



# Federal Register

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-NE-47-AD; Amendment 39-13352; AD 2003-22-05]

RIN 2120-AA64

#### Airworthiness Directives; Hartzell Propeller Inc. Model HC-A6A-3 Series Propellers.

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

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

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for Hartzell Propeller Inc. model HC-A6A-3 series propellers with A10460 series composite blades. This AD requires initial and repetitive visual inspections of A10460 series composite blades for cracks. This AD is prompted by reports of cracks in propeller blades, including an in-flight separation of a blade that caused damage to the airplane. We are issuing this AD to prevent separation of the propeller blade due to possible fatigue failure, which could result in damage to the airplane and possible loss of control of the airplane.

**DATES:** This AD becomes effective November 13, 2003.

We must receive any comments on this AD by December 29, 2003.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-NE-47-AD, 12 New England Executive Park, Burlington, MA 01803-5299.
- By fax: (781) 238-7055.
- By e-mail: [9-ane-adcomment@faa.gov](mailto:9-ane-adcomment@faa.gov)

You can get the service information referenced in this AD from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778-4200; fax (937) 778-4391.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294-7031; fax: (847) 294-7834.

**SUPPLEMENTARY INFORMATION:** On July 31, 2003, a model A10460 series composite propeller blade separated from a model HC-A6A-3 series propeller while in flight and damaged the airplane. The model HC-A6A-3 series propeller was installed on the right-hand engine on a Short Brothers Ltd. SD3-60 Variant 200 airplane, commonly referred to as a Series 300 airplane. The manufacturer of the propeller issued an alert service bulletin (ASB) on September 10, 2003 to require initial and repetitive visual inspections of the composite blades for cracks. On September 12, the manufacturer reported that another cracked blade was found on an airplane when the propellers were inspected using the ASB. Because the manufacturer and the FAA are continuing their investigations into the causes of the cracks, there is no terminating action for the repetitive inspections.

#### Relevant Service Information

We have reviewed and approved the technical contents of Hartzell Propeller Inc. ASB No. HC-ASB-61-265, dated September 10, 2003, that describes procedures for visually inspecting the composite propeller blade on-wing and at overhaul.

#### FAA's Determination and Requirements of this AD

The unsafe condition described previously is likely to exist or develop on other Hartzell Propeller, Inc. propellers of the same type design. We are issuing this AD to prevent separation of the propeller blade due to possible fatigue failure, which could result in damage to the airplane and possible loss of control of the airplane. This AD requires:

- An initial visual inspection of the propeller blades for cracks within 100 flight hours after the effective date of this AD, but no later than 30 days after the effective date of this AD; and
- Repetitive visual inspections of the propeller blades for cracks at intervals of 300 flight hours and at every overhaul, and
- Replacing any cracked blade before further flight.

#### FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

#### Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our 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.

#### Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

#### Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your

comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003-NE-47-AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You can get more information about plain language at <http://www.faa.gov/language> and <http://www.plainlanguage.gov>.

#### Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

#### Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that the 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. 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003-NE-47-AD" in your request.

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

Air transportation, Aircraft, Aviation safety, 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. The FAA amends § 39.13 by adding the following new airworthiness directive:

**2003-22-05 Hartzell Propeller Inc.:**  
Amendment 39-13352. Docket No. 2003-NE-47-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective November 13, 2003.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Hartzell Propeller Inc. model HC-A6A-3 series propellers with A10460 series composite blades installed. These propellers are installed on, but not limited to, Short Brothers Ltd. SD3-60 Series airplanes.

#### Unsafe Condition

(d) This AD was prompted by reports of cracks in propeller blades, including an in-flight separation of a blade that caused damage to the airplane. We are issuing this AD to prevent separation of the propeller blade due to possible fatigue failure, which could result in damage to the airplane and possible loss of control of the airplane.

#### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

#### Initial On-wing Visual Inspection

(f) Perform an initial on-wing visual inspection of the A10460 series composite propeller blades for cracks within 100 flight hours (FH) after the effective date of this AD, but do not exceed 30 days after the effective date of this AD. You can find information on inspecting for cracks in Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. HC-ASB-61-265.

(g) If you find a crack, replace the blade before further flight.

#### Repetitive Inspections

(h) Thereafter, perform a visual inspection of the A10460 series composite propeller blades for cracks within intervals of 300 FH

since-last-inspection. You can find information on inspecting for cracks in Hartzell Propellers Inc. ASB No. HC-ASB-61-265.

(i) If you find a crack, replace the blade before further flight.

(j) At each propeller overhaul, inspect the A10460 series composite propeller blades for cracks. You can find information on inspecting for cracks in Hartzell Propellers Inc. ASB No. HC-ASB-61-265.

(k) If you find a crack, replace the blade.

#### Alternative Methods of Compliance

(l) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

#### Material Incorporated by Reference

(m) None.

#### Related Information

(n) Hartzell Propellers Inc. Alert Service Bulletin No. HC-ASB-61-265 contains information on inspecting the propeller blades for cracks.

Issued in Burlington, Massachusetts, on October 22, 2003.

**Peter A. White,**

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

[FR Doc. 03-27102 Filed 10-28-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-SW-12-AD; Amendment 39-13354; AD 2003-22-06]

RIN 2120-AA64

#### Airworthiness Directives; Eurocopter France Model AS350B, B1, B2, B3, BA, C, D, D1, and AS355E, F, F1, F2, and N Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters that currently requires measuring the tail rotor pitch control rod (control rod) outboard spherical bearing (bearing) for radial and axial play. This amendment revises the requirement to measure control rod play. This amendment also adds the Eurocopter France Model AS350B3 helicopter and an additional control rod to the applicability, a daily check of the control rod bearing, a larger axial play limit, a more frequent AD compliance interval, and makes editorial changes for

clarification. This amendment is prompted by additional service information and comments resulting in the FAA determination that the inspection interval should coincide with the normal maintenance interval, that the AD should apply to the ECF Model AS350B3 helicopter and an additional control rod, that the daily inspection should be a daily check, and that certain editorial changes are needed for clarification. The actions specified by this AD are intended to prevent separation of the bearing ball from its outer race, rubbing of the body of the control rod against the tail rotor blade pitch horn clevis, failure of the control rod, and subsequent loss of control of the helicopter.

**DATES:** Effective December 3, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110, telephone (817) 222-5123, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:**

In response to two commenters to the final rule, request for comments, a proposal to amend 14 CFR part 39 by superseding AD 98-24-35, Amendment 39-10921, Docket 98-SW-41-AD (63 FR 66418, December 2, 1998), for the specified ECF model helicopters, was published in the **Federal Register** on April 9, 2001 (66 FR 18416). The notice of proposed rulemaking (NPRM) proposed retaining the requirements in AD 98-24-35 and adding Eurocopter Model AS350B3 helicopter and control rod, P/N 350A33-3145-00, to the applicability. The NPRM also proposed revising the AD inspection interval so that it does not exceed 30 hours time-in-service (TIS) to coincide with the normal maintenance interval, establishing a daily inspection of the control rod bearing, and increasing the axial play limit to 0.016 inch.

In response to the NPRM, we received various comments from 12 commenters. Because we agreed with some of the comments, which expanded the scope of the proposals, we issued a supplemental NPRM (SNPRM), published in the **Federal Register** on April 22, 2003 (68 FR 19761), reopening the comment period. The SNPRM retained most of the original proposals but proposed changing the daily inspection to a daily check that may be performed by an owner/operator (pilot) and proposed other editorial changes for clarification. As a result of publishing the SNPRM, one commenter provided additional comments. Due consideration has been given to the comments received.

The one commenter on the SNPRM states that 50 hours TIS between inspections of the control rods, as required by current AD 98-24-35, is adequate and that a change is unnecessary. The commenter further states, "In my experience the bearing wears initially between .002-.003 inch axially and .001 inch radially and stabilizes in this range of play."

