burden hours, it would be very insignificant. The USCG estimates receiving 7,000 CG-2692/2692A forms each year, and we estimate only 124 of those 7,000 forms would apply to MMS reporting requirements.

As explained earlier in the preamble, the CG-2692 form does not cover all of the incidents pertinent to MMS nor does it contain certain information that MMS needs. Therefore, we are proposing two new MMS forms that would be submitted only to MMS. The forms are designed to avoid, to the extent possible, duplicating information captured on form CG-2692. The proposed new forms are:

Form MMS-142, Report of OCS Incident (Immediate and 12 Hour)

Form MMS-143, Report of OCS Incident (15 Day)

It also should be noted that the proposed rule does allow respondents to submit copies of internal reports in lieu of form MMS-142 as their "final report," if the company report covers all of the required information.

Hour Burden

The information collected on form CG-2692 and the new MMS forms

expand and add to the currently approved notification and reporting requirements in 30 CFR 250.191 on accidents (994 burden hours), § 250.490 on H<sub>2</sub>S releases (26 burden hours), and 30 CFR 254.46 on oil spills (59 burden hours). We would reduce the respective reporting burdens for requirements in those sections in conjunction with final regulations becoming effective. The ICR

submitted to OMB for this proposed rulemaking covers the total estimated burden for MMS reporting requirements. There are no proposed recordkeeping requirements. The following chart summarizes the estimated hour burden (column 4 has been rounded to the nearest hour) of the proposed rule.

Reporting requirement	Estimated number of notices or reports per year	Estimated hour burden calculated in minutes	Annual hour (rounded) burden	Annual hour burden cost @ \$50/hour
Oral notification of incident .....	142	10	24	\$1,200
"Immediate" Category Follow-up Report using form CG-2692 and MMS-142, Sections 1-3 .....	124	220	455	22,750
"Immediate" Category Final Report using form MMS-142, Sections 1-4 (or company report) .....	65	160	173	8,650
"12-Hour" Category Initial Report using form CG-2692 and MMS-142, Sections 1-2 .....	89	145	215	10,750
"12-Hour" Category Follow-up Report using form MMS-142, Sections 1-3 .....	89	115	171	8,550
"15-Day" Category Report using form MMS-143 .....	750	85	1,063	53,150
Submit additional information for clarification when requested by MMS .....	186	60	186	9,300
<b>Totals .....</b>	<b>1,445</b>	<b>.....</b>	<b>2,287</b>	<b>*114,350</b>

\*Due to "rounding" of hours, this cost is slightly lower than costs shown in other sections which were calculated in fractions of hours. OMB requires ICRs to be submitted in whole hours.

Non-Hour Cost Burden

As discussed in previous sections of the Preamble, in order to submit reports electronically, all companies may experience some one-time set-up costs. A few of the smaller companies may incur additional set-up costs and new annual Internet/email access costs.

Most companies already have reporting and data-gathering systems to investigate and report incidents internally. Most also have systems and procedures in place to notify MMS and the USCG of incidents and to submit required USCG written reports. These established systems may need to be modified and personnel trained to address the change in reporting thresholds and new MMS written report requirements. We estimate this may take 40 hours per company. At a cost of \$50 per hour, the total cost for the 218 companies is estimated at \$436,000 for one-time set-up costs.

Some of the approximately 109 small entities affected by the proposed rule may need to purchase additional computer equipment with Internet access at the location from where they will initiate or submit written reports. We estimate about 5 percent (11 companies) may experience an additional one-time investment of approximately \$5,000 for a total of \$55,000 that would not be a "usual and customary" business expense for these companies.

These same 11 companies would also incur a monthly Internet/email account expense of approximately \$30 per month or \$360 per year/company for a total recurring annual operation and maintenance cost of \$3,960.

PRA Comments

As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden in the proposed rule. You may submit your comments directly to the Office of Information and Regulatory Affairs, OMB. Send a copy of your comments to MMS. Refer to the "Addresses" section for mailing instructions. MMS will summarize written comments and address them in the final rule preamble. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by August 7, 2003. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

a. We specifically solicit comments on the following questions:

(1) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(2) Are the estimates of the burden hours of the proposed collection reasonable?

(3) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(4) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

b. In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping "non-hour cost" burden resulting from the collection of information. We solicit your comments on this item, including the accuracy of our estimates previously discussed or any others we have not identified. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) the total capital and start-up cost component and, (2) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and

technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practice.

**Federalism (Executive Order 13132)**

According to Executive Order 13132, this rule does not have Federalism implications. It does not substantially and directly affect the relationship between the Federal and State governments. This rule applies to lessees/operators and pipeline right-of-way holders on the OCS. It does not impose costs on States or localities. Any costs will be the responsibility of the lessees/operators and pipeline right-of-way holders.

**Takings Implication Assessment (Executive Order 12630)**

According to Executive Order 12630, this proposed rule does not have significant Takings implications. A Takings Implication Assessment is not required. This rule revises existing incident reporting regulations. It does not prevent any lessee, operator, or pipeline right-of-way holder from performing operations on the OCS, provided they follow the regulations.

**Civil Justice Reform (Executive Order 12988)**

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

**National Environmental Policy Act of 1969**

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required. This rule only revises reporting requirements for incidents on the OCS through oral notification and electronic submission of written reports. It does not require, promote, or modify the conduct of operations or activities on the OCS.

**Unfunded Mandates Reform Act (UMRA)**

According to the UMRA (2 U.S.C. 1501 *et seq.*):

(1) This rule will not "significantly or uniquely" affect small governments. A

Small Government Agency Plan is not required. This rule revises reporting regulations for oil and gas operations and does not involve the activities of any small governments, so no small governments are affected.

(2) This rule will not produce a Federal mandate of \$100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the UMRA. This rule does not have any Federal mandates.

**Government-to-Government Relationship With Tribes**

According to the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects because the OCS operating regulations have no effect on any Indian tribe.

**Clarity of the Regulation**

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions, such as the following:

- (1) Are the requirements in the proposed rule clearly stated?
- (2) Does the proposed rule contain technical language or jargon that interfere with its clarity?
- (3) Is the description in the

**SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? What else can we do to make it easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

**List of Subjects**

*30 CFR Part 250*

Continental shelf; Environmental impact statements; Environmental protection; Government contracts; Investigations; Mineral royalties; Oil and gas development and production; Oil and gas exploration; Oil and gas reserves; Penalties; Pipelines; Public lands—mineral resources; Public lands—rights-of-way; Reporting and recordkeeping requirements; Sulphur development and production; Sulphur exploration; Surety bonds.

*30 CFR Part 254*

Continental shelf; Environmental protection; Oil and gas development and production; Oil and gas exploration; Pipelines; Public lands—mineral resources; Public lands—rights-of-way; Reporting and recordkeeping requirements.

Dated: May 21, 2003.

**Rebecca W. Watson,**  
*Assistant Secretary, Land and Minerals Management.*

For the reasons stated in the preamble, the MMS proposes to amend 30 CFR Part 250 and Part 254 as follows:

**PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF**

1. The authority citation for 30 CFR Part 250 continues to read as follows:

**Authority:** 43 U.S.C. 1331 *et seq.*

2. In § 250.105 the following definitions are added in alphabetical order:

**§ 250.105 Definitions**

\* \* \* \* \*

*Collision* means the striking of:

- (1) An OCS facility by a vessel or helicopter; or
- (2) Two vessels together where at least one is engaged in OCS activities, regardless of whether one or both vessels are in motion.

\* \* \* \* \*

*Fire* means the phenomenon of combustion manifested in light, flame, and heat and has the same meaning as in the American Petroleum Institute, Recommended Practice 14G, Third Edition, December 1, 1993. In addition, the term fire as used in this part includes incidents of combustion that involve smoke with no visible flame.

*Gas release* means any unintentional release of gas at an OCS facility that could, without corrective action, raise hydrocarbon or other gas concentrations to the lower flammable (explosive) limit. Gas releases do not include events where gas is successfully released through the vent or flare system.

\* \* \* \* \*

*Incident* means an accident or unexpected event occurring in the course of an OCS activity that affects or is likely to affect operational safety or environmental protection. "Incident" includes the term "casualty" and "marine casualty" used in United States Coast Guard (USCG) regulations.

\* \* \* \* \*

*Loss of well control* means either of the following:

- (1) Uncontrolled flow of formation or other well fluids. The flow may be

between two or more exposed formations or it may be at or above the mudline. This includes uncontrolled flow resulting from failures of either surface or subsurface equipment or procedures.

(2) Flow of formation or other well fluids through a diverter.

\* \* \* \* \*

*Mobile Offshore Drilling Unit (MODU)* means a vessel, other than a public vessel of the United States, that is capable of engaging in drilling operations for exploration or exploitation of subsea resources.

\* \* \* \* \*

*OCS activity* means any activity on the OCS associated with exploration, development, production, transporting, or processing of OCS mineral resources, including but not limited to, oil and gas.

*OCS facility* means any artificial island, installation, pipeline, or other device permanently or temporarily attached to the seabed, erected for the purpose of exploring for, developing, producing, or transporting resources from the OCS. This term does not include ships or vessels for transporting produced hydrocarbons. A MODU is an OCS facility when it is located on the area covered by a lease, easement, right-of-way, or permit and is engaged in operations related to the exercise of

rights under that lease, easement, right-of-way, or permit.

\* \* \* \* \*

*Property damage* means the cost of labor and material to restore all affected items, including, but not limited to, OCS facilities, vessels, or helicopters, to their condition before the damage. Property damage does not include the cost of salvage, cleaning, gas-freeing, drydocking, or demurrage of an OCS facility, vessel, or helicopter.

\* \* \* \* \*

*Reportable releases of H<sub>2</sub>S gas* means a gas release that results in a 15-minute time-weighted average atmospheric concentration of H<sub>2</sub>S of 20 ppm or more anywhere on the facility, as defined in 30 CFR 250.490(l).

\* \* \* \* \*

*Vessel* means any watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the water. The term "vessel" does not include atmospheric or pressure vessels used for containing liquids or gases.

*Vessel engaged in OCS activities* means any vessel that is located within 500 meters of an OCS facility and is engaged in any OCS activity.

\* \* \* \* \*

3. Section 250.190 is redesignated § 250.186.

4. New §§ 250.187 through 250.190 are added to read as set forth below:

**§ 250.187 What is the scope of the incident reporting requirements?**

(a) The reporting requirements in §§ 250.188 through 250.190 apply to incidents that:

(1) Occur on the area covered by your lease, easement, right-of-way, or other permit; and

(2) Are related to operations resulting from the exercise of your rights under your lease, easement, right-of-way, or permit. This includes incidents involving vessels engaged in OCS activities as defined in § 250.105.

(b) You may be required to report incidents described in §§ 250.188 and 250.190 to the USCG under USCG rules. You may use the notifications and reports that you make to MMS under those sections to satisfy USCG incident reporting requirements if and to the extent allowed by USCG regulations.

(c) Nothing in this subpart relieves you from making notifications and reports of incidents that may be required by other regulatory agencies.

**§ 250.188 What incidents must I immediately report to MMS, USCG, National Response Center (NRC), or the Responsible Party?**

(a) After aiding the injured and stabilizing the situation, you must immediately make the following oral notifications and written reports for any of the incidents indicated in the following table.

If the following incident occurs:	You must make immediate oral notification to:	And provide the following written reports to:	
		Follow-up report (within 5 days unless otherwise specified) to:	Final report (within 60 days) to:
(1) All incidents resulting in death, except for deaths due to natural causes	MMS USCG	MMS USCG	MMS
(2) All incidents involving injuries that result in one or more of the following:	MMS USCG	MMS USCG	MMS
(i) Hospitalization of a person for more than 48 hours within 5 days of the incident;			
(ii) Fractured bone (other than in a finger, toe, or nose);			
(iii) Loss of limb;			
(iv) Severe hemorrhaging;			
(v) Severe damage to a muscle, nerve, or tendon;			
(vi) Damage to an internal organ; or			
(vii) Evacuation to shore of three or more people			
(3) All losses of well control	MMS	MMS	MMS
(4) All fires, explosions, or other incidents that result in property damage greater than \$100,000.	MMS USCG	MMS USCG	MMS
(5) All collisions resulting in property damage greater than \$100,000 .....	MMS USCG	MMS USCG	No report.
(6) Any incident that impairs the operation of any OCS facility's primary: ....	MMS USCG	MMS USCG	No report.
(i) Lifesaving equipment; or			
(ii) Firefighting equipment.			
(7) All reportable releases of H <sub>2</sub> S gas. ....	MMS	MMS	No report.
(8) All oil spills (per § 254.46(a)) which includes: .....	NRC	No report	No report.
(i) A spill from your facility;			
(ii) A spill from another offshore facility; or			
(iii) An offshore spill of unknown origin.			

If the following incident occurs:	You must make immediate oral notification to:	And provide the following written reports to:	
		Follow-up report (within 5 days unless otherwise specified) to:	Final report (within 60 days) to:
(9) Oil spills from your facility of one barrel or more (per § 254.46(b)) includes:  (i) Spills of one barrel or more; (ii) Spills of unknown size but thought to be one barrel or more; or (iii) Spills not originally reported, but subsequently found to be one barrel or more.	MMS NRC	MMS Report due within 15 days after the spillage has been stopped	MMS For spills of 200 barrels or more only.
(10) Oil spills resulting from operations at another offshore facility (per § 254.46(c)).	MMS and the Responsible Party	No report	No report.
(11) Vessels engaged in OCS activities that are involved in the incidents listed in 46 CFR 4.05–(1)(a)(1) through 4.05–(1)(a)(4).	MMS USCG	MMS USCG	No report.
(12) All releases of hazardous substances in reportable quantities as required by the Environmental Protection Agency regulations at 40 CFR § 302.6. Hazardous Substances and reportable quantities are listed at 40 CFR § 302.4.	NRC	No report	No report.

MMS = the appropriate Minerals Management Service District Supervisor  
 NRC = the National Response Center (NRC)—toll free number: 1–800–424–8802  
 USCG = the nearest United States Coast Guard Marine Safety Office, Marine Inspection Office, or Coast Guard Group Office

(b) Notifications and written reports made by the owner, agent, master, operator, or person in charge of a vessel will satisfy the reporting requirements for that vessel.

(c) Nothing in this subpart relieves the obligation for any vessel that is not engaged in OCS activities to provide notification and reports to the USCG as required by 46 CFR 4.05.

**§ 250.189 What other incidents must I report to MMS?**

(a) You must submit the following written reports to MMS for any of the incidents indicated in the following table.

If the following incident occurs:	Provide the following written reports:		
	Initial report (within 12 hours)	Followup report (within 5 days)	15-day report (within 15 days)
(1) All incidents not reported under § 250.188(a) resulting in injuries or illnesses to more than one person that involve either: .....	X	X	.....
(i) Days away from work; or (ii) Restricted work or job transfer			
(2) All explosions that result in property damage equal to or less than \$100,000 .....	X	X	.....
(3) All fires, collisions, and other incidents not reported in § 250.188(a) that result in property damage equal to or less than \$100,000 but greater than \$25,000 .....	X	X	.....
(4) All fires not reported in § 250.188(a) or paragraph (3) of this section resulting in injuries or illnesses that involve medical treatment beyond first aid to more than one person .....	X	X	.....
(5) All incidents not reported under § 250.188(a) or paragraphs (1)–(4) of this section resulting in an injury or illness to one person that involves either: .....	.....	.....	X
(i) Days away from work; or (ii) Restricted work or job transfer.			
(6) All other fires not reported under § 250.188(a) or paragraphs (3)–(4) of this section, excluding those completely contained in the living quarters .....	.....	.....	X
(7) Gas Releases .....	.....	.....	X
(8) All non-weather-related incidents when personnel muster for evacuation .....	.....	.....	X

(b) To determine if an injury or illness involves “days away from work,” “restricted work or job transfer,” or “medical treatment beyond first aid,” you should use the recording criteria in the Occupational Health and Safety Administration’s regulations at 29 CFR 1904.7(b)(1)(ii), 1904.7(b)(1)(iii), and 1904.7(b)(1)(iv), respectively.

**§ 250.190 What reporting procedures must I follow?**

(a) General procedures.  
 (1) You must submit all written reports electronically.  
 (2)(i) You must make an oral notification within 24 hours and submit the appropriate written reports for incidents that are not reported, but are later found to be reportable.  
 (ii) You must make the appropriate oral notifications and submit the

appropriate reports for incidents that have been reported but are later found to be reportable under a different section or paragraph.

(3) MMS District Supervisor may require additional information on a case-by-case basis, if the District Supervisor concludes that the information is needed to determine the cause of the incident.

(4) You must submit written reports on the appropriate forms as indicated in the following table.

If you are reporting under	and making this type of report	for incidents reported to MMS or to MMS and USCG, use:
(i) § 250.188 .....	Follow-up .....	CG-2692 and MMS-142, Sections 1-3. MMS-142, Sections 1-4; or company reports as indicated in § 250.190(b)(2).
(ii) § 250.188 .....	Final .....	
(iii) § 250.189(a)(1)-§ 250.189(a)(4) .....	Initial .....	CG-2692 and MMS-142, Sections 1-2. MMS-142, Sections 1-3. MMS-143.
(iv) § 250.189(a)(1)-§ 250.189(a)(4) .....	Follow-up .....	
(v) § 250.189(a)(5)-§ 250.189(a)(8) .....	15-Day .....	

Note: For incidents reported to the MMS and USCG under § 250.188(a)(11), you need only submit a form CG-2692 for the Follow-up Report.

(b) Reporting procedures for incidents listed in § 250.188.

(1) If you are submitting reports under § 250.188 to fulfill USCG requirements, you must make a written report for each OCS facility and vessel involved in the incident.

(2) You may submit copies of company incident reports to fulfill the Final Report requirement as long as all the information requested by form MMS-142 is included.

(3) If you submit a Final Report within the timeframe listed for the Follow-up Report, no additional reporting is required.

5. In § 250.191, the following changes are made:

A. The section heading is revised and new introductory text is added as set forth below.

B. Paragraphs (a), (b), and (c)(2) are removed.

C. Paragraphs (c)(1), (c)(3), and (c)(4) are redesignated paragraphs (a), (c), and (d), respectively.

D. New paragraph (b) is added to read as set forth below.

**§ 250.191 How does MMS conduct incident investigations?**

Any investigation that MMS conducts under the authority of sections 22(d)(1) and (2) of the Act (43 U.S.C. 1348(d) (1) and (2)) is a fact-finding proceeding with no adverse parties. The purpose of the investigation is to prepare a public report that determines the cause or causes of the incident. The investigation may involve panel meetings conducted by a chairperson appointed by MMS. The following requirements must be met for any panel meetings involving persons giving testimony.

\* \* \* \* \*

(b) Only panel members and any experts the panel deems necessary may address questions to any person giving testimony.

\* \* \* \* \*

6. In § 250.490 the following changes are made:

A. In paragraph (l), the last word "facility" is revised to read "OCS facility".

B. Two new sentences are added to the end of the paragraph to read as set forth below.

**§ 250.490 Hydrogen sulfide.**

\* \* \* \* \*

(l) \* \* \* You must submit a written Follow-up Report for these gas releases. All notifications and reports required in this paragraph must be made according to §§ 250.187 through 250.188 and § 250.190.

\* \* \* \* \*

**PART 254—OIL-SPILL RESPONSE REQUIREMENTS FOR FACILITIES LOCATED SEAWARD OF THE COAST LINE**

7. The authority citation for part 254 continues to read as follows:

Authority: 33 U.S.C. 1321

8. In § 254.46, the following changes are made:

A. In paragraphs (b), (b)(1), (b)(2) and (c), the word "Regional" is revised to read "District".

B. New paragraphs (b)(3) and (d) are added to read as follows:

**§ 254.46 Whom do I notify if an oil spill occurs?**

\* \* \* \* \*

(b) \* \* \*

(3) You must submit a written final report for any spill from your facility of 200 barrels or more.

\* \* \* \* \*

(d) You must make all notifications and reports required in this section according to §§ 250.187 through 250.188 and § 250.190 of this chapter.

[FR Doc. 03-16782 Filed 7-7-03; 8:45 am]

BILLING CODE 4310-MR-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[CGD05-03-062]

RIN 1625-AA08

**Special Local Regulations for Marine Events; Isle of Wight Bay, Ocean City, MD**

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish permanent special local regulations for fireworks displays over the waters of Isle of Wight Bay, Ocean City, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the fireworks displays. This action is intended to restrict vessel traffic in portions of Isle of Wight Bay during the events.

**DATES:** Comments and related material must reach the Coast Guard on or before September 8, 2003.

**ADDRESSES:** You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398-6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** S.L. Phillips, Project Manager, Auxiliary and

Recreational Boating Safety Branch, at (757) 398-6204.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-03-062), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### **Background and Purpose**

Several times each year, O.C. Seacrets, Inc. sponsors fireworks displays over the waters of Isle of Wight Bay, Ocean City, Maryland. The fireworks are launched from two pontoon boats anchored near the O.C. Seacrets Dock in the vicinity of 117 W. 49th Street, Ocean City, Maryland. A small fleet of spectator vessels normally gathers nearby to view the event. Due to the need for vessel control during the fireworks, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

##### **Discussion of Proposed Rule**

The Coast Guard proposes to establish permanent special local regulations on specified waters of Isle of Wight Bay. The regulated area will include all waters within 150 feet around the pontoon boats. The special local regulations will be enforced annually from 9:15 p.m. to 10:15 p.m. on Memorial Day, July 4th, August 6th, and Labor Day. If the fireworks are delayed by inclement weather, the special local regulations will be enforced from 9:15 p.m. to 10:15 p.m. the next day. The effect will be to restrict general navigation in the regulated area during

the fireworks displays. Except for vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of spectators and transiting vessels.

##### **Regulatory Evaluation**

This proposed 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 Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of Isle of Wight Bay during the events, the effect of this proposed regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit Isle of Wight Bay by navigating around the regulated area.

##### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or

operators of vessels intending to transit or anchor in a portion of Isle of Wight Bay during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only 4 days each year. Vessel traffic could pass safely around the regulated area. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

##### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

##### **Collection of Information**

This proposed rule would call 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 proposed rule under that Order and have determined that it does not have implications for federalism.

##### **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 proposed rule will not result in such an expenditure, we do

discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

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

### Civil Justice Reform

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

### Protection of Children

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

### Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

### Energy Effects

We have analyzed this proposed 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.

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

### List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233 through 1236; Department of Homeland Security Delegation No. 0170, 33 CFR 100.35.

2. § 100.531 is added to read as follows:

#### § 100.531 Isle of Wight Bay, Ocean City, Maryland

(a) *Definitions.* (1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Eastern Shore.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Eastern Shore with a commissioned, warrant, or

petty officer on board and displaying a Coast Guard ensign.

(3) *Regulated Area.* The regulated area includes all waters of Isle of Wight Bay enclosed by the arc of a circle 300 feet in diameter with the center located at position 38°22'30.0" N latitude, 075°04'18.0" W longitude. All coordinates reference Datum NAD 1983.

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Enforcement period.* This section will be enforced annually from 9:15 p.m. to 10:15 p.m. on Memorial Day, July 4th, August 6th, and Labor Day. If the fireworks are delayed by inclement weather, the special local regulations will be enforced from 9:15 p.m. to 10:15 p.m. the next day.

Dated: June 4, 2003.

**Sally Brice-O'Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 03–17111 Filed 7–7–03; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 70

[NE 178–1178; FRL–7522–9]

### Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Nebraska

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve revisions to the Nebraska State Implementation Plan (SIP) and Operating Permits Program. On September 7, 2001, and May 10, 2002, the state updated its air program rules to be consistent with Federal requirements, to revise definitions, and to clarify applicability, reporting, and monitoring requirements. Approval of these revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal

enforceability of the state's revised air program rules.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

**DATES:** Comments on this proposed action must be received in writing by August 7, 2003.

**ADDRESSES:** Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or E-mail him at [kaiser.wayne@epa.gov](mailto:kaiser.wayne@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Wayne Kaiser at (913) 551-7603.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: June 26, 2003.

**William Rice,**

*Acting Regional Administrator, Region 7.*  
[FR Doc. 03-17099 Filed 7-7-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[IA 186-1186; FRL-7523-3]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; State of Iowa

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a revision to the state of Iowa's rule for controlling emissions from existing sources subject to the section 111(d) emission guidelines. This revision updates the adoption by reference of Federal requirements applicable to these sources. Approval of this revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the revised state rule. In the final rules section of the **Federal Register**, EPA is approving the state's revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

**DATES:** Comments on this proposed action must be received in writing by August 7, 2003.

**ADDRESSES:** Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and

Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or E-mail him at [kaiser.wayne@epa.gov](mailto:kaiser.wayne@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Wayne Kaiser at (913) 551-7603, or by E-mail at [kaiser.wayne@epa.gov](mailto:kaiser.wayne@epa.gov).

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: June 26, 2003.

**William Rice,**

*Acting Regional Administrator, Region 7.*  
[FR Doc. 03-17102 Filed 7-7-03; 8:45 am]

**BILLING CODE 6560-50-P**

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 301-50

[FTR Case 2003-303 Correction]

#### Federal Travel Regulation; eTravel Service (eTS); Correction

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Proposed rule; Correction.

**SUMMARY:** This is to correct the Federal Travel Regulation's proposed rule published in the **Federal Register** at 68 FR 38662, June 30, 2003, by revising a Table of Content entry that was inadvertently revised.

**FOR FURTHER INFORMATION CONTACT:** Ms. Laurie Duarte at (202) 501-4755, General Services Administration, Regulatory Secretariat, Washington, DC 20405.

#### Correction

In the proposed rule document appearing in the issue of June 30, 2003, make the following correction:

1. On page 38662, third column, table of contents, fourth section entry, remove "301-73.1" and add in its place "301-50.4".

Dated: July 1, 2003.

**Laurie Duarte,**

*Supervisor, Regulatory Secretariat, General Services Administration.*

[FR Doc. 03-17146 Filed 7-7-03; 8:45 am]

**BILLING CODE 6820-14-P**

# Notices

Federal Register

Vol. 68, No. 130

Tuesday, July 8, 2003

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

### Commodity Credit Corporation

#### Assistance for Producers in New Mexico for Tebuthiuron Application Losses

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice.

**SUMMARY:** The Commodity Credit Corporation (CCC) is issuing this notice to inform all interested parties of the 2003 New Mexico Tebuthiuron Program (NMTP). The NMTP was authorized by the Agricultural Assistance Act of 2003 (the 2003 Act), which requires the Secretary to reimburse certain agricultural producers on farms in New Mexico for losses related to the application by the Federal Government of the herbicide Tebuthiuron on land on or near the farms of the producers during July 2002.

**DATES:** (1) The Farm Service Agency (FSA), through New Mexico State University (NMSU) will begin accepting applications on July 8, 2003.

(2) The application deadline is July 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Eloise Taylor, Chief, Compliance Branch, FSA/PECD, 1400 Independence Ave., SW., Washington, DC 20250-0517, (202) 720-9882, or e-mail at: [Eloise\\_Taylor@wdc.usda.gov](mailto:Eloise_Taylor@wdc.usda.gov). Persons with disabilities who require alternative means of communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

Section 217 of the 2003 Act requires that this program be administered without regard to 44 U.S.C. 35, the Paperwork Reduction Act (PRA). This means the information to be collected from the public to implement this

program and the burden, in time and money, the collection of the information would have on the public does not need to be approved by the Office of Management and Budget nor is it subject to the 60-day public comment period required by the PRA.

#### Background

This notice provides 2003 NMTP terms and conditions and informs affected parties that they may be eligible for benefits. Section 210 of the 2003 Act provides that the Secretary shall use not more than \$1,650,000 of funds of the Commodity Credit Corporation to reimburse agricultural producers on farms located in the vicinity of Malaga, New Mexico, for all losses to crops, livestock, and trees, and interest and lost income, and related expenses incurred as the result of the application by the Federal Government of Tebuthiuron on land on or near the farms of the producers during July 2002.

Tebuthiuron is a commercially available herbicide that is used to control broadleaf weeds, grasses, and brush. It can be toxic to many plants and can kill trees, shrubs and other desirable plants with roots extending into treated areas.

Tebuthiuron has been used in the past by Federal agencies, such as the Forest Service and Natural Resources Conservation Service (NRCS) of USDA, and the Bureau of Land Management (BLM) of the Department of Interior, in drug crop eradication efforts and to control brush and weeds on public lands. Producers have claimed that Tebuthiuron use by the Federal Government and by a private landowner on July 8, 10, and 12, 2002, caused water drawn from the Black River to be tainted, causing losses to crops and livestock in the vicinity of Malaga, New Mexico. The statute provided funds to address those claims. The program is limited to farmers in that area and for their losses and related expenses due to the July, 2002, applications. No other claims will be allowed. Allowance of claims is not intended to be, and is not, an admission of fact or liability on the part of anyone, but is intended to carry out the program as required by the 2003 Act, based on the claims of the producers and the assessment of NMSU, which will help collect and assess the information. Assistance will be provided to affected producers in

proportion to the losses incurred. No claims will be paid except upon the making of a proper application during the application period as announced in this notice. All claims are subject to the availability of funds. Funding is limited to the \$1,650,000 provided by the 2003 Act and will remain available until expended. Each producer must file a claim on a form developed by FSA and NMSU, and provide supporting documentation for 2002 losses or losses in subsequent years. Once the money is expended, all other claims must be rejected. The final determinations in this matter will be made by the FSA Deputy Administrator for Farm Programs (Deputy Administrator).

#### 2003 New Mexico Tebuthiuron Program

##### I. How to Apply

(A) Producers must submit the following to FSA directly or through NMSU:

- (1) Application for benefits;
- (2) Certification from a qualified crop consultant or New Mexico Department of Agriculture soil test, that supports the producer's contention that the acreage claimed to have been damaged was caused by the July, 2002, Tebuthiuron applications; and
- (3) Verifiable or reliable production records for the 2002 and 2003 crop and farm, including, as applicable, commercial receipts, settlement sheets, warehouse ledgers, load summaries, or appraisal information from a loss adjuster acceptable to CCC. If the damaged crop was farm-stored, fed to livestock, or disposed of by means other than commercial channels, acceptable production records may include truck scale tickets, appraisals from loss adjusters acceptable to CCC, contemporaneous diaries, or other documents, such as contemporaneous measurements. In the absence of such records, CCC may assign production.
- (4) Records for any production of a crop that is grown with an arrangement or contract for guaranteed payment. Failure to report any applicable guaranteed contract or similar agreement shall be considered as providing false information to CCC, will render producers ineligible for NMTP payments, and may lead to other civil or criminal sanctions.

(5) For applicable prevented planting claims for 2003 or subsequent years, a certification by a qualified crop

consultant that supports the producer's claim that a crop could not be taken to maturity because of the presence of Tebuthiuron. Prevented planted acreage shall be limited to the acres of the crop planted in 2002.

(6) Other information needed to verify the amount of the claim, including but not limited to information relating to acres planted, expected 1996 through 2000 actual yields, actual production, replanting expenses, legal fees, livestock records and associated matters as determined necessary by NMSU or CCC or as offered by the producer in support of the claim.

## II. References and Payment Limitations

(A) "Deputy Administrator" in this notice means the Farm Service Agency (FSA) Deputy Administrator for Farm Programs.

(B) Funding for the program is limited to \$1,650,000. In the event that the \$1,650,000 is insufficient to pay all approved claims, CCC will reduce payments of all eligible and timely submitted claims on a pro rata basis or other method deemed appropriate by CCC.

(C) Total NMTP payments are not subject to a per person payment limitation as defined in 7 CFR part 1400.

(D) NMTP payments shall be made without regard to crop liens or title under State law, but may be assigned.

## III. Who is Eligible

Eligible producers for NMTP payments are producers in the State of New Mexico who suffered loss in 2002 and subsequent years as a result of the use of the herbicide Tebuthiuron in the Black River watershed in July 2002 in the vicinity of Malaga, New Mexico.

## IV. Eligibility Determinations

Eligibility determinations will be made by the Deputy Administrator upon receipt of all of the necessary data and the NMSU report of eligible claims timely submitted. Subject to the continued availability of funds, eligible losses are those claimed as a direct result from the Federal Government's use of Tebuthiuron in the vicinity of Malaga, New Mexico. The Deputy Administrator shall determine the level of proof needed to substantiate a claim for purposes of payment.

## V. Payment Calculations

(A) NMTP payments for crop losses shall be based on the producer's share of the crop lost, or, if no crop was produced, the share the producer would have received if the crop had been produced.

(B) NMTP payments for lost crops will be calculated using the same or similar payment rates and county average yields established for the 2002 Crop Year Disaster Program as provided in 7 CFR part 1480, as determined by CCC. In lieu of county average yields, producers may use verifiable or reliable production evidence acceptable to CCC to establish the producers expected yield using the producer's 1996-2000 yields.

(C) NMTP payments to producers under this notice for losses to crops shall be made in an amount determined by multiplying the eligible loss of production for the farm by the applicable payment rate. Grazing losses will be based on the loss of forage value.

(D) Producers may be paid interest for 1 year for crop losses at such rate as determined by the Deputy Administrator, which may be the rate paid by the producer on outstanding loans, but not to exceed 7.44%.

(E) Attorney's fees may be claimed for representation resulting from losses due to the application of Tebuthiuron if the attorney certifies that representation was provided to a farmer. A written agreement of the terms and conditions must be provided along with the amount (by formula or dollar amount) as certified by the producer and attorney for which the producer is currently obligated or will be obligated to the attorney upon receipt of the NMTP payments.

(F) For replanting of alfalfa or pecan trees the producer must have certification from a qualified crop consultant that supports the producer's claim that a replanting is necessary due to the presence of Tebuthiuron.

(G) Miscellaneous expenses may be paid, provided that expenses are itemized and proper documentation is submitted that clearly identifies the nature of the expenses.

## VI. General

(A) The NMTP shall be under the supervision of the Deputy Administrator, who shall have the authority to modify terms and conditions of the NMTP, and to impose additional terms and conditions, in order to achieve the purposes of the program.

(B) The producer, to receive payment, must meet all conditions set out in these regulations, the program application, or otherwise imposed by the Deputy Administrator.

(C) For additional information, or to submit an application directly to FSA, affected producers should contact the Farm Service Agency at the address above.

(D) Payments are subject to administrative offset.

## VIII. Procedure, Application Deadline, Appeals, and Appeals Resolutions

NMSU will collect the information from all claimants. Any function NMSU declines to carry out shall be performed by the Deputy Administrator. Claimants must submit an application to NMSU or directly to the Deputy Administrator by the close of business on July 23, 2003. NMSU will submit the applications to CCC for consideration before August 4, 2003. CCC will accept or reject each application in whole or in part and will notify each producer in writing of such determination. If a producer disagrees with the determination, the producer must submit objections to CCC by writing to the Deputy Administrator, 1400 Independence Avenue, Room 3612, STOP 0510, Washington DC 20250-0510. Objections must be received within 10 days of notification of the determination.

If there are amounts in dispute, those amounts may be withheld from distribution to address those claims. If there is to be a proration such a withholding can affect all claimants. Alternatively, CCC may resolve the matter based upon the information at hand and make a full distribution, in which case there may not be sufficient funds to allow an appeal. The Deputy Administrator shall make the final determinations. All determinations on all claims shall be final except to the extent a withholding is made to allow for appeal to the Department's National Appeals Division. Notwithstanding any provision of this notice, the Deputy Administrator can adjust claims in any manner deemed appropriate to accomplish the goals of the program, may allow waivers of requirements as appropriate, and may prorate or withhold funds as needed to resolve claims under this program within the funding limit. The purpose of this notice is to inform producers of the availability of the program and to establish the basis on which program determinations can be made.

Signed at Washington, DC June 27, 2003.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 03-17201 Filed 7-7-03; 8:45 am]

**BILLING CODE 3410-05-P**

**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****Child and Adult Care Food Program:  
National Average Payment Rates, Day  
Care Home Food Service Payment  
Rates, and Administrative  
Reimbursement Rates for Sponsoring  
Organizations of Day Care Homes for  
the Period July 1, 2003—June 30, 2004**

**AGENCY:** Food and Nutrition Service,  
USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the annual adjustments to: the national average payment rates for meals and supplements served in child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers; the food service payment rates for meals and supplements served in day care homes; and the administrative reimbursement rates for sponsoring organizations of day care homes, to reflect changes in the Consumer Price Index. Further

adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are made on an annual basis each July, as required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

**EFFECTIVE DATE:** July 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Keith Churchill, Section Chief, Child and Adult Care and Summer Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 305-2620.

**SUPPLEMENTARY INFORMATION:****Definitions**

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR part 226).

**Background**

Pursuant to sections 4, 11 and 17 of the Richard B. Russell National School

Lunch Act (NSLA) (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1773) and §§ 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR part 226), notice is hereby given of the new payment rates for institutions participating in CACFP. These rates shall be in effect during the period July 1, 2003, through June 30, 2004.

As provided for under the NSLA and the CNA, all rates in the CACFP must be revised annually on July 1 to reflect changes in the Consumer Price Index (CPI) for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes, and the administrative reimbursement rates for sponsors of day care homes on July 5, 2002, at 67 FR 44804 (for the period July 1, 2002—June 30, 2003).

**BILLING CODE 3410-30-P**

<b>CHILD AND ADULT CARE FOOD PROGRAM (CACFP)</b>							
<b>Per Meal Rates in Whole or Fractions of U.S. Dollars</b>							
<b>Effective from July 1, 2003 - June 30, 2004</b>							
<b>CENTERS</b>		<b>BREAKFAST</b>		<b>LUNCH AND SUPPER<sup>1</sup></b>		<b>SUPPLEMENT</b>	
<b>CONTIGUOUS STATES</b>	<b>PAID</b>	.22		.21		.05	
	<b>REDUCED PRICE</b>	.90		1.79		.30	
	<b>FREE</b>	1.20		2.19		.60	
<b>ALASKA</b>	<b>PAID</b>	.32		.34		.08	
	<b>REDUCED PRICE</b>	1.61		3.15		.48	
	<b>FREE</b>	1.91		3.55		.97	
<b>HAWAII</b>	<b>PAID</b>	.25		.24		.06	
	<b>REDUCED PRICE</b>	1.09		2.15		.35	
	<b>FREE</b>	1.39		2.55		.70	
<b>DAY CARE HOMES</b>		<b>BREAKFAST</b>		<b>LUNCH AND SUPPER</b>		<b>SUPPLEMENT</b>	
		<b>TIER I</b>	<b>TIER II</b>	<b>TIER I</b>	<b>TIER II</b>	<b>TIER I</b>	<b>TIER II</b>
<b>CONTIGUOUS STATES</b>		.99	.37	1.83	1.10	.54	.15
<b>ALASKA</b>		1.57	.56	2.97	1.79	.88	.24
<b>HAWAII</b>		1.15	.42	2.14	1.29	.63	.17
<b>ADMINISTRATIVE REIMBURSEMENT RATES FOR SPONSORING ORGANIZATIONS OF DAY CARE HOMES</b>				<b>Initial 50</b>	<b>Next 150</b>	<b>Next 800</b>	<b>Each Additional</b>
<b>PER HOME/PER MONTH RATES IN U.S. DOLLARS</b>							
<b>CONTIGUOUS STATES</b>				86	65	51	45
<b>ALASKA</b>				139	106	83	73
<b>HAWAII</b>				100	77	60	53

<sup>1</sup>These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the *Federal Register*.

The changes in the national average payment rates for centers reflect a 2.19 percent increase during the 12-month period, May 2002 to May 2003, (from 177.6 in May 2002 to 181.5 in May 2003) in the food away from home series of the CPI for All Urban Consumers.

The changes in the food service payment rates for day care homes reflect a 1.31 percent increase during the 12-month period, May 2002 to May 2003, (from 175.5 in May 2002 to 177.8 in May 2003) in the food at home series of the CPI for All Urban Consumers.

The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 2.06 percent increase during the 12-month period, May 2002 to May 2003, (from 179.8 in May 2002 to 183.5 in May 2003) in the series for all items of the

CPI for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart

V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3518).

**Authority:** Sections 4(b)(2), 11a, 17(c) and 17(f)(3)(B) of the Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1753(b)(2), 1759a, 1766(f)(3)(B)) and section 4(b)(1)(B) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773(b)(1)(B)).

Dated: July 2, 2003.

**Roberto Salazar,**  
Administrator.

[FR Doc. 03-17222 Filed 7-7-03; 8:45 am]

BILLING CODE 3410-30-C

**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates**

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the annual adjustments to: (1) The “national average payments,” the amount of money the Federal government provides States for lunches, afterschool snacks and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; (2) the “maximum reimbursement rates,” the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products. These payments and rates are in effect from July 1, 2003, through June 30, 2004.

**EFFECTIVE DATE:** July 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosemary O’Connell, Section Chief, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, VA 22302 or phone (703) 305-2619.

**SUPPLEMENTARY INFORMATION:****Background**

*Special Milk Program for Children*—Pursuant to section 3 of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution that participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products, published by the

Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 2003, through June 30, 2004, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 13.00 cents. This reflects a decrease of 2.65 percent in the Producer Price Index for Fluid Milk Products from May 2002 to May 2003 (from a level of 147.1 in May 2002 to 143.2 in May 2003).

As a reminder, schools or institutions with pricing programs that elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

*National School Lunch and School Breakfast Programs*—Pursuant to sections 11 and 17A of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1759a and 1766a), and section 4 of the CNA (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for lunches and afterschool snacks served to children participating in the National School Lunch Program and breakfasts served to children participating in the School Breakfast Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 2003, through June 30, 2004, reflect a 2.19 percent increase in the Consumer Price Index for All Urban Consumers during the 12-month period May 2002 to May 2003 (from a level of 177.6 in May 2002 to 181.5 in May 2003). Adjustments to the national average payment rates for all lunches served under the National School Lunch Program, breakfasts served under the School Breakfast Program, and afterschool snacks served under the National School Lunch Program are rounded down to the nearest whole cent.

*Lunch Payment Levels*—Section 4 of the NSLA (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. The NSLA provides two different section 4 payment levels for lunches served under the National School Lunch Program. The lower

payment level applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these section 4 payments, section 11 of the NSLA (42 U.S.C. 1759(a)) provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under section 8 (42 U.S.C. 1757) and section 11 of the NSLA, maximum reimbursement rates for each type of lunch are prescribed by the Department in this notice. These maximum rates are to ensure equitable disbursement of Federal funds to school food authorities.

*Afterschool Snack Payments in Afterschool Care Programs*—Section 17A of the NSLA (42 U.S.C. 1766a) establishes National Average Payments for free, reduced price and paid afterschool snacks as part of the National School Lunch Program.

*Breakfast Payment Factors*—Section 4 of the CNA (42 U.S.C. 1773) establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in “severe need” because they serve a high percentage of needy children.

**Revised Payments**

The following specific section 4, section 11 and section 17A National Average Payment Factors and maximum reimbursement rates for lunch, the afterschool snack rates, and the breakfast rates are in effect from July 1, 2003, through June 30, 2004. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and Guam use the figures specified for the contiguous States.

**National School Lunch Program Payments**

*Section 4 National Average Payment Factors*—In school food authorities which served less than 60 percent free

and reduced price lunches in School Year 2001–02, the payments for meals served are: *Contiguous States*—paid rate—21 cents, free and reduced price rate—21 cents, maximum rate—29 cents; *Alaska*—paid rate—34 cents, free and reduced price rate—34 cents, maximum rate—45 cents; *Hawaii*—paid rate—24 cents, free and reduced price rate—24 cents, maximum rate—33 cents.

In school food authorities which served 60 percent or more free and reduced price lunches in School Year 2001–02, payments are: *Contiguous States*—paid rate—23 cents, free and reduced price rate—23 cents, maximum rate—29 cents; *Alaska*—paid rate—36 cents, free and reduced price rate—36 cents, maximum rate—45 cents; *Hawaii*—paid rate—26 cents, free and reduced price rate—26 cents, maximum rate—33 cents.

*Section 11 National Average Payment Factors*—*Contiguous States*—free lunch—198 cents, reduced price lunch—158 cents; *Alaska*—free lunch—

321 cents, reduced price lunch—281 cents; *Hawaii*—free lunch—231 cents, reduced price lunch—191 cents.

*Afterschool Snacks in Afterschool Care Programs*—The payments are: *Contiguous States*—free snack—60 cents, reduced price snack—30 cents, paid snack—5 cents; *Alaska*—free snack—97 cents, reduced price snack—48 cents, paid snack—8 cents; *Hawaii*—free snack—70 cents, reduced price snack—35 cents, paid snack—6 cents.

#### **School Breakfast Program Payments**

For schools “not in severe need” the payments are: *Contiguous States*—free breakfast—120 cents, reduced price breakfast—90 cents, paid breakfast—22 cents; *Alaska*—free breakfast—191 cents, reduced price breakfast—161 cents, paid breakfast—32 cents; *Hawaii*—free breakfast—139 cents, reduced price breakfast—109 cents, paid breakfast—25 cents.

For schools in “severe need” the payments are: *Contiguous States*—free breakfast—143 cents, reduced price

breakfast—113 cents, paid breakfast—22 cents; *Alaska*—free breakfast—228 cents, reduced price breakfast—198 cents, paid breakfast—32 cents; *Hawaii*—free breakfast—166 cents, reduced price breakfast—136 cents, paid breakfast—25 cents.

#### **Payment Chart**

The following chart illustrates: the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per lunch amount; the maximum lunch reimbursement rates; the reimbursement rates for afterschool snacks served in afterschool care programs; the breakfast National Average Payment Factors including “severe need” schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and Guam are those specified for the contiguous States.

**BILLING CODE 3410–30–P**

SCHOOL PROGRAMS				
MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES				
Expressed in Dollars or Fractions Thereof				
Effective from July 1, 2003 - June 30, 2004				
NATIONAL SCHOOL LUNCH PROGRAM *		LESS THAN 60%	60% OR MORE	MAXIMUM RATE
CONTIGUOUS STATES	PAID	.21	.23	.29
	REDUCED PRICE	1.79	1.81	1.96
	FREE	2.19	2.21	2.36
ALASKA	PAID	.34	.36	.45
	REDUCED PRICE	3.15	3.17	3.41
	FREE	3.55	3.57	3.81
HAWAII	PAID	.24	.26	.33
	REDUCED PRICE	2.15	2.17	2.35
	FREE	2.55	2.57	2.75
SCHOOL BREAKFAST PROGRAM		NON-SEVERE NEED		SEVERE NEED
CONTIGUOUS STATES	PAID	.22		.22
	REDUCED PRICE	.90		1.13
	FREE	1.20		1.43
ALASKA	PAID	.32		.32
	REDUCED PRICE	1.61		1.98
	FREE	1.91		2.28
HAWAII	PAID	.25		.25
	REDUCED PRICE	1.09		1.36
	FREE	1.39		1.66
SPECIAL MILK PROGRAM		ALL MILK	PAID MILK	FREE MILK
PRICING PROGRAMS WITHOUT FREE OPTION		.13	N/A	N/A
PRICING PROGRAMS WITH FREE OPTION		N/A	.13	Average cost per ½ pint of milk.
NONPRICING PROGRAMS		.13	N/A	N/A
AFTERSCHOOL SNACKS SERVED IN AFTERSCHOOL CARE PROGRAMS				
CONTIGUOUS STATES	PAID	.05		
	REDUCED PRICE	.30		
	FREE	.60		
ALASKA	PAID	.08		
	REDUCED PRICE	.48		
	FREE	.97		
HAWAII	PAID	.06		
	REDUCED PRICE	.35		
	FREE	.70		

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that

are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

National School Lunch, School Breakfast and Special Milk Programs are listed in the Catalog of Federal Domestic

Assistance under No. 10.555, No. 10.553 and No. 10.556, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule

related notice published at 48 FR 29114, June 24, 1983.)

**Authority:** Sections 4, 8, 11 and 17A of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Dated: July 2, 2003.

**Roberto Salazar,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 03-17223 Filed 7-7-03; 8:45 am]

**BILLING CODE 3410-30-C**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Southwest Oregon Province Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Southwest Oregon Province Advisory Committee will meet on July 30, 2003 in Grants Pass, Oregon in the Options Building Multi-Purpose Room at 1215 SW G St. The meeting will begin at 9 a.m. and continue until 5 p.m. Agenda items to be covered include: (1) Introduction of New Members; (2) Public Comment; (3) 2003 Implementation Monitoring; (4) Advisory Committee Guidelines and (5) Future Agenda Items.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Jim Hays, Province Advisory Committee Coordinator, USDA Forest Service, Prospect Ranger District, 47201 Highway 62, Prospect, Oregon 97536, phone (541) 560-3432.

Dated: July 1, 2003.

**Virginia Grilley,**

*Acting Designated Federal Official.*

[FR Doc. 03-17213 Filed 7-7-03; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

#### Notice of Request for Extension of Currently Approved Information Collection

**AGENCY:** Rural Business-Cooperative Service.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension of a currently

approved information collection in support of the Intermediary Relending Program (IRP).

**DATES:** Comments on this notice must be received by September 8, 2003, to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Lori Washington, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Avenue, SW., Washington, DC 20250-3225, Telephone (202) 720-9815, E-mail [lori.washington@usda.gov](mailto:lori.washington@usda.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* Intermediary Relending Program.

*OMB Number:* 0570-0021.

*Expiration Date of Approval:* September 30, 2003.

*Type of Request:* Extension of currently approved collection information.

*Abstract:* The objective of the Intermediary Relending Program (IRP) is to improve community facilities and employment opportunities and increase economic activity in rural areas by financing business facilities and community development. This purpose is achieved through loans made by the Rural Business-Cooperative Service (RBS) to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community development. The regulations contain various requirements for information from the intermediaries, and some requirements may cause the intermediary to seek information from ultimate recipients. The information requested is necessary for RBS to be able to process applications in a responsible manner, make prudent credit and program decisions, and effectively monitor the intermediaries' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. It includes information to identify the intermediary; describe the intermediary's experience and expertise; describe how the intermediary will operate its revolving loan fund; provide for debt instruments, loan agreements, and security; and other material necessary for prudent credit decisions and reasonable program monitoring.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 7.5 hours per response.

*Respondents:* Non-profit corporations, public agencies, and cooperatives.

*Estimated Number of Respondents:* 202.

*Estimated Number of Responses per Respondent:* 11.9.

*Estimated Number of Responses:* 2,403.

*Estimated Total Annual Burden on Respondents:* 17,989 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692-0043.

#### Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of the RBS estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, 1400 Independence Avenue, SW., STOP 0742, Washington, DC 20250-0742. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: June 27, 2003.

**John Rosso,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. 03-17167 Filed 7-7-03; 8:45 am]

**BILLING CODE 3410-XY-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on July 23 & 24, 2003, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

**July 23***Public Session*

1. Comments or presentations by the public.
2. Discussion on export controls on signal generators and arbitrary waveform generators.
3. Discussion on developments in micro-processors technology and export controls.
4. Discussion on proposal on encryption in network management.
5. Election of new chairman.

**July 23 and 24***Closed Session*

6. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below:

Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S.

Department of Commerce, 15th St. & Pennsylvania Ave, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 7, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. For more information, contact Lee Ann Carpenter on 202-482-2583.

Dated: July 2, 2003.

**Lee Ann Carpenter,**  
*Committee Liaison Officer.*

[FR Doc. 03-17191 Filed 7-7-03; 8:45 am]

**BILLING CODE 3510-JT-M**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-201-827]

**Notice of Final Results and Rescission of Antidumping Duty Administrative Review: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Mexico**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results and Rescission of Antidumping Duty Administrative Review.

**SUMMARY:** We have determined that the second antidumping duty administrative review of Tubos de Acero de Mexico, S.A. ("TAMSA") should be rescinded.

**EFFECTIVE DATE:** July 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mark Young, or George McMahon, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-6397, or (202) 482-1167, respectively.

**SUPPLEMENTARY INFORMATION****Background**

On August 6, 2002, the Department of Commerce ("the Department") published in the **Federal Register** the notice of "Opportunity to Request Administrative Review" of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe ("SLP") from Mexico, for the period August 1, 2001 through July 31, 2002 (67 FR 50856). On August 30, 2002, we received a request from the petitioner<sup>1</sup> to review TAMSA. On September 25, 2002, we published the notice of initiation of this antidumping duty administrative review with respect to TAMSA. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferment of Administrative Reviews*, 67 FR 60210 (September 25, 2002). On October 25, 2002, we received a request from the petitioner to determine whether antidumping duties have been absorbed during the period of review by respondent TAMSA. TAMSA submitted a November 1, 2002 letter certifying that neither TAMSA, nor its U.S. affiliate, Siderca Corporation, directly or indirectly, exported or sold for

<sup>1</sup> The petitioner is United States Steel Corporation.

consumption in the United States any subject merchandise during the period of review ("POR"). On April 30, 2003, the Department issued a memorandum to the file concerning its intent to rescind the administrative review and invited parties to comment. *See Memorandum from Eric Greynolds through Melissa Skinner, "Second Administrative Review of the Antidumping Duty Order on Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Intent to Rescind Administrative Review,"* (April 30, 2003), located in the case file in the Central Records Unit ("CRU"), main Commerce Building, room B-099. Although we invited parties to comment on our memorandum which outlined our intent to rescind this administrative review, no interested party submitted comments, a case brief, or requested a hearing. In summary, there have been no changes since the Department issued its intent to rescind this administrative review.

**Scope of the Review**

The products covered are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials ("ASTM") A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and the American Petroleum Institute ("API") 5L specifications and meeting the physical parameters described below, regardless of application, with the exception of the exclusions discussed below. The scope of this review also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of this review are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this review are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60,

7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A-106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM A-335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A-106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A-333 or ASTM A-334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A-589) and seamless galvanized pipe for fire protection uses (ASTM A-795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A-106, ASTM A-53, API 5L-B, and API 5L-X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical

requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A-106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A-106 pipes may be used in some boiler applications.

The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this review. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A-106 applications. These specifications generally include ASTM A-161, ASTM A-192, ASTM A-210, ASTM A-252, ASTM A-501, ASTM A-523, ASTM A-524, and ASTM A-618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this review.

Specifically excluded from the scope of this review are:

A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications.

B. Finished and unfinished oil country tubular goods ("OCTG"), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

C. Products produced to the A-335 specification unless they are used in an application that would normally utilize ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications.

D. Line and riser pipe for deepwater application, *i.e.*, line and riser pipe that is (1) used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.*, "API 5L").

With regard to the excluded products listed above, the Department will not instruct the U.S. Bureau of Customs and Border Protection (BCBP) to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application. If such information is provided, the Department will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A-335 specification is being used in an A-106 application, it will require end-use certifications for imports of that specification. Normally the Department will require only the importer of record to certify to the end-use of the imported merchandise. If it later proves necessary for adequate implementation, the Department may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and BCBP's purposes, the written description of the merchandise subject to this scope is dispositive.

### Rescission of Second Administrative Review

On November 1, 2002, TAMSA submitted a letter certifying that neither TAMSA, nor its U.S. affiliate, Siderca Corporation, directly or indirectly, exported or sold for consumption in the United States any subject merchandise during the POR. See *Memorandum from Eric Greynolds through Melissa Skinner, "Second Administrative Review of the Antidumping Duty Order on Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Intent to Rescind Administrative Review,"* (April 30, 2003). The Department conducted a shipment data query on SLP produced by TAMSA during the POR. Our analysis of the query results showed that none the relevant shipments were subject to antidumping duties. To further confirm TAMSA's claim that it did not export subject merchandise to the United States during the POR, on March 19, 2003 we subsequently requested an additional data query of the internal BCBP data. See *Memorandum to file from Mark Young through Eric Greynolds, "Second Administrative Review of the Antidumping Duty Order on Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Internal Customs Data Query"* (March 31, 2003). Pursuant to this request, we discovered what appeared to be several shipments of subject merchandise from TAMSA to the United States during the POR. Consequently, on March 31, 2003, the Department requested that TAMSA explain the discrepancy between TAMSA's statement that it had no sales of subject merchandise during the POR and the results of our data query which contradicted TAMSA's statement, or respond to the antidumping questionnaire that was sent on October 11, 2002. See letter to respondent, dated March 31, 2003, in the case file in the CRU.

Subsequent to the issuance of the Department's March 31, 2003 letter to TAMSA, we discovered an inadvertent error regarding the internal BCBP data query on shipments of subject merchandise from TAMSA. Specifically, the results of the query included extraneous data concerning merchandise that is not covered by the scope of the order. Therefore, on April 30, 2003, we stated that based on our shipment data query and examination of entry documents, we should treat TAMSA as a non-shipper and, in accordance with section 351.213(d)(3) of the Department's regulations, rescind

this review. See *Memorandum from Eric Greynolds through Melissa Skinner to the File, "Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Mexico: Rescission of First Administrative Review,"* dated April 30, 2003. We invited interested parties to comment on our intent to rescind the administrative review.

With respect to petitioner's October 25, 2002 request that the Department determine whether antidumping duties have been absorbed during the period of review by respondent TAMSA, we find their request to be irrelevant to the instant case. The Department's query results show that TAMSA had no entries of subject merchandise during the POR, therefore, no duty absorption can exist (see e.g., *Certain Fresh Cut Flowers from Mexico, Final Results of Antidumping Duty Administrative Review*, 62 FR 27219 (May 19, 1997)).

Based on our BCBP data query and examination of entry documentation, the Department will treat TAMSA as a non-shipper for the purpose of this review. Therefore, in accordance with § 351.213(d)(3) of the Department's regulations, and consistent with our practice, we will rescind this review because TAMSA is the sole respondent and a non-shipper (see e.g., *Polychloroprene Rubber from Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 66 FR 45005 (August 27, 2001)).

This notice is in accordance with section 751(a)(1) of the Act and section 351.213(d) of the Department's regulations.

Dated: July 1, 2003.

**Gary Taverman,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 03-17217 Filed 7-7-03; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-829]

#### Notice of Preliminary Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand from India

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Affirmative Countervailing Duty Determination.

**EFFECTIVE DATE:** July 8, 2003.

### Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of prestressed concrete steel wire strand (PC strand or subject merchandise) from India. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

#### FOR FURTHER INFORMATION CONTACT:

Robert Copyak at (202) 482-2209, Alicia Kinsey at (202) 482-4793, or Cindy Robinson at (202) 482-3797, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

#### SUPPLEMENTARY INFORMATION:

##### Petitioners

The petition in this investigation was filed by American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp. (collectively, the petitioners).

##### Case History

Since the publication of the notice of initiation in the **Federal Register** (see *Notice of Initiation of Countervailing Duty Investigation: Prestressed Concrete Steel Wire Strand from India*, 68 FR 9058 (February 27, 2003) (*Initiation Notice*)), the following events have occurred.

On February 28, 2003, we issued our initial countervailing duty questionnaire (initial questionnaire) to the Government of India (GOI).<sup>1</sup> On April 1, 2003, the GOI requested a one-month extension of the April 7, 2003, deadline for submitting its response to the "government" portion of the initial questionnaire. We granted the GOI an extension until April 21, 2003. On April 21, 2003, the GOI submitted a partial questionnaire response and requested a second extension. The GOI explained that it was having logistical difficulties in gathering the requested information, which pertains to several state government programs and various federal departments. See *Memorandum to the File from Alicia Kinsey, International Trade Analyst, concerning Conversation with Government of India Official* (April 24, 2003), which is on

<sup>1</sup> In the questionnaire, we informed the GOI that it was the government's responsibility to identify all Indian producers/exporters that shipped subject merchandise to the United States during the period of investigation and to forward a copy of the "company" portion of the initial questionnaire to all such producers/exporters.

file in room B-099 of the Central Records Unit of the Main Commerce Building (CRU). See also "Use of Adverse Facts Available" section, below.

On April 25, 2003, we informed the GOI that its April 21, 2003, partial questionnaire response was incomplete and unusable for purposes of calculating a countervailing duty rate, and we again extended the deadline for submitting a complete questionnaire response until April 30, 2003. On April 28, 2003, the GOI submitted another partial questionnaire response. However, the GOI did not file any more submissions and thus did not meet the April 30, 2003, deadline for filing a complete questionnaire response. On May 23, 2003, in a second attempt to obtain the information we requested in the initial questionnaire, we issued a supplemental questionnaire to the GOI. The GOI's supplemental questionnaire response was due on June 6, 2003. The GOI did not submit a response to the supplemental questionnaire. See "Use of Adverse Facts Available" section, below.

As of April 7, 2003, which was the original deadline for the submission of responses to the initial questionnaire, we had not received any responses from any Indian producers/exporters of the subject merchandise. On April 14, 2003, we spoke with a law firm which had entered an appearance in the investigation on behalf of Tata Inc. (importer of subject merchandise) and Tata SSL Ltd. (producers/exporters of subject merchandise) and inquired whether the law firm intended to file a response on these companies' behalf. The law firm informed us that it had not submitted any responses on behalf of Tata Inc. and Tata SSL Ltd. because the companies were proceeding with the investigation on a *pro se* basis. See Memorandum to the file from Robert Copyak, Financial Analyst, concerning Conversation with Former Counsel to Tata (April 24, 2003). On April 15, 2003, on the basis of their recent change to *pro se* status, we granted Tata Inc. and Tata SSL Ltd. an extension until April 30, 2003, to file a response to the initial questionnaire.

On April 16, 2003, we spoke with a company official who stated that the companies never received the initial questionnaire. See Memorandum to the File from Alicia Kinsey, International Trade Analyst, concerning April 16, 2003 Conversation with Tata Official (April 24, 2003). On April 21, 2003, we spoke with the GOI official who had been coordinating the GOI's involvement in the investigation. He explained that the GOI had not

distributed a copy of the initial questionnaire to Tata Inc. and Tata SSL Ltd. Subsequently, the Department provided Tata Inc. and Tata SSL Ltd. an electronic version of the questionnaire. See Memorandum to the File from Alicia Kinsey, International Trade Analyst, concerning Conversation with Government of India Official (April 24, 2003). See also "Use of Adverse Facts Available" section, below.

On April 29, 2003, Tata Inc. and Tata SSL Ltd. requested another extension of the deadline for submitting responses to our initial questionnaire. On April 30, 2003, we extended the deadline to May 7, 2003. On May 7, 2003, respondents' former counsel again entered an appearance on behalf of Tata Inc. and Tata SSL Ltd.. On May 8, 2003, Tata Iron and Steel Company Limited (Wire Division) (TISCO), which recently acquired Tata SSL Ltd., submitted a response to the initial questionnaire. Although the submission was filed one day after the deadline, we accepted it as timely because the company informed us that the delay was the fault of the courier. However, we returned the submission to TISCO for correction and re-submission because it was improperly filed and was not served on interested parties. See Memorandum to the File from Robert Copyak and Alicia Kinsey, Case Analysts, through Melissa Skinner, Office Director, concerning Acceptance and Request for Correction and Re-submission of the May 8, 2003, Questionnaire Response Submitted by TISCO (May 23, 2003). TISCO corrected its May 8, 2003, submission and re-submitted it on May 28, 2003. On May 29, 2003, we issued a supplemental questionnaire to TISCO, and TISCO submitted a timely response on June 12, 2003.

On June 16, 2003, petitioners submitted a letter urging the Department to use facts available for purposes of the preliminary determination. See "Use of Adverse Facts Available" section, below. On June 23, 2003, respondent's counsel contacted a Department official to inform the Department that respondent's counsel had received a tax return requested in our initial and supplemental questionnaires to TISCO; we informed respondents' counsel that if they were to submit the tax return, it would be rejected by the Department as untimely filed. See Memorandum to the File from Robert Copyak, Financial Analyst, through Jim Terpstra, Program Manager regarding Conversation with Garvey Schubert Barer, Counsel for Tata Iron and Steel Company Limited (Wire Division) (June 23, 2003).