The FAA does not agree that a 50-hour TIS inspection interval is sufficient for control rods in which play has been detected, which is the focus of this AD action. The manufacturer recommends the 30-hour TIS inspection interval in Eurocopter Service Letter No. 1367-64-98. The FAA believes that .002-.003 axial and .001 radial play, suggested by the commenter, is not easily detectable by hand checking. Also, when the play is detected by hand, the wear will not stabilize but will increase in due course depending on TIS. The FAA has determined that the inspection interval for these control rods should not be extended above 30 hours TIS.

The commenter also states that the cost estimate "is not a true interpretation of the cost to operators." The commenter estimates flying 1200 hours a year, which will equate to 48 inspections, an increase of 25 percent or 12 additional inspections over the existing program. The commenter further states that his local maintenance shop rate is \$85 per hour. The commenter, therefore, projects an additional cost of \$1020 per year not including ferry time to a maintenance facility and extra out-of-service time while waiting for the inspection to be performed.

The FAA's estimate of the total cost is based on an average labor cost, which was \$60 per hour when the SNPRM was published but is now \$65 per hour. Further, we estimate that the two control rods will need to be replaced on all affected helicopters. We recognize that each operator will incur different costs based on the fleet and the number of operating hours. However, we believe that the commenter's estimate that 1200 flight hours yearly will equate to 12 additional inspections for a total additional annual cost of \$1,020 is high. We recognize that for his usage rate, the incremental increase from a 50-hour TIS interval to a 30-hour TIS interval could result in as many as 16 additional inspections per year. However, the inspection interval for this AD coincides with the normal maintenance interval. Also, only after a pilot or a mechanic detects play does this AD require measuring the play at intervals not to exceed 30 hours TIS. AD 98-24-35 requires that the play be measured at

intervals not to exceed 50 hours TIS regardless of whether or not play has been detected. Establishing this play-detection threshold may reduce the needed ferry time to a maintenance facility since a pilot now may check for play. All facts considered, we do not agree that a change to the cost estimate is warranted except for increasing the labor rate from \$60 to \$65 per hour.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require adopting the rule with the changes in the labor rate in the cost analysis and one relieving change in the AD language. Proposed paragraph (b)(4) was removed because it is unnecessary and was inadvertently included in the proposals. The paragraphs are renumbered accordingly. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

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. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this AD will affect 610 helicopters of U.S. registry, and the required actions will take approximately 1 work hour per helicopter to accomplish at an average labor rate of \$65 per work hour. Required parts will cost approximately \$1224 for two control rods per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be \$786,290.

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 Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

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

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by removing Amendment 39-10921 (63 FR 66418, December 2, 1998), and by adding a new airworthiness directive (AD), to read as follows:

**2003-22-06 Eurocopter France:**  
 Amendment 39-13354. Docket No. 2000-SW-12-AD. Supersedes AD 98-24-35, Amendment 39-10921, Docket No. 98-SW-41-AD.

**Applicability:** Eurocopter France Model AS350B, B1, B2, B3, BA, C, D, D1, and AS355E, F, F1, F2, and N helicopters, with tail rotor pitch control rod (control rod), part

number (P/N) 350A33-2145-00 or 350A33-2145-01, installed, certificated in any category.