### Extension of Time Limit for Preliminary Determination

On April 7, 2003, we published in the **Federal Register** an extension of the due date for this preliminary determination from April 28, 2003, to June 30, 2003. See *Prestressed Concrete Steel Wire Strand from India: Extension of Time Limit for Preliminary Determination in Countervailing Duty Investigation*, 68 FR 16783 (April 7, 2003).

### Scope of the Investigation

The merchandise subject to this investigation is prestressed concrete steel wire (PC strand), which is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

In the scope section of the *Initiation Notice* for this investigation, the Department encouraged all parties to submit comments regarding product coverage by March 19, 2003. Petitioners filed comments regarding product coverage on June 13, 2003. These comments were submitted too late for consideration in this preliminary determination. The Department will examine these comments for the Final Determination.

### Injury Test

Because India is a "Subsidy Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure or threaten material injury to a U.S. industry. On March 21, 2003, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports of subject merchandise from India. See *Prestressed Concrete Steel Wire Strand from Brazil, India, Korea, Mexico, and Thailand*, 68 FR 13952 (March 21, 2003).

### Alignment With Final Antidumping Duty Determination

On June 26, 2003, petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the antidumping duty investigation of prestressed concrete steel wire strand from India.

### Period of Investigation

The period of investigation (POI) is April 1, 2001 through March 31, 2002. This period was alleged by petitioners to be the Indian producers'/exporters' most recently completed fiscal year. See the *Initiation Notice* and the February 20, 2003, Office of AD/CVD Enforcement VI Initiation Checklist titled "Initiation of Countervailing Duty Investigation: Prestressed Concrete Steel Wire Strand from India (C-533-829)" (*Initiation Checklist*), which is on file in the CRU.

### Use of Adverse Facts Available

We preliminarily determine that the GOI and TISCO's questionnaire responses are incomplete and unusable, for the reasons set forth below. Therefore, for this preliminary determination, we have calculated a single countervailing duty rate that is applicable to all Indian producers/exporters of subject merchandise. Accordingly, we also preliminarily determine to base the calculation of this one rate on facts available, pursuant to section 776(a) of the Act, and adverse inferences, pursuant to section 776(b) of the Act (hereafter "adverse facts available").

Despite our repeated requests and numerous extensions described above, the GOI and the Indian exporters/producers of subject merchandise have not provided the requested program information and company-specific data necessary for calculating company-specific countervailing duty rates.

We requested in the initial questionnaire that the GOI provide basic information regarding the production of subject merchandise in India and the administration of the federal and state programs that we are investigating. As described above, although the GOI provided two partial questionnaire responses, these submissions are incomplete and unusable because they contain only a small portion of the information we requested in the initial

questionnaire. The GOI did not provide complete answers and did not provide useable information. Moreover, the GOI failed to answer specific questions regarding the nature of and participants in India's PC strand industry and failed to answer specific questions regarding the various federal and state programs under investigation. The GOI also failed to distribute the "company" portion of the questionnaire to the producers/exporters of subject merchandise.

In a supplemental questionnaire, we requested that the GOI provide all of the information it had neglected to provide in its two partial questionnaire responses. Despite this second opportunity to provide the information requested in the initial questionnaire and the additional time to provide it, the GOI did not file a response and therefore did not provide the information necessary to conduct this countervailing duty investigation.

Similarly, the questionnaire responses provided by TISCO are incomplete and unusable. Despite several extensions, TISCO failed to provide answers to specific questions regarding its use of various federal and state programs under investigation. Most notably, however, TISCO failed to provide the information requested regarding its affiliated and parent companies. In addition, TISCO failed to submit its tax returns, as requested in the Tax Programs Appendix of the initial questionnaire. A copy of the company's tax return is necessary for ascertaining whether the company claimed a tax exemption for export profits under section 80 HHC of the India Tax Act. As mentioned in the "Case History" section, above, counsel for TISCO acquired a copy of TISCO's tax return and offered to file it on the record; however, the information, for which the Department had not granted an extension, would have been filed nearly two weeks after the supplemental questionnaire was due, and less than a week before this preliminary determination was issued. TISCO had the opportunity to provide its tax return in the initial questionnaire, for which two extensions were granted, and in the supplemental questionnaire. Despite these numerous opportunities, TISCO did not submit its tax return. The Department's statutory obligations require a reasonable cut-off point for new information to be submitted on the record and considered; therefore, the Department did not solicit TISCO's tax return upon learning of its availability. TISCO also failed to submit any information regarding most of the state programs under investigation. TISCO also did not submit adequate

information regarding the Pre-shipment and Post-shipment Export Financing program.

In a supplemental questionnaire, we requested the above-mentioned information. Although TISCO provided some additional information, the company did not submit its tax returns, did not provide any additional information about the state programs, did not provide information about their affiliate and parent companies, and did not supplement its previously-submitted information regarding the Pre-shipment and Post-shipment Export Financing program. Moreover, all of the information submitted in both the initial and supplemental questionnaires was generated from the Indian fiscal year 2002-2003, a fiscal year that was not yet completed when the original questionnaire was issued. Respondents did not consult with Department officials regarding their definition of the period of investigation. The information provided by the GOI covered the POI as identified in the questionnaire.

Section 776(a) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. As described above, the GOI and TISCO, as well as any other Indian producers or exporters of the subject merchandise, have failed to provide the information regarding the programs under investigation that the Department expressly requested in the initial and supplemental questionnaires. Because of TISCO's and the GOI's lack of cooperation, the statute requires the use of facts otherwise available for purposes of calculating the countervailing duty rates in this investigation.

Furthermore, section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. The Department finds that by not providing necessary information specifically requested by the Department in this investigation, despite numerous opportunities, the GOI and TISCO have failed to cooperate to the best of their ability. As discussed above, the GOI failed to act to the best of its ability by not distributing the questionnaires to Indian producers/exporters of subject merchandise, not providing necessary information specifically requested in the questionnaire, and not responding to the Department's supplemental questionnaire. TISCO also failed to act

to the best of its ability by not providing necessary information specifically requested in the questionnaire and supplemental questionnaire, despite numerous extensions, and by submitting information using a different POI without consulting the Department. Therefore, in selecting facts available, the Department determines that an adverse inference is warranted.

Section 776(b) of the Act indicates that, when employing an adverse inference, the Department may rely upon information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review; or (4) any other information placed on the record. See also 19 CFR §351.308(c).

If the Department relies on this secondary information as facts available, section 776(c) of the Act provides that the Department shall, "to the extent practicable," corroborate such information using independent sources reasonably at its disposal. The Statement of Administrative Action accompanying the URAA (SAA) further provides that to corroborate secondary information means that the Department will satisfy itself that the secondary information to be used has probative value. See also, 19 CFR 351.308(d). Thus, in those instances in which the Department determines to apply adverse facts available, in order to satisfy itself that such information has probative value, the Department will examine, to the extent practicable, the reliability and relevance of the information used. However, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there are typically no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. The only source for such information normally is administrative determinations. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render benefit data not relevant. See *Cotton Shop Towels From Pakistan: Final Results of Countervailing Duty Administrative Review*, 66 FR 42514 (August 13, 2001). However, the fact that corroboration may not be practicable in a given case does not prevent the Department from applying an adverse inference as appropriate, and does not prevent the Department from using the secondary information. See 19

CFR 351.308(d). The SAA accompanying the URAA clarifies that information from the petition is "secondary information." See Statement of Administrative Action, accompanying H.R. 5110 (H. Doc. No. 103-316) (1994) at 870.

Because the respondents failed to act to the best of their ability, as discussed above, for each program examined, unless the record information made it clear that respondents could not have received benefits from the program, we made the adverse inference that the respondent benefitted from the program, consistent with our practice. See, e.g., *Certain Cold-Rolled Carbon Steel Flat Products From Korea; Final Affirmative CVD Determination*, 67 FR 62102 (October 3, 2002). Therefore, as adverse facts available, we preliminarily determine to use (where possible) the highest company-specific program rates from the most recently-completed investigation pertaining to exports of an Indian steel product see *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 49635 (September 28, 2001) (*Hot-Rolled Steel From India*) and *Issues and Decision Memorandum: Final Results of the Countervailing Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products From India*, which is on file in the CRU or available online at <http://www.ia.ita.doc.gov/frn/summary/india/01-24404-1.txt> (*Hot-Rolled Steel From India Decision Memo*). Because some of the programs under investigation were not investigated in *Hot-Rolled Steel From India*, 66 FR 49635, we preliminarily determine, consistent with our practice, to use (where possible) the highest company-specific program rates from another recently-completed Indian investigation. See *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip From India*, 67 FR 34905 (May 16, 2002) (*PET Film From India*) and *Issues and Decision Memorandum: Final Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India*, which is on file in the CRU or available online at <http://ia.ita.doc.gov/frn/summary/india/02-12294-1.txt> (*PET Film From India Decision Memo*). See also *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 64 FR 30636 (June 8, 1999) (*Sheet and Strip from Korea*).

To corroborate the secondary information that Indian producers/exporters of subject merchandise are eligible to use and may have benefitted

from these programs, we reviewed the federal and state industrial policy and tax bulletins that were submitted on the record by petitioners (in the petition) and by the GOI and the Indian producers/exporters in their questionnaire responses. We also reviewed official government correspondence and records kept by administering authorities. We note that many of these documents were examined at the respective verifications. See *Hot-Rolled Steel From India*, 66 FR 49635, and *PET Film From India*, 67 FR 34905. Based on our review of these documents, these rates are neither unduly harsh nor punitive, and because they have been corroborated, continue to have probative value.

With respect to two of the programs we have previously examined, Tax Deductions under Section 80HHC of the India Tax Act and the State of Maharashtra Capital Incentive Scheme, we were unable to use company-specific program rates from *Hot-Rolled Steel From India* and *PET Film From India* because the Department determined that the programs were not used during the POIs of those cases. As adverse facts available for these two programs, we preliminarily determine to use program rates of 2.00 percent *ad valorem*, which is the *de minimis* rate for developing countries. See Section 703(b)(4)(B). To corroborate our adverse inference that Indian producers/exporters of subject merchandise are eligible to use and may have benefitted from these programs, we reviewed the federal and state industrial policy and tax bulletins that were submitted on the record by petitioners (in the petition) and by GOI and the Indian producers/exporters in their questionnaire responses. We also reviewed official government correspondence and records kept by administering authorities. We note that many of these documents were examined at the respective verifications. See *Hot-Rolled Steel From India*, 66 FR 49635, and *PET Film From India*, 67 FR 34905. Based on our review of these documents, these rates are neither unduly harsh nor punitive, and because they have been corroborated, continue to have probative value.

For each program that we have not examined in previous investigations or administrative reviews, we preliminarily determine to use an adverse facts available program rate of 2.00 percent *ad valorem*. See "Programs Previously Not Examined" section, below. In selecting this rate, we relied on the information put forth by petitioners. In a letter to the Secretary of Commerce dated June 16, 2003, petitioners argue for the application of

the *de minimis* rate for developing countries for each program in which the respondents failed to provide the necessary information to calculate a countervailing duty rate. See petitioners' June 16, 2003 letter; see also Section 703(b)(4)(B). To ensure that respondents are provided an incentive to respond in the future, and because "in employing adverse inferences, one factor [the Department] will consider is the extent to which a party may benefit from its own lack of cooperation," we have preliminarily determined it was reasonable to apply the 2.00 percent rate. (SAA at 870.) Because we have no information on these programs, it was not practicable in this case to corroborate the 2.00 percent rate with anything other than the general information (*i.e.*, various federal and state industrial policy bulletins) used for the allegations in the petition. See *Sheet and Strip Korea*, 64 FR 30636. Based on the record of this case, we regard the petition a practicable source for corroboration, because information in the petition is reliable and relevant, and there is no record information showing otherwise. See 19 CFR 351.308(c)(2)(d). Therefore, we conclude that because TISCO and the GOI failed to cooperate to the best of their ability, we are making an adverse inference that a program rate of 2.00 percent *ad valorem* might reflect the level of benefit they are receiving. To corroborate our adverse inference that Indian producers/exporters of subject merchandise are eligible to use and may have benefitted from these programs, we reviewed the federal and state industrial policy and tax bulletins that were submitted on the record by petitioners in the petitions. Based on this review, these rates are neither unduly harsh nor punitive, and because they have been corroborated, continue to have probative value.

#### Programs Previously Determined To Be Countervailable

As explained in the *Initiation Notice* and in the *Initiation Checklist*, this investigation includes several programs that were determined to be countervailable in previous investigations and administrative reviews. No new information or evidence of changed circumstances has been submitted in this investigation to warrant reconsideration of those determinations. Therefore, in accordance with section 771(5A)(B) of the Act, we continue to determine that the following programs are countervailable. Full descriptions of each program are provided in the *Initiation Checklist*. See *Hot-Rolled Steel From India*, 66 FR 49635, and *Pet*

*Film From India*, 67 FR 34905, for the Department's determinations of countervailability for each of these programs.

#### A. Government of India Programs

##### 1. Pre-shipment and Post-shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or "packing credits," to exporters. Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks.

The Department has previously determined that this export financing is countervailable to the extent that the interest rates are set by the GOI and are lower than the rates exporters would have paid on comparable commercial loans. See, *Hot-Rolled Steel From India*, 66 FR 49635, and *Pet Film From India*, 67 FR 34905, and *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India*, 64 FR 73137 (December 29, 1999) (*CTL Plate From India*). Specifically, the Department determined that the GOI's issuance of financing at preferential rates constituted a financial contribution pursuant to section 771(5)(D)(i) of the Act. See the "Pre-Shipment and Post-Shipment Export Financing" section of the *PET Film From India Decision Memo*. The Department further determined that the interest savings under this program conferred a benefit pursuant to section 771(5)(E)(ii) of the Act. *Id.* In addition, the Department determined this program, which is contingent upon exports, to be specific within the meaning of section 771(5A)(B) of the Act. *Id.*

As adverse facts available for pre-shipment export financing, we preliminarily determine to use a rate of 1.32 percent *ad valorem*, which is the highest company-specific program rate calculated in *Hot-Rolled Steel From India*, 66 FR 49635. As adverse facts available for post-shipment export financing, we preliminarily determine to use a rate of 0.74 percent *ad valorem*, which is the highest company-specific program rate calculated in *Hot-Rolled Steel From India*, 66 FR 49635.

##### 2. Duty Entitlement Passbook Scheme (DEPS)

India's DEPS was enacted on April 1, 1997, as a successor to the Passbook Scheme (PBS). As with PBS, the DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS

credits on a post-export basis, provided that the exported product is listed in the GOI's Standard Input/Output Norms (SIONs). Post-export DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. Post-export DEPS credits are valid for 12 months and are transferable. Exporters were eligible to earn credits equal to certain percent of the f.o.b. value of their export shipments.

The Department has previously determined that the DEPS is countervailable. See, *Hot-Rolled Steel From India*, 66 FR 49635 and *Pet Film From India*, 67 FR 34905. In *PET Film From India*, the Department determined that (1) under the DEPS, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because the GOI provides credits for the future payment of import duties; (2) since the GOI does not have in place and does not apply a system to confirm which inputs, and in what amounts, are consumed in the production of the exported products that is reasonable and effective for the purposes intended, under section 351.519(a)(4) of the Department's regulations and section 771(5)(E) of the Act, the entire amount of import duty exemption earned during the POI constitutes a benefit; and (3) this program can only be used by exporters and, therefore, is specific under section 771(5A)(B) of the Act. See the "DEPS" section of the *PET Film From India Decision Memo*, on file in the CRU.

As adverse facts available for the DEPS, we preliminarily determine to use a rate of 13.98 percent *ad valorem*, which is the highest company-specific program rate calculated in *Hot-Rolled Steel From India*, 66 FR 49635.

##### 3. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to four to five times the value of the capital goods within a period of eight years. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest.

In previous investigations, we determined that producers/exporters benefit from the waiver of import duty on imports of capital equipment. A

second type of benefit conferred under this program involves the import duty reductions that producers/exporters received on the imports of capital equipment for which producers/exporters have not yet met their export requirements. For those capital equipment imports, producers/exporters have unpaid duties that will have to be paid to the GOI if the export requirements are not met. When a company has an outstanding liability and the repayment of that liability is contingent upon subsequent events, our practice is to treat any balance on that unpaid liability as an interest-free loan. See 19 CFR §351.505(d)(1). See *Hot-Rolled Steel From India*, 66 FR 49635, and *Pet Film From India*, 67 FR 34905, and *CTL Plate From India*, 64 FR 73137.

In *PET Film From India*, the Department determined that (1) the receipt of benefits under this program is contingent upon export performance in accordance with section 771(5A)(B) of the Act; (2) the GOI provided a financial contribution under section 771(5)(D)(ii) of the Act in the two ways described above; and (3) the program provides benefits under section 771(5)(E) of the Act. See the "Export Promotion of Capital Goods Scheme (EPCGS)" section of the *Pet Film From India Decision Memo*.

As adverse facts available for the EPCGS, we preliminarily determine to use a rate of 16.63 percent *ad valorem*, which is the highest company-specific program rate calculated in *Hot-Rolled Steel From India*, 66 FR 49635.

#### 4. Loans From the Steel Development Fund (SDF)

Under the SDF program, companies that contributed to the fund are eligible to take out long-term loans at advantageous rates. In order to create the SDF, the GOI, acting through the Joint Planning Commission, mandated steel price increases which were earmarked for the SDF. In previous investigations, the Department determined that this program is countervailable. Under section 771(5)(B) of the Act, a subsidy can be found whenever the government makes a financial contribution, when it provides a payment to a funding mechanism to provide a financial contribution, or when it entrusts or directs a private entity to make a financial contribution. Therefore, in *Hot-Rolled Steel From India*, we found that SDF loans constituted a financial contribution and conferred a benefit within the meaning of section 771(5)(D)(i) and (E)(ii) of the Act, respectively. See "Comment 1: Steel Development Loans and Loan Forgiveness" of the *Hot-Rolled Steel*

*From India Decision Memo*. Because eligibility for loans from the SDF is limited to steel companies, we also determined that loans under this program are specific within the meaning of 771(5A)(D)(i) of the Act. See *Hot-Rolled Steel From India*, 66 FR 49635, and the "Comment 1: Steel Development Loans and Loan Forgiveness" section in the *Hot-Rolled Steel From India Decision Memo*.

As adverse facts available for the SDF Loan program, we preliminarily determine to use a rate of 0.99 percent *ad valorem*, which is the highest company-specific program rate calculated in *Hot-Rolled Steel From India*, 66 FR 49635.

#### 5. Exemption of Export Credit From Interest Taxes

Under the Interest Tax Act of 1974, a tax is levied on the chargeable interest accruing to a credit institution in a given year. Under Section 28 of the Income Tax Act, the GOI may exempt any credit institution or class of credit institutions, or the interest on any category of loan or advances from the levy of the interest tax. Pursuant to this section of the Income Tax Act, the GOI has exempted working capital loans taken from banks for supporting exports from the interest tax. Loans obtained by producers/exporters of subject merchandise from banks under the pre- and post-shipment export financing program are covered by this exemption. All producers/exporters of subject merchandise are eligible to use this program.

In *Hot-Rolled Steel From India*, we determined that this program is contingent upon export performance and, therefore, is specific in accordance with section 771(5A)(B) of the Act. See "Comment 13: Exemption of Export Credit From Interest Tax" of *Hot-Rolled Steel From India Decision Memo*. We have also determined that the GOI provided a financial contribution under section 771(5)(D)(ii) of the Act and that the program provides a benefit under section 771(5)(E) of the Act. See *Hot-Rolled Steel From India*, 66 FR 49635.

As adverse facts available for the Exemption of Export Credit From Interest Taxes program, we preliminarily determine to use a rate of 0.08 percent *ad valorem*, which is the highest company-specific program rate calculated in *Hot-Rolled Steel From India*, 66 FR 49635.

#### 6. Advance Licenses

Under India's Duty Exemption Scheme, exporters may also import inputs duty-free through the use of import licenses. Using advance licenses,

companies are able to import inputs "required for the manufacture of goods" without paying India's basic customs duty.

In *Hot-Rolled Steel From India*, the Department determined that the use of advance licenses was countervailable. See the "Advance Licenses" section of the *Hot-Rolled Steel From India Decision Memo*. The program is contingent upon export performance and, therefore, is specific in accordance with section 771(5A)(B) of the Act. Under the program, the GOI provides a financial contribution under section 771(5)(D)(ii) of the Act, and the program provides a benefit under section 771(5)(E) of the Act. See *Hot-Rolled Steel From India*, 66 FR 49635.

As adverse facts available for the Advance Licenses program, we preliminarily determine to use a rate of 0.24 percent *ad valorem*, which is the highest company-specific program rate calculated in *Hot-Rolled Steel From India*, 66 FR 49635.

#### 7. Income Tax Exemption Scheme (Section 80 HHC)

In *Certain Iron-Metal Castings From India: Final Results of Countervailing Duty Administrative Review (Iron-Metal Castings from India)*, 65 FR 31515 (May 18, 2000), the Department determined that deductions of profit derived from exports under section 80HHC of India's Income Tax Act are countervailable. The program is contingent upon export performance and, therefore, is specific in accordance with section 771(5A)(B) of the Act. Under the program, the GOI provides a financial contribution under section 771(5)(D)(ii) of the Act, and the program provides a benefit under section 771(5)(E) of the Act.

Although in *Hot-Rolled Steel From India*, 66 FR 49635, and *PET Film From India*, 67 FR 34905, we determined that the producers and exporters of subject merchandise did not use this program, we initiated an investigation of this program because the Department has not made a determination that the program has been terminated.

As adverse facts available for this program, we preliminarily determine to use a rate of 2.00 *ad valorem*, which is the *de minimis* rate for developing countries.

#### 8. Loan Guarantees From the GOI

The GOI provides loan guarantees on a case-by-case basis. Loan guarantees are normally extended to "Public Sector Companies" in particular industrial sectors. In *Hot-Rolled Steel From India*, we determined, in accordance with section 771(5)(D)(i) of the Act, that GOI loan guarantees conferred

countervailable subsidies because they result in a financial contribution by the government in the form of revenue forgone and, in accordance with section 771(5)(E) of the Act, provide a benefit to the recipient in the amount of the interest tax savings. Moreover, we determined that the receipt of the loan guarantees were limited to certain companies selected by the GOI on an *ad hoc* basis and, thus, we found the program to be specific under section 771(5A)(D)(iii)(II) of the Act.

As adverse facts available for the GOI Loan Guarantee program, we preliminary determine to use a rate of 0.19 percent *ad valorem*, which is the highest company-specific program rate calculated in *Hot-Rolled Steel From India*, 66 FR 49635.

## B. State of Maharashtra (SOM) Programs

### 1. Sales Tax Incentives

Petitioners allege that incentives offered by the SOM under the Industrial Policy of Maharashtra 1993 provide either exemption or deferral of state sales taxes. Under this program, companies are exempted from paying state sales taxes on purchases and collecting sales taxes on sales; or, as an alternative, recipients are allowed to defer submitting sales taxes collected on sales to the SOM for ten to twelve years. After the deferral period expires, the companies are required to submit the deferred sales taxes to the SOM in equal installments over five to six years. Petitioners claim that producers of subject merchandise received countervailable benefits under this program. In addition, petitioners argue that although this program appears to be discontinued pursuant to the Industrial Policy of Maharashtra 2001, respondents nonetheless may have benefitted during the POI from either the deferral or the exemption of the sales tax.

In *PET Film from India*, the Department determined the program to be specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits are limited to industries located within designated geographical areas. The Department also determined that the SOM provided a financial contribution under section 771(5)(D)(i) of the Act in the form of uncollected interest and that the program conferred benefits under section 771(5)(E) of the Act. See the "Sales Tax Incentives" section of the *PET Film from India Decision Memo*.

As adverse facts available for this SOM program, we preliminary determine to use a rate of 2.39 percent *ad valorem*, which is the highest

company-specific program rate calculated in *PET Film From India*, 67 FR 34905.

### 2. Capital Incentive Scheme

Petitioners allege that companies operating in specific areas of the SOM are eligible to receive capital incentives in the form of either cash grants (of up to 3,000,000 rupees) or sales tax incentives. Petitioners allege that producers of subject merchandise received countervailable benefits under this program.

In *PET Film From India*, the Department determined that this program is countervailable. We determined that the program is specific under section 771(5A)(D)(iv) of the Act because it is limited to industries located in designated geographical areas within the SOM. We further determined that the program provides a financial contribution under section 771(5)(D)(i) of the Act in the form of a direct transfer of funds from the SOM and conferred a benefit under 771(5)(E) of the Act. Although we determined that the producers and exporters of PET film did not use this program, we initiated an investigation of this program because the Department has not made a determination that the program has been terminated.

As adverse facts available for this SOM program, we preliminary determine to use a rate of 2.00 percent *ad valorem*, which is the *de minimis* rate applicable for developing countries.

### 3. Electricity Duty Exemption Scheme

This program provides an exemption from the payment of tax on electricity charges for manufacturers located in specific regions of Maharashtra. In *PET Film From India*, we determined that this program is countervailable because (1) it is specific within the meaning of section 771(5A)(D)(iv) of the Act; (2) the tax exemption provided through the program constitutes a financial contribution with the meaning of section 771(5)(D)(ii) of the Act; and (3) pursuant to section 771(5)(E) of the Act, the benefit consists of the amount of the tax exempted.

As adverse facts available for this SOM program, we preliminary determine to use a rate of 0.36 percent *ad valorem*, which is the highest company-specific program rate calculated in *PET Film From India*, 67 FR 34905.

### Programs Not Previously Examined

As explained in the *Initiation Notice* and in the *Initiation Checklist*, this investigation includes several programs that have not been examined in prior

investigations and administrative reviews. Because the GOI and TISCO did not provide the information necessary to conduct our investigation of these programs, we are making an adverse inference that each program is countervailable. Summaries of petitioners' allegations with regard to each program are provided in the *Initiation Checklist*.

## A. Programs in the State of Maharashtra

### 1. Octroi Refund Scheme

Petitioners alleged that, under the Octroi Refund Scheme, industrial establishments that make capital investments in specific regions of Maharashtra are entitled to the refund of octroi duty, a tax levied by local authorities on goods that enter a town or district, and possibly to the refund of other duties. As adverse facts available for the State of Maharashtra Octroi Refund Scheme, we preliminary determine to use a rate of 2.00 percent *ad valorem*, which is the *de minimis* rate applicable for developing countries.

### 2. Exemption of Sales and Purchase Taxes for Certain Investments Related to Automobiles or Automobile Components

Petitioners alleged that, under this program, automobile investment projects over Rs. 15 billion in Category A districts are eligible to receive tax incentives. As adverse facts available for this State of Maharashtra program, we preliminary determine to use a rate of 2.00 percent *ad valorem*, which is the *de minimis* rate applicable for developing countries.

## B. Program in the State of Bihar

### 1. Sales Tax Incentives

Petitioners argued that the State of Bihar operates its sales tax scheme in a manner "substantially identical" to the Maharashtra sales tax incentive scheme that the Department countervailed in *PET Film From India*. They alleged that, under the Industrial Policy of Bihar 1995, the government granted tax incentives to companies that invested in "backward areas" within Bihar. In addition, petitioners pointed out that the State of Bihar expands its sales tax scheme by expanding the eligibility criteria to include new or existing industrial units undertaking expansion, modernization, or diversification through an investment of more than Rs. 500 crores (equivalent to Rs. 5,000,000,000, as Rs. 1 crore = 10,000,000 rupees). They alleged, that, under this sales tax scheme, "new industrial units" are permitted to either "set off" or exempt sales taxes paid on

the purchase of raw materials within the state and either defer or exempt sales taxes on the sale of finished goods.

As adverse facts available for the State of Bihar sales tax incentive program, we preliminary determine to use a rate of 2.00 percent *ad valorem*, which is the *de minimis* rate applicable for developing countries.

### C. Programs in the State of Jharkhand

#### 1. Sales Tax Incentives

Petitioners alleged that, under this program, "existing industrial units" as well as "new industrial units" are eligible to "set off" the Jharkhand sales tax paid on purchases of raw materials against the amount of sales tax payable to Jharkhand on the sale of finished products. As adverse facts available for the State of Jharkhand (SOJ) sales tax incentive program, we preliminary determine to use a rate of 2.00 percent *ad valorem*, which is the *de minimis* rate applicable for developing countries.

#### 2. Captive Electricity Generative Plant Subsidy

Petitioners alleged that, under the Jharkhand Industrial Policy 2001, the SOJ provides a grant to "new industrial units" in certain industries that invest in a captive electricity generating plant within "backward areas" of the state. As adverse facts available for the SOJ program, we preliminary determine to use a rate of 2.00 percent *ad valorem*, which is *de minimis* rate applicable for developing countries.

#### 3. Interest Subsidy

Petitioners alleged that, under the Jharkhand Industrial Policy 2001, the SOJ provides an interest subsidy to eligible "new industrial units" that invest in "backward areas" within the state. Annexures I and III of the Jharkhand Industrial Policy 2001 identify "backward areas" and ineligible industries, respectively. As adverse facts available for this SOJ program, we preliminary determine to use a rate of 2.00 percent *ad valorem*, which is *de minimis* rate applicable for developing countries.

#### 4. Stamp Duty and Registration

Petitioners alleged that, under the Jharkhand Industrial Policy 2001, the SOJ grants an exemption from the payment of 50 percent of the stamp duty and registration fee required for the purpose of registering documents with the state relating to the purchase of land and buildings for establishing a "new industrial unit" within certain "backward areas" of the state. As adverse facts available for the SOJ program, we preliminary determine to

use a rate of 2.00 percent *ad valorem*, which is the *de minimis* rate applicable for developing countries.

#### 5. Pollution Control Equipment Subsidy

Petitioners alleged that, under the Jharkhand Industrial Policy 2001, the SOJ provides a capital investment subsidy in the form of a grant for installation of pollution control and monitoring equipment to eligible new and existing industrial units in "backward areas" of the state. As adverse facts available for the SOJ program, we preliminary determine to use a rate of 2.00 percent *ad valorem*, which is the *de minimis* rate applicable for developing countries.

#### 6. Mega Units

Petitioners alleged that, under the Jharkhand Industrial Policy 2001, the SOJ formulates special tax incentives and tax deferrals for new projects with an investment of more than Rs. 500,000,000 ("mega units") on a case-by-case basis. As adverse facts available for this SOJ program, we preliminary determine to use a rate of 2.00 percent *ad valorem*, which is the *de minimis* rate applicable for developing countries.

#### 7. Captive Electricity Tax Exemptions

Petitioners allege that the SOJ seeks to encourage the private sector to establish captive power generation plants. Under the Jharkhand Industrial Policy 2001, such captive power generation and purchase shall be exempted from electricity duty for a period of ten years from the date of commercial production. As adverse facts available for this SOJ program, we preliminary determine to use a rate of 2.00 percent *ad valorem*, which is the *de minimis* rate applicable for developing countries.

### D. Program in the State of Gujarat

#### 1. Sales Tax Incentives

Petitioners argue that, pursuant to the 1995 Industrial Policy of Gujarat, the government granted sales tax incentives to eligible investments located in specific areas in Gujarat. Only "banned industries" and operations in "banned areas" were ineligible. Petitioners allege that eligible units were entitled to purchase raw materials, consumable stores, packing materials and processing materials required for production free of charge. They allege that, in addition, other available benefits included exemptions or deferment from sales tax on the sales of goods, intermediate products by-products, scrap, and waste as well as exemptions or deferment from turnover tax and the Central Sales Tax. Petitioners allege that, with the 2000 Industrial Policy, the State of Gujarat

extended the availability of these sales tax incentives, allowing companies to continue benefitting after 2000.

As adverse facts available for the State of Gujarat's sales tax incentive program, we preliminary determine to use a rate of 2.00 percent *ad valorem*, which is the *de minimis* rate applicable for developing countries.

### Suspension of Liquidation

In accordance with 703(b) of the Act, we have calculated the following countervailing duty rate for all Indian producers/exporters of subject merchandise.

Producer/Exporter	Net subsidy rate
All producers/exporters.	62.92% ad valorem

In accordance with section 703(d) of the Act, we are directing the U.S. Bureau of Customs and Border Protection to suspend liquidation of all entries of the subject merchandise From India, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or the posting of a bond for such entries of the merchandise in the amount indicated above. This suspension will remain in effect until further notice.

### ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

### Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Any requested hearing will be tentatively scheduled to be held 57 days from the date of publication of the preliminary

determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

In addition, six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing of the case briefs. An interested party may make an affirmative oral presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: June 30, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 03-17216 Filed 7-7-03; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-351-806]

#### Notice of Decision of the Court of International Trade: Silicon Metal From Brazil

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Decision of the Court of International Trade.

**SUMMARY:** On June 27, 2003, the United States Court of International Trade (CIT) affirmed the Department of Commerce's results of redetermination on remand of the final results of the sixth administrative review of the antidumping duty order on silicon metal from Brazil. *See American Silicon Technologies, et al. v. United States*, Slip Op. 99-03-00149 (CIT June 27, 2003) (*American Silicon Decision*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department is notifying the public that *American Silicon Decision* and the CIT's earlier opinion in this case, discussed below, were "not in harmony" with the Department's original results.

**EFFECTIVE DATE:** July 8, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Maisha Cryor, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone: (202) 482-5831.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 9, 1999, the Department of Commerce (the Department) published a notice of the final results of the sixth administrative review of the antidumping duty order on silicon metal from Brazil. *See Silicon Metal From Brazil: Final Results of Antidumping Duty Administrative Review*, 64 FR 6305 (February 9, 1999) (*Final Results*). Subsequent to the Department's *Final Results*, the respondent filed a lawsuit with the CIT challenging these results. Thereafter, the CIT issued an Order and Opinion dated July 17, 2000, in *American Silicon Technologies, et al. v. United States*, 110 F. Supp. 2d 992, 1003-1004 (Ct. Int'l Trade 2000) (*American Silicon I*), remanding three issues to the Department. Pursuant to *American Silicon I*, the Department filed its remand results on January 29, 2001. The CIT reviewed the Department's redetermination on remand and issued an Order and Opinion dated October 17, 2002, in *American Silicon Technologies, et al. v. United States*, No. 99-03-00149, Slip Op. 02-123 (Ct. Int'l Trade 2002) (*American Silicon II*), remanding one issue to the Department. Pursuant to *American Silicon II*, the Department filed its remand results on January 22,

2003. The respondent challenged the Department's redetermination on remand. On June 27, 2003, the CIT affirmed the Department's final results of redetermination in *American Silicon Decision*.

**Timken Notice**

In its decision in *Timken*, the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish notice of a decision of the CIT which is "not in harmony" with the Department's results. The CIT's decision in *American Silicon Decision* was not in harmony with the Department's final antidumping duty results of review. Therefore, publication of this notice fulfills the obligation imposed upon the Department by the decision in *Timken*. In addition, this notice will serve to continue the suspension of liquidation. If this decision is not appealed, or if appealed, if it is upheld, the Department will publish amended final antidumping duty results.

Dated: July 2, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Grant Aldonas, Under Secretary.*

[FR Doc. 03-17376 Filed 7-7-03; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-583-816]

#### Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Preliminary results of antidumping duty administrative review and notice of intent to rescind in part.

**SUMMARY:** In response to a request from respondent Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen") and from Markovitz Enterprises, Inc. (Flowline Division), Shaw Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc., collectively ("petitioners"), the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. Specifically, the petitioners requested that the Department conduct the administrative review for Ta Chen, Liang Feng Stainless Steel Fitting Co., Ltd. ("Liang

Feng”), and Tru-Flow Industrial Co., Ltd. (“Tru-Flow”). This review covers Ta Chen, a manufacturer and exporter of the subject merchandise and Liang Feng and Tru-Flow, manufacturers of the subject merchandise. The period of review (“POR”) is June 1, 2001 through May 31, 2002. With regard to Ta Chen, we preliminarily determine that sales have been made below normal value (“NV”). With regard to Liang Feng and Tru-Flow, we are giving notice that we intend to rescind this review based on record evidence that there were no entries into the United States of subject merchandise during the POR. For a full discussion of the intent to rescind with respect to Liang Feng and Tru-Flow, see the “Notice of Intent To Rescind in Part” section of this notice.

If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Bureau of Customs and Border Protection (“Customs”) to assess antidumping duties. The preliminary results are listed below in the section titled “Preliminary Results of Review.”

**EFFECTIVE DATE:** July 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jon Freed or Robert Bolling, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3818 and (202) 482-3434, respectively.

### Background

On June 16, 1993, the Department published in the **Federal Register** the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. See *Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Taiwan*, 58 FR 33250 (June 16, 1993). On June 5, 2002, the Department of Commerce (“Department”) published a notice of opportunity to request an administrative review of the Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings from Taiwan for the period June 1, 2001, through May 31, 2002. See *Notice of Opportunity To Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 38640 (June 5, 2002). On June 25, 2002, petitioners requested an antidumping duty administrative review for the following companies: Ta Chen, Liang Feng, and Tru-Flow for the period June 1, 2001, through May 31, 2002. On June 28, 2002, Ta Chen requested an administrative review of its sales to the

United States during the POR. On July 24, 2002, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period June 1, 2001, through May 31, 2002. See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part*, 67 FR 48435 (July 24, 2002).

On August 15, 2002, the Department issued its antidumping questionnaire to Ta Chen, Liang Feng and Tru-Flow. On August 30, 2002, Liang Feng and Tru-Flow reported that they had no sales, entries or shipments of subject merchandise to the United States during the POR. On September 12, 2002, Ta Chen reported that it made sales of subject merchandise to the United States during the POR in its response to Section A of the Department’s questionnaire. On October 4, 2002, Ta Chen submitted its response to Sections B, C, and D of the Department’s questionnaire. On January 7, 2003, the Department issued to Ta Chen a supplemental questionnaire to Section A of the Department’s questionnaire, for which Ta Chen submitted its response on January 28, 2003. On January 22, 2003, the Department issued to Ta Chen a supplemental questionnaire to Section B of the Department’s questionnaire, for which Ta Chen submitted its response on February 12, 2003. On February 3, 2003, the Department issued to Ta Chen a supplemental questionnaire to Section C of the Department’s questionnaire, for which Ta Chen submitted its response on February 25, 2003. On February 21, 2003, the Department issued to Ta Chen a second supplemental questionnaire to Sections B, C, and D of the Department’s questionnaire, for which Ta Chen submitted its response on March 26, 2003. On March 3, 2003, the Department issued to Ta Chen a second supplemental questionnaire to Section D of the Department’s questionnaire, for which Ta Chen submitted its response on March 26, 2003. On March 11, 2003, the Department issued to Ta Chen additional questions to its March 3, 2003 supplemental questionnaire to Sections A, B, and C of the Department’s questionnaire, for which Ta Chen submitted its response on March 26, 2003. On April 7, 2003, the Department issued to Ta Chen a third supplemental questionnaire to Sections A, B, C, and D of the Department’s questionnaire, for which Ta Chen submitted its response on April 24, 2003. On April 11, 2003, the Department issued to Ta Chen additional questions to its April 7, 2003 supplemental questionnaire to Section A of the Department’s questionnaire, for

which Ta Chen submitted its response on April 24, 2003. On May 12, 2003, Ta Chen provided unrequested Section C and D databases. On May 21, 2003, the Department issued a letter to Ta Chen asking Ta Chen to explain the revisions to the Section C and D databases that it submitted on May 12, 2003. Ta Chen submitted its response to the May 21, 2003 letter on June 4, 2003. On May 23, 2003, the Department issued to Ta Chen a fourth supplemental questionnaire to Sections A, B, C, and D of the Department’s questionnaire, for which Ta Chen submitted its response on June 4, 2003.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for conducting an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days. On March 3, 2003, the Department extended the time limit for these preliminary results 92 days to June 2, 2003 in accordance with the Act. See *Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 68 FR 9977 (March 3, 2003). On May 22, 2003, the Department extended the time limit an additional 28 days to June 30, 2003 for the preliminary results of this administrative review. See *Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 68 FR 27988 (May 22, 2003).

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (“the Act”).

### Notice of Intent To Rescind Review in Part

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. The Department explained this practice in the preamble to the Department’s regulations. See *Antidumping Duties; Countervailing Duties* 62 FR 27296, 27317 (May 19, 1997) (“Preamble”); see also *Stainless Steel Plate in Coils From Taiwan: Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789, 5790 (February 7, 2002) and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610 (April 10, 2001).

Both Liang Feng and Tru Flow submitted a letter on the record stating that they had no sales of subject merchandise during the POR. *See* Letter dated August 30, 2002. To confirm their statements, on September 23, 2002, the Department conducted a Customs inquiry and the record from that inquiry indicates that there were no entries of subject merchandise during the POR. *See* the June 19, 2003 Memorandum to the File.

Therefore, pursuant to 19 CFR 351.213(d)(3), the Department preliminarily intends to rescind this review as to Liang Feng and Tru Flow. The Department may take additional steps to confirm that these companies had no sales, shipments or entries of subject merchandise to the United States.

#### Scope of the Review

The products subject to this administrative review are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt-weld pipe fittings ("pipe fittings") are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is 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; and (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: "Elbows", "tees", "reducers", "stub ends", and "caps." The edges of finished pipe 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 review is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

#### Period of Review

The POR for this administrative review is June 1, 2001 through May 31, 2002.

#### Product Comparison

For the purpose of determining appropriate product comparisons to pipe fittings sold in the United States, we considered all pipe fittings covered by the scope of review section above, which were sold by Ta Chen in the home market during the POR, to be "foreign like products" in accordance with section 771(16) of the Act. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the physical characteristics reported by Ta Chen as follows (listed in order of preference): specification, seam, grade, size and schedule.

Since some of Ta Chen's sales were actually produced by other unaffiliated Taiwanese manufacturers, the Department has incorporated that information into the product comparison methodology. Petitioners have argued that the unaffiliated producers should be treated as exporters of subject merchandise to the U.S. *See* Petitioner's comments December 12, 2002, at 26-27. The record shows that Ta Chen both purchased from, and entered into tolling arrangements with, unaffiliated Taiwanese manufacturers of subject merchandise, and the record does not indicate that either manufacturer had knowledge that the subject merchandise would be sold into the United States market. *See* Ta Chen's September 12, 2002 Section A questionnaire response at 2; *see also* Ta Chen's January 28, 2002 Section A supplemental questionnaire response at 1-12. According to Ta Chen's September 12, 2002 Section A response, for subcontracted and resold fittings, Ta Chen labels itself as the producer. We have preliminarily determined that Ta Chen is the sole exporter, and that it is not appropriate to exclude sales of subject merchandise produced by unaffiliated manufacturers from Ta Chen's U.S. sales database.

However, section 771(16)(A) of the Act defines "foreign like product" to be "[t]he subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise." Thus, consistent with the Department's past practice, for products that Ta Chen has identified with certainty that it purchased from a particular unaffiliated producer and resold in the U.S. market, we have restricted the matching of products to identical or similar products purchased by Ta Chen from the same

unaffiliated producer and resold in the home market.

#### Date of Sale

The Department's regulations state that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). If Commerce can establish "a different date [that] better reflects the date on which the exporter or producer establishes the material terms of sale," Commerce may choose a different date. *Id.*

In the present review, Ta Chen claimed that invoice date should be used as the date of sale in both the home market and U.S. market. *See* Ta Chen's Sections B and C responses dated October 4, 2002. Moreover, Ta Chen did not indicate any industry practice which would warrant the use of a date other than invoice date in determining date of sale.

Accordingly, as we have no information demonstrating that another date is more appropriate, we preliminarily based date of sale on invoice date recorded in the ordinary course of business by the involved sellers and resellers of the subject merchandise in accordance with 19 CFR 351.401(i).

#### Affiliation

The petitioners assert that Ta Chen was affiliated with its home market customer and vendor, PFP Taiwan ("PFP") during the POR. At the Department's request, Ta Chen submitted information regarding PFP's corporate structure, ownership, and relationship with Ta Chen. The evidence currently on the record indicates that (1) the president of Ta Chen, Robert Shieh, and the head operating manager of PFP, Roger Tsai are distant relatives in that Roger Tsai is the brother of Robert Shieh's older brother's wife; (2) PFP leases office space out of Ta Chen's Taipei sales office, and pays Ta Chen appropriate consideration for the office space; and (3) Roger Tsai and his family members owned stock in Ta Chen as of June 2002 although their collective percentage of Ta Chen ownership is substantially below 5 percent. *See* Ta Chen's April 24, 2003 submission at pages 1-2, 17, and Exhibit 1; *see also* Ta Chen's May 12, 2003 submission at pages 2-3. Despite these connections, the evidence on the record at this time does not show that Robert Shieh, president of Ta Chen, has the ability to exercise control over PFP, or that Roger Tsai, head operating manager of PFP, has the ability to

exercise control over Ta Chen. Therefore, the Department preliminarily determines that Ta Chen and PFP are not affiliated. However, the Department will continue to investigate whether Ta Chen and PFP are affiliated for purposes of this administrative review.

### Fair Value Comparisons

To determine whether sales of subject merchandise by Ta Chen to the United States were made at prices below normal value ("NV"), we compared, where appropriate, the constructed export price ("CEP") to the NV, as described below. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the monthly weight-averaged NV of the foreign like product.

### Export Price/Constructed Export Price

Section 772(a) of the Act defines export price as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. \* \* \*" Section 772(b) of the Act defines constructed export price as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. \* \* \*"

Consistent with recent past reviews, all of the sales at issue are being considered CEP sales because the sale to the first unaffiliated customer was made between Ta Chen International (CA) Corp. ("TCI"), located in the United States, and the unaffiliated customer in the United States. *See Analysis Memorandum for Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of the 2001-2002 Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan* (June 30, 2003) ("Analysis Memo"); *see also* Ta Chen's February 25, 2003 submission at pages 4-5. TCI takes title to the subject merchandise, invoices the U.S. customer, and receives payment from the U.S. customer. In addition, TCI handles all communication with the U.S. customer, incurs risk of non-payment, relays orders and price requests from the U.S. customer to Ta Chen, and pays for U.S. Custom duties, brokerage charges, U.S. antidumping duties, ocean freight and U.S. inland freight. *See* Ta Chen's

January 28, 2003 Section A Supplemental Questionnaire Response at pages 14-15.

Having determined such sales are CEP, pursuant to section 772(b) of the Act, we calculated the price of Ta Chen's sales based on CEP. We calculated CEP based on FOB or delivered prices to unaffiliated purchasers in the United States and, where appropriate, we deducted discounts. In addition, in accordance with section 772(d)(1), the Department deducted commissions, direct selling expenses and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. With respect to inventory carrying costs, we note that certain of Ta Chen's sales do not enter TCI's inventory prior to shipment to U.S. customers, but are shipped directly to the end user. Therefore, we removed the cost of goods sold for those sales used in the calculation of Ta Chen's reported inventory turnover ratio. We also made deductions for movement expenses, which include foreign inland freight, foreign brokerage and handling, ocean freight, containerization expense, harbor construction tax, marine insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. Customs duties. Finally, where appropriate, in accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit.

### Normal Value

After testing home market viability, as discussed below, we calculated NV as noted in the "Price-to-CV Comparisons" and "Price-to-Price Comparisons" sections of this notice.

#### 1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared Ta Chen's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. In addition, Ta Chen stated that the home market is viable since sales to the home market are more than five percent by quantity of sales in the United States. *See* Ta Chen's September 12, 2002 Section A questionnaire response at page 3. Because Ta Chen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the

subject merchandise, we preliminarily determine that the home market is viable. We, therefore, based NV on home market sales.

#### 2. Cost of Production Analysis

Because we disregarded sales below the cost of production ("COP") in the most-recently completed segment of this proceeding,<sup>1</sup> we have reasonable grounds to believe or suspect that sales by Ta Chen in its home market were made at prices below the COP, pursuant to sections 773(b)(1) and 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by Ta Chen.

##### A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weight-averaged COP based on the sum of Ta Chen's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses ("G&A"), interest expenses, and packing costs. We relied on the COP data submitted by Ta Chen in its original and supplemental cost questionnaire responses. For these preliminary results, we did not make any adjustments to Ta Chen's submitted costs.

##### B. Test of Home Market Prices

We compared the weight-averaged COP for Ta Chen to home market sales of the foreign like product, as required under section 773(b) of the Act in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities, and were not at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any movement charges, discounts, and direct and indirect selling expenses.

##### C. Results of COP Test

In accordance with section 773(b)(1) of the Act, when less than 20 percent of Ta Chen's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the

<sup>1</sup> See Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Stainless Steel Butt-Weld Pipe Fittings From Taiwan ("Final Results"), 67 FR 78417 (December 24, 2002).

below-cost sales were not made in substantial quantities as defined by section 773(b)(2)(C) of the Act. When 20 percent or more of Ta Chen's sales of a given product during the POR were at prices less than the COP, we determined that such sales have been made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) and 773(b)(2)(C) of the Act. In such cases, because we use POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we appropriately disregarded below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Ta Chen's cost of materials, fabrication, G&A (including interest expenses), U.S. packing costs, direct and indirect selling expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses and G&A ("SG&A") and profits on the actual amounts incurred and realized by Ta Chen in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weight-averaged home market direct and indirect selling expenses.

#### 3. Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. Where appropriate, we deducted early payment discounts, credit expenses, and inland freight. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. In accordance with section 773(b)(1) of the Act, where there were no usable contemporaneous matches to a U.S. sale observation, we based NV on CV.

#### Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–61733 (November 19, 1997).

In reviewing a respondent's request for a LOT adjustment, we examine all types of selling functions and activities reported in respondent's questionnaire response on LOT. In analyzing differences in selling functions, we determine whether the levels of trade identified by the respondent are meaningful. See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). In the present review, Ta Chen did not request a LOT adjustment, but did request a CEP offset.

Ta Chen reported one LOT in the home market based on two channels of distribution: Trading companies and end-users. We examined the reported selling functions and found that Ta Chen's selling functions to its home market customers, regardless of channel of distribution, include inventory maintenance, technical services, packing, after-sales services, freight and delivery arrangements, general selling functions, some research and development, and customer service. See Ta Chen's September 12, 2002 Section

A questionnaire response at page 7; see also Ta Chen's January 28, 2003 Section A supplemental questionnaire response at pages 15–16. Therefore, we preliminarily conclude that the selling functions for the reported channels of distribution are sufficiently similar to consider them as one LOT in the comparison market.

Because Ta Chen reported that all of its CEP sales are made through TCI, Ta Chen is claiming that there is only one LOT in the U.S. market for its constructed export price sales and we preliminarily agree with Ta Chen's assertion that its U.S. sales constitute a single LOT. We examined the reported selling functions and found that Ta Chen's selling functions for sales to TCI include order processing, payment of marine insurance and packing for shipment to the United States. TCI handles the remaining selling functions for U.S. sales, such as: Communicating with U.S. customers; handling customer orders; dealing with U.S. customs duties, brokerage, inland freight and U.S. warehousing; taking seller's risk; and, incurring inventory carrying costs on the water and ocean freight.

The Department compared Ta Chen's selling functions offered to its home market customers, trading companies and end users with Ta Chen's selling functions for U.S. sales offered to its wholly-owned subsidiary, TCI. Ta Chen's selling functions for sales to the U.S., namely, order processing, payment of marine insurance and packing for shipment, are less numerous and less advanced than Ta Chen's selling functions to its home market customers, which include inventory maintenance, technical services, packing, after-sales services, freight and delivery arrangements, general selling functions, some research and development, and customer service. Therefore, we preliminarily find that Ta Chen performed fewer selling functions for its U.S. sales than it did in the home market. Ta Chen requested a CEP offset due to differences in level of trade between its home market and U.S. sales (see Ta Chen's September 12, 2002 Section A questionnaire response). When, as here, the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, the Department's practice is to adjust NV to account for this difference. However, we were unable to quantify the LOT adjustment pursuant to section 773(a)(7)(A) of the Act. Therefore, we applied a CEP offset to the NV–CEP comparisons, in accordance with section 773(a)(7)(B) of the Act.

### Currency Conversion

For purposes of the preliminary results, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with Section 773A(a) of the Act.

### Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for Ta Chen for the period June 1, 2001 through May 31, 2002:

Producer/Manufacturer/Exporter	Weighted-average margin (percent)
Ta Chen Stainless Pipe Co., Ltd	1.13

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. See 19 CFR 351.309(d). Further, we would appreciate that parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

### Assessment

Upon issuance of the final results of this review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department has calculated an assessment rate applicable to all appropriate entries. We calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties

calculated for the examined sales to the total entered value, or entered quantity, as appropriate, of the examined sales for that importer. Upon completion of this review, where the assessment rate is above *de minimis*, we will instruct Customs to assess duties on all entries of subject merchandise by that importer.

### Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the rate for a particular product is *de minimis*, i.e., less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 51.01 percent, which is the "all others" rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

### Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of the proprietary information disclosed under APO in

accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 03-17215 Filed 7-7-03; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by August 7, 2003.

**Title and OMB Number:** Application for CHAMPUS-Provider Status: Corporate Services Provider; OMB Number 0720-0020.

**Type of Request:** Reinstatement.

**Number of Respondents:** 1,000.

**Responses Per Respondent:** 1.

**Annual Responses:** 1,000.

**Average Burden Per Response:** 20 minutes.

**Annual Burden Hours:** 333.

**Needs and Uses:** The information collection will allow eligible providers to apply for Corporate Services Provider status under the TRICARE Program. The collected information will be used by TRICARE contractors to process claims and verify authorized provider status. The Application for TRICARE-Provider Status: Corporate Services Provider, will collect the necessary information to ensure that the conditions are met for authorization as a TRICARE corporate services provider: i.e., The provider (1) is a corporation or a foundation, but not a professional corporation or professional foundation; (2) provides services and related supplies of a type of rendered by TRICARE individual professional providers or diagnostic technical services; (3) is approved for Medicare

payment or when Medicare approval status is not required, is accredited, by a qualified accreditation organization; and, (4) has entered into a participation agreement approved by the Executive Director, TRICARE Management Activity or a designee.

*Affected Public:* Business or Other For-Profit; Not-For-Profit Institutions.

*Frequency:* On Occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Ms. Cristal Thomas.

Written comments and recommendations on the proposed information collection should be sent to Ms. Thomas at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: June 30, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03-17128 Filed 7-7-03; 8:45 am]

**BILLING CODE 5001-08-M**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by August 7, 2003.

*Title and OMB Number:* Interactive Customer Evaluation (ICE) System; OMB Number 0704-0420.

*Type of Request:* Revision.

*Number of Respondents:* 3,300.

*Responses Per Respondent:* 1.

*Annual Responses:* 3,300.

*Average Burden Per Response:* 3 minutes.

*Annual Burden Hours:* 165.

*Needs and Uses:* The Interactive Customer Evaluation System automates and minimizes the use of the current manual paper comment cards and other customer satisfaction collection

medium, which exist at various customer service locations throughout the Department of Defense. Members of the public have the opportunity to give automated feedback to the service provider on the quality of their experience and their satisfaction level. This is a management tool for improving customer services.

*Affected Public:* Individuals or Households; Business or Other For-Profit.

*Frequency:* On Occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: June 30, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03-17129 Filed 7-7-03; 8:45 am]

**BILLING CODE 5001-08-M**

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## DEPARTMENT OF DEFENSE

### Office of Secretary

#### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by August 7, 2003.

*Title, Form, and OMB Number:* Application for the Review of Discharge or Dismissal from the Armed Forces of the United States; DD Form 293; OMB Number 0704-0004.

*Type of Request:* Revision.

*Number of Respondents:* 6,000.

*Responses Per Respondent:* 1.

*Annual Responses:* 6,000.

*Average Burden Per Response:* 30 minutes.

*Annual Burden Hours:* 3,000.

*Needs and Uses:* Former members of the Armed Forces who received an

administrative discharge have the right to appeal the characterization or reason for separation. Title 10 of U.S.C., Section 1553, and the DoD Directive 1332.28, established a Board of Review consisting of five members to review appeals of former members of the Armed Forces. The DD Form 293 provides the respondent a vehicle to present to the Board their reasons/justifications for a discharge upgrade, as well as providing the Services the basic data needed to process the appeal.

*Affected Public:* Individuals or Households.

*Frequency:* On Occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: June 30, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03-17130 Filed 7-7-03; 8:45 am]

**BILLING CODE 5001-08-M**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by August 7, 2003.

*Title, Form, and OMB Number:* USAF Museum System Volunteer Application/Registration; AF Form 3569; OMB Number 0701-0127.

*Type of Request:* Revision.

*Number of Respondents:* 255.

*Responses Per Respondent:* 1.

*Annual Responses:* 255.

*Average Burden Per Response:* 15 minutes.

*Annual Burden Hours:* 64.  
*Needs and Uses:* The information collection is necessary to provide: (a) The general public an instrument to interface with the United States Air Force Museum System Volunteer Program; (b) the United States Air Force Museum System the means with which to select respondents pursuant to the USAF Museum System Volunteer Program. The primary uses of the information collection include the evaluation and placement of respondents within the USAF Museum System Volunteer Program.

*Affected Public:* Individuals or Households.

*Frequency:* On Occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room

10236, New Executive Office Building, Washington, DC 20503.

*Dod Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: June 30, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03-17131 Filed 7-7-03; 8:45 am]

**BILLING CODE 5001-08-M**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal No. 03-17]

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**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 21 July 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 03-17 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 30, 2003.

**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

26 JUN 2003

In reply refer to:  
I-03/006141

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. 03-17 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and service estimated to cost \$600 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

A handwritten signature in cursive script, reading "Richard J. Millies".

Richard J. Millies  
Deputy Director

Attachment  
As stated

Separate Cover:  
Offset certificate

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

**Transmittal No. 03-17****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: Republic of Korea**
- (ii) **Total Estimated Value:**

Major Defense Equipment*	\$410.5 million
Other	<u>\$189.5 million</u>
TOTAL	\$600.0 million
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: three MK 41 Vertical Launch System Baseline VI ship sets (includes 30 modules), U.S. Government and contractor engineering and logistics personnel services, personnel training and training equipment, support and test equipment, spare and repair parts, publications and technical documentation, launch system software development and maintenance and other related elements of logistics support.**
- (iv) **Military Department: Navy (LPT)**
- (v) **Prior Related Cases, if any:**  
FMS case LPJ - \$72 million - 31Jan02  
FMS case LOW - \$70 million - 14Dec98
- (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: 26 JUN 2003**

\* as defined in Section 47(6) of the Arms Export Control Act.

**POLICY JUSTIFICATION****Republic of Korea - MK 41 Vertical Launch Systems**

**The Republic of Korea Government has requested the possible sale of three MK 41 Vertical Launch System Baseline VI ship sets (includes 30 modules), U.S. Government and contractor engineering and logistics personnel services, personnel training and training equipment, support and test equipment, spare and repair parts, publications and technical documentation, launch system software development and maintenance and other related elements of logistics support. The estimated cost is \$600 million.**

**This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.**

**The missile launchers will be installed on new construction destroyers and are intended for use with Standard missiles as the principal air defense armament of these new vessels. Korea will have no difficulty absorbing these additional missile launch systems into its armed forces.**

**The proposed sale of this equipment and support will not affect the basic military balance in the region.**

**The principal contractors will be Lockheed Martin Marine Systems of Middle River, Maryland and United Defense Limited Partnership of Minneapolis, Minnesota. One or more proposed offset agreements might be related to this proposed sale.**

**Implementation of this proposed sale will require the assignment of three U.S. Government and six contractor representatives in Korea for approximately 18 months during the preparation, equipment installations, and equipment test and checkout of the MK 41 Vertical Launch Systems on the ships.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

## Transmittal No. 03-17

**Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act**

**Annex  
Item No. vii**

**(vii) Sensitivity of Technology:**

**1. The MK-41 Vertical Launch Systems (VLS) contain sensitive technology and are Unclassified. The Launch Control Computer Program (LCCP), which also contains missile launch rates, is classified Confidential. The LCCP provides the control and processing to interface the Weapon Control System with the VLS. Sections of the MK-41 technical documentation, which disclose launcher vulnerabilities, are classified Confidential.**

**2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.**

**3. A determination has been made that Korea 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. 03-17133 Filed 7-7-03; 8:45 am]  
BILLING CODE 5001-08-C

**DEPARTMENT OF DEFENSE****Office of the Secretary****Meeting of the Technology and Privacy Advisory Committee**

**AGENCY:** Department of Defense.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** Notice is hereby given of a forthcoming partially closed meeting of the Technology and Privacy Advisory Committee (TAPAC). The purpose of the meeting is for presentation of interest and discussion concerning the legal and policy considerations, including those of privacy, implicated by the application of advanced information technologies to counter-terrorism and counter-intelligence missions. The majority of the meeting will be open to the public.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C., Appendix II), it is anticipated that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1) (1988), will be presented during one session of

the meeting, and that, accordingly, that session will be closed to the public. The Committee will also conduct a closed Executive session to discuss administrative and organizational matters.

**DATES:** Monday, July 21, 2 p.m. to 5 p.m. and Tuesday, July 22, 9 a.m. to 4 p.m. The meeting will be closed to discuss classified information Monday from 4-5, and to discuss organizational and administrative matters from 3-4 on Tuesday.

**ADDRESSES:** The Executive Conference Center, a division of Strategic Analysis, 3601 Wilson Blvd., Suite 600, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Visit the Committee's Web site at <http://www.sainc.com/tapac>, or contact Ms. Lisa Davis, Executive Director, Technology and Privacy Advisory Committee, The Pentagon, Room 3E1045, Washington, DC 20301-3330, telephone 703-695-0903.

Dated: June 30, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03-17132 Filed 7-7-03; 8:45 am]

BILLING CODE 5001-08-M

**DEPARTMENT OF EDUCATION****Notice of Proposed Information Collection Requests**

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 8, 2003.

**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 Information 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 1, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

#### **Institute of Education Sciences**

*Type of Review:* Reinstatement.

*Title:* Private School Universe Survey.

*Frequency:* Biennially.

*Affected Public:* Businesses or other for-profit; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 28,800.

Burden Hours: 9,600.

*Abstract:* The Private School Universe Survey is collected every two years to create a universe of private K-12 schools. Information includes types of schools, length of school year and school day, and numbers of students.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2299. When you access the information collection, click on "Download Attachments" to view.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or to the e-mail address [vivian\\_reese@ed.gov](mailto:vivian_reese@ed.gov). Requests may also be electronically mailed to the Internet address [OCIO\\_RIMG@ed.gov](mailto:OCIO_RIMG@ed.gov) or faxed to 202-708-9346. Please specify the

complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address [Kathy.Axt@ed.gov](mailto: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. 03-17147 Filed 7-7-03; 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 Information 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 August 7, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address [Karen\\_F\\_Lee@omb.eop.gov](mailto:Karen_F_Lee@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 Information 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: July 1, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### **Office of Special Education and Rehabilitative Services**

*Type of Review:* Reinstatement.

*Title:* Projects with Industry

Compliance Indicator Form and Annual Evaluation Plan.

*Frequency:* Annually.

*Affected Public:* Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 350.

Burden Hours: 13,500.

*Abstract:* The Projects with Industry compliance indicators are based on program regulations. The regulations: (1) Require that each grant application include a projected average cost per placement for the project (379.21(c)); (2) designate two compliance indicators as "primary" and three compliance indicators as "secondary" (379.51(b) and (c)); (3) require a project to pass the two "primary" compliance indicators and any two of the three "secondary" compliance indicators to receive a continuation award (379.50); and (4) change the minimum performance levels for three of the compliance indicators (379.53(a)(1)—Placement Rate; 379.53(a)—Average Change in Earnings; and 379.53(b)(3)—Average Cost per Placement). Section 379.21 of the program regulations contains the specific information the applicant must include in its grant application.