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

To prevent separation of the control rod outboard spherical bearing (bearing) ball from its outer race, rubbing of the body of the control rod against the tail rotor blade pitch horn clevis, failure of the control rod, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before the first flight of each day, place the tail rotor pedals in the neutral position. If the helicopter is fitted with a tail rotor load compensator, discharge the accumulator as described in the rotorcraft flight manual. Check the bearing for play on the helicopter, by observation and feel, by slightly moving the tail rotor blade in the flapping axis while monitoring the bearing for movement. See the following Figure 1 of this AD:

**BILLING CODE 4910-13-P**

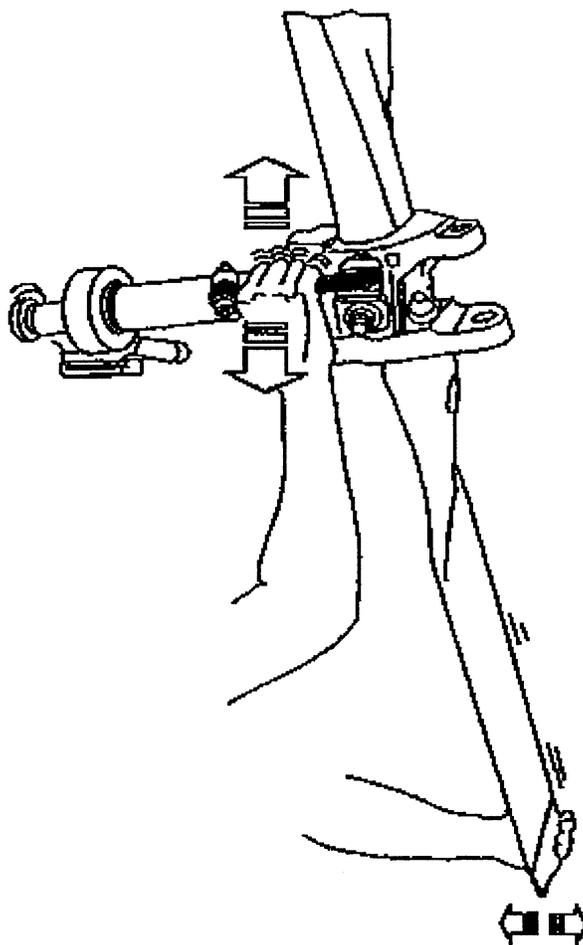


Figure 1: Manual Check for Play of the Tail Rotor Pitch Control Rod

(1) If the Teflon cloth is coming out of its normal position within the bearing, totally or partially, or if there is discoloration or scoring on the bearing, the bearing is unairworthy.

(2) An owner/operator (pilot) holding at least a private pilot certificate may perform this check and must enter compliance into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

(b) If a pilot or mechanic detects play, a mechanic must remove the control rod from the helicopter, and using a dial indicator, measure the bearing wear according to the following and as shown in Figures 2 and 3 of this AD:

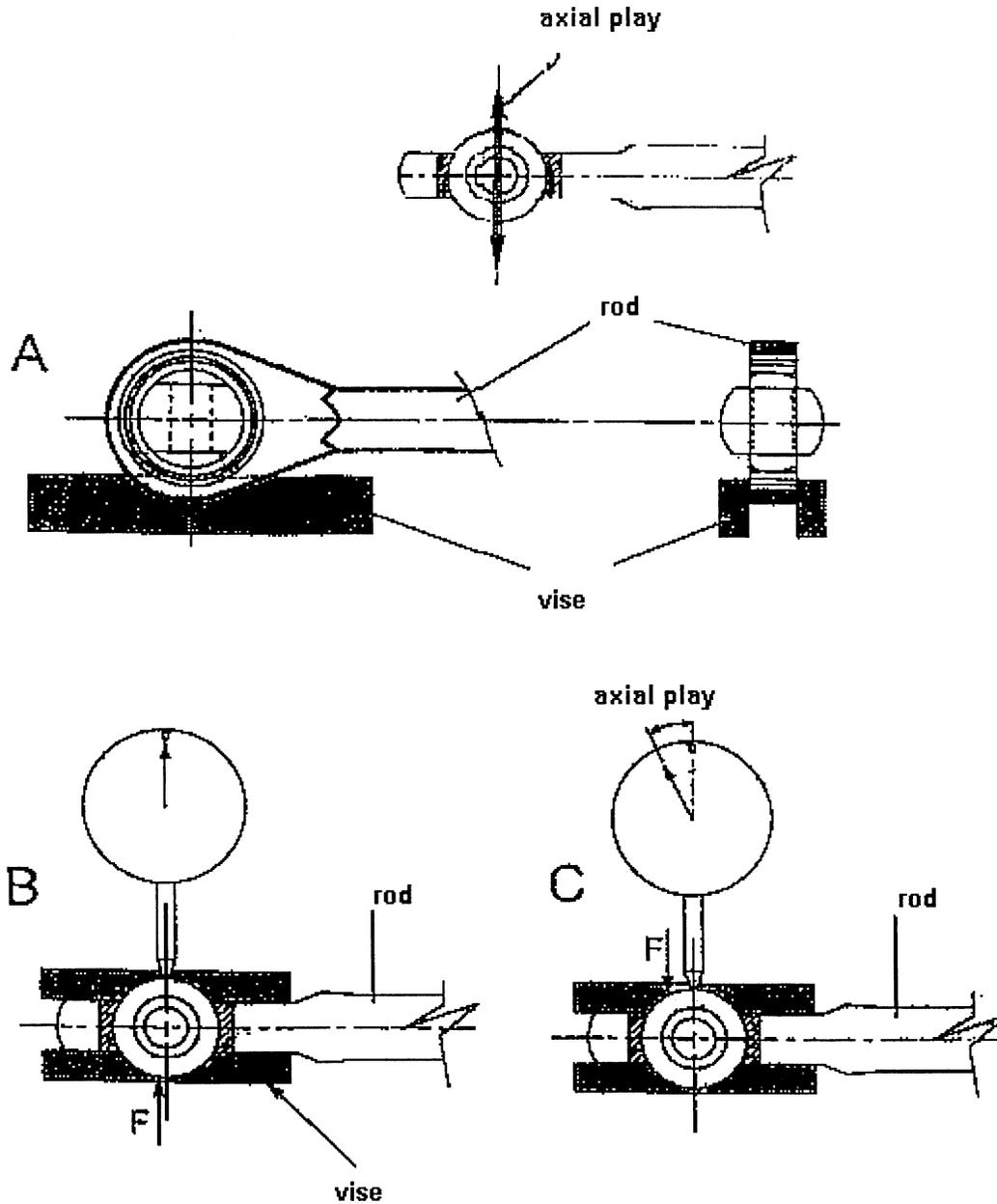


Figure 2: Measurement of the Axial Play (A) of the Bearing

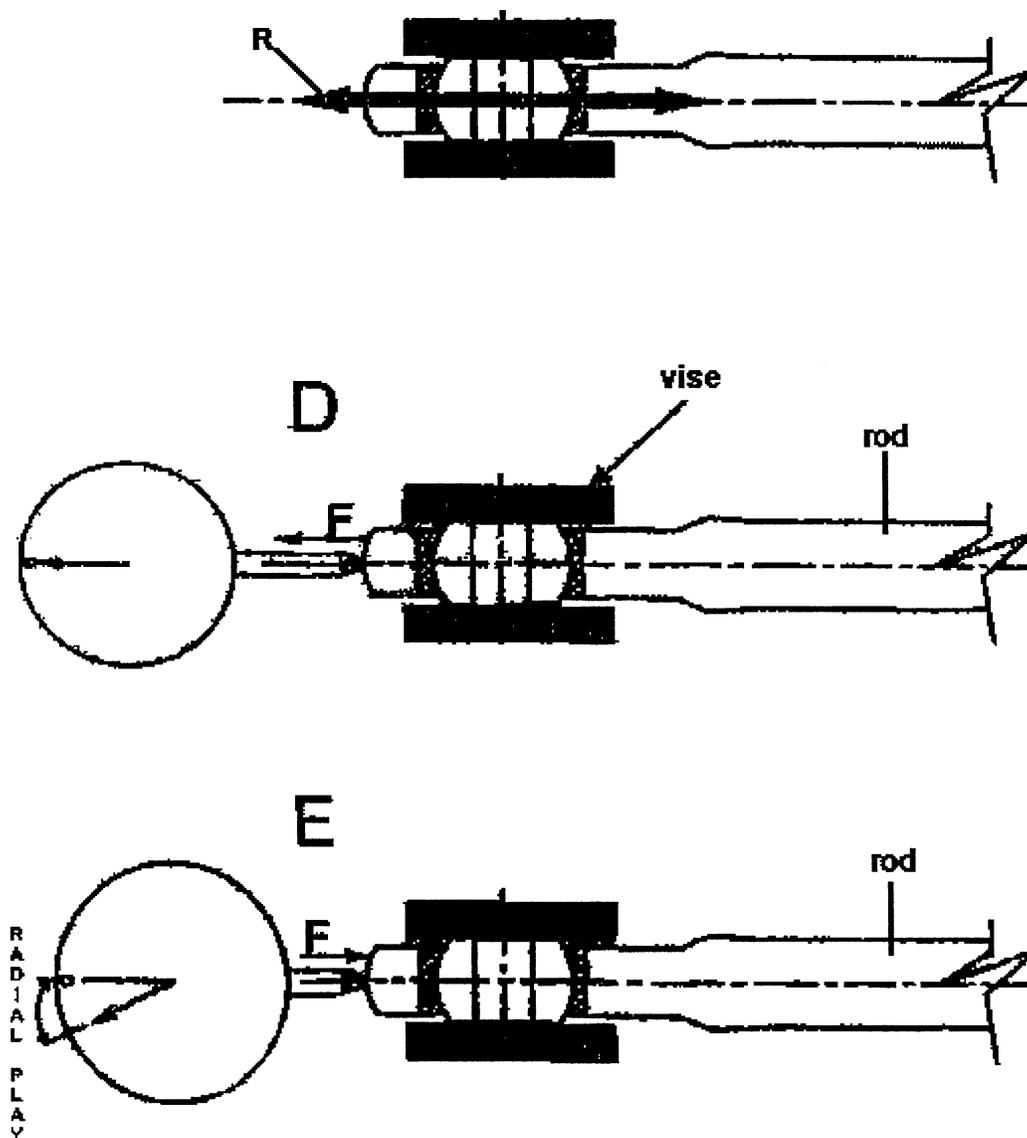


Figure 3: Measurement of the Radial Play (R) of the Bearing

**BILLING CODE 4910-13-C**

(1) Remove the control rod from the helicopter.

(2) Mount the control rod in a vise as shown in Figure 2 of this AD.

(3) Using a dial indicator, take axial play readings by moving the spherical bearing in the direction F (up and down) as shown in Figure 2 of this AD.

(4) Mount the bearing in a vise as shown in Figure 3 of this AD.

(5) Using a dial indicator, take radial play measurements by moving the control rod in the direction F as shown in Figure 3 of this AD.

(6) Record the hours of operation on each control rod.

(7) If the radial play exceeds 0.008 inch or axial play exceeds 0.016 inch, replace the control rod with an airworthy control rod before further flight.

(8) If the radial and axial play are within limits, reinstall the control rod.

(9) Thereafter, at intervals not to exceed 30 hours TIS, remove the control rod and again measure the bearing play with a dial indicator in accordance with this paragraph.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, Rotorcraft Directorate,

FAA, for information about previously approved alternative methods of compliance.

(d) This amendment becomes effective on December 3, 2003.

Issued in Fort Worth, Texas, on October 22, 2003.