Requests for copies of the submission for OMB review; comment request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2261. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or to the e-mail address [vivan.reese@ed.gov](mailto:vivan.reese@ed.gov). Requests may also be electronically mailed to the Internet address [OCIO\\_RIMG@ed.gov](mailto:OCIO_RIMG@ed.gov) or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address [Sheila.Carey@ed.gov](mailto:Sheila.Carey@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. 03-17148 Filed 7-7-03; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

[Number DE-PS07-03ID14525]

### Nuclear Energy Plant Optimization (NEPO) Program for Minority Institutions Under the 2003 University Partnership Program

**AGENCY:** Idaho Operations Office, DOE.

**ACTION:** Notice of availability of solicitation for awards of financial assistance.

**SUMMARY:** The U.S. Department of Energy (DOE), Idaho Operations Office (ID) is seeking applications from minority institutions who are part of the 2003 University Partnership Program under the Nuclear Energy Plant Optimization (NEPO) Program to strengthen the nuclear educational infrastructure, and support research and development of nuclear power technologies. The following schools are currently designated "minority institutions" who are recognized as part of the University Partnership Program for FY 2003: Tuskegee University, South Carolina State University, Texas A&M University-Kingsville, Prairie View A&M University, New Mexico State University, and University of New Mexico.

**DATES:** The issuance date of Solicitation Number DE-PS07-03ID14525 was June 27, 2003. The deadline for receipt of applications is July 30, 2003, at 3 p.m. MT.

**ADDRESSES:** The solicitation will be available in its full text on the Internet by going to the DOE's Industry Interactive Procurement System (IIPS) at the following URL address: <http://e-center.doe.gov>. This will provide the medium for disseminating solicitations and amendments to solicitations, receiving financial assistance applications and evaluating applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS "User Guide for Contractors" can be obtained on the IIPS Homepage and then click on the "Help" button. Questions regarding the

operation of IIPS may be e-mailed to the IIPS Help Desk at [IIPS\\_HelpDesk@e-center.doe.gov](mailto:IIPS_HelpDesk@e-center.doe.gov).

**FOR FURTHER INFORMATION CONTACT:** Trudy Harmel, Contracting Officer at [harmelta@id.doe.gov](mailto:harmelta@id.doe.gov).

**SUPPLEMENTARY INFORMATION:** The solicitation will be issued in accordance with 10 CFR 600.6(b). Eligibility for awards under this program will be restricted to those minority universities who are part of the 2003 University Partnership Program.

DOE anticipates making 1 or more grant award(s), with total estimated DOE funding of approximately \$100K, and a project period of 12-18 months. Only minority institutions currently in the 2003 University Partnership Program are eligible to submit project proposals. The statutory authority for the program is the Atomic Energy Act, 42 U.S.C. 2051 Section 31. The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.114.

Issued in Idaho Falls on June 26, 2003.

**Michael L. Adams,**

*Acting Director, Procurement Services Division.*

[FR Doc. 03-17197 Filed 7-7-03; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-274-008]

#### Kern River Gas Transmission Company; Notice of Revised 2002 Annual Threshold Report

June 30, 2003).

Take notice that on June 25, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing its Revised 2002 Annual Threshold Report.

Kern River states that the purpose of this filing is to comply with the provisions of its general rate settlement in Docket No. RP99-274 and the Commission's December 26, 2002 order in Docket No. RP99-274-007.

Kern River states that it is revising its 2002 Annual Threshold Report to share fifty percent of \$1.33 million in additional revenues received by Kern River due to the settlement of an adversarial claim in a bankruptcy proceeding.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to 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](mailto: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.

*Protest Date:* July 7, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03-17154 Filed 7-7-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. RP00-474-003, RP01-17-006 and RP03-174-001]

#### Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

June 30, 2003.

Take notice that on June 24, 2003, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendices A and B of the filing.

Maritimes states that the purpose of this filing is to comply with the Commission's June 9, 2003 "Order on Rehearing and Compliance Filings" issued in Maritimes" Order No. 637 proceeding in the captioned dockets.

Maritimes states that copies of its filing have been mailed to all affected customers and interested state commissions, as well as to all parties on the Official Service Lists compiled by the Secretary of the Commission in these proceedings.

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 § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 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](mailto: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.

*Protest Date:* July 7, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03-17151 Filed 7-7-03; 8:45 am]

BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER03-200-003]

#### New York Independent System Operator, Inc.; Notice of Filing

June 19, 2003.

Take notice that on June 13, 2003, the New York Independent System Operator, Inc. (NYISO) submitted a compliance filing in connection with the Commission's January 21, 2003, order in Docket No. ER03-200-000.

The NYISO states that it has served a copy of this filing to all parties listed on the official service list. The NYISO also states that it has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

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, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto: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:* July 7, 2003.

**Linda Mityr,**

*Acting Secretary.*

[FR Doc. 03-17149 Filed 7-7-03; 8:45 am]

BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP03-528-000]

#### Overthrust Pipeline Company; Notice of Tariff Filing

June 30, 2003.

Take notice that on June 25, 2003, Overthrust Pipeline Company (Overthrust), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, the following tariff sheets, to be effective August 1, 2003:

Tenth Revised Sheet No. 1  
Thirteenth Revised Sheet No. 30  
Second Revised Sheet No. 78I  
Original Sheet No. 78I.01

Overthrust is proposing new tariff provisions that describe specific types of discounts that may be offered to its transportation customers on a non-discriminatory basis so that such discounts will not be considered

material deviations from Overthrust's forms of service agreements.

Overthrust states that the discounts will be between Overthrust's maximum and minimum rates under the applicable rate schedules of its tariff. Overthrust asserts that approval of these discount provisions will enhance Overthrust's flexibility to provide a variety of discounts for its shippers without the need and administrative burden of filing individual agreements with the Commission as non-conforming service agreements.

Within the proposed categories of eligible discounts, Overthrust states that it is also seeking authority to provide it and its shippers with the ability to adjust rate components in transportation service agreements under certain circumstances in order to preserve the agreed-upon overall rate, as long as all rate components remain within the applicable minimum and maximum rates.

Overthrust states that a copy of this filing has been served upon its customers and the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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 § 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](mailto: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.

*Comment Date:* July 7, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03-17153 Filed 7-7-03; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Project No. 10359-027]

**Snoqualmie River Hydro; Notice of Withdrawal of Application To Surrender License**

June 30, 2003.

By letter, filed November 13, 2002, Snoqualmie River Hydro (licensee or Snoqualmie) requested to surrender the license for the 7.5 megawatt Youngs Creek Hydroelectric Project (P-10359),<sup>1</sup> located on Youngs Creek near the town of Sultan, in Snohomish County, Washington. The project is not constructed. A notice of application for surrender was issued on December 23, 2002, and no comments, protest, or motions to intervene were filed. By letter filed March 21, 2003, the licensee subsequently requested to withdraw the initial request for surrender of the license. The licensee stated that the request to surrender the license was made in error remains in effect.

Because the Commission has not taken final action on the application to surrender, Snoqualmie's request to withdraw its surrender request is granted and its license for the Youngs Creek Project remains in effect.

**Magalie R. Salas,***Secretary.*

[FR Doc. 03-17150 Filed 7-7-03; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP03-506-001]

**Wyoming Interstate Company, Ltd.; Notice of Compliance Filing**

June 30, 2003.

Take notice that on June 24, 2003, Wyoming Interstate Company, Ltd. (WIC) tendered for filing to its FERC Gas Tariff Second Revised Volume No. 2, Original Sheet No. 87A, to become effective June 29, 2003.

WIC states that this tariff sheet supplements the filing recently made by WIC to revise its Rate Schedule FT Form of Service Agreement to insert an omitted paragraph.

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 § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 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](mailto: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.

*Protest Date:* July 7, 2003.**Magalie R. Salas,***Secretary.*

[FR Doc. 03-17152 Filed 7-7-03; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EG03-80-000, et al.]

**North Jersey Energy Associates, et al.; Electric Rate and Corporate Filings**

June 30, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. North Jersey Energy Associates, a Limited Partnership**

[Docket No. EG03-80-000]

Take notice that on June 26, 2003, North Jersey Energy Associates, A Limited Partnership (NJEA), with a principal place of business at 700 Universe Blvd., Juno Beach, FL 33408, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations. NJEA states that it is a wholly owned subsidiary of Northeast Energy, L.P.

*Comment Date:* July 21, 2003.**2. Midwest Independent Transmission System Operator, Inc.**

[Docket No. EL03-38-001]

Take notice that on June 23, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing amended and unexecuted Service Agreements for Long-Term Firm Transmission Service between the Midwest ISO and (1) Cargill Power Markets, LLC (Cargill) and (2) Conectiv Energy Supply, Inc. (Conectiv), pursuant to an Order of the Federal Energy Regulatory Commission, Midwest Independent Transmission System Operator Inc., 103 FERC ¶ 61,214 (2003).

The Midwest ISO states that it has served a copy of its filing on each person whose name is listed on the official service list maintained by the Secretary in this proceeding. In addition, the Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at [www.midwestiso.org](http://www.midwestiso.org) under the heading "Filings to FERC" for other interested parties in this matter.

*Comment Date:* July 23, 2003.**3. The New PJM Companies American Electric Power Service Corporation on Behalf of Its Operating Companies Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company and Commonwealth Edison Company of Indiana, Inc., The Dayton Power and Light Company and PJM Interconnection, L.L.C.**

[Docket No. ER03-262-007]

Take notice that on June 26, 2003, PJM Interconnection, L.L.C. (PJM) and certain operating companies of the American Electric Power System (AEP System), submitted for filing with the Federal Energy Regulatory Commission (Commission) responses to the Commission's June 10, 2003 information request in this proceeding, thereby supplementing the applicants' May 1, 2003 compliance filing in this proceeding.

PJM and the AEP System state that copies of their filing have been served

<sup>1</sup> 59 FERC ¶ 62, 124 (1992).

on all persons on the Commission's official service list for this proceeding.  
*Comment Date:* July 17, 2003.

#### 4. Southwest Power Pool, Inc.

[Docket No. ER03-668-002]

Take notice that on June 26, 2003, Southwest Power Pool, Inc. (SPP) filed revisions with the Federal Energy Regulatory Commission (Commission) to the unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement with Kansas Electric Power Cooperative, Inc. (KEPCO) in compliance with the Commission's May 27, 2003 Order in this proceeding. SPP seeks an effective date of March 1, 2003 for these service agreements.

SPP states that copies of this filing were served on KEPCO and on all parties on the official service list in this docket.

*Comment Date:* July 17, 2003.

#### 5. New York Independent System Operator, Inc.

[Docket No. ER03-984-000]

Take notice that on June 26, 2003, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the NYISO's Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff). NYISO states that the proposed tariff revisions would establish revised rules governing the NYISO's allocation of new working capital contribution and bad debt loss costs to its customers. NYISO states that they would also expressly authorize the NYISO Board to procure credit insurance.

The NYISO states that it has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's OATT or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

*Comment Date:* July 17, 2003.

#### 6. El Cap II, LLC

[Docket No. ER03-985-000]

Take notice that on June 26, 2003, El Cap II, LLC (El Cap II) filed an application requesting acceptance of its proposed Market-Based Rate Tariff, waiver of certain regulations, and blanket approvals.

*Comment Date:* July 17, 2003.

#### 7. Santa Rosa Energy LLC

[Docket Nos. QF97-138-003 and EL03-206-000]

Take notice that on June 24, 2003, Santa Rosa Energy LLC (Applicants)

tendered for filing with the Federal Energy Regulatory Commission (Commission) a petition for limited waiver of the Commission's operating and efficiency standards for a topping-cycle cogeneration facility.

*Comment Date:* July 24, 2003.

#### Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto: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.

Magalie R. Salas,  
*Secretary.*

[FR Doc. 03-17177 Filed 7-7-03; 8:45 am]

BILLING CODE 6717-01-P

### DEPARTMENT OF ENERGY

#### Western Area Power Administration

#### Exira Station Project in Audubon County, Iowa

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of wetlands involvement.

**SUMMARY:** The Western Area Power Administration (Western) has been approached by the Western Minnesota Municipal Power Agency (WMMMPA) and Missouri River Energy Services

(MRES) with a request for interconnection of the Exira Station Project (Project) with Western's electric transmission system. The Project, as proposed, would be a gas-fired (with fuel oil backup) electrical peaking plant with an estimated yearly electrical output averaging less than 50 megawatts (MW). Project construction would expand an existing 0.03-acre pond to approximately 0.18 acres for stormwater and process water retention and develop a new 0.46-acre pond for stormwater retention. This represents a wetland action and Western will prepare a wetland assessment as part of its Environmental Assessment.

**DATES:** Comments on the proposed wetland action are due to the address below no later than July 23, 2003.

**ADDRESSES:** Comments should be addressed to Mr. Nick Stas, Environment Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107-5800, fax (406) 247-7408, e-mail [Stas@wapa.gov](mailto:Stas@wapa.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Dirk Shulund, Environmental Protection Specialist, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107-5800, fax (406) 247-7408, e-mail [Shulund@wapa.gov](mailto:Shulund@wapa.gov).

**SUPPLEMENTARY INFORMATION:** WMMMPA and MRES are proposing to construct the Project in Audubon County, near the towns of Exira and Brayton, Iowa. The Project would occupy about 13 acres of a 76-acre parcel that would be owned by WMMMPA. The Project would consist of two turbines, each with a net generating capacity of 45 MW. The turbines would also use diesel fuel oil as a backup during unforeseen natural gas curtailments or during times of high natural gas fuel cost. Other major plant features would include a switchyard, a 161-kilovolt (kV) transmission line, and a natural gas interconnection with an existing gas pipeline that crosses the property. The yearly electrical output of the plant would be less than 50 average MW. Electricity generated by the Project would be used to meet MRES customer's peak electrical demand which occurs primarily during the summer.

Western's Creston-Dennison 161-kV Transmission Line crosses the northeast corner of the 76-acre parcel. The electrical output of the plant would be interconnected to this line by a new 2,000-foot long, 161-kV transmission line that would travel almost straight east from the power plant along the northern border of the site. On-site

groundwater wells would supply the non-potable water for plant operation. Potable water would be brought to the site as bottled water.

There are two small ephemeral ponds on the site. One is on the west side of the site and is about 0.03 acres. The other pond on the north side of the property is about 0.01 acres in size. All ponds eventually drain to the East Nishnabotna River. Plant process water effluents and stormwater runoff would be discharged to the larger pond, which would need to be expanded. The existing 0.03-acre pond would be excavated to provide a deeper basin and a larger surface area. The proposed action would raise the existing dike on the larger pond sufficient to increase the size of the pond to 0.18 acres. The result would be a 0.15-acre increase of wetland habitat in the project area. The new 161-kV transmission line would span the other pond which would not be impacted by the Project. Also, a new pond would be developed to capture stormwater runoff during construction and operation. The new pond would be constructed by excavating a low area just east of the proposed plant site and creating a berm near the northern property boundary. The resulting pond would be approximately 0.46 acres with a depth of 1 to 2 feet during and after storm events.

In accordance with the Department of Energy's Floodplain/Wetlands Review Requirements (10 CFR part 1022), Western will prepare a wetland assessment and will perform the proposed actions to avoid or minimize potential harm to or within the wetland. The wetland assessment will examine the use of the wetland as a stormwater and waste water retention basin and evaluate avoidance, mitigation, or compensation to minimize loss of wetland habitat. The wetland is located in Audubon County, Iowa, in T. 78 N., R. 35 W., section 31. Maps and further information are available from the contacts listed above.

Dated: June 27, 2003.

**Michael S. HacsKaylo,**  
Administrator.

[FR Doc. 03-17198 Filed 7-7-03; 8:45 am]

**BILLING CODE 6450-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[OAR-2003-0120, FRL-7524-1]

### Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings, EPA ICR Number 1765.03, OMB Control Number 2060-0353

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before September 5, 2003.

**ADDRESSES:** Submit your comments, referencing Docket ID number OAR-2003-0120, to EPA online using EDOCKET (our preferred method), by e-mail *A-and-R-Docket@epamail.epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings, Mailcode 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Morris, Emission Standards Division (C504-04), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5416; fax number: (919) 541-3470; electronic mail (e-mail) address: *morris.mark@epa.gov*.

**SUPPLEMENTARY INFORMATION:** The EPA has established a public docket for this ICR under Docket ID number OAR-2003-0120, which is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air Docket

is (202) 566-1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at <http://www.epa.gov/edocket>. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the 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 docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. The EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to <http://www.epa.gov/edocket>.

**Affected entities:** Entities potentially affected by this action are manufacturers and importers of automobile refinish coatings and coating components.

**Title:** Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings.

**Abstract:** The EPA is required under section 183(e) of the Clean Air Act to regulate volatile organic compound emissions from the use of consumer and commercial products. Pursuant to section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Automobile refinish coatings were included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart B. The reports required under the standards enable EPA to identify all coating and coating component manufacturers and importers in the United States and to determine which coatings and coating components are

subject to the standards, based on dates of manufacture.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

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

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

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

**Burden Statement:** The annual public reporting burden for this collection of information is estimated to be 14 hours per year, at a total labor cost of \$906 per year. There are no capital costs associated with this collection. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 27, 2003.

**Henry C. Thomas Jr.,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. 03-17208 Filed 7-7-03; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7524-3]

### Notice of Open Meeting, Environmental Financial Advisory Board, August 4-5, 2003

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board in San Francisco, California on August 4-5, 2003. The meeting will be held at the Bankers Club, Bank of America Building, in the Pacific Room. The Monday, August 4 session will run from 9 a.m. to 5 p.m. and the August 5 session will begin at 8:30 a.m. and end at 11 a.m.

EFAB is chartered with providing advice and recommendations to the EPA Administrator and program offices on environmental finance. The purpose of this meeting is to discuss progress with work products under EFAB's current strategic action agenda and to develop an action agenda to direct the Board's ongoing and new activities through FY 2004.

The meeting is open to the public, but seating is limited. For further information, please contact Vanessa Bowie, EFAB Coordinator, U.S. EPA at (202) 564-5186.

Dated: July 1, 2003.

**Maryann Froehlich,**

*Acting Comptroller.*

[FR Doc. 03-17206 Filed 7-7-03; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7524-2]

### Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program

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

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National

Emission Standards for Hazardous Air Pollutants (NESHAP); and the Stratospheric Ozone Protection Program.

**FOR FURTHER INFORMATION CONTACT:** An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at: <http://www.epa.gov/compliance/assistance/applicability>. The document may be located by date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564-7027, or by email at: [malave.maria@epa.gov](mailto:malave.maria@epa.gov). For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

#### SUPPLEMENTARY INFORMATION:

**Background:** The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. See 40 CFR 60.5 and 61.06. Although the part 63 NESHAP and section 111(d) of the Clean Air Act regulations contain no specific regulatory provision that sources may request applicability determinations, EPA does respond to written inquiries regarding applicability for the part 63 and section 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which are different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are broadly termed regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability

determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with more than one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of

issuance, subpart, citation, control number or by string word searches. Today's notice comprises a summary of 58 such documents added to the ADI on May 2, 2003. The subject, author, recipient, date and header of each letter and memorandum are listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: <http://www.epa.gov/compliance/assistance/applicability>.

**Summary of Headers and Abstracts**

The following table identifies the database control number for each

document posted on the ADI database system on May 2, 2003; the applicable category; the subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter. We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents.

ADI DETERMINATIONS UPLOADED ON MAY 2, 2003

Control No.	Category	Subpart	Title
A030001	Asbestos	M	Abandoned Underground Lines Wrapped in Friable Asbestos
M030001	MACT	LL	Parametric Monitoring Plan
M030002	MACT	S	Alternative Monitoring Parameter
M030003	MACT	LL	Parametric Monitoring Plan
M030004	MACT	LL	Modification of Parametric Monitoring Plan
M030005	MACT	S	Daily Monitoring Requirement
M030006	MACT	S	Compliance with Condensate Treatment Standard
M030007	MACT	LL, A	Site-Specific Test Plan
M030008	MACT	LL	Parametric Monitoring Plan
M030009	MACT	S	Alternative Monitoring Parameter
M030010	MACT	S	Alternative Monitoring Parameter
M030011	MACT	RRR	Applicability of Secondary Aluminum MACT to Scalpers
M030012	MACT	S	Alternative Monitoring of Sulfite Mill Scrubber
M030013	MACT	SS, YY	Alternative Organic HAP and Halogen Monitoring
M030014	MACT	S	Continuous Monitoring Using Predictive Model
M030015	MACT	MM	Alternative Monitoring for Smelt Dissolving Tank Scrubber
M030016	MACT	S	Continuous Monitoring with Flow Rate and COD
M030017	MACT	S	Continuous Monitoring of Sulfite Mill Weak Acid Scrubber
M030018	MACT	N	Wetting Agents in Trivalent Chromium Baths
Z030001	NESHAP	E	Performance Test Waiver for Sewage Sludge Incinerators
0300001	NSPS	Db	Boiler Derate Criteria
0300002	NSPS	Db	Alternative Monitoring
0300003	NSPS	J	Alternative Monitoring for Propane Fuel
0300004	NSPS	GG	Alternative Test Methods for Gas Turbine
0300005	NSPS	A, GG	Reduced Notification Period for Performance Testing
0300006	NSPS	A, GG	Turbine Relocations and Impacts on Applicability
0300007	NSPS	Cc	Total Landfill Gas Generation
0300008	NSPS	Db	Alternate Opacity Monitoring Method
0300009	NSPS	DDD	Applicability to Expanded Polystyrene Plant
0300010	NSPS	Dc	Heat Exchangers as Unaffected Process Heaters
0300011	NSPS	GG	Modifications to Test Method 20 for Turbines
0300012	NSPS	A, GG	Custom Fuel Monitoring Schedule
0300013	NSPS	Db, A	Extension to Perform a RATA
0300014	NSPS	Kb, A	Flow Measurement for Flare
0300015	NSPS	GG	Waiver for Turbine Load Testing Restriction
0300016	NSPS	Dc, A	Startup & Shutdown Recordkeeping
0300017	NSPS	KKK	Applicability to Crude Oil Production Facility
0300018	NSPS	A, GG	Alternate Monitoring Method
0300019	NSPS	A, GG	Custom Fuel Monitoring
0300020	NSPS	Db, Dc	Steam Reforming Gasification System at Pulp and Paper Mill
0300021	NSPS	D	Boiler Derate Proposal
0300022	NSPS	NNN, RRR, A	Alternative Monitoring/Performance Test Waiver
0300023	NSPS	UUU	Applicability to Expansion Furnace Preheater
0300024	NSPS	BB	Exemption from TRS Standard for Brown Stock Washer
0300025	NSPS	Dc	Fuel Heaters
0300026	NSPS	BB	Monitoring for Smelt Dissolving Tank and Lime Kiln Scrubbers
0300027	NSPS	WWW	Request to Conduct Additional Tier 2 Testing
0300028	NSPS	WWW	Definition of "Treatment System"
0300029	NSPS	AA, A	Clarification of Applicability Date
0300030	NSPS	AA	Clarification of Applicability Date
0300031	NSPS	AA	Clarification of Applicability Date
0300032	NSPS	Db	Thermal Oxidizer/Waste Heat Boiler at Ethanol Production Facility
0300033	NSPS	HH	Applicability of Opacity Monitoring Requirements

## ADI DETERMINATIONS UPLOADED ON MAY 2, 2003—Continued

Control No.	Category	Subpart	Title
0300034 .....	NSPS .....	Da, GG .....	Alternative Monitoring
0300035 .....	NSPS .....	A, GG .....	Initial Performance Test Waiver
0300036 .....	NSPS .....	WWW .....	Common Control for Landfill
0300037 .....	NSPS .....	VVV .....	Applicability to Pultrusion Facilities
0300038 .....	NSPS .....	WWW .....	Responsibility for Compliance with Subpart

**Abstracts***Abstract for [A030001]*

**Q1:** Is there a point at which abandoned underground utility steam lines wrapped in friable asbestos which enter commercial and residential structures are no longer regulated and fall under the residential exemption of 40 CFR 61.141?

**A1:** No. The lines remain a facility component regulated under the asbestos NESHAP, even if they are abandoned. Determination of which specific requirements of the asbestos NESHAP would apply to future demolitions or renovations would be based, in part, on the amount of asbestos involved.

**Q2:** Would abandonment of such lines at a residence cause the location to be considered an active waste disposal site under 40 CFR 61.154? If no more asbestos-containing material is buried there for a year, would the location be an inactive waste disposal site per 40 CFR 61.151(e) and 40 CFR 61.154(h)?

**A2:** No. The residential location would not be considered an active or inactive waste disposal site. If the lines are disturbed, the asbestos NESHAP may apply depending on the type of activity and how it affects the lines.

**Q3:** When a utility steam line is abandoned at a residence or a commercial property, must the utility or the property owner place a notation on the deed of the property per 40 CFR 61.151(e)?

**A3:** No. Because the mere existence of these lines does not make the property an inactive waste disposal site, 40 CFR 61.151(e) does not apply. Should the property become an inactive waste disposal site, the property owner would need to insure that a notation was placed on the deed and any other instrument normally examined during a title search.

**Q4:** Would the asbestos NESHAP regulate the removal of underground utility steam lines from the yard of a residence?

**A4:** The asbestos NESHAP would apply if the amount of asbestos being removed exceeds the regulatory threshold. Because the lines were once part of an affected facility, they remain potentially subject despite the fact that

they are abandoned by the utility and are on residential property.

*Abstract for [M030001]*

**Q:** Will EPA approve the parametric monitoring plan for the Kaiser Aluminum reduction plant?

**A:** Yes. EPA approves the Parametric Monitoring Plan because the source has met the requirement in 40 CFR 63.848(f).

*Abstract for [M030002]*

**Q:** Will EPA allow the monitoring of an alternate parameter, scrubber fan amperage, in lieu of measuring gas scrubber inlet gas flow rate as required in 40 CFR 63.453(c)(2)?

**A:** Yes. Based on EPA's guidance document entitled "Questions and Answers for the Pulp and Paper NESHAP" dated September 22, 1999, EPA approves the request as long as a successful initial performance test of the gas scrubber is conducted while the fan is operating at maximum speed. Fort James is still required to satisfy all the applicable requirements of the Pulp and Paper NESHAP.

*Abstract for [M030003]*

**Q:** Will EPA approve the Parametric Monitoring Plan (Revision 2) for Potlines 1 through 4 at the Alcoa—Wenatchee Works?

**A:** Yes. EPA's review of the source's report indicates that it satisfies the requirements of 40 CFR 63.847(h) and 40 CFR 63.848(f), (j) and (k).

*Abstract for [M030004]*

**Q:** May the parametric limits for alumina ore feed to the control system and air flow from the potline be reduced in proportion to the reduction in operating pots for potline #1?

**A:** Yes. However, an emissions test shall be conducted on the operating primary air pollution control device for potline #1 and the test report submitted to EPA.

*Abstract for [M030005]*

**Q:** Is Potlatch correct in concluding that it is not required to begin the daily monitoring under 40 CFR 63.453(j) until after the initial performance test (IPT) is conducted?

**A:** No. Potlatch's interpretation is not entirely correct. EPA believes that any required monitoring parameter that is not established by the results of the IPT should be monitored beginning on the compliance date. For certain conditions, the monitoring of some parameters would not be required to begin on the compliance date.

*Abstract for [M030006]*

**Q1:** Potlatch proposes to perform 3 test runs from 18 sampling locations to characterize and delineate the mixing zones in a 102-acre secondary treatment aeration pond. Is this study duration and scope acceptable for hazardous air pollutants (HAPs) compliance evaluations?

**A1:** EPA believes that the scope and duration of the Mixing Zone Study would depend on the design and operation of the treatment lagoon, and on the statistical validity of the results. Therefore, Potlatch should be prepared to perform more than 3 test runs as necessary.

**Q2:** Does the facility need approval prior to conducting the Study and performance tests?

**A2:** No. However, the requirements in 40 CFR 63.7(b) and (c) apply.

**Q3:** Do these three test runs have to be done within a 24-hour period or completed on 3 consecutive days?

**A3:** No. However, each test run should be completed within a 24-hour period.

**Q4:** Potlatch proposes to collect one grab sample per sampling location during each day of the Mixing Zone Study and performance tests. Is that acceptable?

**A4:** Yes. Therefore, a study period of more than 3 days may also be necessary.

**Q5:** May the durations of the initial performance test (IPT), quarterly performance test (QPT) and performance test (PT) for an excursion be different?

**A5:** Yes. EPA recommends that once the IPT is completed, the statistical variability of the data would be used to design the QPT and PT for excursion.

**Q6:** What duration of sampling is required for establishing site-specific parameter ranges and averaging times?

**A6:** In reference to 40 CFR 63.453(n)(4), it is the source's

responsibility to collect sufficient data to demonstrate to the permitting agencies' satisfaction that the source is in "continuous compliance with the applicable emission standard".

**Q7:** May a site-specific monitoring parameter and its range(s) be established prior to conducting the IPT or prior to the facility's compliance date if the proper sampling procedures and test methods were followed?

**A7:** Yes. Site-specific monitoring parameters and its ranges may be established and tested during the Mixing Zone Study.

**Q8:** Is it necessary to provide notification to EPA prior to conducting a mixing zone study?

**A8:** Yes. Because the Mixing Zone Study is part of the Initial Performance Test, 60-day notification requirements in 40 CFR 63.7 would apply.

**Q9:** Does a facility have to notify EPA a minimum of 60 days before a performance test?

**A9:** Yes. 40 CFR 63.7(b)(1) requires that an affected source notify the Administrator in writing of its intention to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin. Also, 40 CFR 63.7(c)(2)(i) requires the submission of site-specific test plans upon request by the delegated authorities.

*Abstract for [M030007]*

**Q:** Will EPA approve NWAC's site-specific test plan and the modified versions of EPA's Air Sampling Methods 13B and 14A?

**A:** Yes. EPA approves of NWAC's request.

*Abstract for [M030008]*

**Q:** Will EPA approve the parametric monitoring plan for Alcoa Wenatchee Works?

**A:** Yes. EPA approves Alcoa's Parametric Monitoring Plan as having met the requirements in 40 CFR 63.847(h) and 63.848(f), (j) and (k).

*Abstract for [M030009]*

**Q:** Will EPA allow the monitoring of an alternate parameter, scrubber fan amperage, in lieu of measuring gas scrubber inlet gas flow rate as required in 40 CFR 63.453(c)(2)?

**A:** Yes. Based on EPA's guidance document entitled "Questions and Answers for the Pulp and Paper NESHAP" dated September 22, 1999, EPA approves the request as long as a successful initial performance test of the gas scrubber is conducted while the fan is operating at maximum speed. The source is still required to satisfy all the applicable requirements of the Pulp and Paper NESHAP.

*Abstract for [M030010]*

**Q1:** Will EPA allow the monitoring of the operational status of a scrubber fan in lieu of the monitoring of the scrubber vent gas inlet flow rate when performing its initial performance test?

**A1:** Yes. Based on EPA's guidance document entitled "Questions and Answers for the Pulp and Paper NESHAP" dated September 22, 1999, EPA approves the request as long as a successful initial performance test of the gas scrubber is conducted while the fan is operating at maximum speed.

**Q2:** Will EPA approve a 1,000 ppmv calibration standard in lieu of the 10,000 ppmv calibration standard for measuring leaks in closed-vent systems?

**A2:** Yes. EPA approves this request because the requested 1,000 ppmv calibration standard would provide more accurate detection of a leak.

*Abstract for [M030011]*

**Q:** Do the requirements of NESHAP Subpart RRR for Secondary Aluminum Production apply to the scalpers at Kaiser's Trentwood Works in Spokane, Washington?

**A:** No. Based on Kaiser's description, the scalpers do not engage in activities related to secondary aluminum production and do not fall within the definition of "aluminum scrap shredders."

*Abstract for [M030012]*

**Q:** Will EPA approve the continuous monitoring of scrubber gas exhaust gas flow rate and air evacuation fan gas flow rate in lieu of monitoring vent gas inlet flow rate for the pulping process at the Wausau-Mosinee Brokaw, Wisconsin, magnesium sulfite mill?

**A:** Yes. EPA approves the request under the conditions that the mill continuously monitor both the total vent gas flow rate at the stack outlet and the air evacuation vent gas flow rate, and that the former not exceed 86,912 actual cubic feet per minute (ACFM) at any time. That flow rate was the maximum that occurred during the initial performance test. The mill must still monitor the pH or the oxidation/reduction potential of the scrubber effluent, and the scrubber liquid influent flow rate.

*Abstract for [M030013]*

**Q:** Will EPA approve the alternative monitoring methods to monitor phosgene concentration in lieu of monitoring total organic HAPs as required by 40 CFR 63.990(c) for caustic scrubbers (absorbers) that are used as control devices for organic HAPs? The source also proposes to monitor phosgene concentration in lieu of pH,

scrubber liquid flow, and gas stream flow as required by § 63.994(c)(1) for halogen scrubbers.

**A:** EPA conditionally approves the request. The approvals do not conclude whether the phosgene monitors meet any applicable monitor requirements such as 40 CFR 63.998(b). The approvals are contingent on the results of two performance tests, one for total HAPs and another for hydrogen halides and halogens. Based on the test results and the phosgene monitoring data, the source must submit the rationale for the value(s) of the phosgene concentration to be used to reflect continuous compliance with the standards for total HAPs, and for halogen and halides. The source must also meet the notification requirements of § 63.999(b)(3).

*Abstract for [M030014]*

**Q:** Will EPA approve the use of an Excel-based artificial neural network (ANN) predictive computer model for continuously monitoring methanol emissions from the UNOX closed biological treatment system at International Paper's Kaukauna mill?

**A:** Yes. The company has more than a year of operating data and effluent methanol concentrations. These data show that the measurement of several process parameters, such as the dissolved oxygen in the system and the oxygen uptake rate of the mixed liquor, adequately demonstrates that the ANN model provides continuous monitoring of the UNOX methanol concentration.

*Abstract for [M030015]*

**Q:** Will EPA approve the continuous monitoring of fan amperage and scrubbing liquid flow rate in lieu of scrubber pressure drop for the smelt dissolving tank scrubber at the International Paper Quinnesec, Michigan mill?

**A:** Yes. Pressure drop does not govern particulate removal efficiency for this dynamic scrubber that operates near atmospheric pressure, and fan amp monitoring will suitably indicate scrubber performance. EPA approves the request under the condition that the mill establish operating ranges for the monitoring parameters in the initial performance test.

*Abstract for [M030016]*

**Q:** Will EPA approve the alternative monitoring for the UNOX closed biological treatment system at the Wausau-Mosinee mill in Mosinee, Wisconsin? The mill proposes to continuously monitor the foul condensate flow rate to the UNOX system, the valve position of the feed lines to the foul condensate tank, and

the treated effluent chemical oxygen demand (COD).

A: Yes. The condensate collection efficiency depends on the flow rate to the UNOX system, and COD is a good indicator of UNOX system performance.

*Abstract for [M030017]*

Q: Must the Weyerhaeuser calcium-based sulfite pulp mill in Rothschild, Wisconsin continuously monitor the outlet to the weak acid tower scrubber? The company claims the scrubber is not needed to comply with the methanol emission limit.

A: Yes. There is insufficient evidence that the mill is operating in continuous compliance with the emission limit. Thus, Weyerhaeuser must continuously monitor emissions or establish alternative operating parameters that continuously demonstrate compliance.

*Abstract for [M030018]*

Q: Does 40 CFR 63.342(e)(1) require facilities using trivalent chromium baths to use a pre-mixed bath mixture containing the wetting agent?

A: Yes, 40 CFR 63.342(e)(1) requires the trivalent chromium bath solution components to include a wetting agent. However, the wetting agent does not need to be incorporated into the bath solution by the vendor. The wetting agent must only be included as an integral part of the trivalent chromium bath components when purchasing the solution components from the vendor. The wetting agent can then be added by the source following vendor recommendations.

*Abstract for [Z030001]*

Q: May Cominco get an emissions test waiver for two sewage sludge incinerators located at the DeLong Mountain Regional Transportation System Port Facility in Alaska?

A: Yes. EPA waives the emissions tests required in 40 CFR 61.53(d)(1) based on Cominco's monthly testing results which show the emission level well below the standard at 40 CFR 61.52(b).

*Abstract for [0300001]*

Q: Is Lamb-Weston's boiler #1 subject to NSPS Subpart Db after its capacity was changed to below 100 million Btu/hour?

A: No. The boiler is no longer subject to NSPS Subpart Db.

*Abstract for [0300002]*

Q: Will EPA approve the Predictive Emissions Monitoring System (PEMS) for the boiler subject to NSPS Subpart Db?

A: Yes. EPA approves of the PEMS and requires the company to perform

annual relative accuracy tests to verify the accuracy of the PEMS and send the test results.

*Abstract for [0300003]*

Q: Will EPA approve an alternative monitoring plan (AMP) with a periodic monitoring system for propane fuel used in the generators at Tesoro's Anacortes Refinery?

A: Yes. Pursuant to 40 CFR 60.105(a)(4)(ii), EPA extends the existing EPA approved-AMP dated May 29, 1996, for Boiler F-753 for application to the generators.

*Abstract for [0300004]*

Q1: May Cogentrix conduct performance tests only at 100% load for a combined cycle gas turbine subject to 40 CFR part 75 and NSPS Subpart GG?

A1: Yes. EPA approves this request because the certified NO<sub>x</sub> continuous emission monitoring system (CEMS) used in the initial performance test would undergo calibration checks before and after each test run, and the turbine will normally be operated at 100% load.

Q2: May Cogentrix determine sulfur content by collecting samples for analysis for total sulfur in lieu of testing for SO<sub>2</sub> using Method 20?

A2: Yes. This proposal is acceptable to EPA because the turbine would be firing exclusively pipeline natural gas, where given the sulfur content of the fuel, it would not cause SO<sub>2</sub> emissions in excess of the SO<sub>2</sub> standard specified in 40 CFR 60.333.

*Abstract for [0300005]*

Q: May NW Natural request a reduced notification period for performance testing on two gas fired turbines?

A: Yes. This request is approved because NW Natural had previous correspondence with the Oregon Department of Environmental Quality (ODEQ) and the weather dependent operational schedule of the turbine would not allow NW Natural to meet the required 180-day deadline in 40 CFR 60.8(a) to conduct performance testing.

*Abstract for [0300006]*

Q1: Are turbines that were manufactured before October 3, 1977, but that did not begin operation on the Trans-Alaska Pipeline System (TAPS) pump stations until after October 3, 1977, subject to NSPS Subpart GG, no matter when they were purchased by Alyeska from the manufacturer or other owner?

A1: No. These stationary gas turbines, that are purchased in completed form, are not subject to NSPS Subpart GG provided they were not "modified" or

"reconstructed" as defined in NSPS Subpart A, on or after October 3, 1977.

Q2: Do the requirements of NSPS Subparts A and GG follow a new turbine wherever it is operated on the TAPS?

A2: Yes. The requirements of NSPS Subparts A and GG follow a turbine constructed, modified or reconstructed after October 3, 1977, regardless of where the turbine is relocated to, but do not apply to the equipment that is powered by the turbine (such as a generator or a pump).

Q3: Do the Alyeska turbines that were manufactured before October 3, 1977 become subject to NSPS Subpart GG if they are relocated between TAPS pump stations as a pool of identical turbines to allow for maintenance of turbines?

A3: No. The relocation of a turbine as part of a pool of identical turbines would not make the turbine subject to NSPS Subpart GG if the turbine is not "modified" or "reconstructed," as those terms are defined in 40 CFR Subpart A, as a result of the relocation. Certain requirements are required in the Title V permit.

Q4: Does a turbine that is not subject to NSPS Subpart GG become subject to it if it is rotated into a location to replace an existing turbine that is subject to NSPS Subpart GG?

A4: No. As discussed above, a relocation of an affected facility is not, by itself, a modification.

*Abstract for [0300007]*

Q: Does EPA agree with interpretation of the Lane Regional Air Pollution Authority that the total amount of landfill gases generated must be considered when making an applicability determination?

A: Yes. Specifically, pertaining to 40 CFR 60.33c(a)(3), the total nonmethane organic compound (NMOC) emission rate from the landfill must be used to determine applicability.

*Abstract for [0300008]*

Q: Will EPA approve an alternate opacity emissions monitoring method for an auxiliary boiler subject to NSPS Subpart Db?

A: No. The proposal to use Method 9 instead of operating a COMS is denied because the proposed method would not provide an equivalent level of monitoring. The proposal may be acceptable if certain conditions are met.

*Abstract for [0300009]*

Q: The Native Village of Kotzebue's proposed expanded polystyrene plant plans to purchase polystyrene-bead raw material from other manufacturers. Will the plant be subject to NSPS Subpart DDD?

A: No. With reference to 40 CFR 60.560, because the proposed plant will not manufacture polystyrene, EPA determines that NSPS Subpart DDD would not apply.

*Abstract for [0300010]*

Q: Does NSPS Subpart Dc cover heat exchangers used to heat vegetable oil at a Frito-Lay facility?

A: No. Because the "heat exchanger" units are used to heat vegetable oil, which is a reactant within the chemical reaction involved in the production of potato chips, EPA believes that the units are process heaters as defined in 40 CFR 60.41c and that NSPS Subpart Dc does not apply to them.

*Abstract for [0300011]*

Q: May Phillips Alaska use a 7 point multi-hole probe to identify the two ports with the lowest oxygen concentration in-lieu of the oxygen traverse of the stack in accordance with Reference Method 20 procedures?

A: Yes. EPA believes that the modified method could generate acceptably accurate data.

*Abstract for [0300012]*

Q: Will EPA approve Congentrix's request for a nitrogen monitoring waiver and an alternate sulfur monitoring schedule for a gas-fired combined cycle turbine subject to 40 CFR part 75 and NSPS Subpart GG?

A: Yes. EPA approves this request for a nitrogen monitoring waiver and an alternate sulfur monitoring schedule for the combined cycle turbine firing exclusively pipeline natural gas.

*Abstract for [0300013]*

Q: Will EPA grant an extension to perform a Relative Accuracy Test Audits (RATA) for the CEMS for a new boiler subject to NSPS Subpart Db?

A: No. EPA has not received a report of the performance test within 60 days of achieving maximum production rate as required in 40 CFR 60.8(a). Moreover, if the performance test conducted was a Method 7 test, this would not have been consistent with the method specified in 40 CFR 60.46b(e). Therefore, the source appears to be in violation of the requirement to timely conduct the applicable performance test. Under these circumstances, it would not be appropriate to grant the request for an extension of time to conduct a performance evaluation.

*Abstract for [0300014]*

Q: Will EPA approve BP's proposal of only observing readings from the existing orifice plates to verify flare exit velocities and a waiver of the flow

measurement requirements at 40 CFR 60.18(f)(4)?

A: No. EPA denies the request because BP has not provided sufficient information regarding the existing orifice plates to determine compliance. EPA is concerned about possible corrosion on the orifice plates, which may result in unreliable exit velocity data.

*Abstract for [0300015]*

Q: Will EPA grant a waiver for turbine load testing restriction for two gas turbines subject to NSPS Subpart GG?

A: Yes. EPA grants BP's request for waiving EPA's August 2, 2000, requirement for performing additional source tests at higher than presently tested load points, because there is a strong basis from test results for predicting that NOX Concentrations from operating the turbines would be below the required NSPS standard in the event that the turbines are operated at above the highest tested load.

*Abstract for [0300016]*

Q: Does 40 CFR 60.7(b) mean that an owner or operator shall maintain records of the occurrence and duration of the initial startup and the eventual final shutdown?

A: No. 40 CFR 60.7(b) states that the owner or operator will maintain records of the occurrence and duration of any startup or shutdown.

*Abstract for [0300017]*

Q: Is NSPS Subpart KKK applicable to the facility at BP Exploration's Bedim Development Project located on the North Slope of Alaska?

A: No. NSPS Subpart KKK is applicable to Onshore Natural Gas Processing Plants, as described in 40 CFR 60.630. The subject BP Exploration plant is a crude oil production facility, and therefore does not meet the definition of a "Natural Gas Processing Plant" described in § 60.631.

*Abstract for [0300018]*

Q: May PGE use a CEMS to monitor nitrogen oxides emissions for the turbine subject to NSPS Subpart GG?

A: Yes. PGE may use the CEMS to monitor NOX emissions in lieu of monitoring fuel consumption, and the water-to-fuel ratio, as required by 40 CFR 60.334(a).

*Abstract for [0300019]*

Q: Will EPA approve an exemption of daily nitrogen testing and a custom fuel monitoring schedule for sulfur for a natural gas-fueled turbine?

A: Yes. EPA will waive nitrogen monitoring for pipeline quality natural

gas, as there is no fuel-bound nitrogen, and will approve the custom fuel monitoring schedule for sulfur based on following specific conditions for confirming sulfur variability of the pipeline natural gas.

*Abstract for [0300020]*

Q: Is the entire black liquor steam reforming gasification system, which includes one reformer boiler and 8 pulse heaters, an affected facility under 40 CFR part 60, subpart Db?

A: EPA has determined that the reformer boiler is subject to 40 CFR part 60, subpart Db. The 8 pulse heaters are not part of the same affected facility, and are individual units that are not subject to Subpart Db because of their size. They may be affected facilities as defined by 40 CFR part 60, subpart Dc, unless they are unaffected because they meet the definition of a process heater.

Q: Will EPA approve an alternative proposal for monitoring nitrogen oxides from the reformer boiler?

A: Yes. EPA has determined that monitoring nitrogen oxide concentration at the single stack from the reformer boiler and the pulse heaters and using each unit's corresponding heat inputs, as measured by the fuel fired, is an acceptable alternative for monitoring nitrogen oxide emissions on a pound/mmBTU basis for reasons set out in the determination.

*Abstract for [0300021]*

Q: Will EPA allow a facility to derate a boiler to less than 250 mm Btu/hr by limiting the feed rate of coal and fuel oil?

A: No. Changes which are made only to fuel feed systems are not acceptable for derating boilers.

*Abstract for [0300022]*

Q: Will EPA waive the requirement for a performance test and approve alternative monitoring for boilers and process heaters which are fired with fuel gas which contains vent streams from facilities subject to NSPS Subpart NNN?

A: Yes. EPA will waive the requirement for a performance test and approve the provisions of NSPS Subpart RRR as alternative monitoring to the provisions of NSPS Subpart NNN.

*Abstract for [0300023]*

Q: Is a natural gas-fired preheater, which is used to improve the efficiency of a perlite expansion furnace, subject to NSPS Subpart UUU?

A: No. Based on site-specific information provided and the background document for the standard, the preheater described is not

functionally equivalent to either a dryer or calciner.

*Abstract for [0300024]*

**Q:** Does a brown stock washer system qualify for an exemption from the TRS standard under 40 CFR 60.283(a)(1)(iv)?

**A:** Yes. Based on cost information supplied and recent cost estimates from other facilities, a temporary exemption from the TRS standard is appropriate.

*Abstract for [0300025]*

**Q:** Are natural gas-fired fuel heaters, to be used to heat natural gas prior to being routed to combustion turbines for use as fuel, subject to NSPS Subpart Dc?

**A:** No. The fuel heaters are not subject to subpart Dc, since there is no heat transfer medium associated with their operation.

*Abstract for [0300026]*

**Q1:** Will EPA approve the replacement of the NSPS continuous monitoring requirements with the MACT continuous monitoring requirements for the smelt dissolving tank and lime kiln scrubbers at the International Paper Quinnesec, Michigan mill?

**A1:** Yes. The MACT monitoring requirements meet or exceed the NSPS requirements.

**Q2:** Will EPA approve the continuous monitoring of fan amperage in lieu of scrubber pressure drop for the smelt dissolving tank scrubber?

**A2:** Yes. Pressure drop does not govern particulate removal efficiency for the smelt dissolving tank dynamic scrubber that operates near atmospheric pressure, but fan amperage monitoring will suitably indicate scrubber performance. The U.S. EPA approves the request under the condition that the mill establish operating ranges for the monitoring parameters during a performance test.

*Abstract for [0300027]*

**Q:** Can a landfill conduct additional Tier 2 testing to demonstrate that NMOC emissions are below 50 Mg/year?

**A:** Yes. As long as the collection and control plan has been submitted by one year from the exceedance of 50 Mg/year, the landfill may conduct further testing. If, however, NMOC emissions continue to demonstrate levels at or above 50 Mg/year, then the source will be expected to implement its collection and control system according to the original schedule (18 months after the collection and control system plan was submitted).

*Abstract for [0300028]*

**Q:** Is a system that consists of a 155 scfm, stainless steel, coalescing filter

with a 0.01 micron screen, a compressor/blower, and a liquid knockout sump a treatment system?

**A:** No. "Treatment system" is not defined. However, although the proposed system has a liquid knockout sump, it does not use chillers or other dehydration equipment to de-water the landfill gas.

*Abstract for [0300029]*

**Q1:** The applicability date for NSPS Subpart AA occurred during the construction, in the same building but at different times, of two electric arc furnaces (EAFs). Under these circumstances, what constitutes "construction" and when does construction "commence" for each affected facility for purposes of NSPS Subpart AA applicability?

**A1:** There must be actual physical construction of or a binding contractual obligation for each affected facility prior to the applicability date. In this case, EPA determined that EAF #1 commenced construction before the applicability date of October 21, 1974, but that EAF #2 had commenced construction after the applicability date and was therefore subject to NSPS Subpart AA.

**Q2:** Are transformers which supply electricity to the EAF electrodes part of the NSPS Subpart AA affected facility?

**A2:** No. Although they are treated as part of the affected facility in the later NSPS Subpart AAa, according to the definition of electric arc furnace at 40 CFR 60.271, the transformer system is not part of the affected facility subject to NSPS Subpart AA. It should be noted that, although the transformer system was constructed prior to the subpart AA applicability date, the construction of EAF #2 occurred after that date and is subject to NSPS Subpart AA.

*Abstract for [0300030]*

**Q1:** The applicability date for NSPS Subpart AA occurred during the construction, in the same building but at different times, of two EAFs. Under these circumstances, what constitutes "construction" and when does construction "commence" for each affected facility for purposes of NSPS Subpart AA applicability?

**A1:** There must be actual physical construction of or a binding contractual obligation for each affected facility prior to the applicability date. In this case, EPA determined that EAF #1 commenced construction before the applicability date of October 21, 1974, but that EAF #2 had commenced construction after the applicability date and was therefore subject to NSPS Subpart AA.

**Q2:** Are transformers which supply electricity to the EAF electrodes part of the NSPS Subpart AA affected facility?

**A2:** No. Although they are treated as part of the affected facility in the later NSPS Subpart AAa, according to the definition of electric arc furnace at 40 CFR 60.271, the transformer system is not part of the affected facility subject to NSPS Subpart AA. It should be noted that, although the transformer system was constructed prior to the subpart AA applicability date, the construction of EAF #2 occurred after that date and is subject to NSPS Subpart AA.

*Abstract for [0300031]*

**Q:** The applicability date for NSPS Subpart AA occurred during the construction, in the same building but at different times, of two electric arc furnaces (EAFs). Under these circumstances, what constitutes "construction" and when does construction "commence" for each affected facility for purposes of NSPS Subpart AA applicability?

**A:** There must be actual physical construction of or a binding contractual obligation for each affected facility prior to the applicability date. In this case, EPA determined that EAF #1 commenced construction before the applicability date of October 21, 1974, but that EAF #2 had commenced construction after the applicability date and was therefore subject to NSPS Subpart AA.

*Abstract for [0300032]*

**Q1:** Is the thermal oxidizer with heat recovery boiler located at the Badger State Ethanol facility a steam generating unit and, therefore, subject to NSPS Subpart Db?

**A1:** Yes. The thermal oxidizer/heat recovery boiler would be considered a steam generating unit because it will combust fuel and heat a heat transfer medium; it is covered by NSPS Subpart Db.

**Q2:** How do Applicability Determinations NB04 and NA07 affect the applicability of the thermal oxidizer/heat recovery boiler?

**A2:** Applicability Determination NA07 concerns the applicability of NSPS Subpart Dc to a combined cycle system comprised of a gas turbine and a waste heat boiler. The thermal oxidizer/waste heat boiler configuration at the Badger State facility is treated differently than the gas turbine/waste heat boiler configuration in Applicability Determination NA07. Applicability Determination NB04 consists of a gas turbine followed by a duct burner which, in turn, is followed by a waste heat boiler. In this

configuration the duct burner followed by the waste heat boiler meets the criteria for a device to be considered a steam generating unit. Neither Applicability Determination NA07 nor NB04 contradict this applicability determination.

*Abstract for [0300033]*

**Q:** Is a source controlling SO<sub>2</sub> emissions from a lime kiln using a wet scrubbing system subject to the opacity monitoring requirement in 40 CFR 60.343?

**A:** No. When using a wet scrubber, the source is not required to monitor the opacity of the gases discharged. Instead, the source must install, calibrate, maintain, operate, and record the resultant information from the monitoring device for the continuous measurement of the pressure loss of the gas stream through the scrubber and from the monitoring device for continuous measurement of the scrubbing liquid supply pressure to the control device. The source must comply with these monitoring requirements even during periods of startup, shutdown, and malfunction.

*Abstract for [0300034]*

**Q1:** Will EPA approve an alternative monitoring requirement for NO<sub>x</sub> if the emissions from a duct burner steam generating unit commingle with the emissions from the combustion turbines?

**A1:** Yes. Because the compliance provision under 40 CFR 60.46a(k)(3) requires that NO<sub>x</sub> emissions be measured at the point where emissions from the duct burner combine with the emissions from the combustion turbine, EPA will approve an alternative monitoring requirement. The source should use the equation in appendix D to part 72 to calculate the actual gross electric output from the turbines, using the actual heat input instead of the maximum design heat input. The hourly emission (lb/hr) from the NO<sub>x</sub> CEM will then be divided by the gross electrical output to yield values in terms of the standard (lb/MWh).

**Q2:** Will EPA approve a custom fuel monitoring schedule?

**A2:** Yes, consistent with U.S. EPA's national guidance contained in a policy memorandum, dated August 14, 1987, EPA will allow a custom fuel monitoring schedule under the conditions set out in the letter.

*Abstract for [0300035]*

**Q:** Will EPA approve a previous waiver of an initial performance test for a gas turbine based on preliminary

performance source test results for an identical gas turbine?

**A:** Yes. EPA approves the previous waiver. EPA accepts the preliminary performance source test results for GE LM2500 Turbine B (S/N 671-126) as documentation that it meets the standard for NO<sub>x</sub> (40 CFR 60.332(a)(2)) and has determined that the waiver applies to the identical gas turbine GE LM2500 Turbine A (SN 671-125). This approval is contingent on the test report confirming the preliminary results.

*Abstract for [0300036]*

**Q:** A landfill is selling its landfill gas to an energy generation company. Are they under "common control" for purposes of determining whether they are a single stationary source under PSD and Title V?

**A:** Based on the facts, EPA does not consider the landfill and the energy generating facility to be under common control for PSD and Title V (no common financial interests, employees, or dependence on one another). The state may issue two separate Title V permits. However, EPA does consider them to be responsible for compliance with 40 CFR part 60, subpart WWW.

*Abstract for [0300037]*

**Q:** Does 40 CFR part 60, subpart VVV, Standards of Performance for Polymeric Coating of Supporting Substrates apply to pultrusion facilities?

**A:** No, NSPS Subpart VVV does not apply to pultrusion facilities. The operating characteristics of the pultrusion process are different from the polymeric coating process that is covered by NSPS Subpart VVV. NSPS Subpart VVV applies to those polymeric coating processes where solvents are intentionally volatilized out of the coating as a necessary part of the process. In the pultrusion process, the volatile organic compound (styrene) is a reactant, not a solvent. The styrene predominantly becomes an integral part of the final product.

*Abstract for [0300038]*

**Q:** As between the owner and operator of a landfill facility and the owner and operator of equipment used to control landfill gas emissions for use in generating electricity, which entity bears the regulatory burden of complying with the requirements of NSPS Subpart WWW?

**A:** The owner and operator of the landfill facility is required to demonstrate compliance with all applicable provisions of NSPS Subpart WWW pursuant to 40 CFR 60.750(a). All applicable requirements should be incorporated into the facility's Title V

permit. The owner and operator of the equipment utilized to control landfill gas emissions could also be held liable for complying with the regulations. However, the owner of a regulated facility cannot contract away its liability because another entity is contractually obligated to perform activities which are also regulated. [See generally, for example, *United States of America v. Geppert Bros., Inc. and Amstar Corporation*, 638 F. Supp. 996 (D.C. Pa. 1986)].

Dated: June 30, 2003.

**Lisa Lund,**

*Acting Director, Office of Compliance.*

[FR Doc. 03-17209 Filed 7-7-03; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-7523-9]

**Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act, Riley Lane Residence Superfund Site**

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

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

**SUMMARY:** Notification is hereby given that the United States Environmental Protection Agency proposes to enter into an Agreement for Recovery of Past Response Costs (Agreement) relating to the Riley Lane Residence Superfund Site located in Salt Lake City, Utah. The proposed Agreement is subject to final approval after the comment period. The Agreement resolves Superfund liability for past costs under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), against Union Pacific Railroad. The Agreement requires Union Pacific Railroad to pay EPA \$80,000 in full satisfaction of EPA's claim for past costs incurred in connection with the Riley Lane Residence Superfund Site. For thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed Agreement. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center at the U.S. Environmental Protection Agency,

Region VIII, 999 18th Street, Denver, Colorado 80202.

*Availability:* The proposed Agreement is available for public inspection at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado 80202. A copy of the proposed Agreement may be obtained from Maureen O'Reilly, Enforcement Specialist, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, ENF-T Denver, Colorado 80202. Comments should reference the "Riley Lane residence Superfund Site" and should be forwarded to Maureen O'Reilly, Enforcement Specialist, at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Andrea Madigan, Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, ENF-L Denver, Colorado 80202.

Dated: June 12, 2003.

**Robert E. Roberts,**

*Regional Administrator, Region VIII.*

[FR Doc. 03-17207 Filed 7-7-03; 8:45 am]

**BILLING CODE 6560-50-P**

**FARM CREDIT ADMINISTRATION**

**Farm Credit Administration Board; Sunshine Act Meeting**

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 10, 2003, from 9 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:**

Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883-4009, TTY (703) 883-4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

**SUPPLEMENTARY INFORMATION:** This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

—June 12, 2003 (Open and Closed).

*B. Reports*

1. Farm Credit System FY 2002 Results for Young, Beginning, and Small Farmer Lending Programs.

2. Financial Institution Rating System (FIRS)—Assets Discussion.

*C. New Business Regulations.*

—Proposed Rule—OFI Lending.

Dated: July 3, 2003.

**Jeanette C. Brinkley,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 03-17365 Filed 7-3-03; 2:11 pm]

**BILLING CODE 6705-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

[Report No. 2614]

**Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding**

July 1, 2003.

Petitions for Reconsideration and Clarification have 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 these petitions must be filed by July 23, 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 have expired.

*Subject:* In the Matter of the Reexamination of the Comparative Standard for Noncommercial Educational Applicants (MM Docket No. 95-31).

*Number of Petitions Filed:* 8.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03-17119 Filed 7-07-03; 8:45 am]

**BILLING CODE 6712-01-M**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**Sunshine Act Meetings**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 4 p.m. on Friday, July 11, 2003, to consider the following matters:

**Summary Agenda**

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

**Discussion Agenda**

*Memorandum and resolution re:* Joint Advance Notice of Proposed Rulemaking Regarding Risk-Based Capital Guidelines: Internal Ratings-Based Capital Requirement.

*Memorandum and resolution re:* Basel II Capital Accord: Joint Supervisory Guidance on Internal Ratings-Based Systems for Corporate Credit.

*Memorandum and resolution re:* Basel II Capital Accord: Joint Supervisory Guidance on Operational Risk Advanced Measurement Approaches for Regulatory Capital.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416-2089 (Voice); (202) 416-2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at (202) 898-3742.

Dated: July 3, 2003.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 03-17353 Filed 7-3-03; 8:45 am]

**BILLING CODE 6714-01-M**

**FEDERAL RESERVE SYSTEM**

**Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 21, 2003.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Scott and Nancy Taylor*, Estherville, Iowa; to acquire additional voting shares of NorthStar Bancshares, Inc., Estherville, Iowa, and thereby indirectly acquire additional voting shares of NorthStar Bank, Estherville, Iowa,

**B. Federal Reserve Bank of Minneapolis** (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Gary M. McKellips Revocable Trust*, *Gary McKellips trustee*, both of Alcester, South Dakota; and the *Debra K. McKellips Revocable Trust*, *Debra McKellips trustee*, both of Alcester, South Dakota; to retain voting shares of First State Banking Corp., Alcester, South Dakota, and thereby retain voting shares of State Bank of Alcester, Alcester, South Dakota.

Board of Governors of the Federal Reserve System, July 1, 2003.

**Jennifer J. Johnson**,  
*Secretary of the Board.*

[FR Doc. 03-17141 Filed 7-7-03; 8:45 am]

BILLING CODE 6210-01-S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be

available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 31, 2003.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *Lakeland Bancorp, Inc.*, Oak Ridge, New Jersey; to merge with CSB Financial, Teaneck, New Jersey, and thereby indirectly acquire Community State Bank, Teaneck, New Jersey.

Board of Governors of the Federal Reserve System, July 1, 2003.

**Jennifer J. Johnson**,  
*Secretary of the Board.*

[FR Doc. 03-17140 Filed 7-7-03; 8:45 am]

BILLING CODE 6210-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day-03-89]

#### Agency for Toxic Substances and Disease Registry; Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 498-1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

*Proposed Project:* Support for State Oral Disease Prevention Program Infrastructure Development Evaluation Reporting—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

In 2000, the Surgeon General published the first ever report on oral health in America to alert Americans to the full meaning of oral health and its importance to general health and well-being. Included in the framework for action was the charge to build an effective oral health infrastructure that meets the oral health needs of all Americans and integrates oral health effectively into overall health planning. In response, the CDC will award funds for cooperative agreements to an estimated total of 13 demonstration sites in two phases, for the planning and implementation of oral health capacity infrastructure building and demonstration delivery programs. Building infrastructure enables the demonstration states to develop the capacity to achieve Healthy People 2010 objectives and reach many more Americans than a single local program could reach and to potentially sustain health gains beyond the funding cycle.

Infrastructure development encompasses many activities, each of which can be accomplished in a myriad of methods by the grantees. To summarize and track vital development information across grantee sites, a uniform reporting system must be established for the demonstration sites. Obtaining uniform data will allow the construction of summary reports to assist future sites and not-yet-funded oral health infrastructure development programs.

Evaluation tracking reporting for this project would describe the implementation of each site's infrastructure model in relation to environmental context and state characteristics. The results would provide evidence for the essential

implementation strategies for effective infrastructure development as defined by the consensus-based Association of State and Territorial Dental Directors (ASTDD) model. The results would be used to structure flexible guidelines for infrastructure development and identify high-priority activities enabling additional sites to efficiently plan and implement cost-effective oral health improvement activities. Additionally, this project will assist in the development of objectives and indicators of sustainability—the ability of these demonstration programs to

meet the needs of their constituents beyond the seed-funding period.

The objectives of the uniform evaluation tracking reporting system are to:

1. Evaluate infrastructure development activity characteristics among the funded sites.
2. Synthesize progress and promote cross-collaboration among grantees.
3. Make progress indicators available to nonfunded sites.
4. Promote positive infrastructure growth among funded and nonfunded sites.

The above objectives will be attained through a family of uniform evaluation reporting documents designed to evaluate demographic, extent, and culture climate of infrastructure development activities. One respondent from each site will be required to submit the activity-tracking document annually. Participation is mandatory for funded sites. Nonfunded sites actively involved in infrastructure development are welcome to submit tracking information to further provide information for all sites. Participation is not mandatory for nonfunded sites.

Respondents	Number of respondents per year	Number of responses per respondent	Avg. burden per response (in hrs.)	Total annual burden (in hrs.)
Demonstration site grantees .....	13	1	45/60	9.75

Dated: July 1, 2003.  
**Thomas A. Bartenfeld,**  
*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*  
 [FR Doc. 03-17171 Filed 7-7-03; 8:45 am]  
**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Agency for Toxic Substances and Disease Registry**

[Program Announcement 03078]

**Program To Build Capacity To Conduct Site-Specific Environmental Health Education and Monitoring Activities; Notice of Intent To Fund Single Eligibility Award**

**A. Purpose**

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program to develop educational and environmental programs for communities surrounding the Tar Creek superfund site in Ottawa County, Oklahoma. The Catalog of Federal Domestic Assistance number for this program is 93.161.

**B. Eligible Applicant**

Assistance will be provided only to the State of Oklahoma Department of Health. The Oklahoma State Health Department was designated as the lead state Superfund Agency Protection agency. The Oklahoma State Department of Health has a long history of providing direct public health services and demonstrating the ability to

tract children with elevated blood levels in Ottawa County.

**C. Funding**

Approximately \$166,666 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 15, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

**D. Where to Obtain Additional Information**

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146, Telephone: 770-488-2700.

For technical questions about this program, contact: Richard Sullivan, REHS, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE, MS E-33, Atlanta, GA 30333, Telephone: (404) 498-0521.

Dated: July 1, 2003.  
**Sandra R. Manning, CGFM,**  
*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*  
 [FR Doc. 03-17159 Filed 7-7-03; 8:45 am]  
**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Agency for Toxic Substances and Disease Registry**

**Public Meeting of the Inter-Tribal Council on Hanford Health Projects (ICHHP) in Association With the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

*Name:* Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

*Time And Date:* 9:30 a.m.–4 p.m., August 6, 2003.

*Place:* Tamastslikt Cultural Institute, Umatilla Indian Reservation, 72779 Highway 331, Pendleton, Oregon 97801. Telephone: (541) 276-0355.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

*Background:* A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments

at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE, and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC. Community Involvement is a critical part of ATSDR's and CDC's energy-related research and activities, and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on American Indian health effects at the Hanford site.

**Purpose:** The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, and agency updates.

**Matters To Be Discussed:** Agenda items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include presentations and discussions on each tribal member's respective environmental health activities, and agency updates.

Agenda items are subject to change as priorities dictate.

**For Further Information Contact:** Alan Crawford, Executive Secretary, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E-32, Atlanta, Georgia 30333, telephone 1-888-42-ATSDR (28737), fax 404-498-1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: July 1, 2003.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 03-17162 Filed 7-7-03; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

#### Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

**Name:** Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

**Time and Date:** 8 a.m.-5:30 p.m., August 7, 2003.

**Place:** Tamastlikt Cultural Institute, Umatilla Indian Reservation, 72779 Highway 331, Pendleton, Oregon 97801. Telephone: (541) 276-0355.

**Status:** Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

**Background:** A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE, and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

**Purpose:** This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to receive an update from the Inter-tribal Council on

Hanford Health Projects; to review and approve the minutes of the previous meeting; to receive updates from ATSDR/NCEH and NIOSH; to receive reports from the Outreach, Public Health Assessment, Public Health Activities, and Health Studies Workgroups; and to address other issues and topics, as necessary.

**Matters To Be Discussed:** Agenda items include a presentation from the American College of Preventative Medicine, Updates from the Health Studies, Public Health Assessment, Outreach, and Public Health Activities Workgroups, and agency updates.

Agenda items are subject to change as priorities dictate.

**For Further Information Contact:** French Bell, Executive Secretary, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E-32, Atlanta, Georgia 30333, telephone 1-888-42-ATSDR (28737), fax 404/498-1744.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: July 1, 2003.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 03-17169 Filed 7-7-03; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

#### Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

**Name:** Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

**Time and Date:** 12 p.m.-6 p.m., August 26, 2003.

**Place:** DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee, 37830. Telephone: (865) 241-4780.

**Status:** Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

**Background:** A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU

delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE, and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

*Purpose:* This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

*Matters To Be Discussed:* The agenda includes a discussion of the public health needs assessment, updates from the Public Health Assessment, Public Health Needs Assessment, and Outreach and Communications Workgroup.

Agenda items are subject to change as priorities dictate.

*For Further Information Contact:* Lorine Spencer, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE., M/S E-32, Atlanta, Georgia 30333, telephone 1-888-42-ATSDR (28737), fax 404/498-1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: July 1, 2003.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 03-17158 Filed 7-7-03; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement 03064]

#### Expansion of HIV/AIDS/TB Care and Prevention Activities Among People With HIV/AIDS in the Republic of Uganda; Notice of Intent To Fund Single Eligibility Award

##### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program to strengthen tuberculosis prevention and treatment, and expand other HIV/AIDS prevention, diagnostic and care programs in Uganda, including to promote healthy behavior choices for young people. The Catalog of Federal Domestic Assistance number for this program is 93.941.

##### B. Eligible Applicant

Assistance will be provided only to The AIDS Support Organization (TASO) Uganda. No other applications are solicited.

There is limited, large-scale HIV/AIDS care and support experience in Uganda. TASO is the only HIV-care provider in Uganda that works in several different areas of the country, both rural and urban settings, and has both home-based and clinic-based activities. It currently has 20,000 clients with HIV, more than 400 percent more than the next largest HIV specialist organization. TASO is the only organization in Uganda with demonstrated experience in administering individual- and group-focused HIV prevention programs on a large scale. TASO has over ten years of experience with HIV care programs involving psychosocial support, management of opportunistic infections, and TB care. TASO is the only organization in Uganda with experience implementing large-scale cotrimoxazole prophylaxis programs and a safe-water vessel program among rural communities—two critically important components of the proposed cooperative agreement. Lastly, TASO is the only significant provider of health care services for people living with HIV/AIDS in the rural Tororo area where CDC's HBAC project is to be implemented. Data has already been collected on baseline morbidity and mortality among a proportion of TASO clients as part of a diarrhea prevention study and this is the only population in Uganda with which HBAC could be

implemented and provide the necessary information for evaluation of its effectiveness.

CDC has worked with TASO previously to establish a computerized information system at their seven centers, and on pilot programs for cotrimoxazole prophylaxis and safe water vessel use. This cooperative agreement will allow improved services for all of TASO clients including those at TASO-Tororo, which will enhance the project. If found successful, the HBAC program could be more rapidly and cost-effectively implemented throughout Uganda using existing TASO structures because of the experience of working on HBAC with CDC.

##### C. Funding

Approximately \$750,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

##### D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146. Telephone: 770-488-2700.

For technical questions about this program, contact: Jonathan Mermin, Global AIDS Program (GAP), Uganda Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention, PO Box 49, Entebbe, Uganda. Telephone: +256-410320776. E-mail: [jhm7@cdc.gov](mailto:jhm7@cdc.gov).

Dated: July 1, 2003.

**Sandra R. Manning,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 03-17161 Filed 7-7-03; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement 03159]

#### Cooperative Agreement To Strengthen, Monitor, and Evaluate Communicable Disease Surveillance and Response in Africa; Notice of Intent To Fund Single Eligibility Award

##### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent

to fund fiscal year (FY) 2003 funds for a cooperative agreement to improve country-level capacity for prompt detection and response to priority communicable diseases in the priority countries of Mozambique, Ethiopia, Burkina Faso, and Mali. The Catalog of Federal Domestic Assistance number for this program is 93.283.

### B. Eligible Applicant

Assistance will be provided only to Communicable Disease Surveillance and Response, African Regional Office of the World Health Organization (CSR, WHO-AFRO). No other applications are solicited.

CSR, WHO-AFRO is the most appropriate and qualified organization to conduct the activities specified under this cooperative agreement because it is the sole organization with legal authority to provide guidance, monitoring and evaluation on IDSR to the member states in the African region and with the internal administrative capacity to provide funds to the WHO country offices and ministries of health for country-level activities.

### C. Funding

Approximately \$240,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 1, 2003, and will be made for a 12-month budget period within a project period of one year. Funding estimates may change.

### D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact:

Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146. Telephone: 770-488-2700.

For technical questions about this program, contact: Ms. Helen Perry or Dr. Montse Soriano-Gabarro, Meningitis and Special Pathogens Branch, Division of Bacterial and Mycotic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, GA 30333. Telephone number (404) 639-0706 or (404) 639-4062; email address [hap5@cdc.gov](mailto:hap5@cdc.gov) or [zzd7@cdc.gov](mailto:zzd7@cdc.gov).

Dated: July 1, 2003.

#### Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03-17160 Filed 7-7-03; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement 03061]

#### Expansion of Reference Laboratory Infrastructure To Support HIV/AIDS/STD/TB Control Activities in the Republic of Zambia; Notice of Availability of Funds

*Application Deadline:* August 7, 2003.

#### A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, (42 U.S.C. 2421), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

#### B. Purpose

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program with the national reference laboratories that support HIV, Sexually Transmitted Infections (STIs) and Tuberculosis (TB) surveillance and control activities in Zambia.

The purpose of this program is to build Zambia's national reference laboratory capacity to effectively monitor and control HIV/AIDS and Sexually Transmitted Diseases (STDs), as well as TB, the most common opportunistic infection associated with HIV in Zambia. Funds in this agreement may be used to support surveillance of these diseases and enhancements in information technology and capacity to analyze and disseminate reference laboratory findings. Collaborative activities between CDC and reference laboratories are intended to profoundly improve the effectiveness of HIV/AIDS, STD and TB program activities in Zambia.

The United States Government (USG) seeks to reduce the impact of HIV/AIDS in specific countries in sub-Saharan Africa, Asia and the Americas through its Leadership and Investment in Fighting an Epidemic (LIFE) initiative. To carry out this initiative, the Department of Health and Human Services (HHS) has organized its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of (1) HIV prevention; (2) HIV care, support and treatment; and (3) capacity and infrastructure development, especially for HIV/AIDS surveillance activities.

Targeted countries represent those with the most severe epidemics and the

highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. Government agencies are already active. Zambia is one of these targeted countries.

Through CDC, HHS is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemics in LIFE Initiative countries. In particular, CDC's mission in Zambia is to improve surveillance for HIV, TB and STIs and to strengthen and make more effective programs for preventing and treating these diseases.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for HIV/STD/TB Prevention: Strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs, and improve HIV/AIDS information management and decision making by developing well coordinated databases by 2005.

#### C. Eligible Applicants

Applications may be submitted by research institutions, hospitals, and government reference laboratories in Zambia. Applicants must be actively involved in surveillance of HIV, STIs or TB on a national or regional level. CDC has been working closely with the Government of the Republic of Zambia (GRZ) to build its national laboratory system. Because the intent of this agreement is to support national public health laboratory infrastructure, applicants must have a mandate from the GRZ to provide reference laboratory services within the system.

#### D. Funding

##### *Availability of Funds*

Approximately \$300,000 is available in FY 2003 to fund approximately three awards. It is expected that the average award will be \$100,000, ranging from \$90,000 to \$110,000. It is expected that the awards will begin on or about September 15, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

##### *Use of Funds*

Funds may not be used for:

1. Funds received from this announcement will not be used for the

purchase of antiretroviral drugs for treatment of established HIV infection (with the exception AZT and nevirapine in Prevention of Mother to Child Transmission (PMTCT) cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

2. No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Funds may be used for:

1. Funds may be spent for reasonable program purposes, including personnel, travel, supplies and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by CDC officials must be requested in writing.

2. The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: with the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

3. The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required.)

All requests for funds contained in the budget, shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

You must obtain annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

#### *Recipient Financial Participation*

Matching funds are not required for this program.

### **E. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for activities listed in 2. CDC Activities.

#### *1. Recipient Activities*

a. The applicant will plan and implement activities to build information technology capacity that supports reference laboratory work. This may include a local area network (LAN) and Internet access that will be used to disseminate information and communicate with public health officials within and outside of Zambia. This may also include training in the analysis and handling of laboratory data.

b. The applicant will plan and implement laboratory-based activities to monitor the impact or assist in controlling HIV, STDs or TB in Zambia. This may include disease or drug-resistance surveillance, infrastructure building and training.

#### *2. CDC Activities*

a. CDC will provide technical assistance in designing and building local area networks, setup of databases and other information technology projects.

b. CDC will provide specifications for computer equipment and assist in the procurement process in order to achieve project goals.

c. CDC will assist in developing and implementing data and information dissemination plans for HIV, AIDS, TB, and STI data and results.

d. CDC provide technical assistance including support from Atlanta-based staff for planning and implementing laboratory activities, particularly in the areas of disease surveillance and laboratory quality assurance from reference labs to peripheral labs.

e. CDC will also assist in developing specifications for laboratory equipment and supplies as needed to achieve project objectives.

### **F. Content**

#### *Applications*

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 pages, double-spaced, printed

on one side, with one-inch margins, and unrounded 12-point font.

The narrative should consist of background information about the laboratory and its place in the national laboratory structure, objectives for the agreement and a description of how they will be accomplished, background on the staff members who will work with CDC to implement the project, and a description of prior and proposed collaboration with the Zambia CDC office. A detailed budget justification is required.

### **G. Submission and Deadline**

#### *Application Forms*

Submit the signed original and two copies of your proposal and PHS 5161-1 (OMB Number 0920-0428). Forms are available at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) at 770-488-2700. Application forms can be mailed to you. Forms are also available in the application kit, available from the CDC Zambia Office, American Embassy, Lusaka, tel. +260-1-250955.

#### *Submission Date, Time, and Address*

The application must be received by 4 p.m. eastern time August 7, 2003. Submit the application to: Technical Information Management-PA 03061, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146, USA.

Applications may be e-mailed to [pgotim@cdc.gov](mailto:pgotim@cdc.gov). If you e-mail your application, you must also mail a hard copy of the application to the address listed above, for documentation purposes.

#### *CDC Acknowledgement of Application Receipt*

A postcard will be mailed by PGO-TIM, notifying you that CDC has received your application.

#### *Deadline*

Applications shall be considered as meeting the deadline if they are received before 4:00 p.m. eastern time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due

to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters. CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

## H. Evaluation Criteria

### Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Importance of the Laboratory in Zambia's Public Health Laboratory Network (40 points)

The extent to which the applicant's proposal demonstrates the key role of the laboratory for HIV, STD or TB control programs and disease surveillance in Zambia.

2. Ability To Jointly Work with CDC on the Project (20 points)

The extent to which the applicant documents their ability to work with CDC to jointly develop laboratory capacity in the areas of HIV, STIs or TB.

3. Personnel (20 points)

The extent to which professional personnel involved in this project are qualified to develop and implement laboratory projects in the areas of HIV, STIs or TB.

4. Administration (20 points)

The adequacy of the plans to account for, prepare reports, monitor, and audit expenditures under this agreement.

5. Budget (Reviewed, but not scored)

The extent to which the itemized budget for conducting the project is itemized and justified.

Does the application adequately address the requirements of title 45 CFR part 46 for the protection of human

subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Does the application adequately address the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

1. The proposed plan for the inclusion of both sexes and racial ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

## I. Other Requirements

### Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

### Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement.

AR-1 Human Subjects Requirements  
AR-4 HIV/AIDS Confidentiality Provisions  
AR-12 Lobbying Restrictions  
AR-14 Accounting System Requirements

Executive Order 12372 does not apply to this program.

## J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address <http://www.cdc.gov>.

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146.

Telephone: 770-488-2700.

For business management and budget assistance, contact: Shirley Wynn, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341-4146. Telephone: 770-488-1515. E-mail: [zbx6@cdc.gov](mailto:zbx6@cdc.gov).

For program technical assistance, contact: David B. Nelson, Chief of Party, Global AIDS Program, Zambia, American Embassy, Corner of Independence and United Nations Avenues, Lusaka, Zambia. Telephone: +260-1-250955. E-mail: [nelsond@zamcdc.org.zm](mailto:nelsond@zamcdc.org.zm).

Dated: July 1, 2003.

**Sandra R. Manning,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 03-17156 Filed 7-7-03; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement 03060]

### Support for Government Monitoring and Evaluation Infrastructure for HIV/AIDS/STD/TB Control Activities in the Republic of Zambia; Notice of Availability of Funds

Application Deadline: August 7, 2003.

#### A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, (42 U.S.C. section 2421), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

#### B. Purpose

The Centers for Disease Control and Prevention (CDC), announces the

availability of fiscal year (FY) 2003 funds for a cooperative agreement with Government of the Republic of Zambia (GRZ) for programs that support HIV, Sexually Transmitted Disease (STD) and Tuberculosis (TB) prevention and control activities in Zambia.

The purpose of this program is to build monitoring and evaluation (M&E) capacity to effectively monitor and analyze program activities in the areas of HIV/AIDS and STDs, as well as TB, the most common opportunistic infection associated with HIV in Zambia. Funds in this agreement will be used to support collection and analysis of information on these diseases and enhancements in information technology and capacity to analyze and disseminate findings. Collaborative activities between CDC and reference laboratories are intended to profoundly improve the effectiveness of HIV/AIDS, STD and TB program activities in Zambia.

The United States Government (USG) seeks to reduce the impact of HIV/AIDS in specific countries in sub-Saharan Africa, Asia and the Americas through its Leadership and Investment in Fighting an Epidemic (LIFE) initiative. To carry out this initiative, the Department of Health and Human Services (HHS) has organized its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of (1) HIV prevention; (2) HIV care, support and treatment; and (3) capacity and infrastructure development, especially for HIV/AIDS surveillance activities.

Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. Government agencies are already active. Zambia is one of these targeted countries.

Through CDC, HHS is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemics in LIFE Initiative countries. In particular, CDC's mission in Zambia is to improve surveillance for HIV, TB and STIs and to strengthen and make more effective programs for preventing and treating these diseases.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for HIV/AIDS/STD/TB Prevention: Strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs, and improve HIV/

AIDS information management and decision making by developing well coordinated databases by 2005.

#### **C. Eligible Applicants**

Applications may be submitted by agencies of the GRZ that implement or coordinate programs designed to control HIV, STDs and TB. Programs should have national impact. Applicants must have a mandate from the Government of the Republic of Zambia (GRZ) to provide these services.

#### **D. Funding**

##### *Availability of Funds*

Approximately \$200,000 is available in 2003 to fund approximately two awards. It is expected that the average award will be \$100,000, ranging from \$90,000 to \$110,000. It is expected that the awards will begin on or about September 1, 2003 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

##### *Use of Funds*

##### *Funds May Not Be Used For:*

1. Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception of AZT and nevirapine in Prevention of Mother to Child Transmission (PMTCT) cases and with prior written approval), occupational exposures, and non-occupational exposures.

2. Funds will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

3. No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

##### *Funds May Be Used For:*

1. Funds may be spent for reasonable program purposes, including personnel, travel, supplies and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by CDC officials must be requested in writing.

2. The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the

American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

3. The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required.)

All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

You must obtain annual audit of these CDC funds (program-specific audit) by a U.S.—based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

##### *Recipient Financial Participation*

Matching funds are not required for this program.

#### **E. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for activities listed in 2. CDC Activities.

##### 1. Recipient Activities

a. The applicant will plan and implement activities to build information technology capacity that supports M&E work. This may include a local area network and Internet access that will be used to disseminate information and communicate with public health officials within and outside of Zambia. This may also include training in the analysis and handling of data.

b. The applicant will plan and implement activities to monitor the impact or assist in controlling HIV, STDs or TB in Zambia. This may include collecting and evaluating data on HIV, STIs and TB, and infrastructure building and training in the area of M&E.

## 2. CDC Activities

a. CDC will provide technical assistance in designing and building local area networks, setup of databases and other information technology projects. CDC will also provide guidance in selecting computer equipment to assist in achieving project goals, subject to agreement by CDC and the recipient.

b. CDC will assist in developing and implementing data and information dissemination plans for HIV, AIDS, TB, and STD data and results.

c. CDC will provide technical assistance including support from Atlanta-based staff for planning and implementing M&E activities. Activities may include identifying appropriate indicators to track progress in HIV, TB, and STD prevention and care, and in developing appropriate ways to collect and analyze the data needed to produce these indicators.

## F. Content

### Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 pages, double-spaced, printed on one side, with one-inch margins, and un-reduced 12-point font.

The narrative should consist of background information about the institution and its place in the national public health structure; objectives for the agreement and a description of how they will be accomplished; background on the staff members who will work with CDC to implement the project; and a description of prior and proposed collaboration with the Zambia CDC office. The narrative should also contain a program plan that addresses activities to be conducted over the entire five-year project period. A detailed budget justification is required.

## G. Submission and Deadline

### Application Forms

Submit the signed original and two copies of your proposal and PHS 5161-1 (OMB Number 0920-0428). Forms are available in the application kit, available from the CDC Zambia Office, American Embassy, Lusaka, tel. +260-1-250955, and at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) at 770-488-2700. Application forms can be mailed to you.

### Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time August 7, 2003. Submit the application to: Technical Information Management-PA 03060, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146, USA.

Applications may be e-mailed to [pgotim@cdc.gov](mailto:pgotim@cdc.gov).

If you e-mail your application, you must also mail a hard copy of the application to the address listed above, for documentation purposes.

PGO-TIM will acknowledge receipt of applications by sending a postcard to all applicants.

### Deadline

Applications shall be considered as meeting the deadline if they are received by 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

## H. Evaluation Criteria

### Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Importance of the Institution in Zambia's Public Health System (40 Points)

The extent to which the applicant's proposal demonstrates the key role of the institution for HIV, STD or TB control programs in Zambia.

2. Ability to Jointly work with CDC on the Project (20 Points)

The extent to which the applicant documents ability to work with CDC to jointly develop M&E capacity in the areas of HIV, STIs or TB.

3. Personnel (20 Points)

The extent to which professional personnel involved in this project are qualified to develop and implement M&E projects in the areas of HIV, STIs or TB.

4. Administration (20 Points)

The adequacy of the plans to account for, prepare reports, monitor, and audit expenditures under this agreement.

5. Budget (Not Rated, but Evaluated)

The extent to which the itemized budget for conducting the project is itemized and justified.

6. Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Does the application adequately address the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

## I. Other Requirements

### Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the

budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

- a. Current Budget Period Activities Objectives.
  - b. Current Budget Period Financial Progress.
  - c. New Budget Period Program Proposed Activity Objectives.
  - d. Detailed Line-Item Budget and Justification.
  - e. Additional Requested Information.
2. Financial status report, no more than 90 days after the end of the budget period.
  3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

#### *Additional Requirements*

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site.

- AR-1 Human Subjects Requirements.
- AR-4 HIV/AIDS Confidentiality Provisions.
- AR-12 Lobbying Restrictions.
- AR-14 Accounting System Requirements.

Executive Order 12372 does not apply to this program.

#### **J. Where To Obtain Additional Information**

This and other CDC announcements can be found on the CDC Web site, Internet address: <http://www.cdc.gov>. Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146, Telephone: (770) 488-2700.

For business management and budget assistance, contact: Diane Flournoy, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341-4146, Telephone: (770) 488-2072, E-mail: [dmf6@cdc.gov](mailto:dmf6@cdc.gov).

For program technical assistance, contact: David B. Nelson, Chief of Party, Global AIDS Program, Zambia, American Embassy, Corner of Independence and United Nations Avenues, Lusaka, Zambia, Telephone:

+260-1-250955, E-mail: [nelsond@zamcdc.org.zm](mailto:nelsond@zamcdc.org.zm).

Dated: July 1, 2003.

**Sandra R. Manning,**

*Director, Procurement and Grants Office,  
Centers for Disease Control and Prevention.*

[FR Doc. 03-17170 Filed 7-7-03; 8:45 am]

**BILLING CODE 4163-18-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Disease Control and Prevention**

**[Program Announcement 03044]**

#### **Enhancement of an Integrated HIV Program for Voluntary Counseling and Testing, Clinical and Home-Based Care in Malawi; Notice of Availability of Funds**

*Application Deadline:* August 7, 2003.

##### **A. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under section 307 of the Public Health Service Act, (42 U.S.C. 242l), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

##### **B. Purpose**

The Centers for Disease Control and Prevention (CDC) announce the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for the enhancement of an integrated HIV voluntary counseling and testing (VCT), clinical and home-based care program in Malawi.

The purpose of this program is to provide assistance to a Malawi-based public or private non-profit organization in the provision of an integrated HIV program that includes VCT, clinical care, and home-based care in the country of Malawi. This program will also assist in the development of plans and strategies for replicating a successful service model to extend these service capabilities to other private and public sector sites and providers.

The HIV epidemic in Malawi has matured to the point that both illness and mortality are at very high levels. Malawi has recently succeeded in garnering initial approval for a large Global Fund award to address the HIV epidemic. Three critical elements included in the Global Fund award are: (1) VCT; (2) clinical care and treatment for HIV and opportunistic infections; and (3) home-based care for HIV-infected individuals. Thoughtful, integrated, and innovative programs to address this triad of services are urgently needed to effectively address

implementation of Global Fund activities. Extension of successful integrated programs through training and replication of successful models is a critical step in increasing availability and accessibility to these HIV services for those in need.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for HIV, STD and TB Prevention: Working with other countries, USAID, international, and U.S. Government agencies, reduce the number of new HIV infections among 15 to 24 year olds in sub-Saharan Africa from an estimated two million by 2005.

##### **C. Eligible Applicants**

Applications may be submitted by public and private non-profit organizations and by governments and their agencies with a current capacity for providing three integrated services: (1) VCT; (2) ambulatory facility-based HIV clinical care and anti-retroviral (ARV) treatment; and (3) home-based care in the country of Malawi. Organizations based outside Malawi, including organizations whose headquarters are based outside Malawi, are not eligible to apply.

##### **D. Funding**

###### *Availability of Funds*

Approximately \$175,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about September 15, 2003 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

##### **Use of Funds**

Funds may be utilized only for activities associated with HIV/AIDS. CDC funds may be used for direct costs such as salaries; necessary travel; operating costs, including supplies, fuel, utilities, etc.; and staff training costs, including registration fees and purchase and rental of training related equipment.

##### **Antiretroviral Drugs**

The purchase of antiretroviral drugs, reagents, and laboratory equipment for antiretroviral treatment projects requires pre-approval from the Global AIDS Program headquarters.

##### **Needle Exchange**

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or

syringes for the hypodermic use of any illegal drug.

Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by CDC officials must be requested in writing.

All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

You must obtain an annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

#### *Recipient Financial Participation*

Matching funds are not required for this program.

#### *Funding Preferences*

Preference will be given to applicants who can demonstrate, (1) the capacity to work with in-patient facilities within an established patient referral relationship, and (2) a well-organized program for training its own staff, with a capability of extending this training to other sites by assisting and mentoring these sites to develop and extend the integrated services model.

### **E. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

#### 1. Recipient Activities

a. In collaboration with CDC, the applicant will develop plans for strengthening existing institutional capacity to enable the expansion of the organization's services, and the provision of technical assistance including training to extend services nationwide through replication of a successful model.

b. The applicant will provide necessary staff and training time for replicating the integrated HIV services model and extending it to additional sites.

c. In collaboration with CDC, develop and conduct training programs for staff and other health care providers for extending the integrated HIV testing and care model to other sites and providers.

d. Develop and implement a computerized client record system with the goal of maximizing compatibility with established client record systems in collaborating facilities, and improve coordination of patient care.

e. Provide safe water system education and support and cotrimoxazole prophylaxis to HIV-positive clients in clinical and home-based care settings, as indicated, to reduce the occurrence of opportunistic infections.

f. In collaboration with CDC, the applicant will hire or assign information management staff with the necessary technical skills and experience to implement and manage the computerization of client record data.

#### 2. CDC Activities

a. Collaborate with the grantee on designing and implementing the activities listed above, including, but not limited to the provision of technical assistance to develop program activities, laboratory services, data management and analysis, quality assurance, presentation of program results and findings, and management and tracking of finances. CDC will accomplish these activities using its own Malawi-based technical staff or by bringing in consultants from CDC or other organizations to accomplish the technical assistance activities.

b. Assist in training and capacity building to ensure successful implementation of program and activities. CDC will assist the recipient

in enhancing its laboratory services and in conducting quality assurance of its HIV testing according to national standards being set by the Malawi National Public Health Reference Laboratory.

c. CDC will assist the recipient organization in conducting assessments of the quality of the services provided and maintaining high quality services in VCT, clinical care, and home-based care. These might include laboratory, monitoring and evaluation, counseling, and site management issues including the maintenance of client confidentiality.

d. Assist the recipient in developing and implementing improved computerized client record data collection and improved data management systems. CDC/GAP/Malawi's information technology specialist and epidemiologist will assist in identifying an appropriate staff member for the organization and in providing technical assistance to computerize and manage clinical and VCT data collected by the organization. CDC will assist the organization in using the data to inform program improvements.

e. Assist the successful recipient in hiring a data management staff person to work with CDC in developing and implementing the system and to manage it long-term.

### **E. Content**

#### *Applications*

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 40 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget. The project plan should include activities to be conducted throughout the three-year project period.

### **G. Submission and Deadline**

#### *Application Forms*

Submit the signed original and two copies of PHS 5161-1 (OMB Number 0920-0428). Forms are available at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>.

If you do not have access to the Internet, or if you have difficulty

accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) at (770)488-2700. Application forms can be mailed to you.

#### *Submission Date, Time and Address*

The application must be received by 4 p.m. Eastern Time August 7, 2003. Submit the application to: Technical Information Management-PA 03044, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146.

Applications may not be submitted electronically.

#### *CDC Acknowledgement of Application Receipt*

A postcard will be mailed by PGO-TIM, notifying you that CDC has received your application.

#### *Deadline*

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

#### **H. Evaluation Criteria**

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals, stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Ability to Carry Out the Project (40 points). The extent to which the

applicant understands and describes activities which are realistic, achievable, time-framed and appropriate to effectively plan, coordinate, and complete these activities. Applicant must show how and at what intervals the effectiveness and productivity of this program activity will be monitored and evaluated. Applicant should include a description of applicant organizational structure and use it to explain how the work will be carried out.

2. Technical and Programmatic Approach (20 points). The extent to which the applicant's proposal demonstrates understanding of the technical and organizational aspects of conducting all included HIV testing and care activities and computerization of client record data.

3. Personnel (20 points). The adequacy of personnel, including training, availability, and experience, in order to carry out the technical and organizational aspects of all proposed activities.

4. Administrative and Accounting Management Plan (20 points). (a) The adequacy of the plans to account for, prepare reports, monitor, and audit expenditures under this agreement; (b) The extent to which the application demonstrates ability to administer and manage the budget; (c) The extent to which the budget is itemized and well justified; (d) Demonstration of plans to engage an outside accounting firm to design and manage the financial system to meet CDC and the recipient's accounting requirements.

5. Budget (Not rated, but evaluated). The extent to which the budget is detailed, clear, justified, provides direct support, and is consistent with the proposed program activities.

6. Protection of Human Subjects (Not rated, but evaluated). Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

#### **I. Other Requirements**

##### *Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

#### *Additional Requirements:*

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site.

AR-4 HIV/AIDS Confidentiality Provisions.

AR-6 Patient Care.

AR-8 Public Health System Reporting Requirements.

AR-9 Paperwork Reduction Act Requirements.

AR-12 Lobbying Restrictions.

AR-14 Accounting System Requirements.

Executive Order 12372 does not apply to this program.

#### **J. Where To Obtain Additional Information**

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: <http://www.cdc.gov> Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146, Telephone: 770-488-2700.

For business management and budget assistance, contact: Cynthia Montgomery, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341-4146, Telephone: 770-488-2757

For program technical assistance, contact: Margaret Davis, MD, MPH, Kang'ombe Building 8 West, Lilongwe, Malawi, Telephone Number: 265-1-775-188, Fax Number: 265-1-775-848, E-mail address: [DavisM@malcdc.co.mw](mailto:DavisM@malcdc.co.mw). Mailing Address: c/o U.S. Embassy, PO Box 30016, Lilongwe 3, Malawi.

Dated: July 1, 2003.

**Edward Schultz,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 03-17173 Filed 7-7-03; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement 03112]

#### Enhancement of Antenatal Care Services and Blood Safety for Preventing Transmission of HIV, Syphilis, and Malaria in the Republic of Tanzania; Notice of Intent To Fund Single Eligibility Award

##### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program in the Republic of Tanzania for (1) the enhancement of antenatal care (ANC) services with emphasis on prevention of mother to child transmission (PMTCT) of HIV; and (2) the enhancement of blood safety with emphasis on preventing transmission of HIV, syphilis, and malaria. The Catalog of Federal Domestic Assistance number for this program is 93.941.

##### B. Eligible Applicants

Assistance will be provided only to the Department of Diagnostic Services (DDS) of the Ministry of Health (MOH) in Tanzania. No other applications are solicited.

The DDS is currently the only appropriate and qualified organization to conduct a specific set of activities supportive of the CDC Global AIDS Program's (GAP) goals for enhancing ANC services and blood safety in Tanzania for the following reasons:

1. The DDS is uniquely positioned, in terms of legal authority, ability, and credibility among Tanzanian citizens, to coordinate the implementation of national initiatives for PMTCT and blood safety.
2. The DDS has developed national PMTCT and blood safety guidelines, and strategic plans for enhancing PMTCT services and blood safety in Tanzania, which allows the DDS to immediately become engaged in the activities listed in this announcement.
3. The purpose of the announcement is to build upon the existing framework of health policy and programming that the MOH itself has initiated.
4. The MOH in Tanzania has been mandated by the Tanzanian constitution to coordinate and implement activities

necessary for the control of epidemics, including HIV/AIDS and STDs.

##### C. Funding

Approximately \$1,000,000 is available in FY 2003 to fund this award; \$500,000 for enhancing ANC services, and \$500,000 for blood safety. It is expected that the award will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to five years. Approximately \$1,000,000 will be available for years two through five of the project. Funding estimates may change.

##### D. Where To Obtain Additional Information

For general questions or comments about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146, Telephone: 770-488-2700.

For program technical assistance, contact: Eddas M. Bennett, Deputy Director, CDC Tanzania AIDS Program, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 686 Old Bagamoyo Road, Dar es Salaam, Tanzania, Telephone: 255 222 667 8001 x4819, e-mail: [ebennett@tanccdc.co.tz](mailto:ebennett@tanccdc.co.tz).

Dated: June 1, 2003.

**Sandra Manning,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 03-17174 Filed 7-7-03; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Collection of Specimen Panels for Validation for Incidence Assays, Contract Solicitation Number 2003-N-00872

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Collection of Specimen Panels for Validation for Incidence Assays, Contract Solicitation Number 2003-N-00872.

*Times and Dates:* 7 p.m.-8 p.m., July 24, 2003 (Open); 8 a.m.-8:30 a.m., July 25, 2003 (Open); 8:30 a.m.-5 p.m., July 25, 2003 (Closed).

*Place:* The Westin Atlanta North at Perimeter Center, 7 Concourse Parkway, Atlanta, GA 30328, Telephone 770.395.3900.

*Status:* Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

*Matters To Be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to Contract Solicitation Number 2003-N-00872.

*For Further Information Contact:* Esther Sumartojo, Ph.D., Deputy Associate Director for Science, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road, NE., MS-E07, Atlanta, GA 30333, Telephone 404.639.8006.

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 CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 27, 2003.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 03-17172 Filed 7-7-03; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 03N-0191]

#### Agency Emergency Processing Under OMB Review; Submission of Validation Data for Reprocessed Single-Use Devices

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information will be used by FDA to determine whether reprocessed single-use devices (SUDs) are substantially equivalent to legally marketed predicate devices. FDA is requesting this emergency processing under the PRA to implement the statutory provision under section 302 of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA).

**DATES:** Submit comments on the collection of information by August 7,

2003. FDA is requesting approval of this emergency processing by August 22, 2003.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to [sshapiro@omb.eop.gov](mailto:sshapiro@omb.eop.gov) or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX: 202-395-6974. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

**SUPPLEMENTARY INFORMATION:** FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). This information is needed immediately so that the agency can provide guidance to implement the statutory provision under section 302 of MDUFMA requiring manufacturers to submit validation data for certain reprocessed SUDs. Under section 302 of MDUFMA, FDA was required to publish a list of reprocessed SUDs currently subject to premarket notification requirements for which validation data are necessary, as well as a list of reprocessed SUDs for which an existing exemption from premarket notification requirements will no longer apply. Manufacturers of reprocessed SUDs included in these lists are required by MDUFMA to submit validation data (through the appropriate mechanism) within timeframes specified in the statute.

MDUFMA was signed into law on October 26, 2002. The use of normal clearance procedures would likely result in the prevention or disruption of this collection of information. Therefore, FDA has requested approval

of this emergency processing of this proposed collection of information by (see **DATES**).

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### Submission of Validation Data for Reprocessed Single Use Devices

Section 302(b) of MDUFMA adds new requirements for reprocessed SUDs to section 510 of the Food Drug and Cosmetic Act (the act) (21 U.S.C. 360). One of MDUFMA's provisions requires the submission of validation data specified in the statute for certain reprocessed SUDs (as identified by FDA). The types of validation data include cleaning and sterilization data and functional performance data.

MDUFMA requires that FDA review the types of reprocessed SUDs now subject to premarket notification requirements and identify which of these devices require the submission of validation data to ensure their substantial equivalence to predicate devices. MDUFMA also requires that FDA review critical and semi-critical reprocessed SUDs that are currently exempt from premarket notification requirements and determine which of these devices require the submission of 510(k)s to ensure their substantial equivalence to predicate devices. Under MDUFMA, the validation data submitted for a reprocessed SUD must demonstrate that the device will remain substantially equivalent to its predicate after the maximum number of times the device is reprocessed as intended by the

person submitting the premarket notification.

On April 30, 2003 (68 FR 23139), as required by MDUFMA, FDA published two lists in the **Federal Register**: (1) A list of critical reprocessed SUDs whose exemption from 510(k) requirements will be terminated; and (2) a list of reprocessed SUDs that are currently subject to 510(k) requirements for which validation data must be submitted. FDA will update these lists as necessary.

The validation data required by MDUFMA must be submitted according to the following timetable:

- After publication of the lists manufacturers submitting new 510(k)s for listed devices must include validation data.
- Within 9 months after publication of the list (by January 30, 2004), manufacturers of listed devices with 510(k)s pending for these devices at the time the lists were published should either supplement these 510(k)s with validation data or resubmit them with validation data after clearance.
- Manufacturers of listed devices with 510(k)s for these devices cleared by FDA before publication of the lists must submit validation data for these devices within 9 months after publication of the lists (by January 30, 2004).
- Manufacturers of listed devices that were previously exempt from 510(k) submission requirements must submit validation data for these devices in 510(k) submissions within 15 months after publication of the lists (July 30, 2004).

• By April 26, 2004, FDA must publish a list of semi-critical reprocessed SUDs that will require the submission of validation data in 510(k) submissions. The publication of this list will trigger submission timeframes the same as those in the previous paragraphs.

Respondents to the proposed collection of information will likely be businesses or other for-profit organizations.

FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Item	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Submission of validation data (2003)	20	5	100	40	4,000
Submission of validation data (2004)	20	20	400	40	16,000
Submission of validation data (2005)	20	10	200	40	8,000

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>—Continued

Item	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Total Hours					28,000

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on submissions received to date and registration and listing records for the affected devices, FDA estimates that there are 20 reproducers of SUDs that will need to submit validation data. In calendar year 2003, FDA estimates that there will be 5 new 510(k)s for reprocessed SUDs. Based on its experience with reviewing 510(k)s and discussions with reproducers, FDA estimates that it will take 40 hours per 510(k) to develop and submit the validation data. This results in a total burden of 4,000 for 2003. (In this estimate, FDA is only taking into account the burden related to validation data. The other collections of information related to the submission of information in a 510(k) have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910-0120).

In 2004, reproducers with previously exempt and cleared devices will need to submit their validation data by January 30, 2004, and July 30, 2004. For 2004, FDA estimates that the 20 manufacturers will submit an average of 20 510(k)s each for a total burden of 16,000 hours.

In 2005, FDA estimates that the 20 manufacturers will submit 10 new 510(k)s each. This will result in a total burden of 8,000.

Dated: July 1, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03-17136 Filed 7-7-03; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2003N-0285]

#### Summaries of Medical and Clinical Pharmacology Reviews of Pediatric Studies; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of summaries of the medical

and clinical pharmacology reviews of pediatric studies submitted in supplements for Hycamtin (topotecan), Pulmicort (budesonide), Temodar (temozolomide), Effexor (venlafaxine), Ditropan (oxybutynin), Flonase (fluticasone), Allegra (fexofenadine), Duragesic (fentanyl), and Monopril (fosinopril). The summaries are being made available consistent with the Best Pharmaceuticals for Children Act (BPCA). For all pediatric supplements submitted under the BPCA, the BPCA requires FDA to make available to the public a summary of the medical and clinical pharmacology reviews of the pediatric studies conducted for the supplement.

**ADDRESSES:** The summaries are available for public examination between 9 a.m. and 4 p.m., Monday through Friday, in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the summaries to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Please specify by product name which summary or summaries you are requesting. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries.

**FOR FURTHER INFORMATION CONTACT:** Terrie L. Crescenzi, Center for Drug Evaluation and Research (HFD-950), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-7337, CrescenziT@cder.fda.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

FDA is announcing the availability of summaries of the medical and clinical pharmacology reviews of pediatric studies conducted for Hycamtin (topotecan), Pulmicort (budesonide), Temodar (temozolomide), Effexor (venlafaxine), Ditropan (oxybutynin), Flonase (fluticasone), Allegra (fexofenadine), Duragesic (fentanyl), and Monopril (fosinopril). The summaries are being made available consistent with

section 9 of the BPCA (Public Law 107-109). Enacted on January 4, 2002, the BPCA reauthorizes, with certain important changes, the pediatric exclusivity program described in section 505A of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355a). Section 505A of the act permits certain applications to obtain 6 months of marketing exclusivity if, in accordance with the requirements of the statute, the sponsor submits requested information relating to the use of the drug in the pediatric population.

One of the provisions the BPCA added to the pediatric exclusivity program pertains to the dissemination of pediatric information. Specifically, for all pediatric supplements submitted under the BPCA, the BPCA requires FDA to make available to the public a summary of the medical and clinical pharmacology reviews of pediatric studies conducted for the supplement (21 U.S.C. 355a(m)(1)). The summaries are to be made available not later than 180 days after the report on the pediatric study is submitted to FDA (21 U.S.C. 355a(m)(1)). Consistent with this provision of the BPCA, FDA has posted on the Internet (<http://www.fda.gov/cder/pediatric/index.htm>) summaries of the medical and clinical pharmacology reviews of the pediatric studies submitted in supplements for Hycamtin (topotecan), Pulmicort (budesonide), Temodar (temozolomide), Effexor (venlafaxine), Ditropan (oxybutynin), Flonase (fluticasone), Allegra (fexofenadine), Duragesic (fentanyl), and Monopril (fosinopril). Copies are also available for public examination in the Division of Dockets Management or may be requested by mail (see **ADDRESSES**).

##### II. Electronic Access

Persons with access to the Internet may obtain the documents at <http://www.fda.gov/cder/pediatric/index.htm>.

Dated: June 27, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03-17134 Filed 7-7-03; 8:45 am]

BILLING CODE 4160-01-S

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 2003D-0232]

**Guidance for Industry and FDA Staff; Medical Device User Fee and Modernization Act of 2002, Validation Data in Premarket Notification Submissions [510(k)s] for Reprocessed Single-Use Medical Devices; Availability**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Guidance for Industry and FDA Staff; Medical Device User Fee and Modernization Act of 2002, Validation Data in Premarket Notification Submissions [510(k)s] for Reprocessed Single-Use Medical Devices" (validation data guidance). The Medical Device User Fee and Modernization Act of 2002 (MDUFMA), added a section to the act to establish new regulatory requirements for reprocessed single-use devices (SUDs). MDUFMA was signed into law on October 26, 2002. One requirement of the new provision is the submission of validation data for certain class I and II reprocessed SUDs. This guidance document is intended to assist manufacturers of reprocessed SUDs in understanding and complying with this new MDUFMA requirement. The new section of MDUFMA establishes requirements applicable only to reprocessed SUDs.

**DATES:** Submit written or electronic comments on this guidance at any time.

**ADDRESSES:** Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "Guidance for Industry and FDA Staff; Medical Device User Fee and Modernization Act of 2002, Validation Data in Premarket Notification Submissions [510(k)s] for Reprocessed Single-Use Medical Devices" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ-220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818.

Submit written comments concerning the guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm.

1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. Identify comments with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

**FOR FURTHER INFORMATION CONTACT:** Timothy A. Ulatowski, Center for Devices and Radiological Health (HFZ-300), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301-594-4692.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 302(b) of MDUFMA adds new requirements for reprocessed SUDs to section 510 of the act (21 U.S.C. 360). One of MDUFMA's provisions requires the submission of validation data specified in the statute for certain reprocessed SUDs (as identified by FDA). The types of validation data include cleaning and sterilization data, and functional performance data.

MDUFMA requires that FDA review the types of reprocessed SUDs now subject to premarket notification requirements and identify which of these devices require the submission of validation data to ensure their substantial equivalence to predicate devices. MDUFMA also requires that FDA review critical and semicritical reprocessed SUDs that are currently exempt from premarket notification requirements and determine which of these devices requires the submission of 510(k)s to ensure their substantial equivalence to predicate devices. Under MDUFMA, the validation data submitted for a reprocessed SUD must demonstrate that the device will remain substantially equivalent to its predicate after the maximum number of times the device is reprocessed as intended by the person submitting the premarket notification.

MDUFMA required that FDA publish two lists in the **Federal Register** by April 26, 2003, concerning the following: (1) A list of critical reprocessed SUDs whose exemption from 510(k) requirements will be terminated, and (2) a list of reprocessed SUDs that are currently subject to 510(k) requirements for which validation data must be submitted. FDA will update these lists as necessary. MDUFMA specifies timeframes during which the validation data must be submitted for reprocessed SUDs on these lists. This guidance document describes the types of validation data that FDA recommends these submissions include.

Additionally, the guidance explains the effect of the validation data requirement on reprocessed SUDs that had been cleared, or had applications pending, before the publication of the lists.

FDA is implementing this level 1 guidance document upon issuance because it is essential for the agency to provide immediate guidance on the validation data required by MDUFMA. Under MDUFMA, manufacturers of reprocessed SUDs have a limited time period during which they can develop and submit this validation data. The agency has determined, in light of the need to provide immediate guidance to these manufacturers, that a request for comments before issuance of this guidance is not feasible. The data submission recommendations set forth in this guidance will become effective immediately after approval by the Office of Management and Budget (OMB) of the collection of information proposed by FDA in this guidance. In developing this guidance, the agency has considered comments on the topic that were submitted to the public docket on MDUFMA implementation, docket number 02N-0534.

**II. Significance of Guidance**

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on validation data regarding the cleaning, sterilization, and functional performance of reprocessed SUDs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. You can use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach, contact the FDA staff responsible for implementing this guidance. If you cannot identify the appropriate FDA staff, call the contact person (see FOR FURTHER INFORMATION CONTACT).

The guidance provides information on the validation data for reprocessed SUDs required by MDUFMA. In some cases, FDA may have already published product-specific guidance, other relevant guidance that applies to the same type of device, or guidance that is generally applicable to premarket submissions. MDUFMA and this validation data guidance supersede any existing guidance that recommends less complete data and information than described in this validation data guidance.

### III. Electronic Access

To receive "Guidance for Industry and FDA; Medical Device User Fee and Modernization Act of 2002, Validation Data in Premarket Notification Submissions [510(k)s] for Reprocessed Single-Use Medical Devices" by fax machine, call the CDRH Facts-On-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1216) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at <http://www.fda.gov/cdrh>. A search capability for all CDRH guidance documents is available at <http://www.fda.gov/cdrh/guidance.html>. Guidance documents are also available on the Division of Dockets Management Internet site at <http://www.fda.gov/ohrms/dockets>.

### IV. Paperwork Reduction Act of 1995

This notice and the guidance entitled "Guidance for Industry and FDA; Medical Device User Fee and Modernization Act of 2002, Validation Data in Premarket Notification Submissions [510(k)s] for Reprocessed Single-Use Medical Devices" contain a proposed collection of information that requires clearance by OMB under the Paperwork Reduction Act of 1995. In a document published elsewhere in this issue of the **Federal Register**, FDA is announcing that this proposed collection of information has been submitted to OMB for emergency processing. The notice also solicits comments concerning the proposed collection of information.

FDA will publish a separate notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions contained in this notice and the guidance. 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.

### V. Comments

You may submit written or electronic comments regarding this guidance to the Division of Dockets Management (see **ADDRESSES**). You should submit two copies of a written comment or one copy of an electronic comment. Individuals may submit one copy of a written comment. You should identify comments with the docket number found in brackets in the heading of this document. The guidance document and comments are available in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 27, 2003.

**Jeffrey Shuren**,

*Assistant Commissioner for Policy.*

[FR Doc. 03-17135 Filed 7-7-03; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506 (c) (2) (A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104-13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443-1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

#### Proposed Project: Health Center Expansion and Recruitment Survey—New

HRSA's Office of Rural Health Policy (ORHP) currently funds a number of Rural Health Research Centers in the United States, allocating funding through cooperative agreements. Authorized by section 301 of the Public Health Service Act (42 U.S.C. 241), ORHP conducts research and investigations to render assistance to appropriate public authorities in the areas of the health and well-being of rural populations in the United States. A major current initiative of HRSA is the expansion of Health Centers (HCs), which provide medical care to lower income Americans on the basis of ability to pay in rural and urban areas.

HCs are a key element of the nation's medical care safety net, and are scheduled to expand the scope of their operations in the near future. One of the issues affecting HC expansion is their ability to recruit adequate numbers of medical and administrative personnel to accomplish their mission, particularly in rural areas, where there have been persistent problems recruiting and retaining health care personnel. HRSA's Office of Rural Health Policy (ORHP) has funded a study in collaborative oversight with the Bureau of Primary Health Care (BPHC) and the Bureau of Health Professions (BHP), to collect information from HCs on issues concerning the recruitment of various types of health professionals and administrative personnel.

This data collection effort is designed to assess the problems encountered by rural and remote HCs in their efforts to recruit needed personnel as well as the types of programs employed in recruitment efforts, and to compare these patterns with prevailing programs in urban HCs. This one-time survey will collect information on all HCs in the United States. The survey includes 13 separate response items, and will collect information from HC administrators on health care professional staffing, recruitment trends, and issues and needs among HCs throughout the nation. The data collected will improve HRSA's abilities in forecasting needs for personnel as HCs expand, planning recruitment programs and strategies, and implementation of local and national policy initiatives to meet the personnel demands of HCs so that access to health care is maximized.

*The burden estimates are as follows:*

Health center expansion, and recruitment survey	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden/ hours per response	Total burden hours
Survey instruments .....	845	1	845	.25	211

Send comments to Susan G. Queen, Ph.D, HRSA Reports Clearance Officer, Room 14-45, Parklawn Building, 5600 Fishers Lane, Rockville MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 25, 2003.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 03-17137 Filed 7-7-03; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Directorate of Information Analysis and Infrastructure Protection; National Infrastructure Advisory Council; Notice of Open Meeting

The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, July 22, 2003, from 11:30 a.m. until 1:30 p.m. in the Herman Lay room of the United States Chamber of Commerce, 1615 H Street, NW., Washington DC. The meeting will be open to the public. Limited seating will be available. Reservations are not accepted.

The Council advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services. At this meeting, the Council will receive a briefing concerning the activities of the National Security Telecommunications Advisory Committee and will be briefed on the status of several Working Group activities that the Council undertook at its last meeting.

#### Agenda

##### I. Opening of Meeting:

Nancy J. Wong, Director, Office of Planning and Partnerships, U.S. Department of Homeland Security (DHS)/Designated Federal Officer, NIAC

##### II. Roll Call of Members:

NIAC Staff

##### III. Opening Remarks:

Gen. John A. Gordon (USAF, ret.), Assistant to the President and Homeland Security Advisor, Homeland Security Council  
Lt. Gen. Frank Libutti (USMC, ret.),

Under Secretary for Information Analysis and Infrastructure Protection, DHS

Richard K. Davidson, Chairman, President & CEO, Union Pacific Corporation; Chairman, NIAC

#### IV. Briefing on the National Security Telecommunications Advisory Committee (NSTAC):

a. Introductions: Ms. Wong  
b. Briefing: Dr. Vance D. Coffman, Chairman & CEO, Lockheed Martin, NSTAC Chairman (invited), and

Mr. F. Duane Ackerman, Chairman, President & CEO, BellSouth; NSTAC Vice Chairman (invited)

c. Question and Answer Session: Dr. Coffman, Mr. Ackerman, NIAC Members

#### V. Status Reports on Pending Initiatives:

a. Vulnerability Disclosure: Mr. John T. Chambers, President & CEO, Cisco Systems, Inc.; NIAC Vice Chairman; and

Mr. John W. Thompson, Chairman & CEO, Symantec Corporation; NIAC member

b. Interdependencies: Mr. Martin G. McGuinn, Chairman & CEO, Mellon Financial Corporation; NIAC member

c. Information Sharing: Mr. Thomas E. Noonan, Chairman, President & CEO, Internet Security Systems, Inc.; NIAC member

#### VI. Adjournment

Written comments may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Council members, the Council suggests that presenters forward the public presentation materials, ten days prior to the meeting date, to the following address: Mr. Eric T. Werner, Office of Planning and Partnerships, Directorate of Information Analysis and Infrastructure Protection, U.S. Department of Homeland Security, 14th Street & Constitution Avenue, NW., Room 6073, Washington, DC 20230.

For more information contact Eric Werner on (202) 482-7470.

Dated: July 7, 2003.

**Eric T. Werner,**

*Council Liaison Officer.*

[FR Doc. 03-17234 Filed 7-7-03; 8:45 am]

**BILLING CODE 4410-10-M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Draft Comprehensive Conservation Plan and Environmental Assessment for Assabet River, Great Meadows and Oxbow National Wildlife Refuges, Part of the Eastern Massachusetts National Wildlife Refuge Complex

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces that the Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) is available for Assabet River, Great Meadows and Oxbow National Wildlife Refuges (NWR), part of the Eastern Massachusetts National Wildlife Refuge Complex (Complex). This Draft CCP is prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et. seq.*), and the National Environmental Policy Act of 1969, and describes how the Service intends to manage this refuge over the next 15 years.

**DATES:** You must submit comments on the Draft CCP and EA by August 22, 2003.

Please contact Great Meadows NWR, at 978-443-4661, for information about dates, times and locations of public meetings.

*Send Comments to:* Lindsay Krey, Team Leader, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035, or e-mail comments to [northeastplanning@fws.gov](mailto:northeastplanning@fws.gov) with a subject line stating "Eastern Massachusetts NWR Complex."

**ADDRESSES:** Copies of the Draft CCP/EA are available on compact diskette or a hard copy may be obtained by writing: Lindsay Krey, U.S. Fish and Wildlife Service, 300 Westgate Center Dr., Hadley, Massachusetts 01035. Copies of the Draft CCP/EA may also be accessed and downloaded at the following Web site address: [www.northeast.fws.gov/planning/](http://www.northeast.fws.gov/planning/).

**FOR FURTHER INFORMATION CONTACT:** Lindsay Krey, Planning Team Leader, at 413-253-8556, e-mail [Lindsay\\_Krey@fws.gov](mailto:Lindsay_Krey@fws.gov).

**SUPPLEMENTARY INFORMATION:** This Draft CCP/EA evaluates three alternatives for addressing key management issues at the refuges. Alternative A is the current management, or what is currently offered at the refuge. Alternative B is the Proposed Action and Alternative C is another alternative considered. Public comment is being solicited on all alternatives. Based on the analysis documented in this Draft CCP/EA, the Region 5 Regional Director of the Service will select a preferred alternative to be fully developed into a CCP for the refuges. A CCP is required by the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et. seq.*). The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. This CCP will be reviewed and updated at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et. seq.*), and the National Environmental Policy Act of 1969.

The Complex is a group of eight coastal and inland refuges. This Draft CCP/EA addresses the three northernmost refuges in the Complex. Both Oxbow and Assabet River NWR were established for their "*particular value in carrying out the national migratory bird management program*" under the Transfer of Certain Real Property for Wildlife Conservation Purposes Act of May 1948. Oxbow NWR was established in 1973 and consists of 1,667 acres of upland and wetland habitats along the Nashua River in Middlesex County. Assabet River NWR was established in 2000 and consists of 2,230 acres in Middlesex and Worcester Counties. Great Meadows NWR was established under the Migratory Bird Conservation Act in 1944 "*for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.*" It protects 3,629 acres of wetland and upland

habitats along the Concord and Sudbury Rivers in Middlesex County. Key issues for each refuge are described below.

**Hunting:** Under Alternative A, small game, upland and woodcock hunting would remain open on portions of Oxbow NWR. Under Alternative B, the Service would open additional areas to small game, upland and woodcock hunting and open big game and migratory bird hunting on the refuge. Alternative C also offers these hunting opportunities, but limits areas where hunting would be allowed.

Under Alternative A, Assabet River NWR would remain closed to public access. Under Alternative B, the refuge would be open for big game and upland hunting. Migratory bird hunting would be considered after further data is collected. Alternative C is similar to B, except big game hunting is limited to archery and black powder deer hunting only.

Great Meadows NWR, which is currently closed to all hunting (Alternative A), would be open to archery deer hunting and migratory bird hunting in limited areas under Alternative B. Alternative C proposes that additional areas be open for hunting than identified in Alternative B. Hunting would not be allowed at the Concord impoundments under any alternative.

**Fishing:** Fishing opportunities would continue under Alternative A at both Great Meadows and Oxbow NWRs. Under Alternative B, fishing opportunities would continue unchanged at Great Meadows. Alternative B proposes that Oxbow NWR provide additional bank fishing areas and that Assabet River NWR be open for fishing on Puffer Pond. Alternative C is similar to Alternative B for all refuges.

**Non-wildlife dependent recreation:** Dog walking, currently (Alternative A) occurring on Great Meadows and Oxbow NWRs, would be prohibited under Alternatives B and C. Jogging at Great Meadows and Oxbow NWRs will continue to be allowed. The Service plans to analyze the potential impacts of jogging on Service trust resources and priority public uses and will consider modifying or eliminating the use in the future, based on this additional analysis. Other non-wildlife dependent uses requested during the scoping process, including snowmobiling, dog sledding, horseback riding, dirt biking and model airplane flying, are alternatives addressed but not considered in further detail.

These uses, including dog walking and jogging, are not considered for Assabet River NWR.

**User Fees:** The refuges currently do not charge fees for access or use. Under Alternative B and C, user fees will be collected to help the Service recover costs, improve visitor facilities, promote activities for visitors and address the maintenance backlog of visitor service projects.

Dated: June 19, 2003.

**James G. Geiger,**

*Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.*

[FR Doc. 03-17163 Filed 7-7-03; 8:45 am]

**BILLING CODE 4310-55-P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-910-03-0777-30]

#### Notice of Public Meeting, Northeastern Great Basin Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting 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.

**DATES:** The meeting includes a public comment meeting on August 18, 2003, 7 p.m. at the Hilton Garden Inn, 3560 East Idaho Street, Elko, Nevada. The purpose of the public meeting is for the RAC to receive public comment about the Sustaining Working Landscapes policy. The business meeting will be held August 19, 2003, at the BLM Elko Field Office beginning at 9 a.m. The public comment period will begin at approximately 1 p.m. and the meeting will adjourn approximately 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mike Brown, Public Affairs Officer, Elko Field Office, 3900 East Idaho Street, Elko, NV 89801. Telephone: (775) 753-0386. E-mail: [mbrown@nv.blm.gov](mailto:mbrown@nv.blm.gov).

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Nevada. At the business meeting, topics to be discussed include: Sustaining Working Landscapes, Ely Field Office Resource Management Plan,

Vegetation Draft Guidelines, Mining Update, California National Historic Trail Interpretive Center, Field Managers' and District Rangers' Reports, Other topics the Council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact Mike Brown, BLM Elko Field Office, 3900 East Idaho Street, Elko, Nevada 89801, telephone (775) 753-0386.

Dated: June 25, 2003.

**Helen M. Hankins,**  
Field Manager.

[FR Doc. 03-17155 Filed 7-7-03; 8:45 am]

BILLING CODE 4310-HC-P

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## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1047  
(Preliminary)]

### Ironing Tables and Certain Parts Thereof From China

**AGENCY:** International Trade Commission.

**ACTION:** Institution of antidumping investigation and scheduling of a preliminary phase investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731-TA-1047 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from ironing tables and certain parts thereof, provided for in subheadings 9403.20.00 and 9403.90.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in

antidumping investigations in 45 days, or in this case by August 14, 2003. The Commission's views are due at Commerce within five business days thereafter, or by August 21, 2003.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** June 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gail Burns (202-205-2501), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background.**—This investigation is being instituted in response to a petition filed on June 30, 2003, by Home Products International, Inc., Chicago, IL  
**Participation in the investigation and public service list.**—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing

interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Conference.**—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 21, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Gail Burns (202-205-2501) not later than July 17, 2003, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

**Written submissions.**—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 24, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: July 1, 2003.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03-17193 Filed 7-7-03; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-486]

### In the Matter of Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof; Notice of Commission Issuance of Limited Exclusion Order and Termination of Investigation

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and terminated the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:**

Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3012. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 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) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on February 10, 2003, based on a complaint and motion for temporary relief filed by New Holland North America, Inc. ("complainant") of New Holland, PA. 68 FR 6772 (Feb. 10, 2003). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain tractors and components thereof by reason of

infringement of New Holland's trade dress. The notice of investigation identified three respondents: Beiqi Futian Automobile Co., Ltd. ("Futian") of Beijing, China; Cove Equipment, Inc. ("Cove") of Conyers, Georgia; and Northwest Products, Inc. ("Northwest") of Auburn, Washington. *Id.* On March 19, 2003, the presiding administrative law judge ("ALJ") issued an initial determination ("ID") (Order No. 6) finding respondent Futian in default. On March 31, 2003, the ALJ issued an ID (Order No. 8) amending the complaint and notice of investigation to clarify the identity of Cove and to add Brian Navalinsky of Conyers, Georgia as an additional respondent. On April 1, 2003, the ALJ issued an ID (Order No. 9) terminating respondents Cove and Navalinsky on the basis of a consent order. Those IDs were not reviewed by the Commission.

On April 2, 2003, complainant filed a declaration pursuant to section 337(g)(1) and Commission rule 210.16(c)(1) seeking immediate entry of permanent default relief against respondent Futian. In the declaration, complainant stated that it sought a limited exclusion order directed to all accused agricultural tractors, lawn tractors, and riding lawn mowers and components thereof made or imported into the United States by or for respondent Futian or any affiliated company, and that it also sought a cease and desist order directed to respondent Futian and its U.S. affiliates or agents. Complainant further stated that it did not seek a general exclusion order.

On April 8, 2003, the ALJ issued an ID (Order No. 10) terminating the investigation as to respondent Northwest based on a consent order. In his ID, the ALJ noted that all respondents in the investigation had been found to be in default or had reached settlements with complainant. He stated that "[i]f the Commission adopts [the ID] or otherwise terminates the investigation as to Northwest and also terminates the investigation as to the other respondents, no respondent will remain in this investigation. Therefore, any outstanding motions (including Complainant's Motion for temporary relief) will be moot, and this investigation will be terminated in its entirety." Order No. 10 at 5. No petitions for review of the ID were filed. On May 2, 2003, the Commission issued a notice stating that the Commission had determined not to review the ALJ's ID and requesting briefing on the issues of remedy, the public interest, and bonding. 68 FR 23,497.