**Scott A. Horn,**

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

[FR Doc. 03-27211 Filed 10-28-03; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-CE-22-AD; Amendment 39-13355; AD 2003-22-07]

RIN 2120-AA64

#### Airworthiness Directives; Mitsubishi Heavy Industries, Ltd., MU-2B Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 97-20-14, which applies to all Mitsubishi Heavy Industries, Ltd. (Mitsubishi) MU-2B series airplanes. AD 97-20-14 currently requires incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) that requires pilot training before flight into known or forecast icing conditions after a certain date. AD 97-20-14 resulted from the Federal Aviation Administration's analysis that the training level of the pilots-in-command (PIC) of the MU-2B series airplanes made it difficult for pilots to recognize adverse operating conditions and operate safely while flying in icing conditions. Since issuance of AD 97-20-14, a new training video has been developed that includes information that is critical to safety of the MU-2B series airplanes. This AD requires you to update the AFM information to require this new video as the mandatory pilot training. We are issuing this AD to decrease the chance of icing-related incidents or accidents of the MU-2B series airplanes due to pilot error.

**DATES:** This AD becomes effective on December 15, 2003.

**ADDRESSES:** You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-22-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Contact one of the following for questions or more information related to this subject:

—*For General Icing Related Questions:*

Mr. Paul Pellicano, Aerospace Engineer (Icing Specialist), Atlanta Aircraft Certification Office, FAA, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703-6064; facsimile: (770) 703-6097;

—*For Questions Relating to Airplanes on Type Certificate Data Sheet (TCDS)*

*A2PC:* Mr. Carl Fountain, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627-5222; facsimile: (562) 627-5228; or

—*For Questions Relating to Airplanes on TCDS A10SW:* Mr. Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150; telephone: (817) 222-5133; facsimile: (817) 222-5960.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

*Has FAA taken any action to this point?* Analysis that the training level of the pilots-in-command (PIC) of the MU-2B series airplanes made it difficult for them to recognize adverse operating conditions and operate safely while flying in icing conditions caused FAA to issue AD 97-20-14, Amendment 39-10150 (62 FR 51594, October 2, 1997). AD 97-20-14 currently requires incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) that requires pilot training before further flight into known or forecast icing conditions after a certain date. This AFM limitation consists of the following

On or after November 15, 1997, no person may serve as pilot-in-command (PIC) of a Mitsubishi MU-2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the following training since the beginning of the 24th calendar month before the scheduled flight: FAA-approved Biennial Icing Awareness Training (IAT), Mitsubishi Training Video No. YET-97336. This eight-hour training became available September 22, 1997, and is provided by Mitsubishi Heavy Industries at no cost, as part of the Mitsubishi Systems Review (MSR) program. To sign up for the planned training schedules or to arrange training at a more convenient time and location, contact Mitsubishi at (972) 980-5001. Training is also available at the Flight Safety International (Houston) and Reese Howell Enterprises training facilities. Mitsubishi will provide pilot logbook endorsements upon the completion of this

training. Please note that all operators of the affected airplanes must initiate action to notify and ensure that flight crewmembers are aware of this requirement.

*What has happened since AD 97-20-14 to initiate this proposed action?*

Since issuance of AD 97-20-14, Mitsubishi has developed a new training video, and FAA has determined that it includes information that is critical to the safety of the MU-2B series airplanes. This information includes:

- Procedures to recognize severe icing conditions that may overpower the propeller ice protection system and result in rapid airspeed loss without significant airframe ice accretion;
- Pneumatic deicing boot activation procedures as required by AD 2000-02-25, Amendment 39-11543 (65 FR 5422, February 4, 2000); and
- A clarified definition of icing conditions that is critical for operation of the engine ice protection system.

*What is the potential impact if FAA took no action?* If the new information is not incorporated into the AFM information as mandatory pilot training, there is an increased chance of icing-related incidents or accidents of the MU-2B series airplanes due to pilot error.