On May 16, 2003, the Commission investigative attorney ("IA") submitted his brief on remedy, the public interest,

and bonding. On the same day, complainant requested that the Commission consider complainant's April 2, 2003, declaration seeking immediate entry of default relief as complainant's submission on the issues of remedy, the public interest, and bonding. On May 23, 2003, complainant and the IA filed reply briefs. On May 27, 2003, complainant filed a motion for leave to file a sur-reply in response to the IA's reply submission. On May 29, 2003, the IA filed a motion for leave to comment on complainant's reply submission. No briefs were filed by any other person or government agency.

The Commission determined to grant the motions for leave. The Commission found that each of the statutory requirements of section 337(g)(1)(A)-(E), 19 U.S.C. 1337(g)(1)(A)-(E), has been met with respect to defaulting respondent Futian. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. 1337(g)(1), and Commission rule 210.16(c), 19 CFR 210.16(c), the Commission presumed the facts alleged in the complaint to be true. The Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of agricultural tractors, lawn tractors, riding lawnmowers, and components thereof that infringe New Holland's trade dress as described in the complaint that are manufactured abroad by or on behalf of, or imported by or on behalf of, Futian. The Commission declined to infer that the defaulting foreign respondent Futian maintains commercially significant inventory in the United States and, consequently, determined not to issue a cease and desist order. The Commission further determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.16(c) of the Commission's rules of practice and procedure, 19 CFR 210.16(c).

By order of the Commission.

Issued: July 1, 2003.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03-17194 Filed 7-7-03; 8:45 am]

BILLING CODE 7020-02-P

**DEPARTMENT OF JUSTICE**

**Bureau of Alcohol, Tobacco, Firearms and Explosives**

**Agency Information Collection Activities: Proposed Collection; Comments Requested**

**ACTION:** 30-day notice of information collection under review: extension of a currently approved collection; application and permit for permanent exportation of firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 68, Number 74, page 19009 on April 17, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 7, 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 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, Washington, DC 20503, or facsimile (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments 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 and Permit For Permanent Exportation of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 9 (5320.9). Bureau of Alcohol, Tobacco, Firearms and Explosives, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: Individual or households. The form is used to obtain permission to export firearms and serves as a vehicle to allow either the removal of the firearm from registration in the National Firearms Registration and Transfer Record or collection of an excise tax. It is used by Federal firearms licensees and others to obtain a benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 70 respondents will complete a 18 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,050.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 1, 2003.

**Brenda E. Dyer,**

*Deputy Clearance Officer, Department of Justice.*

[FR Doc. 03-17120 filed 7-7-03; 8:45 am]

**BILLING CODE 4410-FB-P**

Alltech Associates Inc., 2701 Carolean Industrial Drive, PO Box 440, State College, Pennsylvania 16801, made renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed below:

Drug	Schedule
Methcathinone (1237) .....	I
N-Ethylamphetamine (1475) .....	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590).	I
Lysergic acid diethylamide (7315)	I
Mescaline (7381) .....	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3/4-Methylenedioxymethamphetamine (7405).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl) pyrrolidine (7458).	I
1-[1-(2-Thienyl) cyclohexyl] piperidine (7470).	I
Dihydromorphine (9145) .....	I
Normorphine (9313) .....	I
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471) .....	II
Phenylacetone (8501) .....	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Cocaine (9041) .....	II
Codeine (9050) .....	II
Dihydrocodeine (9120) .....	II
Benzoylcocaine (9180) .....	II
Morphine (9300) .....	II
Noroxymorphone (9668) .....	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, *Attention:* Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than September 8, 2003.

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Application**

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 18, 2003, Applied Science Labs, Division of

Dated: June 20, 2003
Laura M. Nagel,
Deputy Assistance Administrator, Office of
Diversion Control, Drug Enforcement
Administration.
[FR Doc. 03-17124 Filed 7-7-03; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled
Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of
the Code of Federal Regulations (CFR),
this is notice that on May 8, 2003, Cody
Laboratories, Inc., made application by
letter to the Drug Enforcement
Administration (DEA) for registration as
a bulk manufacturer of the basic classes
of controlled substances listed below:
Diphenoxylate (9170)—Schedule II
Meperidine (9230)—Schedule II
Oxymorphone (9652)—Schedule II
Sufentanil (9740)—Schedule II

The firm plans to manufacture bulk
material for distribution to its
customers.

Any other such applicant and any
person who is presently registered with
DEA to manufacture such substances
may file comments or objections to the
issuance of the proposed registration.

Any such comments or objections
may be addressed, in quintuplicate, to
the Deputy Assistant Administrator,
Office of Diversion Control, Drug
Enforcement Administration, United
States Department of Justice,
Washington, DC 20537, Attention: DEA
Federal Register Representative (CCD)
and must be filed no later than
September 8, 2003.

Laura M. Nagel,
Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.
[FR Doc. 03-17123 Filed 7-7-03; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled
Substances; Notice of Application

Pursuant to 1301.33(a) of Title 21 of
the Code of Federal Regulations (CFR),
this is notice that on April 21, 2003,
Lilly Del Caribe, Inc., Chemical Plant,
Kilometer 146.7, State Road 2,
Mayaguez, Puerto Rico 00680, made
application by renewal to the Drug
Enforcement Administration (DEA) for
registration as a bulk manufacturer of

Dextropropoxyphene (9273), a basic
class of controlled substance listed in
Schedule II.

The firm plans to bulk manufacture
product for distribution to its customers.

Any other such applicant and any
person who is presently registered with
DEA to manufacture such substances
may file comments or objections to the
issuance of the proposed registration.

Any such comments or objections
may be addressed, in quintuplicate, to
the Deputy Assistant Administrator,
Office of Diversion Control, Drug
Enforcement Administration, United
States Department of Justice,
Washington, DC 20537, Attention:
Federal Register Representative, Office
of Chief Counsel (CCD) and must be
filed no later than September 8, 2003.

Dated: June 20, 2003.
Laura M. Nagel,
Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.
[FR Doc. 03-17125 Filed 7-7-03; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled
Substances; Notice of Registration

By Notice dated January 27, 2003, and
published in the Federal Register on
February 6, 2003, (68 FR 6184),
Noramco, Inc., 1440 Olympic Drive,
Athens, GA 30601, made application by
renewal to the Drug Enforcement
Administration to be registered as a bulk
manufacturer of the basic classes of
controlled substances listed below:

Table with 2 columns: Drug, Schedule. Rows include Amphetamine, Oxycodone (9143), Hydrocodone (9193), Morphine (9300), Thebaine (9333), Sufentanil (9740), and Fentanyl (9801).

The firm plans to support its other
manufacturing facility with
manufacturing and analytical testing.

No comments or objections have been
received. DEA has considered the
factors in Title 21, United States Code,
section 823(a) and determined that the
registration of Noramco, Inc., to
manufacture the listed controlled
substances is consistent with the public
interest at this time. DEA has
investigated Noramco, Inc., to ensure
that the company's registration is
consistent with the public interest. This

investigation has included inspection
and testing of the company's physical
security systems, verification of the
company's compliance with state and
local laws, and a review of the
company's background and history.
Therefore, pursuant to 21 U.S.C. 823
and 28 CFR 0.100 and 0.104, the Deputy
Assistant Administrator, Office of
Diversion Control, hereby orders that
the application submitted by the above
firm for registration as a bulk
manufacturer of the basic classes of
controlled substances listed above is
granted.

Dated: June 20, 2003.
Laura M. Nagel,
Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.
[FR Doc. 03-17126 Filed 7-7-03; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled
Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of
the Code of Federal Regulations (CFR),
this is notice that on March 14, 2003,
Pressure Chemical Company, 3419
Smallman Street, Pittsburgh,
Pennsylvania 15201, made application
by renewal to the Drug Enforcement
Administration (DEA) for registration as
a bulk manufacturer of 2, 5-
Dimethoxyamphetamine (7396), a basic
class of controlled substance listed in
Schedule I.

The firm plans to manufacturer the
substance for distribution to its
customers.

Any other such applicant and any
person who is presently registered with
DEA to manufacturer such substances
may file comments or objections to the
issuance of the proposed registration.

Any such comments or objections
may be addressed, in quintuplicate, to
the Deputy Assistant Administrator,
Office of Diversion Control, Drug
enforcement Administration, United
States Department of Justice,
Washington, DC 20537, Attention:
Federal Register Representative, Office
of Chief Counsel (CCD) and must be
filed no later than September 8, 2003.

Dated: June 20, 2003.
Laura M. Nagel,
Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.
[FR Doc. 03-17122 Filed 7-7-03; 8:45 am]
BILLING CODE 4410-09-M

**DEPARTMENT OF JUSTICE****Office of Justice Programs****Agency Information Collection  
Activities: Proposed Collection;  
Comments Requested**

**ACTION:** 30-Day Notice of information collection under review: extension of a currently approved collection; NCJRS Customer Satisfaction Surveys.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following extension request of generic clearance to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 62, page 15743 on April 1, 2003, allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until August 7, 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 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, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments 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, 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:* NCJRS Customer Satisfaction Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms Numbers: NCJ-CR-01-00 through NCJ-CR-01-07. Office of Justice Program, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be current and potential users of agency products and services. Respondents may represent Federal agencies, State, local, and tribal governments, members of private organizations, research organizations, the media, non-profit organizations, international organizations, as well as faculty and students. The purpose of such surveys is to assess needs, identify problems, and plan for programmatic improvements in the delivery of agency products and services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there will be 132,130 total respondents for all surveys combined. It is estimated that mail surveys will average 10 minutes to complete; Web surveys will average 6 minutes; phone surveys will average 4 minutes to complete; and focus groups and teleconferences will average 90 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the annual public burden associated with this collection is 16,995 hours.

*If additional information is required contact:* Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 30, 2003.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 03-17121 Filed 7-7-03; 8:45 am]

**BILLING CODE 4410-18-M**

**DEPARTMENT OF LABOR****Office of the Secretary****Submission for OMB Review;  
Comment Request**

June 25, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR's) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of these ICR's, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Vanessa Reeves on 202-693-4124 (this is not a toll-free number) or E-Mail: [reeves.vanessa2@dol.gov](mailto:reeves.vanessa2@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503 (202-395-7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Bureau of Labor Statistics.

*Type of Review:* Extension of a currently approved collection.

*Title:* Labor Market Information (LMI) Cooperative Agreement.

*OMB Number:* 1220-0079.

*Affected Public:* State, Local or Tribal Government.

*Frequency:* Monthly, Quarterly, and Annually.

*Type of Response:* Recordkeeping and Reporting.

Information collection	Respondents	Frequency	Responses	Time	Total hours
Work statements .....	55	1	55	1–2 hr.	55–110
BIF (LMI 1A, 1B) .....	55	1	55	1–6 hr.	55–330
Quarterly automated financial reports .....	48	4	192	10–50 min.	32–160
Monthly automated financial reports .....	48	*8	384	5–25 min.	32–160
BLS cooperative statistics financial report (LMI 2A) .....	7	12	84	1–5 hr.	84–420
Quarterly Status Report (LMI 2B) .....	1–30	4	4–120	1 hr.	4–120
Budget Variance Request Form .....	1–55	1	1–55	5–25 min.	0–23
<b>Total</b> .....	<b>1–55</b>		<b>775–945</b>		<b>262–1323</b>
<b>Average Totals</b> .....	<b>55</b>		<b>860</b>		<b>793</b>

\* Reports are not received for end-of-quarter months, i.e., December, March, June, September.

*Total Annualized Capital/Startup Costs:* \$0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* The LMI Cooperative Agreement Includes all information needed by the State Employment Security Agencies to apply for funds to assist them to operate one of more of the five LMI programs operated by the Bureau of Labor Statistics, and, once awarded, reported on the status of obligation and expenditure of funds as well as close out the Cooperative Agreement.

*Agency:* Bureau of Labor Statistics.

*Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Title:* Veterans Supplement to the CPS.

*OMB Number:* 1220–0102.

*Affected Public:* Individuals or households.

*Frequency:* Biennially.

*Type of Response:* Reporting.

*Number of Respondents:* 14,400.

*Number of Annual Responses:* 14,400.

*Estimated Time Per Responses:* 1 minutes.

*Total Burden Hours:* 240.

*Total Annualized Capital/Startup Costs:* \$0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* The Veterans supplement provides information on the labor force status of disabled veterans, Vietnam war theater veterans, and recently discharged veterans, including their employment status. The supplement also provides information on veterans' participation in various employment and training programs. The data collected through this supplement also will be used by the Veterans Employment and Training Service and the Department of Veterans Affairs to determine policies that better meet the

needs of our Nation's veteran population.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 03–17189 Filed 7–7–03; 8:45 am]

**BILLING CODE 4510–28–P**

**DEPARTMENT OF LABOR**

**Office of the Secretary**

**Submission for OMB Review; Comment Request**

June 26, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: [king.darrin@dol.gov](mailto:king.darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/ this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission responses.

*Type of Review:* New collection.

*Agency:* Employment and Training Administration.

*Title:* Evaluation of the Individual Training Account Experiment.

*OMB Number:* 1205–ONEW.

*Affected Public:* Individuals of households.

*Frequency:* One Time.

*Type of Response:* Reporting.

*Number of Respondents:* 3,840.

*Number of Annual Responses:* 3,840.

*Estimated Time per Response:* 30 minutes.

*Total Burden Hours:* 1,920.

*Total Annualized Capital/Startup Costs:* \$0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* This ICR seeks OMB approval for a follow-up survey to be conducted as part of the Individual Training Account (ITA) Experiment. The experiment is designed to test three different approaches to providing ITAs. Data from the follow-up survey of ITA customers will be used to describe experiences inside the workforce system and labor market outcomes for ITA customers. Measures of these experiences and outcomes are necessary to the evaluation of the three approaches. Based on information from the survey and other data sources, the U.S. Department of Labor can advise local workforce boards on how to administer their ITA programs.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 03–17190 Filed 7–7–03; 8:45 am]

**BILLING CODE 4510–30–M**

**DEPARTMENT OF LABOR****Office of the Secretary****Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons**

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

**ACTION:** Notice of policy guidance; re-opening and extension of comment period.

**SUMMARY:** This document re-opens and extends the period for filing comments regarding the Department of Labor's (DOL) Revised Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Revised DOL Recipient LEP Guidance).

**DATES:** Comments must be submitted on or before August 7, 2003.

**ADDRESSES:** Interested persons should submit written comments to Ms. Annabelle T. Lockhart, Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N-4123, Washington, DC 20210. Commenters wishing acknowledgment of their comments must submit them by certified mail, return receipt requested. Please be advised that mail delivery to federal buildings in the Washington, DC metropolitan area may experience delays due to concerns about anthrax contamination. Comments may also be transmitted by facsimile to (202) 693-6505 or by e-mail to [civilrightscenter@dol.gov](mailto:civilrightscenter@dol.gov).

**FOR FURTHER INFORMATION CONTACT:** Annabelle Lockhart or Naomi Barry-Pérez at the Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N-4123, Washington, DC 20210. Telephone: 202-693-6500; TTY: 202-693-6515. Arrangements to receive the Guidance in an alternative format may be made by contacting the named individuals.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 29, 2003 (68 FR 32290), the Department of Labor published Revised Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Revised DOL Recipient LEP Guidance). Interested persons were requested to submit comments on or before June 30, 2003.

Due to technological difficulties, the email account of the Department of Labor Civil Rights Center ([civilrightscenter@dol.gov](mailto:civilrightscenter@dol.gov)) was unable to receive incoming messages. Messages sent to this email account prior to June 27, 2003, were not received and cannot be retrieved. In order to provide commenters with an opportunity to resubmit comments, the comment period for the Revised DOL Recipient LEP Guidance is extended to August 7, 2003.

Signed in Washington, DC this 1st of July, 2003.

**Patrick Pizzella,**

*Assistant Secretary for Administration and Management.*

[FR Doc. 03-17188 Filed 7-7-03; 8:45 am]

**BILLING CODE 4510-23-P**

**DEPARTMENT OF LABOR****Employee Benefits Security Administration**

[Exemption Application No. D-10988 *et al.*]

**Prohibited Transaction Exemption 2003-20; Grant of Individual Exemptions; Deutsche Bank Securities, Inc. and Its Affiliates**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were

received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

**Deutsche Bank Securities Inc. and Its Affiliates Located in New York, NY**

[Prohibited Transaction Exemption 2003-20; Exemption Application No. D-10988]

**Exemption**

The restrictions of sections 406(a)(1)(A) through (D) of the Act and the sanctions resulting from application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of securities, in the context of a portfolio liquidation or restructuring, between (i) Deutsche Bank Securities Inc. (DBSI) and its current and future affiliates, including certain foreign broker-dealers or banks (the Foreign Affiliates, as defined in Section III below), (collectively, the Applicant) and (ii) employee benefit plans (the Plans) with respect to which the Applicant is a party in interest, provided that the conditions set forth in Section II are satisfied.

**Section II—Conditions**

A. The Applicant customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

B. The Applicant (including an affiliate) does not have discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, nor renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

Notwithstanding the foregoing, the Applicant may be a directed trustee (as defined in Section III below) with respect to the Plan assets involved in the transaction.

In addition, although the Applicant does not have discretionary authority or control over such Plan assets at the time of the transaction and has not used its discretion to appoint the transition broker-dealer, it may act as a fiduciary with respect to the Plan assets involved in the transaction, solely as: (i) The investment manager of such assets to be managed as an Index or Model-Driven Fund; or (ii) the investment manager of such assets who supplies a list of securities or other investments to be purchased, which list is prepared without regard to the identity of the broker-dealer and without reference to the portfolio being liquidated or restructured, and is substantially the same list that would be provided to other similarly situated investors with substantially similar investment guidelines and objectives, or is substantially similar to the investments in existing portfolios managed in the same style.

Lastly, a transaction will not fail to meet the requirements of this section if the Applicant is being terminated as a manager of the Plan assets involved in the transaction, its investment discretion is terminated prior to the commencement of the portfolio liquidation or restructuring, and the Applicant has not used its discretion to appoint the transition broker-dealer;

C. The transaction is a purchase or sale, for no consideration other than cash;

D. The terms of any transaction are at least as favorable to the Plan as those obtainable in a comparable arm's length transaction with an unrelated party;

E. An Independent Fiduciary has given prior approval that the transaction may be effectuated as a principal transaction and at a price that—

(1) For an equity security, is specified in advance by the Independent Fiduciary and is a stated dollar amount, or is based on an objective measure (as of a specified date or dates), including, but not limited to, the closing price, the opening price, or the volume-weighted average price; or

(2) For a fixed income security, is a stated dollar amount, or is within the bid and asked spread, as of the close of the relevant market (or another predetermined time on a specified date or dates), as reported by an independent third party reporting service or a publicly available electronic exchange or trading system;

F. In the case where the price for any transaction is not based on an objective measure, the Independent Fiduciary has given prior approval for the transaction, specifying whether the transaction is to be agency or principal, either on a security-by-security basis, or based on the whole portfolio or an identifiable part of the portfolio (such as all debt securities, all equity securities, all domestic securities, or the like);

G. All purchases and sales executed on a principal basis are effected within two days following the Independent Fiduciary's direction to purchase or sell a given security—except that, with the approval of the Independent Fiduciary, the Applicant may extend such initial period for a time not exceeding two additional days, on the same terms;

H. The Independent Fiduciary is furnished with confirmations including the relevant information required under Rule 10b-10 of the Securities Exchange Act of 1934 (the 1934 Act), to the extent required under Rule 10b-10, as well as a report, within five business days after the transaction is completed, containing the following information with respect to each security:

(1) The identity of the security;

(2) The date on which the transaction occurred;

(3) The quantity and price of the securities involved; and

(4) Whether the transaction was executed with the Applicant as principal or agent;

I. Each Plan shall have total net assets with a value of at least \$100 million. For purposes of the net assets test, where a group of Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the \$100 million net assets requirement may be met by aggregating the assets of such Plans, if the assets are pooled for investment purposes in a single master trust;

J. The Applicant complies with all applicable securities or banking laws relating to the transaction;

K. Any Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III, B, and is in compliance with all applicable rules and regulations thereof in connection with any transaction covered by the exemption;

L. Any Foreign Affiliate, in connection with any transaction covered by the exemption, is in compliance with the requirements of Rule 15a-6 (17 CFR 240.15a-6) of the 1934 Act, and Securities and Exchange Commission (SEC) interpretations thereof, providing for foreign affiliates a

limited exemption from U.S. broker-dealer registration requirements;

M. Prior to any transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions. In this regard, the Foreign Affiliate must (i) agree to submit to the jurisdiction of the United States; (ii) agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent); and (iii) consent to service of process on the Process Agent;

N. The Applicant maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction, such records as are necessary to enable the persons described in Paragraph O, below, to determine whether the conditions of the exemption have been met, except that—

(1) A party in interest with respect to a Plan, other than the Applicant, shall not be subject to a civil penalty under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by Paragraph O; and

(2) This record-keeping condition shall not be violated if, due to circumstances beyond the Applicant's control, such records are lost or destroyed prior to the end of the six year period; and

O. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Applicant makes the records referred to in Paragraph N, above, unconditionally available within the United States during normal business hours at their customary location to the following persons or a duly authorized representative thereof:

(1) The Department, the Internal Revenue Service, or the SEC; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in Items (2) through (5) of this subsection is authorized to examine the trade secrets of the Applicant, or commercial or financial information which is privileged or confidential.

### Section III—Definitions

A. The term "DBSI" means Deutsche Bank Securities Inc. DBSI and its domestic affiliates must be one of the following: (i) A broker-dealer registered under the 1934 Act; (ii) a reporting

dealer who makes primary markets in securities of the United States Government or of any agency of the United States Government ("Government securities") and reports daily to the Federal Reserve Bank of New York its positions with respect to Government securities and borrowings thereon; or (iii) a bank supervised by the United States or a State. DBSI and its current and future affiliates, including the Foreign Affiliates (as defined in Paragraph C, below), are collectively referred to herein as "the Applicant."

B. The term "affiliate" shall include: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; (2) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such person; and (3) any corporation or partnership of which such person is an officer, director or partner. For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

C. The term "Foreign Affiliate" means an affiliate of DBSI that is subject to regulation as a broker-dealer or bank by: (1) The Securities and Futures Authority or the Financial Services Authority in the United Kingdom, (2) the Federal Authority for Financial Services Supervision, *i.e.*, der Bundesanstalt fuer Finanzdienstleistungsaufsicht (the BAFin) in Germany, (3) the Ministry of Finance and/or the Tokyo Stock Exchange in Japan; (4) the Ontario Securities Commission and/or the Investment Dealers Association, or the Office of the Superintendent of Financial Institutions, in Canada, (5) the Swiss Federal Banking Commission in Switzerland, or (6) the Australian Prudential Regulation Authority or the Australian Securities & Investments Commission, and/or the Australian Stock Exchange Limited, in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

D. The term "security" shall include equities, fixed income securities, options on equity or fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term "security" does not include swap agreements or other notional principal contracts.

E. The term "index" means a securities index that represents the investment performance of a specific segment of the public market for equity

or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(i) Engaged in the business of providing financial information, evaluation, advice, or securities brokerage services to institutional clients,

(ii) A publisher of financial news or information, or

(iii) A public securities exchange or association of securities dealers;

(2) The index is created and maintained by an organization independent of the Applicant; and

(3) The index is a generally accepted standardized index of securities that is not specifically tailored for the use of the Applicant.

F. The term "Index Fund" means any investment fund, account, or portfolio trustee or managed by the Applicant, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile, and other characteristics of an independently maintained securities index (as "index" is defined in Paragraph E, above) by either (i) replicating the same combination of securities that compose such index, or (ii) sampling the securities that compose such index based on objective criteria and data;

(2) For which the Applicant does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3-101, Definition of "plan assets"—plan investments); and

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

G. The term "Model-Driven Fund" means any investment fund, account, or portfolio trustee or managed by the Applicant, in which one or more investors invest, and—

(1) Which is composed of securities, the identity of which and the amount of which, are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager, to transform an Index (as defined in Paragraph E, above);

(2) Which contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3-101, Definition of "plan assets"—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund, or the utilization of any specific objective criteria, that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

H. The term "Plan" means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act.

I. The term "Independent Fiduciary" means a fiduciary of a Plan who is unrelated to, and independent of, the Applicant. For purposes of the exemption, a Plan fiduciary will be deemed to be unrelated to, and independent of, the Applicant if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant and represents that such fiduciary shall advise the Applicant if those facts change.

(1) Notwithstanding anything to the contrary in this Section III, I, a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Applicant;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Applicant for his or her own personal account in connection with any transaction described in the exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Plan sponsor or the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Plan sponsor or the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's broker-dealer or bank executing the transactions covered herein, and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section III, I(1)(iii) shall not apply.

(2) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration

or finance), or any other officer who performs a policy-making function for the entity.

J. The term "directed trustee" means a Plan trustee whose powers and duties with respect to any assets of the Plan involved in the portfolio liquidation or restructuring are limited to (i) the provision of nondiscretionary trust services to the Plan, and (ii) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services is discretionary. For purposes of the exemption, a person who is otherwise a directed trustee will not fail to be a directed trustee solely by reason of having been delegated, by the sponsor of a master or prototype Plan, the power to amend such Plan.

**EFFECTIVE DATE:** This exemption is effective as of February 6, 2003.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 6, 2003 at 68 FR 6187.

#### Written Comments

The Department received one written comment with respect to the notice of proposed exemption (the Proposal). The comment was submitted by the Applicant, who requested certain modifications to the operative language as discussed below. Some additional editorial changes have been made by the Department to improve clarity and readability of the final exemption.

1. The Applicant wished to revise Section II.B. of the Proposal (68 FR 6188, center column) to clarify that this condition permits situations where the Applicant is both the legacy and the destination manager and permits legacy or destination positions in all investments, not just securities (although the exemption for principal transactions covers only securities).

Thus, Section II.B. has been revised to read as follows (note bracketed deletions and italicized additions):

B. [Neither] The Applicant (*including an affiliate*) [nor an affiliate thereof has] *does not have* discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, [or] *nor* renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

Notwithstanding the foregoing, the Applicant may be a directed trustee (as defined in Section III below) with respect to the Plan assets involved in the transaction.

[The original third paragraph has been moved to the end of Section II.B.]

In addition, [a transaction will not fail to meet the requirements of this section solely because the Applicant is being retained as an investment manager with respect to the Plan assets involved in the transaction, provided that:] *although the Applicant does not have discretionary authority or control over such Plan assets at the time of the transaction and has not used its discretion to appoint the transition broker-dealer, it may act as a fiduciary with respect to the Plan assets involved in the transaction, solely as:* (i) [the Applicant has not used its discretion to appoint the transition broker-dealer; (ii)] *the investment manager of such assets to be managed as an Index or Model-Driven Fund; or (ii) [(iii)] the investment manager of such assets who supplies a list of securities or other investments to be purchased, which list is prepared without regard to the identity of the broker-dealer and without reference to the portfolio being liquidated or restructured [(i.e., the] and is substantially the same list [is substantially the same as] that would be provided to other similarly situated investors with substantially similar investment guidelines and objectives, or [consists of] is substantially similar [the same securities as those in other] to the investments in existing [investment] portfolios managed in the same style.*

Lastly, [this condition will be deemed satisfied] *a transaction will not fail to meet the requirements of this section if the Applicant is being terminated as a manager of the Plan assets involved in the transaction, [the termination is effective] its investment discretion is terminated prior to the commencement of the portfolio liquidation or restructuring, and the Applicant has not used its discretion to appoint the transition broker-dealer.*

2. The Applicant wished to eliminate the requirement in Section II.G. of the Proposal (68 FR at 6188, column 3) that the covered securities be "publicly traded." According to the Applicant, the Independent Fiduciary can assess the fairness of pricing for a non-publicly-traded security by one of the following means: (i) Review the value at which the security is being carried by the Plan; (ii) review the price that other dealers are quoting and the prices at which the security has been trading in the recent past; or (iii) canvass other holders of the security regarding an appropriate trading price.

Further, the Applicant wished to revise Section II.G(2) of this condition (68 FR at 6188, column 3) so that the Independent Fiduciary and the bank or broker-dealer may agree on other objective price references besides "close of market."

Accordingly, Section II.G., which has been relettered Section II.E. in sequence (while old Section II.E. is now II.F., and old Section II.F. is now II.G.), has been revised to read as follows (note bracketed deletions and italicized additions):

E. [Prior to any transaction, the] *An Independent Fiduciary has given prior approval [agrees] that the transaction [purchase or sale of a security, which must be one that is publicly traded,] may be effectuated [through] as a principal transaction and at a price that—*

(1) [in the case of] *for an equity security, is specified in advance by the Independent Fiduciary and is a stated dollar amount, or is based on an objective measure (as of a specified date or dates), including, but not limited to, the closing price, the opening price, or the volume-weighted average price; or*

(2) [in the case of] *for a fixed income security, is a stated dollar amount, or is within the bid and asked spread, as of the close of the relevant market (or another predetermined time on a specified date or dates), as reported by an independent third party reporting service or a publicly available electronic exchange or trading system.*

Further, Section II.E. of the Proposal (68 FR at 6188, column 3), which has been relettered Section II.F, has been revised to read as follows (note bracketed deletions and italicized additions):

F. *In the case where the price for any transaction is not based on an objective measure, [An] the Independent Fiduciary has given prior approval for the transaction, specifying [(solely in the case where the price for any principal transaction is not based on an objective measure)] whether the transaction is to be agency or principal \* \* \**

Also, Section II.F. of the Proposal (68 FR at 6188, column 3), which has been relettered Section II.G, has been revised by adding the italicized language:

G. All purchases and sales *executed on a principal basis* are effected within two days following the Independent Fiduciary's direction to purchase or sell a given security—except that, with the approval of the Independent Fiduciary, the Applicant may extend such initial period for a time not exceeding two additional days, *on the same terms.*

3. Regarding Section II.H. of the Proposal (68 FR 6188, column 3), the Applicant noted that this condition requires a Rule 10b-10 confirmation to be sent for every trade, although some trades do not require such confirmations.

Thus, Section II.H. has been revised to read as follows (note bracketed deletions and italicized additions):

H. The Independent Fiduciary is furnished with confirmations including the relevant information required under Rule 10b-10 of the Securities Exchange Act of 1934 (the 1934 Act), *to the extent required under Rule 10B-10, as well as a report, within five business days [of] after the transaction is completed, containing the following information with respect to each security \* \* \**

4. Finally, regarding Section III.C. of the Proposal (68 FR 6189, center column), the Applicant noted that, in foreign jurisdictions, the authority to regulate securities transactions may change from agency to agency, from time to time, or the legal name of the appropriate regulator may change.

Thus, Section III.C. has been revised by adding the italicized language at the end of clause (6):

C. The term "Foreign Affiliate" means an affiliate of DBSI that is subject to regulation as a broker-dealer or bank by: (1) \* \* \*, or (6) \* \* \*, and/or the Australian Stock Exchange Limited, in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

The Department concurs in the Applicant's requested changes to the operative language of this final exemption. Accordingly, based upon the information contained in the entire record, the Department has determined to grant the proposed exemption as modified herein.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karin Weng of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

**Arizona Machinery Group, Inc. (AMG)  
Located in Avondale, Arizona**

[Prohibited Transaction Exemption 2003-21;  
Exemption Application No. D-11142]

**Exemption**

*Section I. Transactions Covered*

The restrictions of sections 406(a), (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (a) The acquisition by the Arizona Machinery Group Employees' Profit Sharing Retirement Plan (the Plan) of customer notes acquired from the Plan sponsor, AMG, or from any successor employer which sponsors the Plan at the time of the acquisition of such customer note, or from any other employer which at the time of the acquisition of such customer note has adopted the Plan (including employers which adopt the Plan subsequent to the date of this exemption) and which generates customer notes as defined herein in Section III (B), or from any affiliate of any such employer; (b) the Plan's holding of the customer notes, if the notes acquired and held by the Plan are guaranteed by the respective employer or affiliate, which accepted and held the customer notes prior to their acquisition by the Plan, as well as by AMG (when the customer note was accepted and

held by an employer other than AMG); and (c) the repurchase of customer notes from the Plan by the employer or affiliate which initially transferred those notes to the Plan; provided that, with respect to each such transaction, the conditions set forth below in Section II are met.

*Section II. Conditions*

(a) The transaction is on terms that are at least as favorable to the Plan as an arm's-length transaction with an unrelated party.

(b) Prior to the consummation of a transaction described in section I of this exemption, the transaction is approved on behalf of the Plan by a qualified fiduciary who is independent of any of the sponsoring or adopting employers or affiliates of the employer(s) (an Independent Fiduciary), upon a determination made by such Independent Fiduciary that the other conditions of this exemption will be satisfied. The Independent Fiduciary shall acknowledge his or her plan fiduciary status under the Act in writing with respect to the transactions. For purposes of this paragraph, a person is independent of an employer even though he or she was selected by AMG or an adopting employer (or by a person with an interest in such employer) if he or she has no other interest in the transaction for which an exemption is sought that might affect his or her best judgment as a fiduciary under the Act.

(c) The Plan's continuing rights under the terms and conditions of the acquired customer notes, and under this exemption, shall be monitored and enforced on behalf of the Plan by the same or another Independent Fiduciary who is independent of any of the sponsoring or adopting employers and who has acknowledged his or her fiduciary status and liability as described in paragraph (B) of this section. The Independent Fiduciary shall be responsible for taking all appropriate actions necessary to protect the Plan's rights with regard to the safety and collection of the notes purchased by the Plan. These actions shall include, but not be limited to, ascertaining that payments are received timely, diligently pursuing the receipt of delinquent payments and enforcing the employer's or affiliates' guarantees to repurchase delinquent notes, with accrued interest, as described in paragraph (e) of this section.

(d) The acquisition of a customer note from AMG, an adopting employer, or an affiliate, shall not cause the Plan to hold immediately following the acquisition: (i) more than twenty-five percent (25%), in the aggregate, of the current value (as

defined in section 3(26) of the Act) of Plan assets in customer notes of AMG, adopting employers or affiliates, or (ii) more than five percent (5%) of the current value of Plan assets in the notes of any one customer who is the obligor under such notes.

(e) An employer or affiliate from which the Plan acquires a customer note, as well as AMG (when the customer note was acquired from an employer other than AMG), guarantees in writing the immediate repayment of the outstanding balance of the notes and accrued interest in the event that the note is more than 60 days in arrears or if other events occur that, in the opinion of the Independent Fiduciary referred to in paragraph (b) and (c) of section II, impair the safety of the note as a Plan investment. The Independent Fiduciary may, at his or her discretion, grant an additional 30-day extension before repurchase of the note by an employer or affiliate is necessary upon a petition by the employer or affiliate, if the fiduciary determines, after consultation with the employer or affiliate, that such an extension is in the best interests of the participants and beneficiaries of the Plan. The other events (of impairment) referred to above include, but are not limited to, the following:

(1) The obligor on the note fails to comply with any terms or conditions of the note;

(2) The obligor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors or a liquidating agent, offers a composition or extension to creditors or makes a bulk sale;

(3) Any proceeding, suit or action at law, in equity, or under any of the provisions of Title 11 of the United States Bankruptcy Code [11 U.S.C. 101 *et seq.*] or amendments thereto for reorganization, composition, extension, arrangements, receivership, liquidation or dissolution is begun by or against the obligor;

(4) A receiver of any property of the obligor is appointed under any jurisdiction at law or in equity; or

(5) The obligor fails to take proper care of or abandons the property being financed by the note.

(f) The Plan receives adequate security for the note. For purposes of this exemption, the term "adequate security" means that the note is secured by a perfected security interest in the property purchased by the obligor on the note so that if the security is foreclosed upon, or otherwise disposed of, in default of repayment of the loan, the value and liquidity of the security is such that it may reasonably be

anticipated that loss of principal or interest will not result. In no event shall "adequate security" mean an interest in intangible personal property, such as, but not limited to, accounts, contract rights, documents, instruments, chattel paper, and general intangibles.

(g) Insurance against loss or damage to the collateral from fire or other hazards will be procured and maintained by the obligor until the note is repaid or repurchased by the employer or affiliate from which the Plan originally acquired the note, and the proceeds from such insurance will be assigned to the Plan.

(h) Repayment must be provided for in the following manner:

(1) Where the note is secured by heavy equipment, the term of the note shall in no event exceed 60 months. For purposes of this exemption, heavy equipment shall include machinery sold by equipment distributors such as, but not limited to, earth moving, material handling, pipe laying, power generation, and construction machinery manufactured according to standard specifications, but shall not include such equipment which has been specifically designed and manufactured to a user's specifications and which cannot reasonably be resold in the ordinary course of the equipment distributor's business;

(2) Where the note is secured by passenger automobiles and light-duty highway motor vehicles, the term of the note shall in no event exceed 48 months. For purposes of this exemption, passenger automobiles and light-duty highway motor vehicles are defined as vehicles which have a gross weight of 10,000 pounds or less, are propelled by means of their own motor and are a type used for highway transportation; and

(3) Where the note is secured by tangible personal property, other than heavy equipment or motor vehicles described in paragraph (h)(1) and (2) of this section, the term of the note shall in no event exceed 36 months.

(i) All records, information and data required to be maintained which relate to Plan investments in customer notes covered by this exemption shall be unconditionally available at the customary location for examination during normal business hours by:

- (1) The Department of Labor,
- (2) The Internal Revenue Service,
- (3) Plan participants and beneficiaries, or

(4) Any duly authorized employee or representative of a person described in subparagraph (1) through (3) above.

### Section III. Definitions

For purposes of this exemption, the following definitions shall apply:

(a) The terms, "affiliate" or "affiliates," mean, with respect to an employer of employees covered by the Plan, any corporation that is, at the time the Plan acquires a customer note, a member of a controlled group of corporations (as defined in section 407(d)(7) of the Act and section 1563(a) of the Code), along with AMG or any other adopting employer.

(b) The term "customer note," means a two-party instrument, executed along with a security agreement for tangible personal property, which is accepted and held in connection with, and in the normal course of, an employer's (or affiliate's) primary business activity as a seller of such property. A two-party instrument is a promissory instrument used in connection with an extension of credit in which one party (the maker) promises to pay a second party (the payee) a sum of money.

(c) The term "Independent Fiduciary" means a person or entity which is qualified to serve in that capacity (*i.e.*, knowledgeable as to the duties and responsibilities as a fiduciary under the Act and knowledgeable as to the subject transaction) and which is independent of the party in interest engaging in the transaction and its affiliates.

(d) The terms "employer" or "adopting employer" mean those entities which currently sponsor, or in the future will sponsor, the Plan and who have, or will have, employees that are participants in the Plan, and are considered an "employer" as that term is defined in section 3(5) of the Act.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on May 5, 2003 at 68 FR 23778.

*Written Comments:* The Department received one written comment with respect to the Notice which was submitted by the applicant (AMG). The applicant states that in Subsection (a) of Section III (Definitions) of the Notice, the terms "affiliate" or "affiliates" were defined, with respect to an employer of employees covered by the Plan, as:

any corporation that is, at the time the Plan acquires a customer note, a member of a controlled group of corporations (as defined in 407(d)(7) of the Act and section 1563(a) of the Code), along with AMG and any other adopting employer. [emphasis added]

In this regard, the applicant represents that only two employers that have adopted the Plan are part of a controlled group. The remaining companies, while related, do not have the requisite level of common ownership to constitute a controlled group, as described in the definition noted above. Thus, in order to include other adopting employers of the Plan that are not currently within a controlled group along with AMG, the applicant requests that the word "and" be changed to "or" in the last phrase of

the definition of the terms "affiliate" or "affiliates" in Section III(a) of the exemption.

The Department acknowledges the applicant's comment and has revised the definition of "affiliate" in Section III(a) of the exemption to reflect the applicant's request.

No other comments, nor any requests for a hearing, were received by the Department. Accordingly, the Department has determined to grant the exemption, as modified.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian J. Buyniski of the Department, telephone (202) 693-8545. (This is not a toll-free number.)

**Lehman Brothers Holding Inc. (LBHI) and Lehman Brothers Inc. (LBI), et al. (collectively, the Applicants) Located in New York, NY**

[Prohibited Transaction Exemption 2003-22; Exemption Application No. D-11164]

### Exemption

#### Section I. Covered Transactions

The restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code,<sup>1</sup> shall not apply, effective April 16, 2003, to the purchase of any securities by LBHI and LBI and their affiliate (collectively the Asset Manager), on behalf of employee benefit plans (Client Plans), including Client Plans investing in a pooled fund (the Pooled Fund), for which the Asset Manager acts as a fiduciary, from any person other than the Asset Manager or an affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where LBI and its affiliates (collectively, the Affiliated Broker-Dealer) are a manager or member of such syndicate, provided that the following conditions are satisfied:

(a) The securities to be purchased are—

- (1) Either:
  - (i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*) or, if exempt from such registration requirement, are (A) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (B) issued by a bank, (C) exempt from such registration requirement pursuant to a

<sup>1</sup> For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of Title II of the Code.

federal statute other than the 1933 Act, or (D) are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding 12 months; or

(ii) Part of an issue that is an "Eligible Rule 144A Offering," as defined in SEC Rule 10f-3 (17 CFR 270.10f-3(a)(4)). Where the Eligible Rule 144A Offering is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) Purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities, except that —

(i) If such securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, provided that the interest rates on comparable debt securities offered to the public subsequent to the first day and prior to the purchase are less than the interest rate of the debt securities being purchased; and

(3) Offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the securities being offered, except if—

(i) Such securities are purchased by others pursuant to a rights offering; or

(ii) Such securities are offered pursuant to an over-allotment option.

(b) The issuer of such securities has been in continuous operation for not less than three years, including the operation of any predecessors, unless—

(1) Such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.*, Standard & Poor's Rating Services,

Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); or

(2) Such securities are issued or fully guaranteed by a person described in paragraph (a)(1)(i)(A) of Section I of this exemption; or

(3) Such securities are fully guaranteed by a person who has issued securities described in paragraphs (a)(1)(i)(B), (C), or (D) of Section I, and who has been in continuous operation for not less than three years, including the operation of any predecessors.

(c) The amount of such securities to be purchased by the Asset Manager on behalf of a Client Plan does not exceed three percent of the total amount of the securities being offered.

Notwithstanding the foregoing, the aggregate amount of any securities purchased with assets of all Client Plans managed by the Asset Manager (or with respect to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3-21(c)) does not exceed:

(1) 10 percent of the total amount of any equity securities being offered;

(2) 35 percent of the total amount of any debt securities being offered that are rated in one of the four highest rating categories by at least one of the Rating Organizations; or

(3) 25 percent of the total amount of any debt securities being offered that are rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; and

(4) If purchased in an Eligible Rule 144A Offering, the total amount of the securities being offered for purposes of determining the percentages for (1)–(3) above is the total of:

(i) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to "qualified institutional buyers" (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class in any concurrent public offering.

(d) The consideration to be paid by the Client Plan in purchasing such securities does not exceed three percent of the fair market value of the total net assets of the Client Plan, as of the last day of the most recent fiscal quarter of the Client Plan prior to such transaction.

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.

(f) The Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession or other consideration that is

based upon the amount of securities purchased by Client Plans pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designations generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

(g)(1) The amount the Affiliated Broker-Dealer receives in management, underwriting or other compensation is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those securities sold pursuant to this exemption. Except as described above, nothing in this paragraph shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other consideration that is not based upon the amount of securities purchased by the Asset Manager on behalf of Client Plans pursuant to this exemption; and

(2) The Affiliated Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section I(e), (f), or (g) of this exemption.

(h) In the case of a single Client Plan, the covered transaction is performed under a written authorization executed in advance by an independent fiduciary (Independent Fiduciary) of the Client Plan.

(i) Prior to the execution of the written authorization described in paragraph (h) above of this Section I, the following information and materials must be provided in hard copy or in electronic form by the Asset Manager to the Independent Fiduciary of each single Client Plan:

(1) A copy of the notice of proposed exemption and of the final exemption as published in the **Federal Register**; and

(2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(j) Subsequent to an Independent Fiduciary's initial authorization permitting the Asset Manager to engage in the covered transactions on behalf of a single Client Plan, the Asset Manager will continue to be subject to the

requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(k) In the case of existing plan investors in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the Asset Manager has provided the written information described below to the Independent Fiduciary of each plan participating in the Pooled Fund.

The following information and materials shall be provided in hard copy or in electronic form not less than 45 days prior to the Asset Manager's engaging in the covered transactions on behalf of the Pooled Fund pursuant to the exemption:

(1) A notice of the Pooled Fund's intent to purchase securities pursuant to this exemption and a copy of the notice of proposed exemption and of the final exemption as published in the **Federal Register**;

(2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests; and

(3) A termination form expressly providing an election for the Independent Fiduciary to terminate the plan's investment in the Pooled Fund without penalty to the plan. Such form shall include instructions specifying how to use the form.

Specifically, the instructions will explain that the plan has an opportunity to withdraw its assets from the Pooled Fund for a period at least 30 days after the plan's receipt of the initial notice described in paragraph (1) of this Section I(k) above and that the failure of the Independent Fiduciary to return the termination form by the specified date shall be deemed to be an approval by the plan of its participation in covered transactions as a Pooled Fund investor. Further, the instructions will identify the Asset Manager and its Affiliated Broker-Dealer and state that this exemption may be unavailable unless the Independent Fiduciary is, in fact, independent of those persons. Such fiduciary must advise the Asset Manager, in writing, if it is not an "Independent Fiduciary," as that term is defined in Section II(g) of this exemption.

For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof.

However, in-house plans must notify the Asset Manager, as provided above.

(1) In the case of a plan whose assets are proposed to be invested in a Pooled Fund subsequent to implementation of

the procedures to engage in the covered transactions, the plan's investment in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary, following the receipt by the Independent Fiduciary of the materials described in Section I(k)(1) and (2). For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof.

(m) Subsequent to an Independent Fiduciary's initial authorization of a plan's investment in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall:

(1) Furnish the Independent Fiduciary of each single Client Plan, and of each plan investing in a Pooled Fund, with a report (which may be provided electronically) disclosing all securities purchased on behalf of that Client Plan or Pooled Fund pursuant to this exemption during the period to which such report relates, and the terms of the transactions, including:

(i) The type of security (including the rating of any debt security);

(ii) The price at which the securities were purchased;

(iii) The first day on which any sale was made during this offering;

(iv) The size of the issue;

(v) The number of securities purchased by the Asset Manager for the specific Client Plan or Pooled Fund;

(vi) The identity of the underwriter from whom the securities were purchased;

(vii) The spread on the underwriting;

(viii) The price at which any such securities purchased during the period were sold; and

(ix) The market value at the end of such period of each security purchased during the period and not sold;

(2) Provide to the Independent Fiduciary in the quarterly report a representation that the Asset Manager has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described in paragraph (g)(2) of this Section I, affirming that, as to each offering covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section I(e), (f), and (g) of this exemption, and that a copy of such certification will be provided to

the Independent Fiduciary upon request;

(3) Disclose to the Independent Fiduciary that, upon request, any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests will be provided, including, but not limited to:

(i) The date on which the securities were purchased on behalf of the plan;

(ii) The percentage of the offering purchased on behalf of all Client Plans and Pooled Funds; and

(iii) The identity of all members of the underwriting syndicate;

(4) Disclose to the Independent Fiduciary in the quarterly report, any instance during the past quarter where the Asset Manager was precluded for any period of time from selling a security purchased under this exemption in that quarter because of its status as an affiliate of the Affiliated Broker-Dealer and the reason for this restriction;

(5) Provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a single Client Plan, that the authorization to engage in the covered transactions may be terminated, without penalty, by the Independent Fiduciary on no more than five days' notice by contacting an identified person; and

(6) Provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a plan investing in a Pooled Fund, that the Independent Fiduciary may terminate investment in the Pooled Fund, without penalty, by contacting an identified person.

(o) Each single Client Plan shall have total net assets with a value of at least \$50 million. In addition, in the case of a transaction involving an Eligible Rule 144A Offering on behalf of a single Client Plan, each such Client Plan shall have at least \$100 million in securities, as determined pursuant to SEC Rule 144A (17 CFR 230.144A). In the case of a Pooled Fund, the \$50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having total net assets with a value of at least \$50 million. For purchases involving an Eligible Rule 144A Offering on behalf of a Pooled Fund, the \$100 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having at least \$100 million in assets and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset tests described above, where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the \$50 million net asset requirement or the \$100 million net asset requirement may be met by aggregating the assets of such Client Plans, if the assets are pooled for investment purposes in a single master trust.

(p) The Asset Manager qualifies as a "qualified professional asset manager," as that term is defined under Part V(a) of PTE 84-14 (49 FR 9494, 9506, March 13, 1984) and, in addition, has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of \$5 billion and shareholders' or partners' equity in excess of \$1 million.

(q) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, is comprised of assets of employee benefit plans maintained by the Asset Manager, the Affiliated Broker-Dealer, or an affiliate for their own employees, for which the Asset Manager, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The Asset Manager and the Affiliated Broker-Dealer maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in Section I(s) of this exemption to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Client Plan, other than the Asset Manager and the Affiliated Broker-Dealer, shall be subject to a civil penalty under section 502(i) of the Act or the sanctions imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by Section I(s); and

(2) A prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the Asset Manager or the Affiliated Broker-Dealer, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided in subparagraph (2) of this Section I(s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section I(r) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC;

(ii) Any fiduciary of a Client Plan, or any duly authorized employee or representative of such fiduciary;

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Client Plan, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a Client Plan, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in subparagraphs (s)(1)(ii)–(iv) of this Section I shall be authorized to examine trade secrets of the Asset Manager or the Affiliated Broker-Dealer, or commercial or financial information which is privileged or confidential; and

(3) Should the Asset Manager or the Affiliated Broker-Dealer refuse to disclose information on the basis that such information is exempt from disclosure pursuant to Section I(s)(2) above, the Asset Manager shall, by the close of the (thirtieth) (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

#### *Section II. Definitions*

(a) The term "Asset Manager" means any asset management affiliate of any Applicant (as "affiliate" is defined in Section II(c)) that meets the requirements of this exemption.

(b) The term "Affiliated Broker-Dealer" means any broker-dealer affiliate of any Applicant (as "affiliate" is defined in paragraph (c) of this Section II) that meets the requirements of this exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term "manager" means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered, or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term "Client Plan" means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act and whose assets are under the management of the Asset Manager, including a plan investing in a Pooled Fund (as "Pooled Fund" is defined in Section II(f) below).

(f) The term "Pooled Fund" means a common or collective trust fund or pooled investment fund maintained by the Asset Manager.

(g)(1) The term "Independent Fiduciary" means a fiduciary of a Client Plan who is unrelated to, and independent of, the Asset Manager and the Affiliated Broker-Dealer. For purposes of this exemption, a Client Plan fiduciary will be deemed to be unrelated to, and independent of, the Asset Manager and the Affiliated Broker-Dealer if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager or the Affiliated Broker-Dealer and represents that such fiduciary shall advise the Asset Manager if those facts change.

(2) Notwithstanding anything to the contrary in this Section II(g), a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager or the Affiliated Broker-Dealer;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager or the Affiliated Broker-Dealer for his or her own personal account in connection with any transaction described in this exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Client Plan sponsor or of the fiduciary responsible for the

decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Client Plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser and (B) the decision to authorize or terminate authorization for transactions described in Section I, then this Section II(g)(2)(iii) shall not apply.

(3) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(4) In the case of existing Client Plans in a Pooled Fund, at the time the Asset Manager provides such Client Plans with initial notice pursuant to this exemption, the Asset Manager will notify the fiduciaries of such Client Plans that they must advise the Asset Manager, in writing, if they are not independent, within the meaning of this Section II(g).

(h) The term "security" shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940, as amended (the 1940 Act) (15 U.S.C. 80a-2(36) (1996)). For purposes of this exemption, mortgage-backed or other asset-backed securities rated by a Rating Organization will be treated as debt securities.

(i) The term "Eligible Rule 144A Offering" shall have the same meaning as defined in SEC Rule 10f-3(a)(4) (17 CFR 270.10f-3(a)(4)) under the 1940 Act.

(j) The term "qualified institutional buyer" or "QIB" shall have the same meaning as defined in SEC Rule 144A (SEC Rule 144A) (17 CFR 230.144A(a)(1)) under the Securities Act of 1933.

(k) The term "Rating Organizations" means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors.

**EFFECTIVE DATE:** This exemption is effective as of April 16, 2003.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 16, 2003 at 68 FR 18687.

**FOR FURTHER INFORMATION CONTACT:** Ms. Silvia Quezada of the Department at (202) 693-8553. (This is not a toll-free number.)

### **Goldman, Sachs & Co. and Its Affiliates Located in New York, New York**

[Prohibited Transaction Exemption 2003-23; Exemption Application No. D-11169]

#### **Exemption**

The restrictions of sections 406(a)(1)(A) through (D) of the Act and the sanctions resulting from application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of securities, in the context of a portfolio liquidation or restructuring, between (i) Goldman, Sachs & Co. (Goldman) and its current and future affiliates, including certain foreign broker-dealers or banks (the Foreign Affiliates, as defined in Section III below), (collectively, the Applicant) and (ii) employee benefit plans (the Plans) with respect to which the Applicant is a party in interest, provided that the conditions set forth in Section II are satisfied.

#### *Section II—Conditions*

A. The Applicant customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

B. The Applicant (including an affiliate) does not have discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, nor renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

Notwithstanding the foregoing, the Applicant may be a directed trustee (as defined in Section III below) with respect to the Plan assets involved in the transaction.

In addition, although the Applicant does not have discretionary authority or control over such Plan assets at the time of the transaction and has not used its discretion to appoint the transition broker-dealer, it may act as a fiduciary with respect to the Plan assets involved in the transaction, solely as: (i) The investment manager of such assets to be managed as an Index or Model-Driven Fund; or (ii) the investment manager of such assets who supplies a list of securities or other investments to be purchased, which list is prepared without regard to the identity of the broker-dealer and without reference to the portfolio being liquidated or restructured, and is substantially the same list that would be provided to other similarly situated investors with substantially similar investment guidelines and objectives, or is substantially similar to the investments in existing portfolios managed in the same style.

Lastly, a transaction will not fail to meet the requirements of this section if the Applicant is being terminated as a manager of the Plan assets involved in the transaction, its investment discretion is terminated prior to the commencement of the portfolio liquidation or restructuring, and the Applicant has not used its discretion to appoint the transition broker-dealer;

C. The transaction is a purchase or sale, for no consideration other than cash;

D. The terms of any transaction are at least as favorable to the Plan as those obtainable in a comparable arm's length transaction with an unrelated party;

E. An Independent Fiduciary has given prior approval that the transaction may be effectuated as a principal transaction and at a price that—

(1) For an equity security, is specified in advance by the Independent Fiduciary and is a stated dollar amount, or is based on an objective measure (as of a specified date or dates), including, but not limited to, the closing price, the opening price, or the volume-weighted average price; or

(2) For a fixed income security, is a stated dollar amount, or is within the bid and asked spread, as of the close of the relevant market (or another predetermined time on a specified date or dates), as reported by an independent third party reporting service or a publicly available electronic exchange or trading system;

F. In the case where the price for any transaction is not based on an objective measure, the Independent Fiduciary has given prior approval for the transaction, specifying whether the transaction is to be agency or principal, either on a security-by-security basis, or based on the whole portfolio or an identifiable part of the portfolio (such as all debt securities, all equity securities, all domestic securities, or the like);

G. All purchases and sales executed on a principal basis are effected within two days following the Independent Fiduciary's direction to purchase or sell a given security—except that, with the approval of the Independent Fiduciary, the Applicant may extend such initial period for a time not exceeding two additional days, on the same terms;

H. The Independent Fiduciary is furnished with confirmations including the relevant information required under Rule 10b-10 of the Securities Exchange Act of 1934 (the 1934 Act), to the extent required under Rule 10b-10, as well as a report, within five business days after the transaction is completed, containing the following information with respect to each security:

(1) The identity of the security;

(2) The date on which the transaction occurred;

(3) The quantity and price of the securities involved; and

(4) Whether the transaction was executed with the Applicant as principal or agent;

I. Each Plan shall have total net assets with a value of at least \$100 million. For purposes of the net assets test, where a group of Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the \$100 million net assets requirement may be met by aggregating the assets of such Plans, if the assets are pooled for investment purposes in a single master trust;

J. The Applicant complies with all applicable securities or banking laws relating to the transaction;

K. Any Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III, B, and is in compliance with all applicable rules and regulations thereof in connection with any transaction covered by the exemption;

L. Any Foreign Affiliate, in connection with any transaction covered by the exemption, is in compliance with the requirements of Rule 15a-6 (17 CFR 240.15a-6) of the 1934 Act, and Securities and Exchange Commission (SEC) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements;

M. Prior to any transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions. In this regard, the Foreign Affiliate must (i) agree to submit to the jurisdiction of the United States; (ii) agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent); and (iii) consent to service of process on the Process Agent;

N. The Applicant maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction, such records as are necessary to enable the persons described in Paragraph O, below, to determine whether the conditions of the exemption have been met, except that —

(1) A party in interest with respect to a Plan, other than the Applicant, shall not be subject to a civil penalty under section 502(i) of the Act, or the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or not available for

examination, as required by Paragraph O; and

(2) This record-keeping condition shall not be violated if, due to circumstances beyond the Applicant's control, such records are lost or destroyed prior to the end of the six year period; and

O. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Applicant makes the records referred to in Paragraph N, above, unconditionally available within the United States during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (1) The Department, the Internal Revenue Service, or the SEC; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in Items (2) through (5) of this subsection is authorized to examine the trade secrets of the Applicant, or commercial or financial information which is privileged or confidential.

#### Section III—Definitions

A. The term “Goldman” means Goldman, Sachs & Co. and its current and future affiliates, including the Foreign Affiliates (as defined in Paragraph C, below); each domestic affiliate must be one of the following: (i) A broker-dealer registered under the 1934 Act; (ii) a reporting dealer who makes primary markets in securities of the United States Government or of any agency of the United States Government (“Government securities”) and reports daily to the Federal Reserve Bank of New York its positions with respect to Government securities and borrowings thereon; or (iii) a bank supervised by the United States or a State. Goldman, including its current and future affiliates (including the Foreign Affiliates), are collectively referred to herein as “the Applicant.”

B. The term “affiliate” shall include: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; (2) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such person; and (3) any corporation or partnership of which such person is an officer, director or partner. For purposes of this definition, the term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

C. The term “Foreign Affiliate” means an affiliate of Goldman that is subject to regulation as a broker-dealer or bank by: (1) The Securities and Futures Authority or the Financial Services Authority in the United Kingdom, (2) the Federal Authority for Financial Services Supervision, *i.e.*, der Bundesanstalt fuer Finanzdienstleistungsaufsicht (the BAFin) in Germany, (3) the Ministry of Finance and/or the Tokyo Stock Exchange in Japan, (4) the Ontario Securities Commission and/or the Investment Dealers Association, or the Office of the Superintendent of Financial Institutions, in Canada, (5) the Swiss Federal Banking Commission in Switzerland, or (6) the Australian Prudential Regulation Authority or the Australian Securities & Investments Commission, and/or the Australian Stock Exchange Limited, in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

D. The term “security” shall include equities, fixed income securities, options on equity or fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term “security” does not include swap agreements or other notional principal contracts.

E. The term “index” means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if

(1) The organization creating and maintaining the index is—

(i) Engaged in the business of providing financial information, evaluation, advice, or securities brokerage services to institutional clients,

(ii) A publisher of financial news or information, or

(iii) A public securities exchange or association of securities dealers;

(2) The index is created and maintained by an organization independent of the Applicant; and

(3) The index is a generally accepted standardized index of securities that is not specifically tailored for the use of the Applicant.

F. The term “Index Fund” means any investment fund, account, or portfolio trustee or managed by the Applicant, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile, and other characteristics of an independently maintained securities index (as “index” is defined in Paragraph E, above) by either (i) replicating the same

combination of securities that compose such index, or (ii) sampling the securities that compose such index based on objective criteria and data;

(2) For which the Applicant does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains "plan assets" subject to the Act, pursuant to the Department's regulations (*see* 29 CFR 2510.3-101, Definition of "plan assets"—plan investments); and

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

G. The term "Model-Driven Fund" means any investment fund, account, or portfolio trustee or managed by the Applicant, in which one or more investors invest, and—

(1) Which is composed of securities, the identity of which and the amount of which, are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager, to transform an Index (as defined in Paragraph E, above);

(2) Which contains "plan assets" subject to the Act, pursuant to the Department's regulations (*see* 29 CFR 2510.3-101, Definition of "plan assets"—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund, or the utilization of any specific objective criteria, that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

H. The term "Plan" means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act.

I. The term "Independent Fiduciary" means a fiduciary of a Plan who is unrelated to, and independent of, the Applicant. For purposes of the exemption, a Plan fiduciary will be deemed to be unrelated to, and independent of, the Applicant if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant and represents that such fiduciary shall advise the Applicant if those facts change.

(1) Notwithstanding anything to the contrary in this Section III, I, a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Applicant;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Applicant for his or her own personal account in connection with any transaction described in the exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Plan sponsor or the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Plan sponsor or the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's broker-dealer or bank executing the transactions covered herein, and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section III, I(1)(iii) shall not apply.

(2) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

J. The term "directed trustee" means a Plan trustee whose powers and duties with respect to any assets of the Plan involved in the portfolio liquidation or restructuring are limited to (i) the provision of nondiscretionary trust services to the Plan, and (ii) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services is discretionary. For purposes of the exemption, a person who is otherwise a directed trustee will not fail to be a directed trustee solely by reason of having been delegated, by the sponsor of a master or prototype Plan, the power to amend such Plan.

**EFFECTIVE DATE:** This exemption is effective as of February 6, 2003.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of

proposed exemption published on April 16, 2003 at 68 FR 18698.

#### Written Comments

The Department received one written comment with respect to the notice of proposed exemption (the Proposal). The comment was submitted by the Applicant, who requested clarification of a certain statement in Item 3 of the Summary of Facts and Representations in the Proposal. The Applicant wished to revise the first full sentence in the first column of 68 FR at 18701 as follows (note bracketed deletions and italicized additions):

The Applicant [delete "believes"] *is concerned that some of its Plan clients may believe* that the principal transactions at issue may fall outside the scope of relief provided by PTE 75-1 (40 FR 50845, October 31, 1975), Part II, [footnote 32] because that class exemption is unavailable where the broker-dealer's affiliate is the trustee of a Plan, even if only a directed trustee, *and is unavailable where the broker-dealer or an affiliate thereof is otherwise a fiduciary with respect to the Plan, such as an asset manager.*

The Department acknowledges the Applicant's clarification to the record.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karin Weng of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of

whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 1st day of July, 2003.

**Ivan Strasfeld,**

*Director of Exemption Determinations  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. 03-17095 Filed 7-7-03; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

##### 1. San Juan Coal Company

[Docket No. M-2003-047-C]

San Juan Coal Company, 1001 Pennsylvania Avenue, NW, Washington, DC 20004-2595 has filed a petition to modify the application of 30 CFR 75.321(a)(1) (Air quality) to its San Juan South Underground Mine (MSHA I.D. No. 29-02170) located in San Juan County, New Mexico. The petitioner requests a modification of the existing standard to permit oxygen levels below 19.5% in the tailgate entry adjacent to the last shield on the longwall face in the San Juan South Underground Mine to eliminate air quality, and rib and roof fall hazards to the miners in lieu of adjusting ventilation controls in the affected area if less than 19.5% oxygen is detected there. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miner and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

##### 2. Snyder Coal Company

[Docket No. M-2003-048-C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.381 (Escapeways; anthracite mines) to its Rattling Run Slope (MSHA I.D. No. 36-08713) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit two separate travelable

passageways designated as escapeways in lieu of two travelable passageways designated as escapeways that must be on distinct air courses. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

##### 3. Drummond Company, Inc.

[Docket No. M-2003-049-C]

Drummond Company, Inc., PO Box 10246, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.507 (Power connection points) to its Shoal Creek Mine (MSHA I.D. No. 01-02901) located in Jefferson County, Alabama. The petitioner proposes to use 4,160-volt, three-phase, alternating current deepwell submersible pumps in boreholes in it Shoal Creek Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

#### Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to [comments@msha.gov](mailto:comments@msha.gov), or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before August 7, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, VA, this 30th day of June 2003.

**Marvin W. Nichols, Jr.,**

*Director, Office of Standards, Regulations,  
and Variances.*

[FR Doc. 03-17138 Filed 7-7-03; 8:45 am]

**BILLING CODE 4510-43-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03-079)]

### Notice of Prospective Patent License

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

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that Bigelow Development Aerospace Division, LLC, having offices in Las Vegas, Nevada, has applied for an exclusive license to practice the inventions described and claimed in U.S. Patent No. 6,231,010, entitled

“Advanced Structural and Inflatable Hybrid Spacecraft Module,” and U.S. Patent No. 6,547,189, entitled “Inflatable Vessel and Method.” Each of the above-listed patents is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

**DATES:** Responses to this notice must be received by July 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058-8452; telephone (281) 483-1001.

Dated: June 26, 2003.

**Robert M. Stephens,**

*Deputy General Counsel.*

[FR Doc. 03-17219 Filed 7-7-03; 8:45 am]

**BILLING CODE 7510-01-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03-080)]

### Notice of Prospective Patent License

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

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that Brandywine Optics, Inc. of West Chester, Pennsylvania, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,880,834, entitled “Convex Diffraction Grating Imaging Spectrometer,” which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the NASA Management Office-JPL.

**DATES:** Comments to this notice must be received by July 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Patent Counsel, NASA Management Office-JPL, 4800 Oak Grove Drive, Mail Station 180-801, Pasadena, CA 91109-8099, telephone (818) 354-7770.

Dated: June 26, 2003.

**Robert M. Stephens,**

*Deputy General Counsel.*

[FR Doc. 03-17220 Filed 7-7-03; 8:45 am]

**BILLING CODE 7510-01-P**

## THE NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

### Institute of Museum and Library Services; Notice of Comment Request

**SUMMARY:** The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance 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. 3508©(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 Institute of Museum and Library Services is submitting to OMB a generic clearance for guidelines, applications, reporting forms and customer service surveys.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

Comments should be sent to Mamie Bittner, Director of Public and Legislative Affairs, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before September 8, 2003.

IMLS is particularly interested in comments which help the agency to:

- 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.

**ADDRESSES:** Send comments to: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and

Library Services, 1100 Pennsylvania Ave., NW., Room 510, Washington, D.C. 20506.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Pub. L. 104-208 enacted on September 30, 1996 contains the Library Services and Technology Act and the Museum Services Act.

Pub. L. 104-208 authorizes the Director of the Institute of Museum and Library Services to make grants to States, and to Indian tribes and to organizations that primarily serve and represent Native Hawaiians to—

- (1) Consolidate Federal library service programs;
- (2) stimulate excellence and promote access to learning and information resources in all types of libraries for individuals of all ages;
- (3) promote library services that provide all users access to information through State, regional, national and international electronic networks;
- (4) provide linkages among and between libraries;
- (5) promote targeted library services to people of diverse geographic, cultural, and socioeconomic backgrounds, to individuals with disabilities, and to people with limited functional literacy or information skills.

Pub. L. 104-208 also provides authority for the Director to make grants, and to enter into contracts and cooperative agreements for activities that may include

- (1) education and training of persons in library and information science, particularly in areas of new technology and other critical needs, including graduate fellowships, traineeships, institutes and other programs.
- (2) research and demonstration projects related to the improvement of libraries, education in library and information science, enhancement of library services through effective and efficient use of new technologies, and dissemination of information derived from such projects;
- (3) preserving or digitization of library materials and resources, giving priority to projects emphasizing coordination, avoidance of duplication, and access by researchers beyond the institution of library entity undertaking the project; and
- (4) model programs demonstrating cooperative efforts between libraries and museums.

Pub. L. 104-208 also provides authority for the Director to make grants to museums for activities such as—

- (1) Programs that enable museums to construct or install displays, interpretations, and exhibitions in order

to improve museum services provided to the public:

(2) assisting museums in developing and maintain professionally trained or otherwise experienced staff to meet the needs of the museums;

(3) assisting museums in meeting the administrative costs of preserving and maintaining the collections of the museums, exhibiting the collections to the public, and providing educational programs to the public through the use of the collections;

(4) assisting museums in cooperating with each other in developing traveling exhibitions, meeting transportation costs, and identifying and locating collections available for loan;

(5) assisting museums in the conservation of their collections;

(6) developing and carrying out specialized programs for specific segments of the public, such as programs for urban neighborhoods, rural areas, Indian reservations, and penal and other State institutions; and

(7) model programs demonstrating cooperative efforts between libraries and museums.

The Director is also authorized to enter into contracts and cooperative agreements with appropriate entities to strengthen museum services.

##### II. Current Actions

To administer these programs of grants, cooperative agreements and contracts, IMLS must develop application guidelines, reports and customer service surveys.

*Agency:* Institute of Museum and Library Services.

*Title:* Application Guidelines, Interim and Final Performance Reports, and Customer Service Surveys.

*OMB Number:* 3137-0029.

*Agency Number:* 3137.

*Frequency:* Annually.

*Affected Public:* State Library Administrative Agencies, museums, libraries.

*Number of Respondents:* 2500.

*Estimated Time Per Respondent:* 1-40.

*Total Burden Hours:* 35,000.

*Total Annualized capital/startup costs:* 0.

*Total Annual Costs:* 0.

#### FOR FURTHER INFORMATION CONTACT:

Mamie Bittner, Director Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606-4646.

Dated: July 1, 2003.

**Mamie Bittner,**

*Director Public and Legislative Affairs.*

[FR Doc. 03-17166 Filed 7-7-03; 8:45 am]

**BILLING CODE 7036-01-M**

**NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES****National Council on the Humanities; Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92-463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, DC on July 24-25, 2003.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on July 24-25, 2003, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on July 24, 2003 will be as follows:

**Committee Meetings**

(Open to the Public)

Policy Discussion

9-10:30 a.m.

Education Programs—Room M-07  
Public Programs—Room 420  
Federal/State Partnership and  
Challenge Grants—Room 507

(Closed to the Public)

Discussion of Specific Grant  
Applications and Programs Before the  
Council

10:30 a.m. until adjourned

Education Programs—Room M-07  
Public Programs—Room 420  
Federal/State Partnership and  
Challenge Grants—Room 507

2-3:30 p.m.

National Humanities Medals—Room  
527

The morning session on July 25, 2003 will convene at 9 a.m., in the 1st Floor Council Room M-09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

**A. Minutes of the Previous Meeting****B. Reports**

1. Introductory Remarks
2. Staff Report
3. Congressional Report
4. Reports on Policy and General Matters
  - a. Overview
  - b. Education Programs
  - c. Public Programs
  - d. Challenge Grants
  - e. Federal/State Partnership
  - f. National Humanities Medals

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Mr. Daniel C. Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606-8322, TDD (202) 606-8282. Advance notice of any special needs or accommodations is appreciated.

**Daniel C. Schneider,**

*Advisory Committee Management Officer.*

[FR Doc. 03-17165 Filed 7-7-03; 8:45 am]

**BILLING CODE 7536-01-P**

**NATIONAL TRANSPORTATION SAFETY BOARD****Sunshine Act Meetings; Agenda**

**TIME AND DATE:** 1 p.m., Tuesday, July 15, 2003.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

**STATUS:** The one item is Open to the Public.

**MATTERS TO BE CONSIDERED:**

7567 Highway Accident Report—15 Passenger Van Single-Vehicle Rollover Accidents, Henrietta, Texas, May 8, 2001, and Randleman, North Carolina, July 1, 2001.

*News Media Contact: Telephone: (202) 314-6100.* Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314-6305 by Friday, July 11, 2003.

**FOR FURTHER INFORMATION CONTACT:**  
Vicky D'Onofrio, (202) 314-6410.

Dated: July 3, 2003.

**Vicky D'Onofrio,**

*Federal Register Liaison Officer.*

[FR Doc. 03-17352 Filed 7-3-03; 2:11 pm]

**BILLING CODE 7533-01-M**

**NUCLEAR REGULATORY COMMISSION****Advisory Committee on Reactor Safeguards: Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting**

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a closed meeting on July 16-17, 2003, at Westinghouse Electric Company, 4350 Northern Pike, Monroeville, Pennsylvania.

The entire meeting will be closed to public attendance to discuss Westinghouse Electric Company LLC proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

*Wednesday, July 16, 2003—8:30 a.m. until the conclusion of business.*

*Thursday, July 17, 2003—8:30 a.m. until 12 noon.*

The purpose of this meeting is to review the thermal-hydraulic aspects of the AP1000 design. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Westinghouse Electric Company LLC, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

*For Further Information Contact:* Mr. Ralph Caruso, Designated Federal Official (Telephone: 301-415-8065) between 7:30 a.m. and 4:15 p.m. (e.t.).

Dated: July 1, 2003.

**Sher Bahadur,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 03-17185 Filed 7-7-03; 8:45 am]

**BILLING CODE 7590-01-P**

**NUCLEAR REGULATORY COMMISSION****Advisory Committee on Reactor Safeguards Subcommittee Meeting on Future Plant Designs; Notice of Meeting**

The ACRS Subcommittee on Future Plant Designs will hold a meeting on July 17-18, 2003, at Westinghouse

Electric Company, 4350 Northern Pike, Monroeville, Pennsylvania.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Thursday, July 17, 2003—1 p.m. until the conclusion of business.*

*Friday, July 18, 2003—8:30 a.m. until the conclusion of business.*

The purpose of this meeting is to discuss the Westinghouse AP1000 Instrumentation and Control design concept, man-machine interface design acceptance criteria, human factors issues, and status of resolution of open items regarding the design review. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Westinghouse Electric Company LLC, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Medhat M. El-Zeftawy (telephone 301-415-6889) between 7:30 a.m. and 5 p.m. (e.t.) five days prior to the meeting, if possible, so

that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 5 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: June 30, 2003.

**Sher Bahadur,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 03-17186 Filed 7-7-03; 8:45 am]

**BILLING CODE 7590-01-P**

**NUCLEAR REGULATORY COMMISSION**

**Update to Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste**

On January 6, 1982 (47 FR 596 and 47 FR 600), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** final amendments to 10 CFR parts 71 and 73 (effective July 6, 1982), that require advance notification to Governors or their designees by NRC licensees prior to

transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in part 73 is for spent nuclear reactor fuel shipments and the notification for part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR part 73).

The following list, which was published on June 30, 2003, is being re-published in its entirety for the convenience of users to reflect late-breaking updates to the names, addresses, and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30 to reflect any changes in information.

Questions regarding this matter should be directed to Rosetta O. Virgilio, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (Internet address: [rov@nrc.gov](mailto:rov@nrc.gov) or at (301) 415-2367).

Dated in Rockville, Maryland this 1st day of July, 2003.

For the Nuclear Regulatory Commission.

**Josephine M. Piccone,**

*Deputy Director, Office of State and Tribal Programs.*

**INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS**

State	Part 71	Part 73
Alabama .....	Colonel W.M. Coppage, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36102-1511, (334) 242-4394.	Same.
Alaska .....	Douglas Dasher, Alaska Department of Environmental Conservation, Northern Regional Office, 610 University Avenue, Fairbanks, AK 99709-3643, (907) 451-2172.	Same.
Arizona .....	Aubrey V. Godwin, Director, Arizona Radiation Regulatory Agency, 4814 South 40th Street, Phoenix, AZ 85040, (602) 255-4845, ext. 222, 24 hours: (602) 223-2212.	Same.
Arkansas .....	Bernard Bevill, Division of Radiation Control and Emergency Management, Arkansas Department of Health, 4815 West Markham Street, Mail Slot #30, Little Rock, AR 72205-3867, (501) 661-2301, 24 hours: (501) 661-2136.	Same.
California .....	Captain Andrew R. Jones, California Highway Patrol, Enforcement Services Division, 444 North 3rd St., Suite 310, P.O. Box 942898, Sacramento, CA 94298-0001, (916) 445-1865, 24 hours: 1-(916) 861-1300.	Same.
Colorado .....	Captain Tommy Wilcoxon, Hazardous Materials Section, Colorado State Patrol, 700 Kipling Street, Suite 1000, Denver, CO 80215-5865, (303) 239-4546, 24 hours: (303) 239-4501.	Same.
Connecticut .....	Edward L. Wilds, Jr., Ph.D., Director, Division of Radiation, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106-5127, (860) 424-3029, 24 hours: (860) 424-3333.	Same.
Delaware .....	James L. Ford, Jr., Department of Public Safety, P.O. Box 818, Dover, DE 19903, (302) 744-2680, 24 hours: pager (302) 474-1030.	Same.

## INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
Florida	Harlan W. Keaton, Administrator, Bureau of Radiation Control, Environmental Radiation Program, Department of Health, P.O. Box 680069, Orlando, FL 32868-0069, (407) 297-2095.	Same.
Georgia	Captain Bruce Bugg, Special Projects Coordinator, Law Enforcement Division, Georgia Department of Motor Vehicle Safety, P.O. Box 80447, 2206 East View Parkway, Conyers, Georgia 30013, (678) 413-8825.	Same.
Hawaii	Loretta Fuddy, Acting Deputy Director for Environmental Health, State of Hawaii Department of Health, P.O. Box 3378, Honolulu, HI 96813, (808) 586-4424.	Same.
Idaho	Lieutenant Duane Sammons, Deputy Commander, Commercial Vehicle Safety, Idaho State Police, P.O. Box 700, Meridian, ID 83680-0700, (208) 884-7220, 24 hours: (208) 846-7500.	Same.
Illinois	Gary Wright, Assistant Director, Division of Nuclear Safety, Illinois Emergency Management Agency, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785-9868, 24 hours: (217) 785-9900.	Same.
Indiana	Superintendent Melvin J. Carraway, Indiana State Police, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232-8248.	Same.
Iowa	Ellen M. Gordon, Administrator, Homeland Security Advisor, Iowa Emergency Management Division, Hoover Street Office Building, Level A, 1305 East Walnut Street, Des Moines, IA 50319, (515) 281-3231.	Same.
Kansas	Frank H. Moussa, M.S.A., Technological Hazards Administrator, Department of the Adjutant General, Division of Emergency Management, 2800 SW. Topeka Boulevard, Topeka, KS 66611-1287, (785) 274-1409, 24 hours: (785) 296-3176.	Same.
Kentucky	Robert L. Johnson, Manager, Radiation Health and Toxic Agents Branch, Cabinet for Health Services, 275 East Main Street, Mail Stop HS-2E-D, Frankfort, KY 40621-0001, (502) 564-7818, ext. 3697 24 hours: (1-800) 255-2587.	Same.
Louisiana	Major Joseph T. Booth, Louisiana State Police, 7901 Independence Boulevard, P.O. Box 66614 (#21), Baton Rouge, LA 70896-6614, (225) 925-6113, ext. 270, 24 hours: (877) 925-6252.	Same.
Maine	Colonel Michael R. Sperry, Chief of the State Police, Maine Department of Public Safety, 42 State House Station, Augusta, ME 04333, (207) 624-7000.	Same.
Maryland	Lt. Thomas McCord, Maryland State Police, Electronic Systems Division, 1201 Reisterstown Road, Pikesville, MD 21208, (410) 653-4208, 24 hours: (410) 653-4200.	Same.
Massachusetts	Robert Walker, Director, Radiation Control Program, Massachusetts Department of Public Health, 90 Washington Street, Dorchester, MA 02121, (617) 427-2944, 24 hours: (617) 427-2913.	Same.
Michigan	Captain Dan Smith, Commander, Special Operations Division, Michigan State Police, 714 South Harrison Road, East Lansing, MI 48823, (517) 336-6187, 24 hours: (517) 336-6100.	Same.
Minnesota	John R. Kerr, Assistant Director, Administration and Preparedness Branch, Department of Public Safety, Division of Emergency Management 444 Cedar St., Suite 223, St. Paul, MN 55101-6223, (651) 296-0481, 24 hours: (651-649-5451).	Same.
Mississippi	Robert R. Latham, Jr., Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296-4501, (601) 960-9020.	Same.
Missouri	Jerry B. Uhlmann, Director, Emergency Management Agency, P.O. Box 116, Jefferson City, MO 65102, (573) 526-9101, 24 hours: (573) 751-2748.	Same.
Montana	James Greene, Administrator, Montana Disaster & Emergency Services Division, P.O. Box 4789, Helena, MT 59604-4789, (406) 841-3911.	Same.
Nebraska	Major Bryan J. Tuma, Nebraska State Patrol, P.O. Box 94907, Lincoln, NE 68509-4907, (402) 479-4950, 24 hours: (402) 471-4545.	Same.

## INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
Nevada .....	Stanley R. Marshall, Supervisor, Radiological Health Section, Bureau of Health Protection Services, Nevada State Health Division, 1179 Fairview Drive, Suite 102, Carson City, NV 89701-5405, (775) 687-5394, ext. 276, 24 hours: (775) 688-2830.	Same.
New Hampshire .....	Commissioner Richard M. Flynn, New Hampshire Department of Safety, James H. Hayes Building, 10 Hazen Drive, Concord, NH 03305, (603) 271-2791, 24 hours: (603) 271-3636.	Same.
New Jersey .....	Kent Tosch, Chief, Bureau of Nuclear Engineering, Department of Environmental Protection, P.O. Box 415, Trenton, NJ 08625-0415, (609) 984-7701.	Same.
New Mexico .....	Derrith Watchman-Moore, Deputy Secretary, New Mexico Environment Department, Office of Emergency Services and Security, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502-6110, (505) 827-2855, 24 hours: (1-800) 249-0157.	Same.
New York .....	Andrew Feeney, Director, State Emergency Management Office, 1220 Washington Avenue, Building 22—Suite 101, Albany, NY 12226-2251, (518) 457-8900.	Same.
North Carolina .....	Line Sergeant Mark Dalton, Hazardous Materials Coordinator, North Carolina Highway Patrol Headquarters, 4702 Mail Service Center, Raleigh, NC 27699-4702, (919) 733-5282, 24 hours: (919) 733-3861.	Same.
North Dakota .....	Terry O'Clair, Director, Division of Air Quality, North Dakota Department of Health, 1200 Missouri Avenue, P.O. Box 5520, Bismarck, ND 58506-5520, (701) 328-5188, After hours: (701) 328-9921.	Same.
Ohio .....	Carol A. O'Claire, Supervisor, Ohio Emergency Management Agency, 2855 West Dublin Granville Road, Columbus, OH 43235-2206, (614) 799-3915, 24 hours: (614) 889-7150.	Same.
Oklahoma .....	Commissioner Bob A. Ricks, Oklahoma Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136-0145, (405) 425-2001, 24 hours: (405) 425-2424.	Same.
Oregon .....	David Stewart-Smith, Administrator, Energy Resources Division, Oregon Office of Energy, 625 Marion Street, NE, Suite 1, Salem, OR 97301-3742, (503) 378-6469.	Same.
Pennsylvania .....	John Bahnweg, Director of Operations and Training, Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110-9364, (717) 651-2001.	Same.
Rhode Island .....	William A. Maloney, Associate Administrator, Motor Carriers Section, Division of Public Utilities and Carriers, 89 Jefferson Blvd., Warwick, RI 02888, (401) 941-4500, ext. 150.	Same.
South Carolina .....	Henry J. Porter, Assistant Director, Division of Waste Management, Bureau of Land and Waste Management, Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 896-0424, Emergency: (803) 253-6488.	Same.
South Dakota .....	John A. Berheim, Director, Division of Emergency Management, 500 E. Capitol Avenue, Pierre, SD 57501-5070, (605) 773-3231.	Same.
Tennessee .....	John D. White, Jr., Director, Emergency Management Agency, 3041 Sidco Drive, Nashville, TN 37204-1504, (615) 741-0001, After hours: (Inside TN) 1-800-262-3400, (Outside TN) 1-800-258-3300.	Same.
Texas .....	Richard A. Ratliff, Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756-3189, (512) 834-6679.	Colonel Thomas A. Davis Director, Texas Department of Public Safety, ATTN: EMS Preparedness Section, P. O. Box 4087, Austin, TX 78773-0223, (512) 424-2589, 24 hours: (512) 424-2277.
Utah .....	William J. Sinclair, Director, Division of Radiation Control, Department of Environmental Quality, 168 North 1950 West, P.O. Box 144850, Salt Lake City, UT 84114-4850, (801) 536-4250, After hours: (801) 536-4123.	Same.
Vermont .....	Lieutenant Col. Thomas A. Powlovich, Director, Division of State Police, Department of Public Safety, 103 South Main Street, Waterbury, VT 05671-2101, (802) 244-7345.	Same.

## INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
Virginia .....	Brett A. Burdick, Director, Technological Hazards Division, Department of Emergency Management, Commonwealth of Virginia, 10501 Trade Court, Richmond, VA 23236, (804) 897-6500, ext. 6569, 24 hours: (804) 674-2400.	Same.
Washington .....	Steven L. Kalmbach, Assistant State Fire Marshall, Washington State Patrol, Fire Protection Bureau, P.O. Box 42600, Olympia, WA 98504-2600, (360) 570-3119, 24 hours: (1-800) 409-4755.	Same.
West Virginia .....	Colonel H. E. Hill, Jr., Superintendent, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309, (304) 746-2111.	Same.
Wisconsin .....	Edward J. Gleason, Administrator, Division of Emergency Management, 2400 Wright Street, P.O. Box 7865, Madison, WI 53707-7865, (608) 242-3232.	Same.
Wyoming .....	Captain Vernon Poage, Support Services Officer, Commercial Carrier, Wyoming Highway Patrol, 5300 Bishop Boulevard, Cheyenne, WY 82009-3340, (307) 777-4317, 24 hours: (307) 777-4321.	Same.
District of Columbia .....	Gregory B. Talley, Program Manager, Radiation Protection Division, Bureau of Food, Drug & Radiation Protection, Department of Health, 51 N Street, NE., Room 6006, Washington, DC 20002, (202) 535-2320, 24 hours: (202) 666-8001.	Same.
Puerto Rico .....	Esteban Mujica, Chairman, Environmental Quality Board, P.O. Box 11488, San Juan, PR 00910, (787) 767-8056 or (787) 767-8181.	Same.
Guam .....	Jesus T. Salas, Administrator, Guam Environmental Protection Agency, P.O. Box 22439 GMF, Barrigada, Guam 96921, (671) 457-1658.	Same.
Virgin Islands .....	Dean C. Plaskett, Esq., Commissioner, Department of Planning and Natural Resources, Cyril E. King Airport, Terminal Building—Second Floor, St. Thomas, Virgin Islands 00802, (340) 774-3320.	Same.
American Samoa .....	Pati Faiiai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799, (684) 633-2304.	Same.
Commonwealth of the Northern Mariana Islands.	Thomas B. Pangelinan, Secretary, Department of Lands and Natural Resources, Commonwealth of Northern Mariana Islands Government, Caller Box 10007, Saipan, MP 96950, (670) 322-9830 or (670) 322-9834.	Same.

[FR Doc. 03-17184 Filed 7-7-03; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any

amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, June 13, 2003, through June 26, 2003. The last biweekly notice was published on June 24, 2003 (68 FR 37574).

#### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the

proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the

Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 7, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing

Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the

Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

**AmerGen Energy Company, LLC, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station (OCNGS), Ocean County, New Jersey**

*Date of amendment request:* June 2, 2003.

*Description of amendment request:* The licensee proposed to revise Sections 3.7.B.1 and 3.7.C.2 of the OCNGS Technical Specifications (TSs). Section 3.7.B.1 currently specifies that the reactor may remain in operation "for a period not to exceed 7 days in any 30 day period if a startup transformer is out of service." Section 3.7.C.2, referring to the standby diesel generators (DGs), currently specifies that the reactor may remain in operation "for a period not to exceed 7 days in any 30 day period if a diesel generator is out of service." The proposed revision is to delete the phrase "in any 30 day period" from these two sections. The licensee regards this phrase as an unnecessary restriction, and states that it has no basis in the existing TSs, design basis, or licensing basis of OCNGS.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the three standards of 10 CFR 50.92(c) and performed its own. The NRC staff's analysis is presented below:

The first standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The

proposed changes, if approved by the NRC staff, will be made in a manner such that conservatism is maintained through continued compliance with applicable NRC regulations (specifically, the Maintenance Rule in 10 CFR 50.65) and guidance. No hardware design change is involved with the proposed amendment, thus there can be no adverse effect on the functional performance of the startup transformers or DGs. Consequently, the subject components will continue to perform their design functions with no decrease in their capabilities to mitigate the consequences of postulated accidents. Unavailability of these components was not factored into the scenarios of previously analyzed accidents, nor were the subject components assumed to be initiators of previously analyzed accidents. Consequently, the proposed revision to the subject sections will lead to no increase in the consequences of accidents previously evaluated, and will lead to no increase of the probability of accidents previously evaluated.

The second standard requires that operation of the unit in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment is not the result of a hardware design change, nor does it lead to the need for a hardware design change. There is no change in the methods OCNGS is operated. As a result, all structures, systems, and components will continue to perform as previously analyzed by the licensee, and previously evaluated and accepted by the NRC staff. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The third standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. Since the licensee did not propose to exceed or alter a design basis or safety limit, the proposed amendment will not affect in any way the performance characteristics and intended functions of the subject components. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* John E. Matthews, Esquire, Morgan, Lewis, &

Bockius, LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.  
*NRC Section Chief:* Richard J. Laufer.

**Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona**

*Date of amendments request:* May 28, 2003.

*Description of amendments request:* The amendments would modify several surveillance requirements (SRs) in Technical Specifications (TSs) 3.8.1 and 3.8.4 on alternating current and direct current sources, respectively, for plant operation. The revised SRs would have notes deleted or modified to allow the SRs to be performed, or partially performed, in reactor modes that are currently not allowed by the TSs. The current SRs are not allowed to be performed in Modes 1 and 2. Several of the current SRs also cannot be performed in Modes 3 and 4. The footnote to SR 3.8.4.8 would also be deleted. There would also be renumbering in several of the SR notes.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The emergency diesel generators (DGs) and their associated emergency loads are accident mitigating features, rather than accident initiating equipment. Each DG is dedicated to a specific vital bus and these buses and DGs are independent of each other. There is no common mode failure provided by the testing changes proposed in this license amendment request (LAR) that would cause multiple bus failures. Therefore, there will be no significant impact on any accident probabilities by the approval of the requested amendment.

The design of plant equipment is not being modified by these proposed changes. The changes include an increase in the online time the DG will be paralleled to the grid in Mode 1, 2, 3, [and] 4. The overall time that the DG is paralleled in all modes (outages/non-outage) should remain unchanged. As such, the ability of the DGs to respond to a design basis accident (DBA) can be adversely impacted by [the] proposed changes. However, the impacts are not considered significant based on the DG under test maintaining its ability to respond to an auto-start signal were one to be received during testing, along with the ability of the remaining DG to mitigate a DBA or provide a safe shutdown, and data that shows that the DG itself will not perturb the electrical system significantly. Furthermore, the

proposed amendments for surveillance requirements (SR) 3.8.1.10 and SR 3.8.1.14 share the same electrical configuration alignment to the current monthly 1-hour loaded surveillance.

For SR 3.8.1.13, the DG would still be able to respond to an auto-start signal were one to be received during testing. The unavailability of the DG during the conduct of this SR 3.8.1.13 is minimal (approximately 30 minutes) and is considered insignificant from a risk perspective.

In addition, operating experience and evaluation of the probability of a DG being rendered inoperable concurrent with or due to a significant grid disturbance, support the conclusion that the proposed changes in this LAR do not involve any significant increase in the likelihood of a safety-related bus blackout.

SR changes that are consistent with Industry/Technical Specification Task Force (TSTF) Standard Technical Specification (STS) change TSTF-283, Revision 3 and NUREG-1432, Revision 2 have been approved by the NRC, and the on-line tests allowed by the TSTF and the NUREG are only to be performed for the purpose of establishing operability [of the DG being tested]. Performance of these SRs during previously restricted modes will require an assessment to assure plant safety is maintained or enhanced.

The deletion of the footnote associated with SR 3.8.4.8 is an editorial change. This footnote was associated with coming out of the ninth refueling outage for Unit 1, which has since passed.

Therefore, the proposed change[s] do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different [kind of] accident from any accident previously evaluated.

The proposed change[s] would create no new accidents since no changes are being made to the plant that would introduce any new accident causal mechanisms. Equipment will be operated in the same configuration currently allowed by other DG SRs that allow testing in plant Modes 1, 2, 3, and 4. This license amendment request does not impact any plant systems that are accident initiators or adversely impact any accident mitigating systems.

Therefore, the proposed change[s] do not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in the margin of safety. The margin of safety is related to the ability of the fission product barriers to perform their design [safety] functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes to the testing requirements for the plant DGs do not affect the operability requirements for the DGs, as verification of such operability will continue

to be performed as required (except during different allowed modes [of operation]). Continued verification of operability supports the capability of the DGs to perform their required function of providing emergency power to plant equipment that supports or constitutes the fission product barriers. Only one DG is to be tested at a time and the remaining DG will be available to safely [shut down] the plant or respond to a DBA, if required. Consequently, the performance of these fission product barriers will not be impacted by implementation of [the] proposed amendment.

In addition, the proposed changes involve no changes to [safety] setpoints or limits established or assumed by the accident analysis. On this and the above basis, no safety margins will be impacted.

Therefore, the proposed change[s] do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

*Attorney for licensee:* Kenneth C. Manne, Senior Attorney, Arizona Public Service Company, P.O. Box 52034, Mail Station 7636, Phoenix, Arizona 85072-2034.

*NRC Section Chief:* Stephen Dembek.

**Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland**

*Date of amendments request:* May 28, 2003.

*Description of amendments request:* The proposed amendment would revise the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, cooldown curves (Technical Specification Figure 3.4.3-2) to change the range of temperatures for which a cooldown rate of 100 °F/hr is acceptable.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

In accordance with 10 CFR Part 50, Appendix G, the Calvert Cliffs pressure/temperature (P-T) limits for material fracture toughness requirements of the reactor coolant pressure boundary materials were developed using the methods of linear elastic fracture mechanics and the guidance found in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section III, Appendix G. The proposed

cooldown rates for the Technical Specification P-T limits were made possible by ASME Code Case N-640 which permits use of  $K_{IC}$  for reference stress intensity factor. [Temperatures that enable the low temperature overpressure protection system are not affected].

The proposed change only changes the temperature at which the cooldown transitions from 100°F/hr to 40°F/hr. It does not change the basic cooldown rates or methods of cooling down the Reactor Coolant System. This cooldown transition does not affect the probability of an accident previously evaluated because the cooldown rates have not changed. Additionally, since the cooldown rates are not changed above 300°F, the safety analyses and dose consequences in the Updated Final Safety Analysis Report are not affected.

Therefore[,] the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The implementation of the proposed revision has no significant effect on either the configuration of the plant, or the manner in which it is operated.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The margin of safety is defined by compliance with 10 CFR Part 50, Appendix G, requirements for adequate margin to prevent brittle failure of the reactor coolant pressure boundary materials. As discussed above, use of  $K_{IC}$  with continuous cooldown results in a conservative cooldown rate that will maintain plant safety. With the proposed change, the underlying intent of the 10 CFR Part 50, Appendix G, is maintained.

Therefore, this proposed change does not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Richard J. Laufer.

**Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina**

*Date of amendment request:* May 28, 2003.

*Description of amendment request:* The proposed amendment would modify the Technical Specifications requirements for spent fuel storage pool

boron concentration and fuel storage. The proposed amendment would eliminate the need to credit Boraflex neutron absorbing material for reactivity control in the H. B. Robinson Steam Electric Plant, Unit No. 2, spent fuel storage pool. The new analyses submitted by the licensee take credit for a combination of soluble boron and controlled fuel loading patterns within the spent fuel storage pool in order to maintain acceptable margins of subcriticality.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed changes do not modify the facility. They apply additional administrative controls for maintaining the required boron concentration in the spent fuel storage pool. They also revise the acceptance criteria for the spent fuel storage pool criticality analyses. There will be a procedural change requiring increased frequency of spent fuel storage pool sampling for boron analysis. The sampling is performed in accordance with approved procedures and does not impact the probability or consequences of spent fuel storage pool accidents, which are a fuel handling accident and a loss of spent fuel storage pool cooling. The changes will allow for the further degradation of the Boraflex within the high density racks. The existence or degradation of the Boraflex has no relationship to the probability or consequences of a fuel handling accident or a loss of spent fuel storage pool cooling.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed changes are related to the possibility of a criticality accident in the spent fuel storage pool. Detailed analyses have been performed to ensure a criticality accident in the spent fuel storage pool is not a credible event. The events that could lead to a criticality accident are not new. These events include a fuel mis-positioning event, a fuel drop event, and a boron dilution event. The proposed changes do not impact the probability of any of these events. The detailed criticality analyses performed demonstrate that criticality would not occur following any of these events. For the more likely events, such as a fuel mis-positioning

event,  $k_{\text{eff}}$  remains less than or equal to 0.95. For the unlikely event that the spent fuel storage pool boron concentration was reduced to zero,  $k_{\text{eff}}$  remains less than 1.0. Since a criticality accident remains "not credible," the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes continue to provide the controls necessary to ensure a criticality event could not occur in the spent fuel storage pool. The acceptance criteria are consistent with the acceptance criteria specified in 10 CFR 50.68, which provide an acceptable margin of safety in regard to the potential for a criticality event. Therefore, the changes do not result in a significant reduction in the margin of safety.

Based on the above discussion, [Carolina Power & Light Company] has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

*NRC Section Chief:* Allen G. Howe.

**Dominion Nuclear Connecticut Inc., et al., Docket No. 50-423, Millstone Power Station, Unit No. 3, New London County, Connecticut**

*Date of amendment request:* March 4, 2003, as supplemented May 13, 2003.

*Description of amendment request:* The proposed amendment would revise selected sections of the Technical Specifications (TSs) based upon a re-analysis of fuel handling accidents (FHAs). The revised analysis is based upon selective implementation of the alternative source term (AST) methodology of Regulatory Guide (RG) 1.183, and in accordance with Title 10 of the Code of Federal Regulations (10 CFR), Section 50.67. Specifically, the amendment would revise: TS 3.7.8, "Plant Systems, Control Room Envelope Pressurization System;" TS 3.9.4, "Refueling Operations, Containment Building Penetrations;" TS 3.9.9, "Refueling Operations, Containment Purge and Exhaust Isolation System," and TS 3.9.12, "Refueling Operations, Fuel Building Exhaust Filter System."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve physical modifications to the plant equipment and do not change the operational methods or procedures used for the physical movement of fuel in containment or in the fuel building. As such, the proposed changes have no effect on the probability of occurrence of any accident previously evaluated.

The proposed changes are based upon the re-analysis of an FHA in the containment and an FHA in the fuel building area. The consequences of the re-analyzed events are expressed in terms of total effective dose equivalent (TEDE), and are not directly comparable to either the thyroid or whole body doses reported in the existing analyses. However, even taking this comparison into consideration, any dose increase is considered not to be significant as the revised analyses results meet the applicable TEDE acceptance criteria for AST implementation.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The containment closure components (e.g., equipment access hatch, personnel access hatch doors, and various containment penetrations) and filtration systems are not accident initiators. The proposed changes do not involve the addition of new systems or components nor do they involve the modification of existing plant systems. The proposed changes do not change the operational modes or procedure used for the physical movements of fuel in containment or in the fuel building. The proposed changes do not affect the way in which an FHA is postulated to occur. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety for the dose consequence analysis is considered to be that provided by meeting the applicable regulatory limits. The dose consequences of the existing FHA are within regulatory limits for whole body and thyroid doses as established in 10 CFR 100. The revised FHA using the AST method demonstrates that the dose consequences are within the regulatory limits for TEDE established in 10 CFR 50.67 and RG 1.183. There is no direct

correlation between the old margins of safety established by meeting 10 CFR Part 100 and those established by the proposed change. The staff concludes, however, that meeting 10 CFR 50.67 and RG 1.183 limits would result in doses that would be within the 10 CFR Part 100 limits. Therefore, it is concluded that a reduction in margin of safety, if any, would not be significant.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06141-5127.

*NRC Section Chief:* James W. Clifford.

**Duke Energy Corporation, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* February 25, 2003, as supplemented June 9, 2003.

*Description of amendment request:* The proposed amendments require a Steam Generator (SG) Program that defines a performance based approach to maintaining SG tube integrity. The SG Program includes performance criteria that define the basis for tube integrity and provides reasonable assurance that SG tubing will remain capable of fulfilling its safety function of maintaining reactor coolant pressure boundary (RCPB) integrity. The proposed amendments add a new Technical Specification (TS) for SG Tube Integrity (3.4.18) and revise the TSs for Reactor Coolant System (RCS) Operational Leakage (3.4.13), SG Tube Surveillance Program (5.5.9), and SG Tube Inspection Report (5.6.8).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the facility in accordance with the proposed amendments:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes require a SG Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown, and all anticipated transients included in the design specification) and design basis accidents.

The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational leakage.

The structural integrity performance criterion is a new requirement. It is included in the proposed SG Program administrative TS 5.5.9.

The accident induced leakage criterion is a new requirement. It is included in the proposed SG Program administrative TS 5.5.9.

The operational leakage criterion is equivalent to the existing requirement. Its limit is part of the proposed RCS Operational Leakage TS 3.4.13.

A SG tube rupture event is one of the design basis accidents analyzed as part of Catawba's licensing basis. In the analysis of a SG tube rupture event, a bounding primary to secondary leakage rate equal to the operational leakage rate limit in the licensing basis plus the leakage rate associated with a double-ended rupture of a single tube is assumed. For other design basis accidents, the tubes are assumed to retain their structural integrity (*i.e.*, they are assumed not to rupture). These analyses assume that primary to secondary leakage through each SG is 150 gallons per day.

The accident induced leakage criterion introduced by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis. The SG performance criteria proposed as part of these TS amendments identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining RCPB integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the SG Program required by the proposed changes to TS 5.5.9. The program, defined by NEI [Nuclear Energy Institute] 97-06, "Steam Generator Program Guidelines," includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring.

*Probability of an Accident*

The TS proposed by these license amendments define the actions required upon failure to maintain SG tube integrity and the surveillances necessary to verify that tube integrity is maintained. The proposed administrative TS contain performance criteria, repair criteria, repair methods, maximum SG inspection intervals, and reporting requirements. The set of TS proposed is a significant improvement over the existing SG TS.

In addition, the SG Program required by these amendments includes provisions important in satisfying the TS requirements. The topics addressed by the SG Program include:

- SG performance criteria, including an operational leakage limit,
- SG repair criteria and repair methods,
- SG inspection intervals, and
- Performance based SG inspections that include pre-inspection degradation

assessments, condition monitoring assessments, operational assessments, and non-destructive examination technique requirements.

These SG Program provisions establish requirements that are an improvement as compared to the requirements in the existing TS. As an example, the SG Program requires an operational assessment that defines the maximum SG inspection interval that provides reasonable assurance that the performance criteria will continue to be met at the next inspection. The actual inspection interval is always chosen to be less than the interval determined by the operational assessment. The existing TS have no similar requirement. As a result, the function and integrity of the tubes are maintained with greater assurance and the probability of a SG tube rupture is decreased.

*Consequences of an Accident*

The consequences of design basis accidents are, in part, functions of the dose equivalent  $I^{131}$  in the primary coolant and the primary to secondary leakage rates resulting from an accident. Therefore, limits are included in the plant TS for operational leakage and for dose equivalent  $I^{131}$  in primary coolant to ensure the plant is operated within its analyzed condition.

The analysis of the associated design basis accidents assumes that the initial primary to secondary leak rate is 150 gallons per day in each SG (except for the ruptured SG in a SG tube rupture), and that the reactor coolant activity levels of dose equivalent  $I^{131}$  are at the TS values before the accident. The TS limits, license conditions, and other controls on  $I^{131}$  are unchanged by these amendment requests. These other controls include License Amendments 159 and 151 for Catawba Units 1 and 2, respectively, and the Catawba license amendment request submittal dated May 9, 2002, which is presently being reviewed by the NRC.

In addition, the proposed amendments include a new performance criterion for accident induced leakage that requires that the primary to secondary leakage resulting from an accident other than a SG tube rupture not exceed the value assumed in the dose analyses (150 gallons per day through each SG).

Since the proposed operational leakage limit is equivalent to the existing value, and since the proposed amendments include a new performance criterion for accident induced leakage, the proposed amendments will not increase the consequences of an accident.

From the above discussion, it is concluded that the proposed amendments do not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the existing TS and enhances the requirements for SG inspections. The proposed TS changes do not adversely impact any other previously evaluated design basis accident and represent an improvement over the existing TS. Therefore, the proposed changes do not affect the consequences of a SG tube rupture accident and the probability of such an accident is reduced. In addition, the proposed changes do not affect the consequences of other accidents.

2. Would not create the possibility of a new or different kind of accident from any other accident previously evaluated.

The proposed performance based requirements are an improvement over the requirements imposed by the existing TS. Implementation of the proposed SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the SG Program will be an enhancement of SG tube performance. Primary to secondary leakage that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed amendments do not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed changes do not impact any other plant system or component. The changes enhance SG inspection requirements. Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The SG tubes in pressurized water reactors are an integral part of the RCPB and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the RCPB, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of a SG is maintained by ensuring the integrity of its tubes.

SG tube integrity is a function of the design, environment, and physical condition of the tube. The proposed license amendments do not affect tube design or operating environment. The proposed changes are expected to result in an improvement in the tube integrity by implementing the SG Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the SG Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the existing TS.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed revisions to the TS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South

Church Street, Charlotte, North Carolina 28201-1006.

*NRC Section Chief:* John A. Nakoski.

**Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont**

*Date of amendment request:* May 21, 2003.

*Description of amendment request:* Change the technical specifications by extending the functional test frequency of the reactor protection system (RPS) intermediate range monitor (IRM) functions from weekly to 31 days, and to add more restrictive requirements for the RPS IRM—High Flux function.

*Basis for proposed no significant hazards consideration determination:* As required by Title 10 of the Code of Federal Regulations (10 CFR) Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously analyzed?

The proposed changes do not physically impact the plant, nor do they impact any design or functional requirements of the associated systems. The change does not degrade the performance of, or increase the challenges to, any safety systems assumed to function in the safety analysis. The changes do not impact the way in which surveillances are performed or introduce any accident initiators. The availability of equipment and systems required to prevent or mitigate the radiological consequences of an accident are not significantly affected because of other, more frequent testing that is performed, the availability of redundant systems and equipment, or the high reliability of the equipment. More stringent requirements that ensure operability of equipment do not affect the initiation of any event, nor do they negatively impact the mitigation of any event.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not introduce any failure mechanisms of a different type than previously evaluated, since no physical changes to

the plant are being made. No new failure modes are introduced as no new or different equipment is being installed, and no installed equipment is being operated or surveillance tested in a different manner.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in the margin of safety?

Although the proposed changes would result in changes to the interval between certain surveillance tests, the impact, if any, on system availability is minimal, based upon other more frequent testing that is performed, the existence of redundant systems and equipment, or overall system reliability. The changes do not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. The imposition of more stringent requirements has no negative impact on margins of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037-1128.

*NRC Section Chief:* James W. Clifford.

**Nuclear Management Company, LLC, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of amendment request:* May 30, 2003.

*Description of amendment request:* The proposed amendment deletes requirements from the Technical Specifications (TS) and other elements of the licensing bases to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG-0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS

for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The changes are based on NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF-413, "Elimination of Requirements for a Post Accident Sampling System (PASS)." The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF-413, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following NSHC determination in its application dated May 30, 2003.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

**Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated**

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI-2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI-2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a

PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and

assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI-2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from TS (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

**Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated**

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

**Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety**

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of

the requirements established as a result of the TMI-2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. Jonathan Rogoff, General Counsel, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

*NRC Section Chief:* L. Raghavan.

**Nuclear Management Company, LLC,  
Docket No. 50-255, Palisades Plant,  
Van Buren County, Michigan**

*Date of amendment request:* June 3, 2003.

*Description of amendment request:* The proposed amendment would revise the Palisades Plant Operating License and Technical Specifications to increase the licensed rated power level by 1.4 percent from 2530 megawatts thermal (MWt) to 2565.4 MWt. This power level increase is considered a measurement uncertainty recapture power uprate.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed increase in power level is achieved by the taking credit for the accuracy of the existing feedwater flow measurement instrumentation, including the Crossflow ultrasonic flow measurement (UFM) system, which results in a more accurate feedwater flow used in the heat balance calculation. The increased flow accuracy utilizing the Crossflow UFM system improves the uncertainty in the core power level from the existing 2 percent margin to  $\leq 0.5925\%$ . The probability of an accident previously evaluated is not increased by the proposed change because the flow measurement instrumentation is not an initiator of design-basis accidents evaluated in the updated final safety analysis report [FSAR].

The plant design and licensing basis has been evaluated for operation at the proposed increased value of 2565.4 Megawatts thermal (MWt). All systems and components continue to acceptably perform their structural and operational functions.

There are no changes as a result of the proposed measurement uncertainty recapture power uprate to the design or operation of the plant that could affect system, component, or accident mitigative functions. All systems and components will function as designed and the applicable performance requirements have been evaluated and found to be acceptable. The proposed variable high power trip allowable value will ensure that the maximum actual steady state power at

which a trip would be actuated is within safety analysis limits.

Therefore, there is no significant increase in the probability of an accident previously evaluated.

The reduction in power measurement uncertainty is bounded by the safety analyses since they were performed or evaluated at 2580.6 MWt. Radiological consequences of [FSAR] Chapter 14 accidents were assessed previously and continue to be bounding. The FSAR Chapter 14 analyses continue to demonstrate compliance with the relevant accident analysis acceptance criteria. Therefore, there is no significant increase in the consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed change. All systems, structures and components previously required for the mitigation of an event remain capable of fulfilling their intended design function at the proposed uprated power level. The proposed change has no adverse effects on any safety-related systems or component and does not challenge the performance or integrity of any safety-related system. The proposed variable high power trip allowable value will ensure that the maximum actual steady state power at which a trip would be actuated is within safety analysis limits. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The maximum steady-state reactor power of 2580.6 MWt assumed in the accident analysis, including uncertainties, remains the same as previously analyzed. Therefore, the change in rated thermal power to 2565.4 MWt does not involve a significant reduction in the margin of safety.

The current accident analyses and system and component analyses had been previously performed at core powers that exceed the proposed measurement uncertainty recapture uprated core power. Evaluations have been performed for analyses that were done at nominal core power and have been found acceptable for the proposed measurement uncertainty recapture power uprate. Analyses of the primary fission product barriers at uprated core powers have concluded that all relevant design basis criteria remain satisfied in regard to integrity and compliance with the regulatory acceptance criteria. As appropriate, all evaluations have been either reviewed and approved by the Nuclear Regulatory Commission or are in compliance with applicable regulatory review guidance and standards. The proposed variable high power trip allowable value will ensure that the maximum actual steady state power at which a trip would be actuated is within safety analysis limits. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

*NRC Section Chief:* L. Raghavan.

**Pacific Gas and Electric Company,  
Docket Nos. 50–275 and 50–323, Diablo  
Canyon Nuclear Power Plant, Unit Nos.  
1 and 2, San Luis Obispo County,  
California**

*Date of amendment requests:* May 29, 2003.

*Description of amendment requests:* The License Amendment Request (LAR) revises TS 3.8.1, “AC Sources—Operating” to allow surveillance testing of the onsite standby emergency diesel generators (DG) during modes in which it is currently prohibited. Specifically, the licensee proposes removing the mode restrictions for the following surveillance requirements (SRs): SR 3.8.1.10 (full load rejection test), SR 3.8.1.13 (protective-trip bypass test), and SR 3.8.1.14 (endurance and margin test). This LAR also incorporates changes included in the NRC-approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification (STS) change TSTF–283, Revision 3. These changes modify the Notes in SRs 3.8.1.8 (transfer of AC sources test), 3.8.1.9 (post accident load rejection test), 3.8.1.11 (simulated loss of offsite power test), 3.8.1.12 (auto-start on safety injection (SI) signal test), 3.8.1.16 (restoration of loads to offsite power test), 3.8.1.17 (verification of test mode override test), 3.8.1.18 (engineered safety feature and auto-transfer load sequencing test), 3.8.1.19 (loss of offsite power plus SI signal response test), 3.8.4.7 (battery service test), and 3.8.4.8 (battery discharge test) to allow performance of the surveillances in order to reestablish operability following corrective maintenance, corrective modification, deficient or incomplete surveillance testing, and other unanticipated operability concerns during plant operation.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or

consequences of an accident previously evaluated.

The emergency diesel generators (DGs) and their associated emergency loads are accident-mitigating features. As such, testing of the DGs themselves is not associated with any potential accident initiating mechanism. Each DG is dedicated to a specific vital bus and these buses and DGs are independent of each other. There is no common mode failure provided by the testing changes proposed in this license amendment request (LAR) that would cause multiple bus failures. Therefore, there will be no significant impact on any accident probabilities by the approval of the requested amendment.

The design of plant equipment is not being modified by these proposed changes.

The changes include an increase in the online time the DG will be paralleled to the grid in Mode 1 or 2. However, the overall time that the DG is paralleled in all modes (outage/non-outage) should remain unchanged. As such, the ability of the DGs to respond to a design basis accident can be adversely impacted by these proposed changes. However, the impacts are not considered significant based on the ability of the remaining two DGs to mitigate a design bases accident (DBA) or provide a safe shutdown, and data that shows that the DG itself will not perturb the electrical system. Furthermore, the proposed amendments for surveillance requirement (SR) 3.8.1.10 and SR 3.8.1.14 share the same electrical configuration alignment to the current monthly 1-hour loaded surveillance.

For SR 3.8.1.13, the DG would still be able to respond to an auto-start signal were one to be received during testing. The unavailability of the DG during the conduct of this SR 3.8.1.13 is minimal (approximately 5 minutes) and is insignificant from a risk perspective.

In addition, operating experience and evaluation of the probability of a DG being rendered inoperable concurrent with or due to a significant grid disturbance support the conclusion that the proposed changes in this LAR do not involve any significant increase in the likelihood of a safety-related bus blackout.

SR changes that are consistent with Industry/Technical Specification Task Force (TSTF) Standard Technical Specification (STS) change TSTF–283, Revision 3 have been approved by the NRC and the online tests allowed by the TSTF are only to be performed for the purpose of establishing operability. Performance of these SRs during normally restricted modes will require an assessment to assure plant safety is maintained or enhanced.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

The proposed change would create no new accidents since no changes are being made to the plant that would introduce any new accident causal mechanisms. Equipment will be operated in the same configuration currently allowed by other DG SRs that allow

testing in plant Modes 1 and 2 and 3. This license amendment request does not impact any plant systems that are accident initiators or adversely impact any accident mitigating systems.

Therefore, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in the margin of safety. The margin of safety is related to the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes to the testing requirements for the plant DGs do not affect the operability requirements for the DGs, as verification of such operability will continue to be performed as required (except during different allowed modes). Continued verification of operability supports the capability of the DGs to perform their required function of providing emergency power to plant equipment that supports or constitutes the fission product barriers. Consequently, the performance of these fission product barriers will not be impacted by implementation of this proposed amendment.

In addition, the proposed changes involve no changes to setpoints or limits established or assumed by the accident analysis. On this and the above basis, no safety margins will be impacted.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Section Chief:* Stephen Dembek.

**Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California**

*Date of amendment request:* June 5, 2003.

*Brief description of amendments:* The proposed change involves the extension from 1 hour to 24 hours of the completion time (CT) for Condition B of Technical Specification (TS) 3.5.1, which defines requirements for accumulators. Accumulators are part of the emergency core cooling system and consist of tanks partially filled with borated water and pressurized with

nitrogen gas. The contents of the tank are discharged to the reactor coolant system (RCS) if, as during a loss-of-coolant accident, the coolant pressure decreases to below the accumulator pressure. Condition B of TS 3.5.1 specifies a CT to restore an accumulator to operable status when it has been declared inoperable for a reason other than the boron concentration of the water in the accumulator not being within the required range. This change was proposed by the Westinghouse Owners Group participants in the Technical Specification Task Force (TSTF) and is designated TSTF-370. TSTF-370 is supported by NRC-approved topical report WCAP-15049-A, "Risk-Informed Evaluation of an Extension to Accumulator Completion Times," submitted on May 18, 1999. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on July 15, 2002 (67 FR 46542), on possible amendments concerning TSTF-370, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 12, 2003 (68 FR 11880). The licensee affirmed the applicability of the following NSHC determination in its application dated June 5, 2003.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

**Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated**

The basis for the accumulator limiting condition for operation (LCO), as discussed in Bases Section 3.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of WCAP-15049-A, the proposed change will allow plant operation with an inoperable accumulator for up to 24 hours, instead of 1 hour, before the plant would be required to begin shutting down. The impact of the increase in the accumulator CT on core damage frequency for all the cases evaluated in WCAP-15049-A is within the acceptance limit of 1.0E-06/yr for a total plant core damage frequency (CDF) less than 1.0E-03/yr. The incremental conditional core damage probabilities calculated in WCAP-15049-A

for the accumulator CT increase meet the criterion of 5E-07 in Regulatory Guides (RG) 1.174, "An Approach for using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," and 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications," for all cases except those that are based on design basis success criteria. As indicated in WCAP-15049-A, design basis accumulator success criteria are not considered necessary to mitigate large break loss-of-coolant accident (LOCA) events, and were only included in the WCAP-15049-A evaluation as a worst case data point. In addition, WCAP-15049-A states that the NRC has indicated that an incremental conditional core damage frequency (ICDP) greater than 5E-07 does not necessarily mean the change is unacceptable.

The proposed technical specification change does not involve any hardware changes nor does it affect the probability of any event initiators. There will be no change to normal plant operating parameters, engineered safety feature (ESF) actuation setpoints, accident mitigation capabilities, accident analysis assumptions or inputs.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

**Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated**

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. As described in Section 9.1 of the WCAP-15049-A evaluation, the plant design will not be changed with this proposed technical specification CT increase. All safety systems still function in the same manner and there is no additional reliance on additional systems or procedures. The proposed accumulator CT increase has a very small impact on core damage frequency. The WCAP-15049-A evaluation demonstrates that the small increase in risk due to increasing the CT for an inoperable accumulator is within the acceptance criteria provided in RGs 1.174 and 1.177. No new accidents or transients can be introduced with the requested change and the likelihood of an accident or transient is not impacted.

The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

**Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety**

The proposed change does not involve a significant reduction in a margin of safety. There will be no change to the departure from nucleate boiling ratio (DNBR)

correlation limit, the design DNBR limits, or the safety analysis DNBR limits.

The basis for the accumulator LCO, as discussed in Bases Section 3.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of WCAP-15049-A, the proposed change will allow plant operation with an inoperable accumulator for up to 24 hours, instead of 1 hour, before the plant would be required to begin shutting down. The impact of this on plant risk was evaluated and found to be very small. That is, increasing the time the accumulators will be unavailable to respond to a large LOCA event, assuming accumulators are needed to mitigate the design basis event, has a very small impact on plant risk. Since the frequency of a design basis large LOCA (a large LOCA with loss of offsite power) would be significantly lower than the large LOCA frequency of the WCAP-15049-A evaluation, the impact of increasing the accumulator CT from 1 hour to 24 hours on plant risk due to a design basis large LOCA would be significantly less than the plant risk increase presented in the WCAP-15049-A evaluation.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Section Chief:* Stephen Dembek.

**Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California**

*Date of amendment requests:* June 11, 2003.

*Description of amendment requests:* The license amendment request proposes to revise Technical Specification (TS) 3.1.7, "Rod Position Indication," TS 3.2.1, "Heat Flux Hot Channel Factor," TS 3.2.4, "Quadrant Power Tilt Ratio," and TS 3.3.1, "Reactor Trip System Instrumentation," to allow use of a power distribution monitoring system as described in WCAP-12472-P-A, "BEACON Core Monitoring and Operations Support System," for power distribution measurements.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The power distribution monitoring system (PDMS) performs continuous core power distribution monitoring. This system utilizes the NRC-approved Westinghouse proprietary computer code, the Best Estimate Analyzer for Core Operations—Nuclear (BEACON), to provide data reduction for incore flux maps, core parameter analysis, load follow operation simulation, and core prediction. It in no way provides any protection or control system function. Fission product barriers are not impacted by these proposed changes. The proposed changes occurring with PDMS will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident. The changes associated with the PDMS do not affect plant systems such that their function in the control of radiological consequences is adversely affected. These proposed changes will therefore not affect the mitigation of the radiological consequences of any accident described in the Final Safety Analysis Report Update (FSARU).

Continuous on-line monitoring through the use of PDMS provides significantly more information about the power distributions present in the core than is currently available. This results in more time (*i.e.*, earlier determination of an adverse condition developing) for operator action prior to having an adverse condition develop that could lead to an accident condition or to unfavorable initial conditions for an accident.

Each accident analysis addressed in the Diablo Canyon Power Plant FSARU is examined with respect to changes in cycle-dependent parameters, which are obtained from application of the NRC-approved reload design methodologies, to ensure that the transient evaluation of reload cores are bounded by previously accepted analyses. This examination, which is performed in accordance with the requirements set forth in 10 CFR 50.59, "Changes, tests and experiments," ensures that future reloads will not involve a significant increase in the probability or consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The implementation of the PDMS has no influence or impact on plant operations or safety, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. The possibility for a new or different type of accident from any accident previously evaluated is not created since the changes associated with implementation of the PDMS do not result in a change to the design basis of any plant component or system. The evaluation of the effects of using the PDMS

to monitor core power distribution parameters shows that all design standards and applicable safety criteria limits are met.

The proposed changes do not result in any event previously deemed incredible being made credible. Implementation of the PDMS will not result in more adverse conditions and will not result in any increase in the challenges to safety systems. The cycle specific variables required by the PDMS are calculated using NRC-approved methods. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken when or if limits are exceeded.

The proposed change, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the implementation of the PDMS. The margin of safety provided by current TS remains unchanged. The proposed changes continue to require operation within the core limits that are based on NRC-approved reload design methodologies. Appropriate measures exist to control the values of these cycle-specific limits. The proposed changes continue to ensure that appropriate actions will be taken if limits are violated. These actions remain unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Section Chief:* Stephen Dembek.

**PSEG Nuclear, LLC, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey**

*Date of amendment request:* June 17, 2003.

*Description of amendment request:* The proposed amendment would delete Technical Specification (TS) Surveillance Requirement 4.6.2.1.b.2.b. This change would remove the requirement to verify that the reactor thermal power output is less than, or equal to, 1% of rated thermal power when the suppression chamber average water temperature is above 95 °F. Additionally, the amendment would correct two typographical errors on TS index page "x."

*Basis for proposed no significant hazards consideration determination:* As required by Title 10 of the Code of Federal Regulations (10 CFR) Section

50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not affect the allowable suppression chamber average water temperatures provided in the TS. The changes do not affect previously evaluated events described in the UFSAR [Updated Final Safety Analysis Report] including all DBAs [Design Basis Accidents] and other operational transients.

The surveillance is extraneous because Action b of LCO [Limiting Condition for Operation] 3.6.2 directs the plant operators to commence a plant shutdown if the suppression chamber temperature cannot be restored. These changes do not affect plant systems, structures or components (SSCs).

Therefore, the proposed changes do not involve a significant increase in the probability or radiological consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the design function or operation of a plant SSC. No physical or procedural changes are associated with this LCR [License Change Request]. As a result, no new credible failure mechanisms, malfunctions, or accident initiators are related to this change. Additionally, no new modes of plant operation are created.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes include the deletion of a surveillance requirement. This change is prompted by an LCO action statement, which prevents the plant from performing the surveillance. As a result, this change does not impact safety margins specified in the Hope Creek licensing basis.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

*NRC Section Chief:* James W. Clifford.

**Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York**

*Date of amendment request:* May 21, 2003.

*Description of amendment request:* The proposed amendment would change the source term for the Dose Calculation Methodology to the Alternate Source Term (AST). This change would result in design modifications to the Control Room Emergency Air Treatment System (CREATS), eliminate the requirement for the Containment Post Accident Charcoal Filters, and revise both the reactor coolant dose equivalent I-131 specific activity limit and the containment spray NaOH concentration limit.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The function of the CREATS is to provide a safe environment for the operators in the event of an accident, and thereby allow them to perform their accident mitigation responsibilities. The physical changes to the CREATS were designed to enhance the ability of the system to perform that function. The new system is an improvement in reliability, redundancy and leak tightness over the existing system. The change in design has no impact on accident initiation frequencies. Therefore the physical changes to the plant do not increase the probability or consequences of a previously evaluated accident.

The proposed Technical Specification changes involving the CREATS reflect the new system configuration and current industry guidance. The specifications ensure system functionality and protection of the operators under postulated accident conditions.

The new dose analysis indicates that the radiation dose to the operators and the public is acceptable without crediting the post accident charcoal filters removed from Technical Specification 3.6.6 and 5.5.10, and also bounds the change to the Reactor Coolant System activity limits in Technical Specification 3.4.16. The change to the dose conversion factor definition in Technical Specification [S]ection 1.1 is consistent with the new analysis.

The reference to ICRP-30 [International Commission on Radiological Protection Publication No. 30] in the Dose Equivalent I-131 definition is consistent with the new analysis and Standard Tech Specs, NUREG1431, ["Standard Technical Specifications Westinghouse Plants."]

All calculated doses are within the regulatory limits prescribed in 10CFR50.67. In addition, with the exception of one calculated Exclusion Area Boundary (EAB) dose, all dose numbers are within the guidelines of Reg Guide 1.183, ["Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,"] and Standard Review Plan (SRP) 15.0.1. This above-mentioned dose is in one particular direction from the source. The associated accident is the Locked Rotor Accident, which was not previously evaluated for dose at Ginna. The 100% fuel failure assumption used in this accident is widely considered to be overly conservative. Additionally, extra margin is built into the calculation because RG&E [Rochester Gas & Electric Corporation] assumed 500 gallons per day (GPD) of Steam Generator (SG) tube leakage per SG. Since the primary release pathway for this accident is SG tube leakage, and Reg Guide 1.183 (reference 3) allows an assumed tube leakage equal to the Tech Spec allowable leakage (~150 GPD/SG at Ginna), RG&E assumed a release rate of ~3.3 times greater than required. The calculated dose (2.7 Rem) is well below the regulatory limit of 25 Rem and only slightly greater than the published guideline of 2.5 Rem. Given the localized nature, associated probability/risk, and conservatism in this analysis, the calculated dose is considered acceptable.

Iodine removal was not credited in the existing analysis of doses for Equipment Qualification. Therefore, even though the Containment Post Accident Charcoal Filters will be removed from Tech Specs as a result of this amendment, it is not necessary to re-analyze these doses.

The Toxic Gas in-leakage analysis is bounded by the assumed in-leakage in the dose analysis. The amendment also does not hinder or change the ability to mitigate smoke infiltration as described in NEI [Nuclear Energy Institute] 99-03, Control Room Habitability Guidance.

This change has no impact on accident initiators, will not affect the ability of the operators to perform their designated functions, and removal of the requirement for CNMT [Containment] Post Accident Charcoal Filters is shown to be acceptable. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

For the proposed changes, a different kind of accident would involve a situation where the operators would become incapacitated or otherwise be prevented from fulfilling their function. The new system differs in that the cooling in the emergency mode is from direct expansion of R-22 refrigerant. A rupture of the coils could introduce the refrigerant into the Control Room environment. However, the charge of refrigerant R-22 in cooling system will be limited such that a rupture in the cooling coils would not exceed nationally accepted toxicity standards.

The radiation and/or toxic gas exposures are shown to be acceptable, and the ability

of the plant to mitigate smoke infiltration has not changed. The new system will improve the environmental conditions in most situations and actually enhance the ability of the operators to perform their functions.

Given the above, an event that would result in preventing the operators from fulfilling their safety functions is not introduced by this change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in margin of safety?

Response: No.

The new analysis was performed without crediting the existing Containment Post Accident Charcoal Filters and indicated that the Control Room and off-site doses remain within the required limits. Removal of the Post Accident Charcoal Filters from Technical Specification will not impact the operators' ability to function or significantly increase dose to the public.

The new Technical Specification surveillance limits for NaOH tank level and concentration establish criteria acceptable to meet the assumptions in the dose analysis.

The changes to the VFTP [Ventilation Filter Testing Program] program in Technical Specification reflect the removal of the Containment Post Accident Charcoal Filters consistent with the analysis, and the surveillance limits consistent with the new CREATS design.

The use of AST represents a change to a standardized and accepted dose calculation method.

The function of the CREATS system is to protect the operators and allow them to perform the necessary accident mitigation tasks. The proposed changes to the CREATS enhance this ability through improved redundancy and system operation. The analysis demonstrates that the Control Room will remain within prescribed limits during the design basis accidents. The operators will be able to perform their function and the public will be protected.

Therefore, the proposed change does not involve a significant reduction in a margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

*NRC Section Chief:* Richard J. Laufer.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* May 22, 2003 (TSC 03-02).

*Description of amendment request:* The proposed amendment would revise the limiting condition for operation for Technical Specification (TS) Section 3.7.5, "Ultimate Heat Sink." This revision would modify the required minimum ultimate heat sink (UHS) water elevation in TS 3.7.5.a from 670 feet to 674 feet. The maximum emergency raw cooling water (ERCW) temperature requirement in TS 3.7.5.b will be increased from 83 degrees Fahrenheit (°F) to 87 °F. Limiting condition for operation requirements that are now obsolete because of the proposed changes are being deleted, as well as expired footnote provisions.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change to increase the UHS maximum temperature and the minimum water level does not alter the function, design, or operating practices for plant systems or components. The UHS is utilized to remove heat loads from plant systems during normal and accident conditions. This function is not expected or postulated to result in the generation of any accident and continues to adequately satisfy the associated safety functions with the proposed changes. Therefore, the probability of an accident presently evaluated in the safety analyses will not be increased because the UHS function does not have the potential to be the source of an accident and no plant equipment is altered as a result of this change. The heat loads that the UHS is designed to accommodate have been evaluated for functionality with the higher temperature and elevation requirements. The result of these evaluations is that there are existing margins associated with the systems that utilize the UHS for normal and accident conditions. These margins are sufficient to accommodate the postulated normal and accident heat loads with the proposed changes to the UHS. Since the safety functions of the UHS are maintained, the systems that ensure acceptable offsite dose consequences will continue to operate as designed. Therefore, the proposed changes to TS 3.7.5 will not significantly increase the consequences of an accident previously evaluated based on safety functions continuing to meet their accident mitigation requirements and limiting dose consequences to acceptable levels.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The UHS function is not an initiator of any accident and only serves as a heat sink for normal and upset plant conditions. By

allowing the proposed change in the UHS temperature and elevation requirements, only the parameters for UHS operation are changed while the safety functions of the UHS and systems that transfer the heat sink capability continue to be maintained. The UHS function provides accident mitigation capabilities and does not reflect the potential for accident generation. Therefore, the possibility for creating a new or different kind of accident is not created because the UHS is only utilized for heat removal functions that are not a potential source for accident generation.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change has been evaluated for systems that are needed to support accident mitigation functions as well as normal operational evolutions. Operational margins were found to exist in the systems that utilize the UHS capabilities such that these proposed changes will not result in the loss of any safety function necessary for normal or accident conditions. The ERCW system has excess flow margins that will accommodate the increased flows necessary for the proposed temperature increase. While operating margins have been reduced by the proposed changes, safety margins have been maintained as assumed in the accident analyses for postulated events. Additionally, the proposed changes do not require the modification of component setpoints or operating provisions that are necessary to maintain margins of safety established by the SQN design. Therefore, a significant reduction in the margin to safety is not created by this proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC Section Chief:* Allen G. Howe.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* June 5, 2003 (TSC 03-07).

*Description of amendment request:* The proposed amendment would revise Action b of Technical Specification (TS) 3.6.1.9, "Containment Ventilation System" to allow an alternative to returning the inoperable containment purge supply or exhaust valve to operable conditions for continued operation. The alternative ensures isolation of the affected flow path such that potential release paths to the environment are sufficiently restricted to meet regulatory limits. This change

will minimize the need to initiate a unit shutdown or delay start-up when acceptable means are available to ensure the required safety function.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change does not alter any plant system or operating practice. This change will allow the isolation of the affected flow path such that the safety function is completed when the associated automatic isolation valve is inoperable because of leakage. The containment purge supply and exhaust valves are not considered to be the source of an accident as their function is to isolate containment from the outside environs in the event of an accident. Accident generation probability is not affected by providing alternative isolation methods that continue to satisfy the required safety function. Therefore, the proposed change does not involve an increase in the probability of an accident previously evaluated.

The proposed addition for the isolation of the affect flow path in place of a required shutdown of the unit, provides an equivalent safety function without the risk associated with a unit shutdown. Using a feature that has minimal potential for inadvertent loss of function and a more frequent surveillance to ensure that the isolation function is maintained, is as good or better than the automatic system that is required by the TSs. This is because the proposed action utilizes a passive feature in place of an active system and ensures offsite dose consequences within required limits. Additionally, the overall plant safety is enhanced by not requiring a unit shutdown when acceptable measures can be taken to preserve the safety function of the containment purge supply and exhaust valves. Therefore, the proposed change does not involve an increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change does not involve a change to plant systems, components, or operating practices that could result in a change in accident generation potential. In addition, the purge and exhaust valves are utilized for the isolation of flow paths to the environs and are not a feature that could generate a postulated accident. Use of the proposed action for inoperable purge and exhaust valves will not impact the potential for accidents. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed changes do not alter plant systems or their setpoints that are used to maintain the margin of safety. Additionally, the proposed change provides a method to ensure the safety function of the containment ventilation and isolation systems are retained for accident mitigation purposes. The proposed change will improve the margin of safety by not requiring a unit shutdown when acceptable methods for maintaining plant safety functions can be achieved. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC Section Chief:* Allen G. Howe.

**Tennessee Valley Authority (TVA),  
Docket No. 50-390, Watts Bar Nuclear  
(WBN) Plant, Unit 1, Rhea County,  
Tennessee**

*Date of amendment request:* May 30, 2003.

*Description of amendment request:* The proposed amendment would revise the Technical Specifications to replace the single boron concentration requirement with a table that defines the minimum and maximum amount of boron that is required for accident mitigation based on the number of tritium producing burnable absorber rods (TPBARs) in the core.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies the required boron concentration for the cold leg accumulators (CLAs) and RWST [Refueling Water Storage Tank]. The proposed values have been verified to maintain the required accident mitigation safety function for the CLAs and RWST. The CLAs and RWST safety function is to mitigate accidents that require the injection of borated water to cool the core and to control reactivity. These functions are not potential sources for accident generation and the modification of the boron concentration that supports event mitigation will not increase the potential for an accident. Therefore, the possibility of an

accident is not increased by the proposed changes. The boron levels for this change are based on the number of TPBARs in the core. As the number of rods is increased the need for additional shutdown boron also increases. This effect has been evaluated with a similar methodology utilized for previously NRC approved amendments associated with tritium production. This methodology ensures that the impact of TPBARs is adequately compensated for by the required boron concentrations and has been incorporated into the proposed revision. Since the boron levels will continue to maintain the safety function of the CLAs and RWST in the same manner as currently approved, the consequences of an accident are not increased by the proposed changes.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only modifies boron concentrations for accident mitigation functions of the CLAs and RWST. These functions do not have a potential to generate accidents as they only serve to perform mitigation functions associated with an accident. The proposed requirements will maintain the mitigation function in an identical manner as currently approved. There are no plant equipment or operational changes associated with the proposed revision other than the adjustment of the boron level in the CLAs and RWST. Therefore, since the CLA and RWST functions are not altered and the plant will continue to operate without change, the possibility of a new or different kind of an accident is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This change proposes boron concentration requirements that support the accident mitigation functions of the CLAs and RWST equivalent to the currently approved limits. The proposed change does not alter any plant equipment or components and does not alter any setpoints utilized for the actuation of accident mitigation system or control functions. The proposed boron values have been verified to provide an adequate level of reactivity control for accident mitigation. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC Section Chief:* Allen G. Howe.

**TXU Generation Company LP, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas**

*Date of amendment request:* June 5, 2003.

*Brief description of amendments:* The proposed change involves the extension from 1 hour to 24 hours of the completion time (CT) for Condition B of Technical Specification (TS) 3.5.1, which defines requirements for accumulators. Accumulators are part of the emergency core cooling system and consist of tanks partially filled with borated water and pressurized with nitrogen gas. The contents of the tank are discharged to the reactor coolant system if, as during a loss of coolant accident, the coolant pressure decreases to below the accumulator pressure. Condition B of TS 3.5.1 specifies a CT to restore an accumulator to operable status when it has been declared inoperable for a reason other than the boron concentration of the water in the accumulator not being within the required range. This change was proposed by the Westinghouse Owners Group participants in the Technical Specification Task Force (TSTF) and is designated TSTF-370. TSTF-370 is supported by NRC-approved topical report WCAP-15049-A, "Risk-Informed Evaluation of an Extension to Accumulator Completion Times," submitted May 18, 1999. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on July 15, 2002 (67 FR 46542), on possible amendments concerning TSTF-370, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 12, 2003 (68 FR 11880). The licensee affirmed the applicability of the following NSHC determination in its application dated June 5, 2003.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

**Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated**

The basis for the accumulator limiting condition for operation (LCO), as discussed in Bases Section 3.5.1, is to ensure that a sufficient volume of borated water will be

immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of WCAP-15049-A, the proposed change will allow plant operation with an inoperable accumulator for up to 24 hours, instead of 1 hour, before the plant would be required to begin shutting down. The impact of the increase in the accumulator CT on core damage frequency for all the cases evaluated in WCAP-15049-A is within the acceptance limit of  $1.0E-06$ /yr for a total plant core damage frequency (CDF) less than  $1.0E-03$ /yr. The incremental conditional core damage probabilities calculated in WCAP-15049-A for the accumulator CT increase meet the criterion of  $5E-07$  in Regulatory Guides (RG) 1.174, "An Approach for using Probabilistic Risk Assessment in Risk-Informed Decisions On Plant-Specific Changes to the Licensing Basis," and 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications," for all cases except those that are based on design basis success criteria. As indicated in WCAP-15049-A, design basis accumulator success criteria are not considered necessary to mitigate large break loss-of-coolant accident (LOCA) events, and were only included in the WCAP-15049-A evaluation as a worst case data point. In addition, WCAP-15049-A states that the NRC has indicated that an incremental conditional core damage frequency (ICCDP) greater than  $5E-07$  does not necessarily mean the change is unacceptable.

The proposed technical specification change does not involve any hardware changes nor does it affect the probability of any event initiators. There will be no change to normal plant operating parameters, engineered safety feature (ESF) actuation setpoints, accident mitigation capabilities, accident analysis assumptions or inputs.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

**Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated**

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. As described in Section 9.1 of the WCAP-15049-A evaluation, the plant design will not be changed with this proposed technical specification CT increase. All safety systems still function in the same manner and there is no additional reliance on additional systems or procedures. The proposed accumulator CT increase has a very small impact on core damage frequency. The WCAP-15049-A evaluation demonstrates that the small increase in risk due to increasing the CT for an inoperable accumulator is within the acceptance criteria provided in RGs 1.174 and 1.177. No new accidents or transients can be introduced with the requested change and the likelihood of an accident or transient is not impacted.

The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

**Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety**

The proposed change does not involve a significant reduction in a margin of safety. There will be no change to the departure from nucleate boiling ratio (DNBR) correlation limit, the design DNBR limits, or the safety analysis DNBR limits.

The basis for the accumulator LCO, as discussed in Bases Section 3.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of WCAP-15049-A, the proposed change will allow plant operation with an inoperable accumulator for up to 24 hours, instead of 1 hour, before the plant would be required to begin shutting down. The impact of this on plant risk was evaluated and found to be very small. That is, increasing the time the accumulators will be unavailable to respond to a large LOCA event, assuming accumulators are needed to mitigate the design basis event, has a very small impact on plant risk. Since the frequency of a design basis large LOCA (a large LOCA with loss of offsite power) would be significantly lower than the large LOCA frequency of the WCAP-15049-A evaluation, the impact of increasing the accumulator CT from 1 hour to 24 hours on plant risk due to a design basis large LOCA would be significantly less than the plant risk increase presented in the WCAP-15049-A evaluation.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.  
*NRC Section Chief:* Robert A. Gramm.

**TXU Generation Company LP, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas**

*Date of amendment request:* June 6, 2003.

*Brief description of amendments:* The proposed license amendments would change Technical Specification (TS) Section 3.8.4, "DC Sources—Operating," TS Section 3.8.5, "DC Sources—Shutdown," and TS Section 3.8.6, "Battery Cell Parameters," and

add a new TS Section 5.5.19, "Battery Monitoring and Maintenance Program", to establish an administrative controls program for the maintenance and monitoring of the station safety-related batteries. The purpose of the proposed changes is to provide increased operational flexibility and allow more efficient application of plant resources to safety significant activities.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change affects TS sections 3.8.4 "DC Sources—Operating," TS 3.8.5 "DC Sources—Shutdown," TS 3.8.6 "Battery Cell Parameters," and TS Administrative Controls section 5.5.

The proposed change restructures the TS for the DC electrical power subsystem and adds new Conditions and Required Actions with increased Completion Times to address battery charger inoperability. Neither the DC electrical power subsystem nor associated battery chargers are initiators of any accident sequence analyzed in the updated Final Safety Analysis Report (FSAR). Operation in accordance with the proposed TS ensures that the DC electrical power subsystem is capable of performing its function as described in the FSAR, therefore the mitigative functions supported by the DC electrical power subsystem will continue to provide the protection assumed by the analysis.

The relocation of preventive maintenance surveillance, and certain operating limits and actions to a newly-created, licensee-controlled TS [5.5.19], "Battery Monitoring and Maintenance Program," will not challenge the ability of the DC electrical power subsystem to perform its design function. The maintenance and monitoring required by current TS, which are based on industry standards, will continue to be performed. In addition, the DC electrical power subsystem is within the scope of 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants," which will ensure the control of maintenance activities associated with the DC electrical power subsystem.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any physical alteration of the units. No new equipment is being introduced, and installed equipment is not being operated in a new or

different manner. There are no setpoints at which protective or mitigative actions are initiated that are affected by the proposed changes. The operability of the DC electrical power subsystem in accordance with the proposed TS is consistent with the initial assumptions of the accident analyses and is based upon meeting the design basis of the plant. These proposed changes will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures, which ensure the unit remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed changes do not alter assumptions made in the safety analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not adversely affect operation of plant equipment and will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment is ensured. The changes associated with the new Battery Maintenance and Monitoring Program will ensure that the station batteries are maintained in a highly reliable manner. The equipment fed by the DC electrical system will continue to provide adequate power to safety related loads in accordance with analysis assumptions.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

*NRC Section Chief:* Robert A. Gramm.

**Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia**

*Date of amendment request:* June 9, 2003.

*Description of amendment request:* The proposed amendment would make administrative changes to Section 6 of the Surry Power Station Technical Specifications (TS) for Units 1 and 2 to adopt the format for topical report references that are described in Industry/Technical Specifications Task Force Traveller, TSTF-363, Rev 0, "Revised Topical Report References in

Improved Technical Specification (ITS) 5.6.5, COLR."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change is administrative in nature and as such does not impact the condition or performance of any plant structure, system or component. The proposed administrative change does not affect the initiators of any previously analyzed event or the assumed mitigation of accident or transient events. As a result, the proposed change to the Surry Technical Specifications does not involve any increase in the probability or the consequences of any accident or malfunction of equipment important to safety previously evaluated since neither accident probabilities nor consequences are being affected by this proposed administrative change.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change is administrative in nature, and therefore does not involve any changes in station operation or physical modifications to the plant. In addition, no changes are being made in the methods used to respond to plant transients that have been previously analyzed. No changes are being made to plant parameters within which the plant is normally operated or in the setpoints, which initiate protective or mitigative actions, and no new failure modes are being introduced. Therefore, the proposed administrative change to the Surry Technical Specifications does not create the possibility of a new or different kind of accident or malfunction of equipment important to safety from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed change is administrative in nature and does not impact station operation or any plant structure, system or component that is relied upon for accident mitigation. Furthermore, the margin of safety assumed in the plant safety analysis is not affected in any way by the proposed administrative change. Therefore, the proposed change to the Surry Technical Specifications does not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Lillian M. Cuoco, Esq., Senior Counsel, Dominion

Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

*NRC Section Chief:* John A. Nakoski.

### Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible 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>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

### AmerGen Energy Company, LLC, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

*Date of application for amendment:* November 16, 2001, as supplemented by letters dated October 4, 2002, and March 28, 2003.

*Brief description of amendment:* The amendment revises Technical Specification (TS) 3.6.2.2, "Suppression Pool Water Level," and TS 3.6.2.4, "Suppression Pool Makeup System," to permit draining the reactor cavity pool portion of the upper containment pool in MODE 3, "Hot Shutdown," with the reactor vessel pressure less than 235 psig.

*Date of issuance:* June 12, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 156.

*Facility Operating License No. NPF-62:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* April 2, 2002 (67 FR 15621). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** Notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 12, 2003.

No significant hazards consideration comments received: No.

### Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

*Date of amendment request:* June 26, 2002, as supplemented November 22, 2002.

*Brief description of amendment:* The amendments change the Technical Specifications for the pressure-temperature limits curves in Technical Specification 3.4.9, "RCS Pressure and Temperature (P/T) Limits."

*Date of issuance:* June 18, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance

*Amendment No.:* 228 and 256.

*Facility Operating License Nos. DPR-71 and DPR-62:* Amendments revise the Technical Specifications.

*Date of initial notice in Federal Register:* August 6, 2002 (67 FR 50949). The November 22, 2002, supplement contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 2003.

No significant hazards consideration comments received: No.

### Duke Energy Corporation, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

*Date of application for amendments:* October 24, 2002, as supplemented by letters dated November 21, 2002, and February 19, 2003.

*Brief description of amendments:* The amendments revise TS 3.5.3, Low Pressure Injection, Condition A, to change the Completion Time from 72 hours to 7 days. This revision will allow longer corrective maintenance to be completed at power, without requiring a plant shutdown. It will also reduce shutdowns due to a Limiting Condition for Operation requirement.

*Date of Issuance:* June 18, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 332, 332, and 333.

*Renewed Facility Operating License Nos. DPR-38, DPR-47, and DPR-55:* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* December 24, 2002 (67 FR 78517).

The supplement dated November 21, 2002, did not change the scope of the October 24, 2002, application; however it did change the licensee's proposed No Significant Hazards Consideration Determination (NSHCD). The supplement dated February 19, 2003, provided clarifying information that did not change the scope of the October 24, 2002, application nor the initial proposed NSHCD.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 2003.

No significant hazards consideration comments received: No.

### Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

*Date of amendment request:* March 19, 2003.

*Brief description of amendment:* The amendment deletes Technical Specification (TS) 5.5.3, "Post Accident Sampling," and thereby eliminates the requirements to have and maintain the post accident sampling system at River Bend Station, Unit 1. The amendment also addresses related changes to TS 5.5.2, "Primary Coolant Sources Outside Containment."

*Date of issuance:* June 23, 2003.  
*Effective date:* As of the date of issuance and shall be implemented within 120 days from the date of issuance.

*Amendment No.:* 134.  
*Facility Operating License No. NPF-47:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* April 29, 2003 (68 FR 22746).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 2003.

No significant hazards consideration comments received: No.

**FirstEnergy Nuclear Operating Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit 2, Beaver County, Pennsylvania**

*Date of application for amendment:* July 24, 2002, as supplemented February 4, 2003.

*Brief description of amendment:* The amendment changed the MSIV full-closure stroke time of Technical Specification (TS) surveillance requirement 4.7.1.5 from 5 seconds to 6 seconds. Additionally, the once-per-92-day requirement to part-stroke exercise the main steam isolation valves (MSIVs) was replaced with criteria to test each MSIV pursuant to TS 4.0.5, which requires testing in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section XI.

*Date of issuance:* June 25, 2003.  
*Effective date:* Effective the day of issuance to be implemented within 60 days.

*Amendment No.:* 137.  
*Facility Operating License No. NPF-73:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* September 17, 2002 (67 FR 58644). The supplement dated February 4, 2003, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 2003.

No significant hazards consideration comments received: No.

**Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida**

*Date of application for amendment:* July 3, 2002, as supplemented September 24, 2002, January 10, 2003, and March 20, 2003.

*Brief description of amendment:* The amendment revises Improved Technical Specification (ITS) 3.8.1 and associated Bases, "AC Sources-Operating," by extending the allowed outage time for the emergency diesel generators from 72 hours to 14 days.

*Date of issuance:* June 13, 2003.  
*Effective date:* As of the date of issuance and shall be implemented within 60 days of issuance except for installation of an Aac source. An Aac source as described in the licensee's application supplement dated March 20, 2003, shall be installed before completion of refueling outage 14, as discussed in the NRC Safety Evaluation dated June 13, 2003. Implementation shall include incorporation of a description of the Aac source into the next scheduled Final Safety Analysis Report update after the Aac installation.

*Amendment No.:* 207.  
*Facility Operating License No. DPR-72:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 6, 2002 (67 FR 50955). The September 24, 2002, January 10, 2003, and March 20, 2003, supplements contained clarifying information only, and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 13, 2003.

No significant hazards consideration comments received: No.

**Nuclear Management Company, LLC, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota**

*Date of application for amendment:* March 19, 2003.

*Brief description of amendment:* The amendment deletes Technical Specification 6.8.C, "Post Accident Sampling," and thereby eliminates the requirements to have and maintain the post accident sampling system at the Monticello Nuclear Generating Plant.

*Date of Issuance:* June 17, 2003.  
*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 136.  
*Facility Operating License No. DPR-22:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* May 13, 2003 (68 FR 25655).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 2003.

No significant hazards consideration comments received: No.

**PSEG Nuclear, LLC, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey**

*Date of application for amendment:* February 14, 2003.

*Brief description of amendment:* The amendment revises Technical Specification (TS) 3/4.3.4.2 to extend the surveillance test intervals and allowed out-of-service times for the end-of-cycle recirculation pump trip system instrumentation. In addition, the TS Bases have been revised to address the proposed changes.

*Date of issuance:* June 24, 2003.  
*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 148.  
*Facility Operating License No. NPF-57:* This amendment revises the TSs.

*Date of initial notice in Federal Register:* April 15, 2003 (68 FR 18284).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 24, 2003.

No significant hazards consideration comments received: No.

**PSEG Nuclear LLC, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of application for amendments:* September 26, 2002, as supplemented on March 20, 2003.

*Brief description of amendments:* The amendments revise setpoint and allowable values of the steam generator (SG) low-low level trip function in Technical Specification (TS) Table 2.2-1, "Reactor Trip System Instrumentation Trip Setpoints," and TS Table 3.3-4, "Engineered Safety Feature Actuation System Instrumentation Trip Setpoints." The TS changes are necessary to account for a flow-induced pressure drop through the mid-deck plate inside the SG in the SG water level measurement.

*Date of issuance:* June 13, 2003.  
*Effective date:* As of the date of issuance, and shall be implemented within 30 days.

*Amendment Nos.:* 257 and 238.  
*Facility Operating License Nos. DPR-70 and DPR-75:* The amendments revised the TSs.

*Date of initial notice in Federal Register:* February 4, 2003 (68 FR 5680). The March 20, 2003, supplement contained clarifying information and did not change the staff's proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 13, 2003.

No significant hazards consideration comments received: No.

**Southern Nuclear Operating Company, Inc., Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama**

*Date of amendments request:* March 31, 2003, as supplemented by letter dated April 29, 2003.

*Brief description of amendments:* The amendment modifies Technical Specifications (TS) Surveillance Requirement (SR) 3.4.11.1, for Farley, Unit 2 only by the addition of the following note that states, "Not required to be performed for Unit 2 for the remainder of operating cycle 16 for Q2B31MOV8000B." In addition, a temporary TS SR 3.4.11.4 is added to provide compensatory action for this block valve while SR 3.4.11.1 is suspended. Further, this SR requires that power to the Farley, Unit 2 Power Operated Relief Valve Q2B31MOV8000B be checked at least every 24 hours for the remainder of Operating Cycle 16.

*Date of issuance:* June 13, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 151.

*Facility Operating License No. NPF-8:* Amendment revises the Technical Specifications.

*Date of initial notice in Federal Register:* May 13, 2003 (68 FR 25658).

The supplement dated April 29, 2003, provided clarifying information that did not change the scope of the March 31, 2003, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 13, 2003.

No significant hazards consideration comments received: No.

**STP Nuclear Operating Company, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of amendments request:* February 14, 2002, as supplemented by letters dated July 29, 2002 and March 27, 2003.

*Brief description of amendments:* The amendments revise STP technical specifications to eliminate shutdown actions associated with radiation monitoring instrumentation. The proposed changes will enhance plant reliability by reducing exposure to unnecessary shutdowns and increase operational flexibility, and relax certain other restrictions.

*Date of issuance:* June 9, 2003.

*Effective date:* As of the date of issuance to be implemented within 4 months from the date of issuance.

*Amendment Nos.:* Unit 1—153; Unit 2—141.

*Facility Operating License Nos. NPF-76 and NPF-80:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* April 2, 2002 (67 FR 15629).

The July 29, 2002, and March 27, 2003, supplemental letters provided clarifying information that was within the scope of the original **Federal Register** Notice (67 FR 15629) and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 9, 2003.

No significant hazards consideration comments received: No.

**TXU Generation Company LP, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas**

*Date of amendment request:* December 4, 2002.

*Brief description of amendments:* The amendments revise several Limiting Conditions for Operation (LCO) Notes and Required Actions in the Technical Specifications that require suspension of operations involving positive reactivity additions or suspension of operations involving reactor coolant system boron concentration reductions. The amendments revise these LCO Notes and Required Actions to allow small, controlled, safe insertions of positive reactivity, but limit the introduction of positive reactivity such that compliance with the required shutdown margin or refueling boron concentration limits will still be satisfied.

*Date of issuance:* June 24, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment Nos.:* 105 and 105.

*Facility Operating License Nos. NPF-87 and NPF-89:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* January 7, 2003 (68 FR 813).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 24, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 30th day of June 2003.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 03-17028 Filed 7-7-03; 8:45 am]

BILLING CODE 7590-01-P

**OVERSEAS PRIVATE INVESTMENT CORPORATION**

**July 17, 2003, Board of Directors Meeting; Sunshine Act**

**TIME AND DATE:** Thursday, July 17, 2003, 1:30 p.m. (Open Portion). 1:45 p.m. (Closed Portion).

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

**STATUS:** Meeting open to the public from 1:30 p.m. to 1:45 p.m. Closed portion will commence at 1:45 p.m. (approx.).

**MATTERS TO BE CONSIDERED:**

1. President's Report.
2. Testimonial D. Cameron Friday.
3. Approval of April 24, 2003 Minutes (Open Portion).

**FURTHER MATTERS TO BE CONSIDERED:** (Closed to the Public 1:45 p.m.)

1. Finance Project in Brazil
2. Finance Project in Russia
3. Insurance Project in Croatia
4. Approval of April 24, 2003 Minutes (Closed Portion)
5. Pending Major Projects
6. Reports

**FOR FURTHER INFORMATION CONTACT:**

Information on the meeting may be obtained from Connie M. Downs at (202) 336-8438.

Dated: July 3, 2003.

**Connie M. Downs,**

*Corporate Secretary, Overseas Private Investment Corporation.*

[FR Doc. 03-17344 Filed 7-3-03; 12:10 am]

BILLING CODE 3210-01-M

**POSTAL SERVICE**

**Board of Governors; Sunshine Act Meeting**

**Board Votes to Close June 27, 2003, Meeting**

By telephone vote on June 27, 2003, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting held in Washington, DC, via teleconference. The Board determined that prior public notice was not possible.

**Items Considered**

1. Personnel Matter.

2. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC2003-1, Customized Market Mail (CMM).
3. Advanced Funding Request for Human Capital Enterprise Program.
4. Strategic Planning.

#### General Counsel Certification

The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

*For further information contact:* Requests for information about the meeting should be addressed to the Secretary of the Board, William T. Johnstone, at (202) 268-4800.

**William T. Johnstone,**  
*Secretary.*

[FR Doc. 03-17342 Filed 7-3-03; 11:58 am]

BILLING CODE 7710-12-M

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Etz Lavud Ltd, Common Shares and Class A Common Shares, NIS 0.01, par value) From the American Stock Exchange LLC File No. 1-06982

July 2, 2003.

Etz Lavud Ltd, an Israeli corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its Common Shares and Class A Common Shares, NIS 0.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Israel, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Trustees ("Board") of the Issuer approved a resolution on June 24, 2003 to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw its Security from the Amex, the Board noted the substantial cost savings resulting from the elimination of fees and expenses related to listing the Security on the Amex.

The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act<sup>3</sup> and shall not affect its obligation to be registered under section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before July 23, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 03-17142 Filed 7-7-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48111; File No. SR-Amex-2003-52]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Reducing to Option Transaction Fees

June 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 29, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>3</sup> 15 U.S.C. 78l(b).

<sup>4</sup> 15 U.S.C. 78l(g).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish, on a three month pilot basis, a fee reduction for Exchange specialists and registered options traders ("ROTs") in connection with equity option and QQQ option transactions where the other side of the trade is a market maker, *i.e.* specialist, ROT or away market maker. The reduction of these fees will be \$0.08 per contract side for equity options and \$0.18 per contract side for QQQ options. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Amex charges fees for transactions in options executed on the Exchange by Exchange specialists and ROTs. Current charges for specialist and ROT transactions in equity options is \$0.36 per contract side which includes a \$0.26 transaction charge, a \$0.05 comparison fee and a \$0.05 brokerage fee. In addition, for transactions in QQQ options, the fee for ROTs and specialists amounts to \$0.46 per contract side consisting of a \$0.26 transaction fee, a \$0.10 licensing fee, a \$0.05 comparison fee and a \$0.05 brokerage fee.<sup>3</sup>

For the purpose of attracting increased options volume to the floor of the Exchange, the Amex believes that certain transaction fees in connection with equity option and QQQ option transactions of specialists and ROTs should be reduced.<sup>4</sup> This proposal

<sup>3</sup> Customers are not charged a transaction fee, licensing fee, comparison fee, or brokerage fee.

<sup>4</sup> The Amex believes that reducing these fees should encourage specialists and ROTs to attract additional order flow to the Exchange. Telephone call between Jeffrey P. Burns, Associate General Counsel, Amex, and Sonia Trocchio, Special Counsel, Division of Market Regulation ("Division"), Commission (June 26, 2003).

<sup>1</sup> 15 U.S.C. 78l(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

seeks, on a three month pilot basis, to reduce these charges by \$0.08 for equity options and \$0.18 for QQQ options. In order for a specialist or ROT to qualify for the fee reduction, the option trades must be between market makers,<sup>5</sup> *i.e.* the other side of the trade must be a specialist, ROT or away market maker.<sup>6</sup> The Exchange believes that a three month pilot program for this fee reduction program is appropriate so that it is able to monitor and evaluate the effectiveness of the fee reduction.

This proposed change is expected to reduce the overall option transaction fee for specialists and ROTs to \$0.28 for both equity and QQQ options in connection with market maker to market maker trades. In the case of equity option market maker to market maker trades, the new fee breakdown after the fee reduction will consist of a \$0.18 transaction fee, a \$0.05 comparison fee and a \$0.05 brokerage fee. For QQQ option market maker to market maker trades, the new fee breakdown after the fee reduction will consist of a \$0.08 transaction fee, a \$0.10 licensing fee, a \$0.05 comparison fee and a \$0.05 brokerage fee. The Amex believes that the proposed fee reduction of transaction costs for market maker to market maker trades is reasonable and will help to make the Exchange's fees more attractive and competitive with the other options exchanges.

## 2. Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,<sup>7</sup> in general, and with section 6(b)(4)<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

<sup>5</sup> Section 3(a)(38) of the Act defines "market maker" as any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

<sup>6</sup> An "away market maker" is a member of another national securities exchange registered as a market maker in an options class(es). An "away market maker" is considered to be a "broker-dealer" for purposes of the Exchange's fee schedule. Thus, "away market makers" would pay a \$0.19 transaction fee for equity options, including the QQQ options; a \$0.04 comparison fee; and a \$0.03 floor brokerage fee. Telephone Call between Jeffrey P. Burns, Associate General Counsel, Amex, Kelly Riley, Senior Special Counsel, Division, Commission, and Sonia Trocchio, Special Counsel, Division, Commission (June 16, 2003).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2003-52 and should be submitted by July 29, 2003.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-17144 Filed 7-7-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48113; File No. SR-NASD-2003-99]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Amendment to Rule 6260 Regarding New Issue Notification Procedures for TRACE-Eligible Securities

June 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 19, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 6260(a) and (b) to require members to provide additional, descriptive information in the notice that is sent to NASD and identifies the basic terms of a new TRACE-eligible security ("new issue notification"), and to provide the information required in Rule 6250(b) by e-mail or facsimile. Rule 6260 is one of the Trade Reporting and Compliance Engine ("TRACE") rules. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

\* \* \* \* \*

6200. Trade Reporting and Compliance Engine (TRACE)

6260. Managing Underwriter Obligation To Obtain CUSIP

(a) In order to facilitate trade reporting and dissemination of secondary transactions in TRACE-eligible securities, the member that is the

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

managing underwriter of any newly issued TRACE-eligible security must obtain and provide information by *e-mail or facsimile* to the TRACE Operations Center as required under paragraph (b). If a managing underwriter is not appointed, the group of underwriters must comply with paragraph (b).

(b) For such TRACE-eligible securities, the managing underwriter must provide to the TRACE Operations Center, *by email or facsimile*: (1) the CUSIP number; (2) the issuer name; (3) the coupon rate; (4) the maturity; (5) whether Rule 144A applies; [and] (6) a brief description of the issue (*e.g.*, senior subordinated note, senior note); and, (7) information, as determined by NASD, that is required to determine if a TRACE-eligible security must be disseminated under Rule 6250 (*e.g.*, size of issue and rating), or if any of items (2) through (7)[(6)] has not been determined, such other information as NASD deems necessary. The managing underwriter must obtain the CUSIP number and provide it and the information listed as (2) through (7)[(6)] not later than 5 p.m. on the business day preceding the day that the registration statement becomes effective, or, if registration is not required, the day before the securities will be priced. If an issuer notifies a managing underwriter, or the issuer and the managing underwriter determine, that the TRACE-eligible securities of the issuer shall be priced, offered and sold the same business day in an intra-day offering under Rule 415 of the Securities Act of 1933 or Rule 144A of the Securities Act of 1933, the managing underwriter shall provide the information not later than 5 p.m. on the day that the securities are priced and offered, provided that if such securities are priced and offered on or after 5 p.m., the managing underwriter shall provide the information not later than 5 p.m. on the next business day. The managing underwriter must make a good faith determination that the security is a TRACE-eligible security before submitting the information to the TRACE Operations Center.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

NASD Rule 6260 currently requires a member that is the managing underwriter of the initial offering of a TRACE-eligible security to notify NASD and provide certain descriptive information about the security at the time of the initial offering of the security ("new issue notification"). Specifically, Rule 6260(b) currently requires that the new issue notification include: (a) The CUSIP number; (2) the issuer name; (3) the coupon rate; (4) the maturity; (5) whether Rule 144A applies; and (6) a brief description of the issue (*e.g.*, a senior subordinated note, a senior note). In addition, the rule provides, if such information has not been determined, the member must provide such other information as NASD deems necessary. The purpose of Rule 6260 is to require members that are acting in a capacity of managing underwriter or are otherwise designated in the course of an offering of a TRACE-eligible security to notify NASD by certain times set forth in the rule so that the TRACE system is able to capture, and, when applicable, disseminate transaction information as soon as secondary trading begins.

NASD is proposing to amend Rule 6260(a) and (b) to explicitly require that members provide information relating to dissemination eligibility in the new issue notification. The additional information to be required is the information needed to determine if a new TRACE-eligible security is subject to dissemination.

The current "phasing-in" of dissemination was developed in response to industry concerns that dissemination might adversely affect the bond markets.<sup>3</sup> Certain market participants urged that dissemination occur over time, by phasing in the requirement for specifically defined groups of securities with certain characteristics. To properly administer dissemination, NASD must obtain and assess information about a TRACE-eligible security to determine if dissemination is required under Rule 6250 at the same time that NASD obtains identifying information about a

new TRACE-eligible security to properly and timely enter the security into the TRACE system.

The proposed additional information requirements in Rule 6260 are directly related to the increasing complexity of the dissemination requirements in effect and anticipated under Rule 6250.<sup>4</sup> Recently, the SEC approved amendments to Rule 6250 that established additional criteria for determining dissemination.<sup>5</sup> NASD must review the additional criteria, such as the original issue size and the ratings of a new TRACE-eligible security, to determine if the transaction information for a security must be disseminated under Rule 6250.<sup>6</sup> This information is

<sup>4</sup> On July 1, 2002, when TRACE began, under Rule 6250, NASD was required to disseminate transaction information on only two categories of TRACE-eligible securities: (1) Investment Grade securities having an initial issuance size of \$1 billion or greater; and (2) 50 Non-Investment Grade securities designated by NASD according to a variety of criteria set forth in the Rule. See Rule 6250(a)(1) and (2), respectively.

<sup>5</sup> On January 31, 2003, the SEC approved amendments to Rule 6250, requiring NASD to disseminate transaction information on two additional categories of debt securities. Under new paragraph (a)(3) of Rule 6250, NASD disseminates transaction information on any TRACE-eligible security that is Investment Grade, is rated by Moody's Investors Service, Inc. as "A3" or higher, and by Standard & Poor's, a division of McGraw Hill Co., Inc. as "A-" or higher, and has an original issue size of \$100 million or greater. Under new paragraph (a)(4), NASD disseminates transaction information on approximately 120 TRACE-eligible securities designated by NASD that are rated "Baa/BBB" at the time of designation. See Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003) (order approving SR-NASD-2002-174), and Securities Exchange Act Release No. 47566 (March 25, 2003), 68 FR 15490 (March 31, 2003) (notice of filing and immediate effectiveness of SR-NASD-2003-41).

Moody's Investors Service, Inc. ("Moody's") is a nationally recognized statistical rating organization. Moody's is a registered trademark of Moody's Investors Service. Moody's ratings are proprietary to Moody's and are protected by copyright and other intellectual property laws. Moody's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without Moody's prior written consent.

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<sup>6</sup> For example, to administer the current dissemination provisions of Rule 6250, when a member provides NASD a new issue notification, generally NASD would expect the member to include both the original issue size of the offering and the rating of the security.

<sup>3</sup> See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131, 8133-8135, 8141-8142 (January 29, 2001) (order approving SR-NASD-99-65).

readily available to members responsible for compliance with Rule 6260 in a particular offering, and members would be able to provide this additional information as part of the Rule 6260 compliance process with little difficulty. Moreover, in the future, NASD may propose additional standards for dissemination to the SEC under Rule 6250. If additional standards are proposed and adopted, NASD would be required to identify and analyze additional characteristics of a security to determine if the security is subject to dissemination immediately before trading begins. The proposed amendment to Rule 6260(b), as drafted, will allow NASD to require members to submit the descriptive information that is then relevant in making a dissemination determination under Rule 6250.

NASD is also proposing that the new issue notification be submitted via email or facsimile to NASD. Currently, many members e-mail the new issue notification to NASD. Some members have provided the new issue notification by telephone. Members that provide the new issue notification by telephone would be required to provide it by email or a facsimile in order to comply with the proposed amendment.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change, if approved, will enhance transparency in the debt securities markets and will provide NASD, as the self-regulatory organization designated to regulate the over-the-counter markets, with heightened capabilities to regulate and provide surveillance of the debt securities markets to prevent fraudulent and manipulative acts and practices for the protection of investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to file number SR-NASD-2003-99 and should be submitted by July 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-17143 Filed 7-7-03; 8:45 am]

**BILLING CODE 8010-01-P**

## **DEPARTMENT OF STATE**

[Public Notice 4394]

### **Bureau of Nonproliferation; Nonproliferation Measures Imposed on an Entity in China, Including a Ban on U.S. Government Procurement**

**AGENCY:** Bureau of Nonproliferation, Department of State.

**ACTION:** Notice.

The U.S. Government has determined that the effective date of Public Notice 4370 (68 Federal 28314), concerning the imposition of measures on North China Industries Corporation (NORINCO), is the date of publication of that Notice in the **Federal Register**, May 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** On general issues: Vann H. Van Diepen, Office of Chemical, Biological, and Missile Nonproliferation, Bureau of Nonproliferation, Department of State, (202-647-1142). On import ban issues, Rochelle E. Stern, Chief, Policy Planning and Program Management Division, Office of Foreign Assets Control, Department of the Treasury, (202-622-2500). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State, (703-516-1691).

Dated: July 1, 2003.

**Andrew K. Semmel,**

*Acting Assistant Secretary of State for Nonproliferation, Department of State.*

[FR Doc. 03-17203 Filed 7-7-03; 8:45 am]

**BILLING CODE 4710-25-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **Availability of Changes to Advisory Circular 27-1B, Certification of Normal Category Rotorcraft, and Advisory Circular 29-2C, Certification of Transport Category Rotorcraft**

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

**ACTION:** Notice of availability of Advisory Circular (AC) changes.

**SUMMARY:** This notice announces the availability of changes to AC 27-1B, Certification of Normal Category Rotorcraft, and AC 29-2C, Certification of Transport Category Rotorcraft. These changes revise AC paragraph 27.602, Critical Parts; AC paragraph 29.547A, Main Rotor and Tail Rotor Structure; AC paragraph 29.602, Critical Parts; and AC paragraph 29.917A, Design. These AC paragraphs are final and replace the existing paragraphs AC 27.602, AC

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

29.547A, AC 29.602, and AC 29.917A, all dated 2/12/03. These changes clarify the wording in the corresponding rule.

**FOR FURTHER INFORMATION CONTACT:** Gary B. Roach, Regulations Group, FAA, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, TX 76193-0111; telephone (817) 222-5130; fax (817) 222-5961; email; <http://www.Gary.B.Roach@FAA.GOV>.

**SUPPLEMENTARY INFORMATION:** This notice announces the availability of AC changes. You can get electronic copies of these changes from the FAA by logging on to <http://www.airweb.faa.gov/rgl> and then clicking first on Advisory Circulars, then clicking on Current AC's, and then clicking on By Number. If you do not have access to the Internet, you may request a copy by contacting the person named under the caption **FOR FURTHER INFORMATION CONTACT**.

An Aviation Rulemaking Advisory Committee (ARAC) harmonization working group recommended these revisions. We have reviewed these recommended revisions and agree that they clarify further the language in each affected AC paragraph. Therefore, we will incorporate these revised paragraphs in the next change to AC 27-1B and AC 29-2C.

Issued in Fort Worth, Texas, on June 25, 2003.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 03-17113 Filed 7-7-03; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent to Request Review From the Office of Management and Budget (OMB) of One Proposed Public Collection of Information

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on one proposed public information collection which will be submitted to OMB for approval.

**DATES:** Comments must be received on or before September 8, 2003.

**ADDRESSES:** Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division,

APF-100, 800 Independence Ave., SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Street at the above address or on (202) 267-9895.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following proposed collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

The following is a description of the collection activity:

*Title:* Information for the Prevention of Aircraft Collisions on Runways at Towered Airports. The Federal Aviation Administration (FAA) Office of Runway Safety (ARI) would like to collect data on a periodic basis to determine performance of people operating in the National Airspace System (NAS) in relation to runway incursion risk. Information to be collected will include voluntary feedback on the efficacy of runway safety initiatives designed to reduce the risk of collision on the Nation's runways. Reduction of runway incursions is listed by the Department of Transportation (DOT) Office of the Inspector General (OIG) as one of the top ten transportation management improvements needed, and the National Transportation Safety Board (NTSB) has selected runway safety as one of their "most wanted" transportation safety improvements. There is a lack of feedback information from people working and flying on the runways in the NAS. Feedback gathered on the accuracy and effectiveness of collision prevention methods will be used by the FAA in the future to improve safety performance. Data will be collected from varied respondents who have the potential to be involved in a runway collision. The sample population will be stratified into four general areas: Pilots, vehicle drivers, pedestrians, and management who exercise oversight of the varied respondents.

An annual total of 12,500 hours of burden are expected from an estimated 150,000 potential annual respondents; however, the FAA estimates a 25% response rate.

Issued in Washington, DC, on June 30, 2003.

**Judith D. Street,**

*FAA Information Collection Clearance Officer, APF-100.*

[FR Doc. 03-17117 Filed 7-7-03; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Proposed Information Collection

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on one new public information collection which will be submitted on OMB for approval.

**DATES:** Comments must be received on or before September 8, 2003.

**ADDRESSES:** Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF-100, 800 Independence Ave., SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Street at the above address or on (202) 267-9895.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to approve the clearance of the following information collection.

Following is a summary of the new collection:

*Title:* Southwest Region Assessment of Aviation Examiners. The Federal Aviation Administration (FAA), through the Civil Aerospace Medical Institute (CAMI), has undertaken an effort to improve aviation safety through collecting data on the quality of flight training and testing. This research requires that information be collected from general aviation (GA) pilots newly certificated by the FAA. Since GA pilot

certification testing occurs repeatedly throughout the year, and we wish to capture the opinions and attitudes of respondents soon after their practical test flight. We will need to conduct multiple data collections, however it will be a different respondent each time. We estimate that we will be surveying approximately 1,500 pilots per year. With an average of 1 hour per pilot, the estimated annual reporting burden is 1,500 hours.

Issued in Washington, DC, on June 30, 2003.

**Judith D. Street,**

*FAA Information Collection Clearance Officer, APF-100.*

[FR Doc. 03-17118 Filed 7-07-03; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Premium War Risk Insurance

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

**ACTION:** Notice of extension of Aviation Insurance.

**SUMMARY:** This notice contains the text of a memo from the Secretary of Transportation to the President regarding the extension of the provision of aviation insurance coverage for U.S. flag commercial air carrier service in domestic and international operations.

**DATES:** Dates of extension from June 14, 2003 through August 12, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Helen Kish, Program Analyst, APO-3, or Eric Nelson, Program Analyst, APO-3, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone 202-267-9943 or 202-267-3090. Or online at FAA Insurance Web site: <http://insurance.faa.gov>.

**SUPPLEMENTARY INFORMATION:** On June 12, 2003, the Secretary of Transportation authorized a 60-day extension of aviation insurance provided by the Federal Aviation Administration as follows:

#### MEMORANDUM TO THE PRESIDENT

Pursuant to the authority delegated to me by the President in paragraph (3) of Presidential Determination No. 01-29 of September 23, 2001, and the direction of Section 1202 of the Homeland Security Act of 2002, I hereby extend that determination to allow for the provision of aviation insurance and reinsurance coverage for U.S. Flag commercial air carrier service in domestic and international operations for an additional 60 days.

Pursuant to section 44306(b) of Chapter 443 of 49 U.S.C., Aviation Insurance, the period for provision of insurance shall be extended from June 14, 2003, through August 12, 2003.

/s/ Norman Y. Mineta

*Affected Public:* Air Carriers who currently have Premium War-Risk Insurance with the Federal Aviation Administration.

Issued in Washington, DC on June 30, 2003.

**John M. Rodgers,**

*Director, Office of Aviation Policy and Plans.*

[FR Doc. 03-17116 Filed 7-7-03; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Application 03-07-C-00-TYS To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at McGhee-Tyson Airport, Knoxville, TN

**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 McGhee-Tyson Airport under the provisions of the 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 August 7, 2003.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airport District Office, 3385 Airways Boulevard, Suite 302, Memphis, TN 38116-3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William Marrison, President of the Metropolitan Knoxville Airport Authority at the following address: McGhee-Tyson Airport, P.O. Box 15600, Knoxville, Tennessee 37901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Knoxville Airport Authority under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Cager Swauncy, Program Manager, Memphis Airports District Office, 3385 Airways Boulevard, Suite 302, Memphis, Tennessee 38116-3841. 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 McGhee-Tyson Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 26, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Metropolitan Knoxville Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 24, 2003.

The following is a brief overview of the application.

*Proposed charge effective date:* July 1, 2022

*Proposed charge expiration date:* September 1, 2023

*Level of the proposed PFC:* \$4.50

*Total estimated PFC revenue:* \$4,691,627

*Brief description of proposed project(s):* Terminal Improvements Program and PFC Administration and Development

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Nonscheduled, whole-plane-charter operations by Air Taxi/Commercial operators filing FAA Form 1800-31

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Airports District office located at: 3385 Airways Boulevard, Suite 302, Memphis, Tennessee.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Knoxville Airport Authority.

Issued in Memphis, Tennessee on June 26, 2003.

**LaVerne F. Reid,**

*Manager, Memphis Airports District Office.*

[FR Doc. 03-17114 Filed 7-7-03; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Policy Statement No. ANM-03-115-38: Use of Surrogate Parts When Evaluating Seatbacks and Seatback Mounted Accessories for Compliance With §§ 25.562(c)(5) and 25.785(b) and (d)**

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

**ACTION:** Notice of proposed policy; request for comments.

**SUMMARY:** The Federal Aviation Administration (FAA) announces the availability of proposed policy on the use of surrogate parts when evaluating seatbacks and seatback mount accessories for compliance with 14 CFR 25.562(c)(5) and 25.785(b) and (d).

**DATES:** Send your comments on or before August 7, 2003.

**ADDRESSES:** Send your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Thompson, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM-115, 1601 Lind Avenue, SW., Renton, WA 98055-4056; telephone (425) 227-1157; fax (425) 227-1149; e-mail: [michael.t.thompson@faa.gov](mailto:michael.t.thompson@faa.gov).

**SUPPLEMENTARY INFORMATION:****Comments Invited**

The proposed policy is available on the Internet at the following address: <http://www.airweb.faa.gov/rgl>. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT**. Mark your comments, "Comments to Policy Statement No. ANM-03-115-28."

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.

Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date

for comments. We may change the proposed policy because of the comments received.

**Background**

The proposed policy will streamline the seat certification process by providing Federal Aviation Administration certification policy on using surrogate test articles in lieu of actual production seatback mounted accessories (e.g., video monitor, telephone) during blunt trauma tests in accordance with §§ 25.562(c)(5) and 25.785(b) and (d). The policy also provides acceptable methods of demonstrating the sharp, inurious edges would not be formed by a head impact against the actual production accessory since this evaluation would not be accomplished from a test that uses a surrogate part.

Issued in Renton, Washington, on Jun. 23, 2003.

**Ali Bahrami,**

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

[FR Doc. 03-17115 Filed 7-7-03; 8:45 am]

**BILLING CODE 4910-13-M**

**Department of Transportation****National Highway Traffic Safety Administration****Discretionary Cooperative Agreement To Support Metropolitan/Urban Projects To Increase African American Safety Belt Use**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Announcement of a Discretionary Cooperative Agreement to Support Metropolitan/Urban Demonstration Projects to Increase African American Safety Belt Use.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) announces a Discretionary Cooperative Agreement to provide funding to a national organization servicing the African American community to support demonstration projects in key metropolitan/urban cities designed to increase African American safety belt use. NHTSA anticipates funding one national organization for a period of three years that, if necessary, may subcontract with local or community-based service providers to administer demonstration projects in approximately 3 to 4 sites, to be determined jointly by NHTSA and the successful applicant. This Notice solicits applications from national non-

profit, not-for-profit and for-profit organizations. Interested applicants must submit an application packet meeting the requirements set forth in the application section of this Notice. NHTSA will evaluate the applications to determine which proposal will receive funding under this announcement.

**DATES:** Applications must be received no later than August 5, 2003, at 1 p.m., Eastern Standard Time.

**ADDRESSES:** Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurements (NPO-220), ATTN: April Jennings, 400 7th Street SW., Room 5301, Washington, DC 20590. All applicants must include reference to NHTSA Cooperative Agreement Program No. DTNH22-03-H-05155

**FOR FURTHER INFORMATION CONTACT:**

General administrative questions may be directed to April Jennings, Office of Contracts and Procurement at (202) 366-9571 or by e-mail:

[ajennings@nhtsa.dot.gov](mailto:ajennings@nhtsa.dot.gov). Programmatic questions should be directed to Shirley Peterson Barton, Occupant Protection Division, NHTSA, NTI-112, 400 7th Street SW, Washington, DC 20590, fax (202) 366-7721 or by e-mail: [sbarton@nhtsa.dot.gov](mailto:sbarton@nhtsa.dot.gov). Interested applicants are advised that no separate application packages exist beyond the contents of this announcement.

**SUPPLEMENTARY INFORMATION:****Background**

*Safety Belt Use Among African Americans Reaches an Unprecedented Level*

After decades of being below the national average for safety belt use and suffering a higher incidence of deaths and injuries from motor vehicle crashes, African Americans have begun using safety belts at an increased rate. In 1996, only 51 percent of African Americans used safety belts. The latest National Occupant Protection Use Survey (NOPUS) indicates that safety belt use among African Americans reached an unprecedented level of 77 percent in 2002. This increase of 8 percentage points over the rate recorded in 2000 places African Americans slightly ahead of the overall population in safety belt use (currently observed at 75 percent).

**Keys to Success**

This dramatic increase appears to be the result of a combination of factors. Prior to the 2002 NOPUS, minorities were overrepresented in motor vehicle crashes. In response, NHTSA initiated a comprehensive outreach project to

educate and enlist national African American organizations to focus on the motor vehicle problem. NHTSA also contracted with the Cambridge Institute for Applied Research to assess how best to reach the African American community. The Institute concluded that focusing on key metropolitan/urban areas with large African American populations would yield considerable results in increasing safety belt use and thereby reduce injuries and fatalities among this group.

Also leading the way in research relating to this issue was Meharry Medical College, a predominately African American Medical College, which released a report funded by General Motors Corporation entitled, *Achieving A Credible Health and Safety Approach to Increasing Seat Belt Use Among African Americans*. Meharry reported that by increasing safety belt use by African Americans to 100 percent, 1,300 lives could be saved, 26,000 injuries prevented and \$2.5 billion saved every year. This report helped galvanize the commitment of the African American community and Black legislators to address traffic safety issues, particularly safety belt and child safety seat use. One of the recommendations from the Meharry Report suggested that a panel of African American leaders periodically convene to identify additional strategies to increase safety belt use in their community.

In October 1999, NHTSA collaborated with Meharry Medical College on a second report entitled, *The Role of African-American National Organizations in Increasing Seat Belt Use Among African-Americans: A Health and Safety Forum & Student Practicum*. One of the Forum's principal recommendations was to convene a national body, under the auspices of the U.S. Department of Transportation, whose purpose would be, " \* \* \* to inspire and excite all sectors of the American public to take action and address the public health crisis (by providing) strategies that could be implemented by all Americans to close the gap in safety belt use."

This led to significant efforts by several national African American leadership organizations, members of the Congressional Black Caucus, National Black Caucus of State Legislators, and most notably to the Blue Ribbon Panel to Increase Seat Belt Use Among African Americans. This Panel, which convened in June 2000 and consisted of African American leaders from civic, health and medicine, faith-based, academia, and law enforcement backgrounds, was charged

with developing recommendations and strategies for increasing safety belt use among African Americans. The Panel documented its findings in a December 2000 report entitled, *Blue Ribbon Panel To Increase Safety Belt Use Among African Americans: A Report to the Nation*. The report, which stressed the need to increase safety belt use among this population and recommended a number of specific strategies, was well received by the African American community and government officials. It can be viewed at [<http://www.bchle.org>]

Concurrent with these research activities, NHTSA began working with States to implement the successful Click It or Ticket/Operation ABC Mobilizations. The Click It or Ticket model consists of intensive, widespread enforcement of a State's safety belt law coupled with earned and paid media that publicizes enforcement efforts. Specifically, media activities inform the motoring public directly about the enforcement campaign and paid media employs the "Click It or Ticket" slogan. Click It or Ticket, which began in North Carolina in 1993, has a strong track record of increasing safety belt use. Focus group testing demonstrates that Click It or Ticket's message resonates well with the hard-core non-user of safety belts.

NHTSA's May 2002 Click It or Ticket Mobilization, involving ten "full implementation States," showed the effectiveness of the campaign's approach in raising safety belt use. Full participation involved a statewide coverage program employing the Click It or Ticket model of defined periods of earned media (5 weeks), paid media (2 weeks) and intensive enforcement (2 weeks). Paid media used "Click It or Ticket" or similar direct enforcement messages. During this mobilization, belt use increased 8.6 percentage points (on average) among the full implementation States, versus a 2.7 percentage point increase (on average) among partial implementation States. Partial implementation States had some variation of the full implementation, but not all of the elements, such as following the model's timeline but only conducted conducting modest paid media or covering only a portion of the State. There was a 0.5 percentage point increase (on average) in comparison States, which did not use direct paid advertisements.

#### Looking to the Future

Although the latest observational surveys of safety belt use for African Americans are positive, approximately one-quarter of this population still is not buckling up. The non-user segment of

this population remains the most difficult group to reach and warrants enhanced efforts.

NHTSA's mission is to ensure that everyone is buckled up, and to develop and implement national activities that will generate further positive change in safety belt and child safety seat use. NHTSA's programs are tailored to meet the unique needs of communities, use evidence-based and proven strategies, and rely on close collaborations and partnerships with community-based service providers.

As part of this on-going effort to define strategies that work best to increase safety belt use in African American communities, NHTSA announces this demonstration program to examine the premise, presented by the Cambridge Institute for Applied Research, that focusing on key metropolitan/urban areas with large African American populations will reduce injuries and fatalities among this group. Through the award of a Cooperative Agreement to a national organization that serves the African American community, NHTSA hopes to increase safety belt use in metropolitan/urban communities with large African American populations and to identify effective strategies that can be replicated in other African American communities across the Nation.

In June 2003, the U.S. Secretary of Transportation, Administrator of NHTSA, and the National Council of Negro Women, convened a Leadership Forum on Increasing Safety Belt Use in the African American Community. The Forum served to acknowledge the recent increases in African American safety belt use and to reaffirm the recommendations of the Blue Ribbon Panel to Increase Seat Belt Use in the African American Community. In addition to acknowledging the success of the Blue Ribbon Panel, the Leadership Forum discussed next steps to further increase safety belt use among urban-based African American populations. The strategies identified by the Blue Ribbon Panel will be utilized in the demonstration program.

#### Objective

The objective of the demonstration program is to examine the impact of various strategies to increase safety belt use in key metropolitan/urban areas with large African American populations. NHTSA and the successful applicant will select sites in metropolitan/urban areas with diverse geographical distribution and with safety belt usage rates lower than the national average. By implementing different strategies in different selected

sites, NHTSA and the successful applicant will have the capacity to evaluate the strategies' impact on safety belt use and, ultimately, their ability to reduce injuries and fatalities among this group.

#### Effective Strategies

Research has shown that combinations of strategies have been effective in increasing safety belt use. The greatest increases in safety belt use have come from highly visible enforcement programs, supplemented with paid advertising with a strong enforcement message. The Click It or Ticket message is simple and straightforward; "Wear your safety belt or you will get a ticket." (The evaluation report is available at [www.nhtsa.dot.gov/people/injury/research/index.html](http://www.nhtsa.dot.gov/people/injury/research/index.html)). Messages that are purely educational or safety oriented have not been shown to have as great of an effect (e.g., "What's Holding You Back"). There is some evidence that the people who can be educated to wear their safety belts already are wearing them, so education alone does not seem to increase safety belt use beyond a minimal level.

To assist the highway safety community in determining the most appropriate and effective strategies to increase safety belt use in African American populations, under this Cooperative Agreement, the successful applicant will assess variations of enforcement and education models. One of these approaches **must be** the Click It or Ticket model of high visibility law enforcement coupled with a strong enforcement media message. Other approaches might include education, health awareness programs, faith-based programs, or other programs proposed by the successful applicant.

Since we know that highly visible enforcement of a State's safety belt law, supplemented by paid media, is an effective tool for increasing safety belt use, the high visibility enforcement/media model must constitute at least part of the successful applicant and sub-grantee planned activities at most sites funded under this Cooperative Agreement.

#### Program Oversight

Under the Cooperative Agreement, the successful applicant will be responsible for managing the demonstration projects in key metropolitan/urban areas. NHTSA will work closely with the successful applicant to provide necessary technical assistance to any sub-grantee.

#### Evaluation of Programs

The successful applicant will be responsible for collecting information about program activities, resources, and outcomes. At a minimum, the successful applicant will conduct a process evaluation to document activities, materials, education activity, enforcement activity, and media activities expended on the program. The ultimate goal is to increase safety belt use among the African American population. To assess achievement of that goal, outcome measures must include pre- and post safety belt observation surveys to measure changes in safety belt usage rates as a result of the program. NHTSA also will require public perception surveys. A data collection and evaluation plan that describes the design for these observational surveys, as well as the public perception surveys, must be approved by NHTSA prior to conducting the surveys. Measuring public awareness will track the extent to which the successful applicant used media and other activities to make the African American public aware of the program. NHTSA will work with the successful applicant to select an independent evaluator to coordinate an outcome evaluation document changes in safety belt use among African Americans resulting from program activity. The successful applicant agrees to work with an independent evaluator in collecting information to document the success of the program.

#### NHTSA Involvement

NHTSA will provide:

##### 1. Contracting Officer's Technical Representative (COTR)

Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the Cooperative Agreement and to coordinate activities between the successful applicant and NHTSA;

##### 2. Availability of Funds and Period of Performance

Provide a total of \$2 million is currently available to support demonstration efforts in key metropolitan/urban areas during the performance of the Cooperative Agreement. The government anticipates making an award to one national organization for a total performance period of 3 years. This funding shall include all monies to support the demonstration site, evaluation, administration and management, and all other related expenses. The successful applicant will, with the approval of

NHTSA, sub-contract with an independent evaluator to conduct a full evaluation of the project. NHTSA will require the successful applicant to set aside \$400,000 for these activities;

##### 3. Support

Provide technical assistance in response to specific requests from the successful applicant and/or sub-grantee and work collaboratively with both through phone conference calls, web site communications or meetings;

##### 4. Briefing

Conduct a one-day initial briefing in Washington, DC for the successful applicant to discuss and determine requirements for completing tasks successfully and efficiently;

##### 5. Data Related Research

Provide significant information and technical assistance from government sources and available resources (as deemed appropriate by the COTR), including safety belt use and African American population data; and

##### 6. Oversight

Stimulate the exchange of ideas and information among recipients of related projects, including through periodic meetings and briefings.

#### Successful Applicant Responsibilities

First and foremost, NHTSA intends to replicate successful strategies and activities conducted pursuant to this Cooperative Agreement elsewhere throughout the Nation. Accordingly, this benchmark demonstration project will be closely monitored and its results shared with other programs and constituencies. NHTSA will work with the successful applicant to assure that the necessary components of the project are in place to fulfill this goal. Successful applicant responsibilities include:

##### 1. Briefing

Participate with key NHTSA resource staff in the initial briefing meeting, which will take place after the Cooperative Agreement is awarded. The purpose of the meeting will be to review the project's objectives, planned course of action, successful applicant responsibilities, milestones and deliverables, and to resolve any differences between the Government's technical approach and the successful applicant's approach. The successful applicant first shall conduct a short briefing (20 to 30 minutes) describing the organization's planned approach. The successful applicant shall provide attendees with appropriate briefing

materials. After the prepared briefing, the successful applicant and NHTSA personnel will discuss specific details of the project.

## 2. Personnel and Equipment

Provide necessary skilled personnel and equipment needed for performing the work under this agreement. Assign a principal manager as the point of contact for NHTSA's Contracting Officer's Technical Representative (COTR) for the purpose of ongoing coordination and review of work under this agreement.

## 3. Site Selection

Identify, jointly with NHTSA, the 3 to 4 communities/sites where the successful applicant and/or sub-grantees will administer demonstration projects. Based on NHTSA's preliminary identification of locations with large proportionate African American populations and low safety belt use rates, potential sites include, but are not limited to the cities listed in Appendix A.

## 4. Strategy Identification

Identify the behavior change strategies, including high visibility enforcement and media, to be implemented in the various sites as approved by NHTSA.

## 5. Program Oversight

Provide ongoing program oversight at the selected sites including oversight of any sub-grantee. Ideally, the successful applicant will engage sub-grantees at selected sites that already have the infrastructure and capacity to implement the demonstration project, as required by NHTSA and the successful applicant. If no such entities exist at some or all of the sites selected, the successful applicant may use project resources, as approved by NHTSA, to develop infrastructure necessary for the implementation of the demonstration project at those sites(s). Through coordinated discussions, NHTSA and the successful applicant together will determine whether the successful applicant or one or more sub-grantees will implement demonstration projects at the selected sites. In either case, the successful applicant will provide ongoing and close oversight and coordination over demonstration project personnel at the site(s) to ensure the quality of the programs.

## 6. Foster Community Support

Build community support and buy-in for the program. Engage and mobilize policy makers, law enforcement (e.g., chiefs of police), mayors and other

officials and community leaders at the selected sites. The successful applicant must ensure that efforts are coordinated with the Governor's Highway Safety Representative and the NHTSA Regional office in the related site locations.

## 7. Team Approach

Establish and maintain a highly credible internal and external team approach to prepare for and resolve any potential challenges presented by this Demonstration Project.

## 8. Evaluation

Work closely with an independent evaluator selected jointly by NHTSA and the successful applicant at the 3–4 selected sites to coordinate the design and execution of an evaluation model applicable to all demonstration projects conducted under this Cooperative Agreement. The successful applicant will be responsible for collecting information about program activities, resources, and outcomes, as well as engaging and paying the fees of the selected independent evaluator out of project funds. At a minimum, in partnership with NHTSA, the successful applicant will carry out a data collection and evaluation plan, and will conduct a process evaluation to document the activities, materials, education activity, enforcement activity, and media activities expended on the project.

## 9. Technical Assistance

Provide technical assistance to the personnel at the selected sites and in selected communities through conferences, annual meetings, journals, and established networks and affiliate organizations. Encourage personnel at the selected sites to coordinate their efforts under this Cooperative Agreement with existing highway safety programs, and facilitate an open exchange of information with other key players. Collaborate with other national organizations and local chapters of such organizations.

## 10. Results and Strategy Assessment

Identify remaining challenges to increasing safety belt use in the African American population. Identify what strategies can quickly be replicated, both locally, and nationally.

## 11. Report and Written Deliverables

Create a credible and culturally infused report of facts, safety education materials and examples of safety belt use. Distribute the materials and information through collaborative partnerships with community-based service and other organizations/groups including churches, civil rights and

volunteer organizations, schools, educators, parents and students. Coordinate and compile "best practices" guide for other metropolitan cities, especially targeted at community leadership and lawmakers.

## 12. Record Keeping

Maintain accurate records of all internal executive and management discussions on planning, performance and evaluation activities related to this project. Accurate project records will greatly assist in the replication of the successful approaches and processes identified as a result of this Cooperative Agreement.

## Eligibility Requirements

To be considered for the Metropolitan/Urban Demonstration Projects to Increase African American Safety Belt Use, the applicant must be a non-profit, not-for-profit or for profit national organization dedicated to serving the needs and/or addressing issues specific to African American communities.

The successful applicant must demonstrate that it has the infrastructure and staff sufficient to carry out the development, administration, coordination and implementation of activities required by this Agreement.

Specifically, successful applicants must have:

1. Demonstrated expertise in the development and implementation of traffic safety programs and have substantial knowledge of safety belt issues specific to the African American community;

2. an organizational infrastructure with adequate staff time necessary to handle the day-to-day logistical needs of the Metropolitan/Urban Demonstration Project to Increase African American Safety Belt Use;

3. a communications and office infrastructure sufficient to handle phone calls, conference calls, computer conferencing, faxes, emails, mailings, and other necessary group communications;

4. staff experienced in and/or with adequate writing skills to prepare press releases, reports, articles and other methods of promotion and communication;

5. demonstrated ability to work with the media (e.g., develop media buy plans, place media buys, etc.) or coordinate this effort with an appropriate firm, as well as with law enforcement to develop a high visibility enforcement campaign in a selected site(s);

6. demonstrated ability to implement the recommendations promulgated by the Blue Ribbon Panel To Increase Safety Belt Use Among African Americans within the selected sites;

7. capacity to identify effective strategies to increase safety belt use among high-risk populations, particularly African American youth ages 16–24;

8. demonstrated ability to network with local chapters of national organizations and create a broader partnership to maximize the impact and ensure sustainability of the projects;

9. demonstrated ability and/or willingness to attempt to secure in-kind or other contributions for the purposes of enhancing the program and building sustainability;

10. demonstrated capacity for program planning and analysis;

11. demonstrated adequate knowledge of injury prevention programs;

12. the ability to implement injury prevention programs at the grassroots level, or work with local coalitions or organizations at the grassroots levels to do so;

13. demonstrated experience and technical proficiency in program design, data collection and evaluation; and

14. the capability to outline strategies, successes, and challenges of programs, *i.e.*, identifying new initiatives that can be developed to achieve increased safety belt use in minority communities and serve as a model nationwide.

#### Application Procedures

The successful applicant shall submit on or before August 5, 2003, at 1 p.m. EDT, one original and two copies of the application package to: National Highway Traffic Safety Administration, Office of Contracts and Procurements, NPO–220, 400 Seventh Street, SW., Room 5301, Washington, DC 20590, Attention: (April Jennings).

An additional three copies will facilitate the review process, but are not required. Applications must be typed on one side of the page only. Only complete packages received on or before August 5, 2003 at 1 p.m. EDT will be considered.

#### Application Contents

A. The application package must be submitted with OMB Standard 424 (Rev 7–97), including SF 424A and 424B). The Application for Federal Assistance, with the required information filled in and certified assurances must be included. While the SF 424 addresses budget information, and Section B identifies budget categories, the available space does not permit a level of detail that is sufficient to provide for

a meaningful evaluation of the proposed costs. A Supplemental Budget Sheet must be submitted to detail the breakdown of the proposed costs (Direct Labor, including labor categories, level of effort, and rate; Materials including itemized equipment; Travel and Transportation, including projected trips and number of people traveling; Subcontractor/Sub-grantee, with similar detail; and Overhead) as well as any costs that the applicant proposes to contribute or obtain from any other sources in support of this effort.

B. The certifications required by 49 CFR part 20.

C. The certifications required by CFR part 29.

D. A technical proposal not to exceed 20 pages describing:

1. The successful applicant's proposed plan of action/approach for designing and implementing the Demonstration Programs, including a discussion of the applicant's infrastructure and/or proposed sub-grantees at the sites proposed for demonstration projects;

2. A timeline/schedule of activities that demonstrates that the successful applicant will comply with NHTSA requests and Cooperative Agreement requirements in a timely manner;

3. A brief biography of each proposed staff person and sub-contractor, if known, and their role on the Demonstration Projects and/or projects at individual sites;

4. Letters of support and commitment to the Metropolitan/Urban Demonstration Projects to Increase African American Safety Belt Use (*e.g.*, from members of the Blue Ribbon Panel to Increase Seat Belt Use in the African American Community, mayors or other elected officials, or local community-based service providers involved with issues specific to the African American Community);

5. A letter of support from the State Governor's Highway Safety Office in which the applicant resides; however, upon award, the successful applicant must submit letters of support from the State Governor's Highway Safety Offices in the States where the selected demonstration sites are located. Contact information for Governor's Highway Safety Offices can be found on the NHTSA Web site at: <http://www.nhtsa.dot.gov/nhtsa/whatis/regions/>

6. Work samples that demonstrate the required knowledge and skills necessary to implement this Demonstration Project; and

7. Documentation of the applicant's recordkeeping strategy, specifically, how information from the organization

and demonstration sites will be organized, maintained and disseminated.

#### Review Procedures, Criteria and Evaluation Factors

Upon receipt of the application package, each package will initially be reviewed to ensure eligibility and that the application contains all of the items specified in the Application Contents Section of this announcement. An Evaluation Committee using the criteria outlined below will then review all complete applications.

The application package must concisely address the following criteria:

1. *Organizational Capabilities*—The Applicant shall provide evidence of the existence of a viable organizational entity with sufficient demonstrated experience in performing the tasks required for successful implementation of this Cooperative Agreement; a full and complete description of existing capabilities, and established credibility within the African American community through similar initiatives; and, sufficient staff with demonstrated skill and relevant experience to perform the tasks required to support the Metropolitan/Urban Demonstrations. Applicants must have demonstrated research and evaluation capacity or be affiliated with an academic institution or other entity that possess these critical capabilities. (25 percent)

2. *Project Approach/Plan*—The Applicant shall provide a sound and feasible plan for the development and implementation of program activities. The approach shall demonstrate a clear and comprehensive understanding of the African American community, knowledge of effective strategies and interventions, and the potential to increase safety belt use. (25 percent)

3. *Partnerships/Collaboration*—The Applicant shall demonstrate its ability (through examples of current and prior activities) to form effective partnerships with other organizations, coalitions and with community leaders/officials, and to motivate and mobilize the community and community leaders to take action in furtherance of positive change. (25 percent)

4. *Project Management*—The soundness of the project management structure, budget and the delineation of responsibility for different parts of the project. NHTSA will assess the qualifications and experience of project personnel. The applicant's staffing plan should be adequate to manage and implement the project and identify estimated costs and rationale for the proposed budget. (25 percent)

### Terms and Conditions of the Award

1. Prior to award, each grantee must comply with the certification requirements set forth in 49 CFR part 20, DOT's New Restrictions on Lobbying, and those set forth in 49 CFR part 29, DOT's Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace Grants).

#### 2. Progress Reports

The successful applicant will furnish two copies of a monthly letter typed progress report to the COTR and one copy to the Contracting Officer (CO), by the 10th of each month detailing:

a. Accomplishments made during that reporting period, and one copy of any written or graphic product produced;

b. An analysis and interpretation of those accomplishments, and an assessment of results achieved;

c. Funding expended during the reporting period and a total of expenditures for the Cooperative Agreement;

d. What is planned during the next reporting period; and,

e. Specific actions that the successful applicant would like NHTSA to undertake.

#### 3. Annual Summary Report

At the completion of each year of the Cooperative Agreement, the successful applicant will submit an annual summary report. These reports shall document and review the accomplishments of the year. The reports shall include a list and brief summary of materials developed, dissemination of methods used, feedback from the field, a list of partners secured, notable accomplishments, evaluation results and recommendations for future year's efforts. The annual summary report also shall include an executive summary, which may be reproduced for widespread distribution and used as a "best practices guide."

#### 4. Draft Final Report

The successful applicant shall prepare a Draft Final Report that includes a description of the demonstration project detailing the major activities, events, data collection, methodology, and best practices guide that can be replicated for use in other communities. The successful applicant shall submit the Draft Final Report to the COTR 90 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the successful applicant within 30 days of receipt of the document.

#### 5. Final Report

The revised Draft Final Report shall be delivered to the COTR one (1) month

before the end of the performance period and reflect the COTR's comments. The comprehensive report should detail the major activities, events, data collection, methodology, and best practices guide that can be replicated in other communities. The successful applicant shall supply the COTR with:

(a) one camera-ready version of the document, as printed and one copy, on appropriate media disk in Microsoft Word Format or CD ROM of the document in the original program format that was used for the printing process. Some documents require several different original program languages (e.g., PageMaker for general layout and design, PowerPoint for charts, Project for project timeline management, and another for photographs, etc.). Each of these component parts should be available on disk, properly labeled with the program format and the file names. For example, PowerPoint files should be clearly identified by both a descriptive name and file name (e.g., 2001 Fatalities—chart 1.ppt).

(b) document must be completely assembled with all colors, charts, sidebars, photographs, and graphics, if appropriate). This can be delivered to NHTSA on a standard 1.44 floppy diskette (for small documents) or on any appropriate archival media (for larger documents) such as CD ROM. The successful applicant will provide to the COTR four hard paper copies of the final document, as well as a disk containing the redlined version of the Draft Final Report reflecting changes made in response to the COTR's comments.

6. During the effective performance of Cooperative Agreement awarded as a result of this announcement, the Agreement shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements, dated July 1995.

#### Marilena Amoni,

*Associate Administrator for Program Development and Delivery.*

### Appendix A—Cities With Highest African American Populations

1. Jacksonville, FL
2. Atlanta, GA
3. Chicago, IL
4. New Orleans, LA
5. Cleveland, OH
6. Columbus, OH
7. Philadelphia, PA
8. Birmingham, AL
9. Memphis, TN
10. St. Louis, MO
11. Indianapolis, IN
12. Boston, MA

13. Milwaukee, WI

[FR Doc. 03-17109 Filed 7-7-03; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### Cooperative Agreement Demonstration Program To Increase Safety Belt Use in Rural Areas

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Announcement of a demonstration cooperative agreement program to increase safety belt use in rural areas. This funding is available through special allocation by Congress to increase safety belt use among teens, minorities, and rural populations.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) announces a demonstration cooperative agreement program to solicit support for program leadership in increasing safety belt use and addressing traffic safety problems in rural communities. NHTSA is seeking to demonstrate best practices in establishing infrastructures in rural areas to address traffic safety problems utilizing a lead coordinating institution—community outreach serving agency or organization—interested in building and sustaining a coordinated motor vehicle injury prevention program in their rural service area.

NHTSA seeks to engage rural area service providers in institutionalizing traffic safety as part of their community outreach initiatives. This notice solicits applications from for-profit or not-for-profit national organizations, and State, regional or local agencies and organizations that administer direct community outreach programs in rural areas. In addition, NHTSA is particularly interested in gaining the interest and involvement of organizations that provide health and safety services and have the interest and ability to coordinate an on-going community effort beyond the project period. These could include, but are not limited to: hospitals and health care facilities, and Emergency Medical Services, law enforcement, transportation, county government and community serving organizations.

**DATES:** Applications must be received at the office designated below on or before (30 days after notice is issued) August 7, 2003, at 2 p.m., Eastern Standard Time.

**ADDRESSES:** Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NPO-220), ATTN: Maxine D. Edwards, 400 7th Street, SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Program #NTS-01-3-05149.

**FOR FURTHER INFORMATION CONTACT:** General administrative questions may be directed to Maxine D. Edwards, Office of Contracts and Procurement at (202) 366-4843. Programmatic questions relating to this grant program should be directed to Ann Mitchell, Occupant Protection Division (NTI-112), NHTSA, 400 7th Street, SW., Washington, DC 20590, by e-mail at [amitchell@nhtsa.dot.gov](mailto:amitchell@nhtsa.dot.gov), or by phone at (202) 366-2690. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

**SUPPLEMENTARY INFORMATION:**

**Background**

In 1996, the U.S. Department of Transportation commenced a national initiative to increase safety belt use nationwide called the Buckle Up America Campaign.<sup>1</sup> Since the start of the campaign, the national safety belt use rate has steadily climbed from 68 percent in 1996 to 75 percent in 2002. By 1999—a year ahead of schedule—the campaign had achieved its goal of reducing occupant fatalities in children ages 0–4 years by 15 percent. This success was a direct result of efforts by the many partners who joined the Buckle Up America Campaign and supported the campaign's initiatives. Despite significant gains, continued work is needed to reach the remaining 25 percent of Americans who still do not buckle up. NHTSA has established a target of 79 percent safety belt use by 2004. Meeting this goal will require an intense effort to persuade hardcore nonusers to change their behavior.

Rural populations are among the groups at higher risk of being killed in a crash, as are teens, minorities, and pickup truck drivers and passengers. NHTSA statistics show that traffic crashes, injuries, and fatalities occur with much higher frequency in rural areas than in urban areas. Factors such as higher alcohol-related crash rates, lower safety belt use, higher speeding crash rates and less accessibility to emergency services all contribute to the disparity. In 2001, 25,737 traffic related fatalities occurred in rural areas—61 percent of all traffic fatalities. Rural areas, however, account for only 39 percent of the vehicle miles traveled

and only 21 percent of the population nationwide. In 2001, the rural fatality rate remains double that of the urban rate per 100 million vehicle miles traveled (VMT).<sup>2</sup>

These crash and fatality statistics illustrate why the rural population is a high-risk group that has been targeted by Congress for assistance. Yet, the highway safety community has not developed an approach that effectively incorporates rural America into its highway safety program. Administrative resources and programmatic goals often work against support for rural initiatives by focusing activity in high population/high crash rate areas. Rural communities individually do not have the data to support targeted funding in a small community; however, collectively, they encompass the majority of the crashes, injuries and fatalities on the road.

Across the board, safety belt use is lowest among young adults ages 16 to 24 years old and by occupants of pickup trucks. Safety belt use in pickup trucks is considerably lower (54 percent) in rural areas than in urban areas (69 percent).<sup>3</sup> High-speed crashes play a role in the disparity, with 70 percent of fatal crashes at 55 MPH or higher occurring in rural areas.<sup>4</sup> Studies reveal that survival from car crashes in rural areas depends on a number of factors, including crash dynamics, time to discovery and the degree of organization of EMS and trauma system resources.<sup>5</sup>

Though NHTSA studies show that enactment and enforcement of a primary safety belt law comprise a proven methodology to increase safety belt use, rural America faces challenges in implementing this approach, and rural secondary States even more so. Law enforcement officials in rural communities are often elected officials and thus reluctant to write traffic tickets. Due to limited resources, inadequate manpower, and lack of community support for strong enforcement, rural communities are less engaged in coordinated national, state and local safety belt enforcement campaigns such as the Operation ABC (America Buckles Up Children) Mobilizations, *Click It or Ticket*.<sup>6</sup> These campaigns have proven successful in increasing safety belt use;<sup>7,8</sup> however, rural America has not fully embraced the enforcement concept, nor have traditional program delivery systems been successful in reaching rural communities.

The problem of increasing safety belt use in rural communities needs a solution. Changing social norms in rural America is a difficult task that will require an understanding of the

perceptions, knowledge, and attitudes of rural Americans. Messages and programs designed for “mainstream America” often are not effective for those populations most at risk or hardest to reach. Language, cultural, and other barriers must play a role in the development of tailored messages and alternate delivery channels. Increasing usage rates in this population will require the leadership, support and cooperation of respected organizations that represent and advocate on behalf of rural Americans, with the credibility and knowledge to influence their members and constituencies to buckle up. Engaging the rural residents themselves to take responsibility in addressing this issue also will be key to the success of the highway safety community's efforts.

This approach has been tested and proven effective in both urban and rural communities. Community Traffic Safety Programs and Safe Communities Coalitions<sup>9,10</sup> have been active throughout the nation for a number of years. NHTSA also partnered with the National Rural Health Association (NRHA) to demonstrate the “Partners for Rural Traffic Safety” community-based approach. Fifteen projects conducted in 1997–1998 resulted in an average nine percentage-point increase in safety belt use. NRHA and NHTSA produced the *Partners for Rural Traffic Safety Action Kit*<sup>11</sup> based on the demonstration projects and their community approach. Information on how to obtain copies of the sources cited herein (and other relevant resources) is set forth below, in the “Additional Resources” section of this announcement.

**Goal**

The goals of this demonstration program are to test viable delivery mechanisms for administering traffic safety programs in rural communities and to engage rural communities in activities to increase safety belt use. We are seeking organizations/agencies that will take a leadership role in serving as a focal point for traffic safety program delivery to/within the community. The success of the effort will be measured in terms of:

- Changes in safety belt use rates;
- increases in enforcement activities;
- ability to coordinate, monitor, and publicize activity and serve as a focal point for information;
- ability to engage the community in the program, provide education and training, and to work closely with law enforcement and other community service providers on planning, data collection, and evaluation;

- utilization of technology, community resources, media, and other delivery channels to gather and provide information;
- ability to establish an infrastructure and acquire resources for sustaining the program beyond the initial project funding period;
- ability to evaluate activities and outcomes; and
- potential for replication in other rural community settings.

#### Purpose

The primary purpose of this cooperative agreement program is to identify/test "best practice" approaches for delivering/administering traffic safety programs in rural communities. Best practices are those that successfully increase safety belt use and can be replicated in other rural communities. The program is designed to generate the interest and commitment of rural area service providers to become traffic safety focal points in their rural community/service area. NHTSA will provide funding between approximately \$150,000 and \$200,000 total over a 3-year period for program startup, implementation, and evaluation for each community level project, as well as support for State or national organization administrative costs. Annual funding will be allocated in depreciating increments based on 100 percent funding the first year, 50 percent funding the second year, and 25 percent funding the third year. Thus, the successful applicant(s) will be responsible for providing 50 percent funding for the second year and seventy-five percent funding for the third year, while maintaining a level of program activity and delivery equivalent to or in excess of that provided in the first year of the program.

The objectives of this initiative are to have successful applicants, whether national, State or local, work together to establish an infrastructure for program delivery, to conduct program delivery activities and to spearhead coordination at the community level of highway safety activities, all designed to increase safety belt use. In order to achieve these objectives, the successful applicant(s) will:

- Work with NHTSA to identify one to four geographically dispersed "rural" community sites based on criteria and objectives identified in this Notice;
- Perform an assessment of the identified community site(s) for their safety belt use rates, knowledge and attitudes about safety belt use, enforcement of occupant protection laws, motor vehicle injuries and

fatalities, and recent past/current program activity;

- Develop a program structure within the community organization(s) (and national or State organization, if applicable) or enhance an existing structure to serve as a central point(s) of contact for program coordination and community outreach;
- Design and implement program delivery services and information to/within the community(ies) with regard to safety belts, occupant protection, and traffic safety in coordination with law enforcement, other service providers, and community leaders;
- Evaluate the process and impact of this effort in terms of the benefits to the community and the service provider (applicant organization), increases in safety belt use rates and enforcement of occupant protection laws, changes in knowledge and attitudes, and community awareness of and impressions about the program, working under the oversight of a NHTSA evaluator.

#### Eligibility Requirements

Applications may be submitted by public and private, non-profit and for-profit organizations or agencies that represent and provide direct services to rural communities or within rural areas. An eligible organization may be national, state, regional or local in scope. Tribal organizations and agencies are also eligible to apply. Eligible applicants must have an established network at the community level, including affiliates well integrated into the infrastructure of each community where a demonstration project will be conducted.

- National organizations must have the capacity to administer the entire demonstration program, consisting of at least three to four geographically dispersed community projects each servicing at least a countywide area, through their State/local affiliates. National organizations must demonstrate how they will institutionalize the program within their organization, nationally, in addition to institutionalizing the program in the demonstration communities.

- State level organizations and agencies must have the capacity to administer/oversee at least one to possibly two community-level projects each servicing at least a countywide area, and also demonstrate how they will institutionalize the program at the state level in addition to institutionalizing the program in the demonstration community(ies).
- Local level applicants proposing to serve as the project focal point for the

community must be able to provide program coordination/services on at least a countywide-basis. Tribal Nation applicants must have the capacity to provide program coordination/services on a basis comparable to countywide.

- All project applications must be coordinated with the State Governor's Highway Safety Office and a letter of support from that office must accompany applications. Tribal organization and agency applications must be coordinated with the Bureau of Indian Affairs (BIA) Indian Highway Safety Program Office, which serves as the Governor's Representative for Highway Safety for Indian Nations, and a letter of support from that office must accompany their application. National/state organizations may not be able to identify specific state/local site locations for proposed projects at the time of this application; however, upon award, successful applicants must submit support letters from the appropriate State Governor's Highway Safety Office or the Indian Highway Safety Program Office for all sites being considered for project funding under this agreement. These contacts and letters serve the purposes of notification and coordination with state and BIA highway safety programs. Contact information for Governor's Highway Safety Offices and the Indian Highway Safety Program Office can be found on the NHTSA Web site at: <http://www.nhtsa.dot.gov/nhtsa/whatis/regions/>

- Applicants must describe their strategies for increasing teen/adult safety belt use, including the role of law enforcement. Although programs may include activities that encompass younger children and the use of child restraint systems, the major focus should be on teen/adult belt use.

- All applicants must include an evaluation plan in their proposal and be willing to work in conjunction with a NHTSA evaluator (discussed below) to insure that consistent data is collected for overall evaluation across all projects awarded as part of the demonstration program.

#### Project Evaluation

- The grantee shall evaluate the process, outcome, and impact results of the demonstration project at the community level, and, if applicable, process and outcome of the effort at the State and/or national level to administer and institutionalize the program. As discussed in the "Goals" section of this announcement, at a minimum, applications should include a detailed Evaluation Plan. Please note that successful applicants will work closely

with a NHTSA evaluator, most likely an independent contractor, who will oversee the evaluation component of the program and individual community projects. The evaluator will work with successful applicants on evaluation design and overseeing implementation to ensure that results from all awarded projects remain consistent. Because evaluation are critical to the success of the Demonstration Project, NHTSA will require successful applicants to expend up to 20 percent of the project budget on evaluation activities, which must include: a process and impact evaluation of this effort in terms of the benefits to the community and the service provider (applicant organization), increases in safety belt use rates and enforcement of occupant protection laws, changes in knowledge and attitudes, and community awareness of impressions about the program, working under the oversight of a NHTSA evaluator.

#### Additional Resources and References

The following is a list of resources and references relevant to this demonstration program. All (\*) items may be ordered either directly from the NHTSA Web site at: <http://www.nhtsa.dot.gov> by E-Mail to Webmaster (see bottom of home page) or by sending a fax request to: Communication Services Division at 202-493-6062. All requests should include the name, address, and telephone number of the person to receive the materials.

1. Presidential Initiative to Increase Seat Belt Use Nationwide, Fourth Report to Congress, Second Report to the President.\* NHTSA. November 2001. DOT HS 809 349. This is the latest published report documenting activities of the Buckle Up America Campaign from April 2, 1999 through December 31, 1999, <http://www.nhtsa.dot.gov/people/injury/airbags/bua4threport/index.html>.

2. Traffic Safety Facts 2001, Rural/Urban Comparison.\* National Center for Statistics and Analysis, NHTSA. DOT HS 809 524. Fact Sheet describing the overview and trends of motor vehicle crashes and fatalities based on 2001 data from NHTSA's National Center for Statistics & Analysis, <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2001/2001rural.pdf>.

3. Safety Belt Use in 2002—Demographic Characteristics.\* National Center for Statistics and Analysis, NHTSA. DOT HS 809 557. Demographic results of National Occupant Protection Use Survey—2002. The data for this survey were collected between June 3, 2002 and June 22, 2002, at randomly

selected road sites throughout the nation, <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/RNotes/2003/809-557.pdf>.

4. IBID (2).

5. Esposito, T.J., Sanddal, T.L., Reynolds, S.A. and Sanddal, N.D. (2003). Effect of a Voluntary Trauma System on Preventable Death and Inappropriate Care in a Rural State. *Journal of Trauma*, 54(4) 663-670, <http://www.jtrauma.com/>.

6. Operation ABC: America Buckles Up Children Mobilizations and Click It or Ticket. Current information can be found on the following websites: The Buckle Up America Online Headquarters at: <http://www.buckleupamerica.org> and The National Safety Council Air Bag and Seat Belt Safety Campaign's Web site at: <http://www.nsc.org/airbag.htm>. You can also find resource documents on NHTSA's Web site at: <http://www.nhtsa.dot.gov/people/injury/airbags/index.html>.

7. Achieving a High Belt Use Rate: A Guide for Selective Traffic Enforcement Programs.\* NHTSA. April 2001. DOT HS 809 244. This is a short How To Guide for communities who want to do a selective traffic enforcement program (sTEP). It describes how Chemong County (Elmira), New York, increased their seat belt use rate from 63 percent to 90 percent in three short weeks. The Guide describes leadership and coordination, enforcement strategies, public information and education messages, and includes data sheets to track progress, <http://www.nhtsa.dot.gov/people/injury/research/ACHIEVE.pdf>.

8. Evaluation of Click It or Ticket Model Programs.\* NHTSA. November 2002. DOT HS 809 498. Click It or Ticket (CIOT) is an intense, short duration, safety belt enforcement program that relies heavily on paid media to reach all motorists. During the Memorial Day 2002 holiday period, ten States that implemented the full CIOT model (5 weeks of earned media, 2 weeks of paid media, 2 weeks of intensive enforcement, and belt use observations surveys and public awareness surveys) were compared to four States that conducted belt use enforcement but with limited specific paid advertisement placement, and four other States that conducted enforcement but without specific paid advertisement placement. Belt use increased +8.6 percentage points averaged across the ten CIOT States, +2.7 percentage points across the four limited paid media States, and +0.5 percentage points across the four States using no specific paid advertisement placement.

9. Safe Communities Service Center,\* c/o NHTSA Region VI, 819 Taylor Street, Room 8A38, Fort Worth, Texas 76102, Phone: 817-978-3633, Fax: 817-978-8339, or E-Mail:

Safe.Communities@nhtsa.dot.gov. Also visit the Safe Communities Web site on the Internet (<http://www.nhtsa.dot.gov/safecommunities>). These resources provide information on best practices, Safe Communities and traffic safety materials, and access to technical assistance sources.

10. *Item # 5P0026* Safe Communities folio package.\* NHTSA. 1997. DOT HS 808 578. Contains technical assistance materials on various topics including getting started, coalition building, partnering with traffic safety specialists and evaluation and monitoring tips.

11. *Item #1P1239* Partners for Rural Traffic Safety Action Kit.\* NHTSA. August 2001. DOT HS 809 299. This is a step-by-step guide on how to organize, plan and implement a 30-day campaign to increase safety belt use in rural communities based on demonstration projects conducted by the National Rural Health Association, <http://www.nhtsa.dot.gov/people/injury/airbags/ruralsafety/index.html>.

#### Application Procedures

Each applicant must submit one original and two copies of the application package to: NHTSA, Office of Contracts and Procurement (NPO-220), ATTN: Maxine D. Edwards, 400 7th Street, SW., Room 5301, Washington, DC 20590. An additional three copies will facilitate the review process, but are not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Program #NTS-01-3-05149, and specify if you are applying as a national, state or local applicant.

*Only complete packages received on or before August 7, 2003, at 2 p.m. Eastern Standard Time will be considered.*

#### Application Contents

1. The application package must be submitted with OMB Standard Form 424 (Rev. 4-88), Application for Federal Assistance, including 424A, Budget Information B Nonconstruction Programs, and 424B, Assurances—Nonconstruction Programs with the required information filled in and the certified assurances included. The OMB Standard Forms SF-424, SF-424A, and SF-424B may be downloaded directly from the OMB Internet Web site, <http://www.whitehouse.gov/WH/EOP/OMB/Grants/>.

While Form 424–A details budget information and section B identifies Budget Categories, the available space does not permit a description of adequate detail to provide for a meaningful evaluation of the proposed costs. Accordingly, applicants must also submit a supplemental Detailed Budget Sheet and Narrative Explanation of Costs, itemizing the proposed budget by cost category for each year of the project. For example, for *Personnel/Labor*, the Detailed Budget Sheet should break down: personnel positions, number of hours and hourly rates, and benefits; for *Products/Materials/Supplies*: item, amount, and unit cost; for *Subcontracts*: specific services to be provided and estimated costs; for *Overhead Rate*: identify what is included in the rate and provide documentation of any previous governmental approval of this rate; and for *Indirect Costs*: provide breakdown of what is included. The budget also should identify any additional resources/contributions from the applicant or other sources to support this effort, including in-kind services. The Narrative Explanation of Costs should reference the Detailed Budget Sheet items and explain why and how these costs are necessary to implement the project.

2. Applications shall include a Program Narrative Statement which:

a. *Organization*: identifies the organization's membership, purpose and structure; defines the constituency represented and serviced by the organization; demonstrates the organization's commitment to supporting the initiatives of the Buckle Up America Campaign; provides examples of the organization's involvement in community outreach activities; and states specifically how NHTSA funding will enable the organization to augment its rural community involvement in increasing safety belt use among the target population, and to institutionalize the demonstration program both in the community and within the applicant organization. Supporting documentation from concerned interests, partner organizations, and/or affiliates may be submitted to substantiate the applicant's level of commitment and interest.

b. *Proposed Demonstration Sites*: for each such site, identifies the community demographics, how the applicant and/or the applicant's local affiliate will design and implement this program, and serve as a sustained focal point for traffic safety in the community.

c. *Plan of Action/Strategies*: outlines a plan of action detailing the proposed work, including how activities will be

coordinated with national and State mobilizations and other coordinated efforts to increase safety belt use. For calendar year 2004, the Click It or Ticket mobilization will begin on May 24 and end on June 6, 2004. States and communities are also encouraged to conduct summer-long campaigns, from July 4 to Labor Day, focusing on either safety belts, impaired driving, or both. The Action Plan should include an estimated time line of projected activity and approximate milestones. NHTSA will require successful applicants to submit a revised and more detailed Action Plan 60 days after award, including schedules for: dissemination of information; product development; targeted events; belt use observational survey dates; reporting dates; and/or other major tasks associated with the project.

d. *Deliverables*: identifies required deliverables and due dates including products and reports. The organization also should identify any NHTSA publications or other materials proposed to support the project, including quantities and describing use and distribution. Successful applicants will be required to submit to NHTSA quarterly progress reports and a comprehensive final report with a complete evaluation report, in accordance with the evaluation plan.

3. As discussed in the "Project Evaluation" section of this announcement, applications must include a detailed Evaluation Plan describing the applicant's proposed evaluation methodology for determining and documenting process, activity, outcomes and results.

4. As noted in the "Eligibility" section of this announcement, for each proposed project site, applications must include a support letter from the appropriate State Governor's Highway Safety Office and or BIA Indian Highway Safety Program Office for Tribal applications. Additional letters of support may be included.

#### **Project Review Procedures and Criteria**

Upon receipt, NHTSA will screen applications to ensure that applicant organizations meet the eligibility requirements identified herein. An evaluation committee then will review eligible applications using the criteria outlined below.

#### **Application Review Process and Evaluation Factors**

Each application package initially will be reviewed to confirm that the applicant is an eligible recipient and that the application contains all of the items specified in the Application

Contents section of this announcement. Applicants should use the following outline of selection criteria as a basis for organizing their application packages:

1. *Ability and commitment of the organization in taking a leadership role to coordinate program efforts to increase safety belt use in rural area(s) (30%)*.

The degree to which the applicant has demonstrated an understanding of the Buckle Up America campaign and detailed its role as a partner in the campaign; the organization's capacity to organize and manage a communitywide program, and its interest in and capacity to institutionalize the program and sustain its effort beyond the grant period.

2. *Commitment to encourage and support law enforcement efforts to increase safety belt use (30%)*.

The degree to which the proposal incorporates coordinated activity with the law enforcement community and participation, with law enforcement, in national and State safety belt mobilization campaigns. The national mobilization schedule is noted in the "Application Contents" section of this announcement.

3. *Action and Evaluation Plans (20%)*.

The quality and substance of the proposed action and evaluation plans, components of these plans, and data instruments utilized to measure outcomes and results. At a minimum, plans detailing all community projects must document: the process; activities; conduct of key participants; baseline; periodic safety belt observational surveys; and, as appropriate, public awareness surveys representative of the demonstration project site(s). In drafting plans, applicants should note that surveys should be scheduled in conjunction with mobilization or other "waves" of heightened activity periods. Additionally, community data, such as changes in: attitudes, knowledge and awareness, crashes, injuries, and fatalities, hospital admissions, enforcement citations, etc. should be specified.

4. *Budget (20%)*.

The degree to which the application clearly identifies, itemizes, and explains project costs. Identification of project support cost sharing, particularly in second and third year performance period, is required. Cost-sharing may include in-kind services, the applicant's or other funding resources. NHTSA will give a preference to applicants who identify resources from within or outside their organization to support continuation of the program beyond the grant period.

### *Availability of Funds and Period of Support*

Contingent on the availability of funds and satisfactory performance, cooperative agreement(s) awarded under this solicitation will extend for a project period of 3 years. *Should the Agency select a national organization to administer the entire demonstration program, consisting of multiple community projects rather than a single project, NHTSA will make only one (1) award under this announcement.* NHTSA will consider applications from State organizations to administer 1 to 2 community projects, and also applications from local organizations to administer individual community projects.

A total estimated program effort of \$700,000 is anticipated over the 3-year period, with approximately \$400,000 available in Fiscal Year 2003. Based on demonstrated need, we anticipate that the funding level to support the individual community projects will range from between approximately \$150,000 and \$200,000 total, over the 3-year project period. This estimate is based on depreciating funding levels of 100 percent for year one, 50 percent for year two, and 25 percent for year three, and the expectation that the grantee will identify and utilize other funding resources to support the effort. This stated range *does not* establish minimum or maximum funding levels.

Please note that applications from national and state organization also may budget for necessary organization costs to administer the community projects and establish an infrastructure to sustain the program. Each application, whether from a national, state or local entity, must specify the portion of funding requested for evaluation activities. It is imperative that all applicants earmark at least 20 percent of the total budget for such evaluation activities, whether NHTSA funding, applicant's contribution, or combined funding resources.

Successful applicants will work closely with a NHTSA evaluator, most likely an independent contractor, who will oversee the evaluation component of the program and individual community projects. The evaluator will work with successful applicants on evaluation design and execution to ensure that results from all awarded projects remain consistent. Thus, this portion of the project evaluation will not be an additional cost item for the project applicants.

### *NHTSA Involvement*

In addition to being involved in all activities undertaken under the cooperative agreement program, NHTSA will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of activities undertaken pursuant to this cooperative agreement and to coordinate activities between the grantee(s) and NHTSA;
2. Provide information and technical assistance from available government resources, as deemed appropriate by the COTR;
3. Serve as a liaison between NHTSA Headquarters, Regional Offices and other Federal, State and local stakeholders who may be interested in the demonstration program and the activities of the grantee, as appropriate;
4. Stimulate the transfer of information between grantees involved in the demonstration program and others engaged in rural community traffic safety programs; and 2. Provide available NHTSA materials to support grantee activities, as appropriate.

### *Special Award Selection Factors*

NHTSA strongly urges applicants to seek funds from other Federal, State, local and private sources to augment those available under this announcement, and specifically to support cost-sharing in the second and third years of the agreement as the program moves towards self-sufficiency. NHTSA may give preference to meritorious applications with the best-proposed cost-sharing strategies and/or identifying additional proposed funding sources to support and sustain the program. In-kind services provided by the applicant organization may be included as a contribution.

### **Terms and Conditions of Award**

1. Prior to award, each grantee must comply with the certification requirements set forth in 49 CFR Part 20, DOT's New Restrictions on Lobbying, and those set forth in 49 CFR Part 29, DOT's Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).

2. Reporting Requirements and Deliverables:

a. *Quarterly Progress Reports* are required and should include a summary of the previous quarter's activities and accomplishments, as well as the proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter

should be included in the report. The grantee shall supply the progress report to the Contracting Officer's Technical Representative (COTR) every 90 days following date of award;

b. *Program Action Plan and Evaluation Plan:* The grantee shall submit revised action and evaluation plans, incorporating comments received from the NHTSA COTR, no more than 60 days after award of this agreement. The NHTSA COTR will review, comment and request revision, if necessary.

c. *Draft Final Report:* The grantee shall prepare a Draft Final Report that includes: a project description, process of implementation, partnerships established, community participation, activities conducted, establishment of infrastructure, and results and findings from the program evaluation, including changes in safety belt use rates. In terms of information transfer, it is important to know what worked and did not work, under what circumstances, what can be done to avoid potential problems in future projects. The report also should contain a discussion of how the project will be sustained within the community and organization, if applicable, and potential for replication. The grantee shall submit the Draft Final Report to the COTR 60 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

d. *Final Report:* The grantee shall revise the Draft Final Report to reflect the COTR's comments. The revised Final Report shall be delivered to the COTR 15 days before the end of the performance period. The grantee shall supply the COTR:

- Four hard copies of the final document;
- A disk of the report in Microsoft Word format; and
- A disk of the redlined version of the Draft Final Report reflecting changes made in response to the COTR's comments.

e. *Presentations:* The grantee shall conduct a final briefing of the project process and results to NHTSA staff in Washington, DC, and provide a workshop presentation at a national meeting to be determined upon completion of the project.

3. During the effective performance period of cooperative agreement(s) awarded as a result of this announcement, the agreement as applicable to the grantee shall be subject

to NHTSA's General Provisions for Assistance Agreements, dated July 1995.

**Jeffrey P. Michael,**

*Director, Office of Impaired Driving and Occupant Protection.*

[FR Doc. 03-17110 Filed 7-7-03; 8:45 am]

BILLING CODE 4910-59-P

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**Denial of Motor Vehicle Defect Petition, DP03-002**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Denial of petition for a defect investigation.

**SUMMARY:** This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency investigate alleged steering column failures on model year (MY) 1987-1995 vehicles manufactured by

DaimlerChrysler Corporation (DCC). The petition is identified as DP03-002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan White, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5226.

**SUPPLEMENTARY INFORMATION:** Mr. Larry A. Sackey, an attorney with the Law Offices of Herbert Hafif in Claremont, CA, submitted a petition to NHTSA by letter dated April 18, 2003, requesting NHTSA to further investigate alleged "defective collapsible steering shaft systems" on all MY 1987-1995 and model vehicles manufactured by DCC, other than those previously investigated and subsequently recalled. NHTSA had previously opened investigations PE93-091, PE96-047, and RQ97-004 to investigate alleged steering column shaft separations on MY 1993 Jeep Grand Cherokee vehicles, MY 1994-1995 Dodge Ram Series trucks, and MY 1993-1995 Jeep Cherokee/1994-1995 Jeep Grand Cherokee vehicles, respectively. As a result of the PE investigations, DCC recalled 115,000 units of MY 1993 Grand Wagoneer and Grand Cherokee vehicles (NHTSA Recall 93V210) and

475,000 units of MY 1994-1995 Dodge Ram Series Trucks (NHTSA Recall 96V230) to remedy a defect that could allow the upper and the lower shafts of the collapsible steering column to separate from each other (alleged defect) resulting in a loss of steering control. The petitioner alleged that DCC issued the recalls when they were aware the same defect existed in other MY 1987-1995 DCC vehicles.

For analytical purposes, ODI has focused on the experience of MY 1993-1995 vehicles, other than those covered by the previous recalls, in part because 49 U.S.C. 30120(g) limits a manufacturer's obligation to provide a recall remedy without charge to vehicles less than 10 years old at the time of a defect determination. If the analysis of these vehicles had identified a potential problem, the scope could have been expanded in an investigation.

A review of ODI's database shows that there are only six complaints about the subject vehicles that appear to be related to the alleged defect. Table 1 shows the make, model, model year, and the receipt date of each of these complaints:

TABLE 1.—ODI DATABASE SEARCH RESULTS FOR STEERING COLUMN SHAFT SEPARATION COMPLAINTS ON THE SUBJECT VEHICLES

Make	Model	Model year	Complaint date
Dodge	Dakota	1993	6/95
Dodge	Ram	1993	5/96
Jeep	Grand Cherokee	1995	9/99
Jeep	Grand Cherokee	1995	7/01
Jeep	Cherokee	1994	4/95
Jeep	Cherokee	1995	10/96

The number of reports is very low, considering the fact that these vehicles have on average 10 years of usage. The data also show that there is a lack of a defect trend and recent complaints.

Steering column complaints reported to ODI on the subject vehicles that do not appear to be related to the alleged defect are shown in Table 2. Most of

these complaints alleged steering column vibration, looseness, noise, or binding; and a few identified no specific failure. ODI has not considered complaints of miscellaneous electrical malfunctions and crash-induced problems. The complaints for MY 1995 Dodge and Plymouth Neon vehicles are also not counted because the Neon's

steering column is not designed to collapse during certain crashes. Instead, it has a coupler designed to separate during certain crashes to mitigate crash forces. NHTSA previously investigated these Neon vehicles (PE94-095, PE96-069, and EA97-009) for inadvertent steering column coupler separation, and they were recalled (Recall 97V169).

TABLE 2.—ODI DATABASE SEARCH RESULTS FOR STEERING COLUMN COMPLAINTS ON THE SUBJECT VEHICLES NOT RELATED TO THE ALLEGED DEFECT

Model platform	No. of complaints	Complaint date range
Cirrus/Stratus	1	9/98
Concorde/Intrepid/LHS/New Yorker	8	3/95 to 4/00
Caravan/Voyager	8	4/95 to 5/01
Cherokee/Grand Cherokee	6	10/95 to 2/00
Dakota	6	2/95 to 6/97
Lebaron	4	6/95 to 5/00
Shadow/Spirit/Sundance	3	10/96 to 8/97

Even if we were to consider the data shown in Table 2, it does not reflect a failure trend for the subject vehicles as a whole or by individual models.

Considering the fact that there were over 5 million subject vehicles manufactured and that these vehicles are 10 years old on average, the number of alleged defects reported to ODI on the subject vehicles is extremely low.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of an alleged safety-related defect as defined by the petitioner in the subject vehicles at the conclusion of an investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

**Authority:** 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: June 23, 2003.

**Kenneth N. Weinstein,**

*Associate Administrator for Enforcement.*

[FR Doc. 03-17200 Filed 7-7-03; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 03-15520]

#### Grant of Applications of Two Motorcycle Manufacturers for Temporary Exemptions and Renewal of Temporary Exemptions From Federal Motor Vehicle Safety Standard No. 123

This notice grants the applications by two motorcycle manufacturers for temporary exemptions, and renewal of temporary exemptions, from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*. The applicants asserted that "compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles," 49 U.S.C. Sec. 30113(b)(3)(iv).

Aprilia, U.S.A. Inc., Woodstock, Ga., has applied for an extension of exemption for the Aprilia Scarabeo 150 (NHTSA Temporary Exemption No. 99-9), and for new exemptions for the Aprilia Mojito 150, Atlantic 200, Atlantic 500, and Scarabeo 500 models. American Honda Motor Company, Inc., Torrance, California, has applied for an extension of exemption for the Honda

FSC600 (previously FJS600)(NHTSA Temporary Exemption No. EX 2001-8).

Because the safety issues are identical we have decided to address all petitions in a single notice. Further, given the opportunity for public comment on these issues in the years 1998-2002 (which resulted only in comments in support of the petitions), we have concluded that a further opportunity to comment on the same issues is not likely to result in any substantive submissions, and that we may proceed to decisions on these petitions. See, e.g., the grant of applications by five motorcycle manufacturers (67 FR 62850).

#### The Reason Why the Applicants Need a Temporary Exemption

The problem is one that is common to the motorcycles covered by the applications. If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles (Item 11, Table 1). Motor-driven cycles are motorcycles with motors that produce 5 brake horsepower or less. Honda and Aprilia petitioned to use the left handlebar as the control for the rear brakes of certain of their motorcycles whose engines produce more than 5 brake horsepower. The frame of each of these motorcycles has not been designed to mount a right foot operated brake pedal (*i.e.*, these scooter-type vehicles which provide a platform for the feet and operate only through hand controls). Applying considerable stress to this sensitive pressure point of the frame could cause failure due to fatigue unless proper design and testing procedures are performed.

Absent an exemption, the manufacturers will be unable to sell the motorcycle models named above because the vehicles would not fully comply with Standard No. 123.

#### Arguments Why the Overall Level of Safety of the Vehicles To Be Exempted Equals or Exceeds That of Non-Exempted Vehicles

As required by statute, the petitioners have argued that the overall level of safety of the motorcycles covered by their petitions is at least equal to that of a non-exempted motor vehicle for the following reasons. All vehicles for which petitions have been submitted are equipped with an automatic transmission. As there is no foot-operated gear change, the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle, and the vehicles

can be operated without requiring special training or practice.

The five models for which Aprilia seeks exemption are equipped with engines ranging from 150cc to 50cc in displacement. They are configured identically with respect to their brake controls. In its earlier petitions, Aprilia cited tests performed by Carter Engineering on a similarly-configured Aprilia scooter to support its statement that "a motor vehicle with a hand-operated rear wheel brake provides a greater overall level of safety than a nonexempt vehicle." See materials in Dockets No. NHTSA 98-4357 and 01-10257. Aprilia cites these materials in support of its applications for the Scarabeo 150 and Atlantic 500 models. The company has submitted individual test reports for the Mojito 150, Atlantic 200, and Scarabeo 500 models, which have been placed in the docket identifying this notice. According to Aprilia, a rear wheel hand brake control allows riders to brake more quickly and securely. It takes a longer time for a rider to find and place his foot over the pedal and apply force than it does for a rider to reach and squeeze the hand lever, and there is a reduced probability of inadvertent wheel locking in an emergency braking situation. In its latest petition, Aprilia stated that it has received no written complaints relating to the brake operation of the Scarabeo 150s which it has imported and sold under NHTSA Temporary Exemption No. 99-9. (This exemption was scheduled to expire on October 1, 2002, but the expiration date was tolled as provided by 49 CFR 555.8(e) for timely filings. Aprilia's petition for renewal was dated May 2, 2002.)

Aprilia also pointed out that European regulations allow motorcycle manufacturers the option of choosing rear brake application through either a right foot or left handlebar control, and that Australia permits the optional locations for motorcycles of any size with automatic transmissions.

Honda informed us that "the FSC600 can easily meet the braking performance requirements of both Standard 122 and ECE 78," and, therefore, that "This braking system provides the FSC600 with an overall safety level exceeding \* \* \* nonexempted vehicles."

Honda attached to its petition copies of a second effectiveness service brake system test conducted in accordance with S5.3 of Standard No. 122, demonstrating that the FSC600 easily stopped within the maximum distances specified at speeds of 30 and 65 mph, as well as a test showing compliance with ECE 78.

### Arguments Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Aprilia asserted in its initial request for exemption that "the public interest would be served with the granting of the exemption because the Scarabeo 150 provides enhanced safety as well as environmentally friendly, fuel-efficient, convenient urban transportation." According to Aprilia, its initial assertion is supported by feedback from initial customers. It has enclosed comments from Scarabeo 150 customers touting the speed and handling of the motorcycle, and a magazine article commenting that it is "the perfect vehicle for stop-and-go traffic." For this reason, Aprilia argues that an exemption would also be consistent with the objectives of motor vehicle safety. Aprilia asserted that "the braking configuration of the Atlantic 500 is safer than non-exempt vehicles currently being operated in the U.S.," and "allows for a more natural braking response by the rider." Aprilia reiterated this assertion with respect to the Scarabeo 500, the Mojito 150, and the Atlantic 200.

In support of its argument that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety, Honda reiterated its certainty "that the level of safety of the FSC600 is equal to similar vehicles certified under Standard No. 123 \* \* \*."

### NHTSA's Decisions on the Applications and Request

It is evident that, unless Standard No. 123 is amended to permit or require the left handlebar brake control on motor scooters with more than 5 hp, the petitioners will be unable to sell their motorcycles if they do not receive a temporary exemption from the requirement that the right foot pedal operate the brake control. It is also evident from the previous grants of similar petitions that we have repeatedly found that the motorcycles exempted from the brake control location requirement of Standard No. 123 have an overall level of safety at least equal to that of nonexempted motorcycles.

In consideration of the foregoing, we hereby find that the petitioners have met their burden of persuasion that to require compliance with Standard No. 123 would prevent these manufacturers from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a

temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety.

Therefore:

1. NHTSA Temporary Exemption No. 99-9, exempting Aprilia USA Inc. from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear wheel brakes be operable through the right foot control, is hereby extended to expire on July 1, 2005. This exemption applies only to the Aprilia Scarabeo 150.

2. NHTSA Temporary Exemption No. EX2001-8, exempting American Honda Motor Co., Inc., from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear brakes be operable through the right foot control, is hereby extended to expire on July 1, 2005. This exemption applies only to the Honda FSC600.

3. Aprilia USA Inc. is hereby granted NHTSA Temporary Exemption No. EX03-3 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear brakes be operable through the right foot control. This exemption applies only to the following Aprilia models: Mojito 150, Atlantic 200, Atlantic 500, and Scarabeo 500. The exemption will expire on July 1, 2005. (49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on June 27, 2003.

**Jeffrey W. Runge,**  
Administrator.

[FR Doc. 03-17108 Filed 7-7-03; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 30, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before August 7, 2003 to be assured of consideration.

### Internal Revenue Service (IRS)

*OMB Number:* 1545-0193.

*Form Number:* IRS Form 4972.

*Type of Review:* Revision.

*Title:* Tax on Lump-Sum Distributions (From Qualified Retirement Plans or Plan Participants Born Before 1936).

*Description:* Internal Revenue Code (IRC) section 402(e) allows taxpayers to compute a separate tax on a lump-sum distribution from a qualified retirement plan. Form 4972 is used to correctly figure that tax. The data is used to verify the correctness of the separate tax. Form 1972 is also used to make the special 20% capital gain election attributable to pre-1974 participation from the lump-sum distribution.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 35,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping: 52 minutes  
Learning about the law or the form: 19 minutes

Preparing the form: 1 hour, 11 minutes

Copying, assembling, and sending the form to the IRS: 20 minutes

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 95,550 hours.

*OMB Number:* 1545-1020.

*Form Number:* IRS Form 1041-T.

*Type of Review:* Revision.

*Title:* Allocation of Estimated Tax Payments to Beneficiaries.

*Description:* This form was developed to allow a trustee of a trust or an executor of an estate to make the election under Internal Revenue Code (IRC) section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). This form serves as a transmittal so that Service Center personnel can determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 1,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping: 19 minutes  
Learning about the law or the form: 4 minutes

Preparing the form: 18 minutes

Copying, assembling, and sending the form to the IRS: 16 minutes

*Frequency of Response:* Other (when such election is made).

*Estimated Total Reporting/Recordkeeping Burden:* 990 hours.

*OMB Number:* 1545-1441.

*Form Number:* IRS Form 2106-EZ.

*Type of Review:* Revision.

*Title:* Unreimbursed Employee Business Expenses.

*Description:* Internal Revenue Code (IRC) section 62 allows employees to deduct their business expenses to the extent of reimbursement in computing "Adjusted Gross Income". Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 50% of the expense. Form 2106-EZ is used to figure these expenses.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 3,337,019.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping: 39 minutes

Learning about the law or the form: 12 minutes

Preparing the form: 24 minutes

Copying, assembling, and sending the form to the IRS: 20 minutes

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 5,339,231 hours.

*OMB Number:* 1545-1837.

*Revenue Procedure Number:* Revenue Procedure 2003-36.

*Type of Review:* Extension.

*Title:* Industry Issue Program.

*Description:* Revenue Procedure 2003-36 describes the procedure for business taxpayers, industry associations, and others representing business taxpayers to submit issues for resolution under the IRS' Industry Issues Resolution Program.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 50.

*Estimated Burden Hours Per Respondent:* 40 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 2,000 hours.

*Clearance Officer:* Glenn Kirkland, (202) 622-3428, Internal Revenue Service, Room 6411-03, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 03-17199 Filed 7-7-03; 8:45 am]

**BILLING CODE 4830-01-U**

## 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, August 18, 2003, at 3 p.m., central daylight time.

**FOR FURTHER INFORMATION CONTACT:** Sandy McQuin 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, August 18, 2003, from 3 to 4 p.m. central daylight 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 Sandy McQuin at 1-888-912-1227 or (414) 297-1604 for more 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: July 1, 2003.

**Tersheia Carter,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 03-17231 Filed 7-7-03; 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, August 20, 2003, at 11 a.m., central daylight time.

**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, August 20, 2003, from 11 a.m. to noon, central daylight 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: July 1, 2003.

**Tersheia Carter,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 03-17232 Filed 7-7-03; 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, August 19, 2003, at 1:30 p.m., eastern daylight time.

**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, August 19, 2003, from 1:30 to 3 p.m. eastern daylight time via a telephone conference call. 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: July 1, 2003.

**Tersheia Carter,**

*Acting Director, Taxpayer Advocacy Panel.*  
[FR Doc. 03-17233 Filed 7-7-03; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

#### Proposed Collection: Comment Request

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate of Identity.

**DATES:** Written comments should be received on or before September 8, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328, or [Vicki.Thorpe@bpd.treas.gov](mailto:Vicki.Thorpe@bpd.treas.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

#### SUPPLEMENTARY INFORMATION:

*Title:* Certificate of Identity.  
*OMB Number:* 1535-0048.  
*Form Numbers:* PD F 0385.  
*Abstract:* The information is requested to establish the identity of the owner of United States Savings Securities.

*Current Actions:* None.  
*Type of Review:* Extension.  
*Affected Public:* Individuals.  
*Estimated Number of Respondents:* 177.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 30.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 1, 2003.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 03-17179 Filed 7-7-03; 8:45 am]

**BILLING CODE 4810-39-P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

#### Proposed Collection: Comment Request

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Disposition of United States registered securities and related checks for nonadministered estate.

**DATES:** Written comments should be received on or before September 8, 2003, to be assured of consideration.

**ADDRESS:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328, or [Vicki.Thorpe@bpd.treas.gov](mailto:Vicki.Thorpe@bpd.treas.gov).

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

#### SUPPLEMENTARY INFORMATION:

*Title:* Disposition of United States Registered Securities and Related Checks For Nonadministered Estate.

*OMB Number:* 1535-0058.

*Form Number:* PD F 1646.

*Abstract:* The information is requested to support a request for distribution of registered securities belonging to a decedent's estate that is not being administered.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 625.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 313.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 1, 2003.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 03-17180 Filed 7-7-03; 8:45 am]

**BILLING CODE 4810-39-P**

**DEPARTMENT OF THE TREASURY**

**Bureau of the Public Debt**

**Proposed Collection: Comment Request**

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request by owner of savings bonds/notes deposited in safekeeping when original custody receipts are not available.

**DATES:** Written comments should be received on or before September 8, 2003, to be assured of consideration.

**ADDRESS:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328, or [Vicki.Thorpe@bpd.treas.gov](mailto:Vicki.Thorpe@bpd.treas.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Request By Owner Or Person Entitled To Payment Or Reissue Of United States Savings Bonds/Notes Deposited In Safekeeping When Original Custody Receipts Are Not Available.

*OMB Number:* 1535-0063.

*Form Number:* PD F 4239.

*Abstract:* The information is requested to establish ownership and request reissue or payment when original custody receipts are not available.

*Current Actions:* None.  
*Type of Review:* Extension.  
*Affected Public:* Individuals.  
*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 84.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 1, 2003.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 03-17181 Filed 7-7-03; 8:45 am]

**BILLING CODE 4810-39-P**

**DEPARTMENT OF THE TREASURY**

**Bureau of the Public Debt**

**Proposed Collection: Comment Request**

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Affidavit by individual surety.

**DATES:** Written comments should be received on or before September 8, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328, or [Vicki.Thorpe@bpd.treas.gov](mailto:Vicki.Thorpe@bpd.treas.gov).

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Affidavit By Individual Surety.

*OMB Number:* 1535-0100.

*Form Number:* PD F 4094.

*Abstract:* The information is requested to support a request to serve as surety for an indemnification agreement on a Bond of Indemnity.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 55 minutes.

*Estimated Total Annual Burden Hours:* 460.

*Request for Comments*

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 1, 2003.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 03-17182 Filed 7-7-03; 8:45 am]

**BILLING CODE 4810-39-P**

**DEPARTMENT OF THE TREASURY****Bureau of the Public Debt****Proposed Collection: Comment Request**

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning collections of information required to comply with the terms and conditions of FHA debentures.

**DATES:** Written comments should be received on or before September 8, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328, or [Vicki.Thorpe@bpd.treas.gov](mailto:Vicki.Thorpe@bpd.treas.gov).

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

**SUPPLEMENTARY INFORMATION:**

*Titles:* FHA New Account Request, FHA Transaction Request, FHA Debenture Transfer Request.

*OMB Number:* 1535-0120.

*Form Numbers:* PD F 5366, 5354, and 5367.

*Abstract:* The information is used to (1) establish a book-entry account; (2) change information on a book-entry account; and (3) transfer ownership of a book-entry account on the HUD system, maintained by the Federal Reserve Bank of Philadelphia.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals or households, businesses or other for-profit.

*Estimated Number of Respondents:* 600.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 102.

*Request for Comments*

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 1, 2003.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 03-17183 Filed 7-7-03; 8:45 am]

**BILLING CODE 4810-39-P**

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# Corrections

Federal Register

Vol. 68, No. 130

Tuesday, July 8, 2003

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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2003-15495]

#### Weight-Based Restrictions at Airports: Proposed Policy

##### *Correction*

In notice document 03-16462 beginning on page 39176 in the issue of

Tuesday, July 1, 2003 make the following correction:

On page 39177, in the second column, under paragraph 5., in the fourth line, "and unjustly" should read "and not unjustly".

[FR Doc. C3-16462 Filed 7-7-03; 8:45 am]

**BILLING CODE 1505-01-D**

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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.

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Boeing Model 747SP, 747-100, 747-200B, -200C, and -200F series airplanes; comments due by 7-18-03; published 6-18-03 [FR 03-15401]  
Embraer Model ERJ-170 series airplanes; comments due by 7-16-03; published 6-16-03 [FR 03-15140]

Restricted areas; comments due by 7-14-03; published 5-30-03 [FR 03-13037]

#### TRANSPORTATION DEPARTMENT

##### National Highway Traffic Safety Administration

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Transmission shift lever sequence, starter interlock, and transmission braking effect; comments due by 7-14-03; published 5-15-03 [FR 03-12051]

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Communication services; distance sensitivity; comments due by 7-15-03; published 6-17-03 [FR 03-15283]

#### TREASURY DEPARTMENT

##### Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticultural area designations:

San Bernabe and San Lucas, Monterey County, CA; comments due by 7-14-03; published 5-14-03 [FR 03-11970]

#### 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 "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.nara.gov/fedreg/plawcurr.html>.

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#### H.R. 658/P.L. 108-44

Accountant, Compliance, and Enforcement Staffing Act of 2003 (July 3, 2003; 117 Stat. 842)

#### S. 1276/P.L. 108-45

Strengthen AmeriCorps Program Act (July 3, 2003; 117 Stat. 844)

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