*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 all Mitsubishi MU-2B series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 4, 2003 (68 FR 33423). The NPRM proposed to supersede AD 97-20-14 and would require incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) that would require pilot training before further flight into known or forecast icing conditions after a certain date. This AFM limitation would consist of the following:

On or before \_\_\_\_\_ (6 months after the effective date of this AD), no person may serve as pilot-in-command (PIC) of a Mitsubishi MU-2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the following training since the beginning of the 24th calendar month before the scheduled flight: FAA-approved Mitsubishi Icing Awareness Training (IAT) video YET-01295. If training mandated by AD 97-20-14 has been received in the 24 months before \_\_\_\_\_ (6 months after the effective date of this AD), then the new training must be done no later than 24 months after the date of the AD 97-20-14 training. This eight-hour training has been available since July 2, 2002, and is provided by Mitsubishi Heavy Industries at no cost, as part of the Mitsubishi Systems Review (MSR)

program. To sign up for the planned training schedules or to arrange training at a more convenient time and location, contact Turbine Aircraft Services at (972) 248-3108. Training is also available at the Sim Com and Reese Howell Enterprises training facilities and some local Flight Standards District Offices (FSDOs). Mitsubishi will provide pilot logbook endorsements upon the completion of this training. Please note that all operators of the affected airplanes must initiate action to notify and ensure that flight crewmembers are aware of this requirement.

#### Comments

*Was the public invited to comment?* We provided the public the opportunity to participate in the development of this AD. The following presents the comments received on the proposal and FAA's response to each comment:

#### Comment Issue: Revise the Requirements of the AFM Limitations

*What is the commenter's concern?* Mitsubishi recommends the following:—Change reference to the training from 8 hours to approximately 2 hours in length;—Remove reference to the Mitsubishi Systems Review (MSR) program; and—Add a list of other organizations that may provide the pilot logbook endorsement to complete the training.

*What is FAA's response to the concern?* We concur with the commenter and will make these changes in the actual AD portion of the final rule to further clarify the required actions.

#### Conclusion

*What is FAA's final determination on this issue?* We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and 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.

#### Changes to 14 CFR Part 39—Effect on the AD

*How does the revision to 14 CFR part 39 affect this AD?* On July 10, 2002, the FAA published 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 altered products, special

flight permits, and alternative methods of compliance. 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.

#### Costs of Compliance

*How many airplanes does this AD impact?* We estimate that this AD affects 300 airplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected airplanes?* The pilot can accomplish all the work associated with this action. We estimate less than 1 hour to incorporate the information into the AFM and approximately another 2 hours to view the training video.

#### Compliance Time of This AD

*What will be the compliance time of this AD?* The compliance time of this AFM incorporation is "within the next 10 days after the effective date of this AD." The actual viewing of the training video will be incorporated into the current schedule of the video required by AD 97-20-14.

*Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)?* The unsafe condition described in this AD is not a direct result of airplane design or operation, but is attributed to the expertise and knowledge of the PIC. For this reason, FAA has determined that a compliance time based upon calendar time will be used instead of a certain number of hours TIS.

#### Regulatory Findings

*Will this AD impact various entities?* We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

*Will this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this AD:

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. 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003-CE-22-AD" in your request.

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

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 97-20-14, Amendment 39-10150 (62 FR 51594, October 2, 1997), and by adding a new AD to read as follows:

**2003-22-07 Mitsubishi Heavy Industries, Ltd.:** Amendment 39-13355; Docket No. 2003-CE-22-AD; Supersedes AD 97-20-14, Amendment 39-10150.

#### When Does This AD Become Effective?

(a) This AD becomes effective on December 15, 2003.

#### What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 97-20-14, Amendment 39-10150.

#### What Airplanes Are Affected by This AD?

(c) This AD affects Models MU-2B, MU-2B-10, MU-2B-15, MU-2B-20, MU-2B-25, MU-2B-26, MU-2B-26A, MU-2B-30, MU-2B-35, MU-2B-36, MU-2B-36A, MU-2B-40, and MU-2B-60 airplanes, all serial numbers, that are certificated in any category.

#### What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of Mitsubishi developing a new training video that includes information that is critical to safety of the MU-2B series airplanes. The actions specified in this AD are intended to decrease the chance of icing-related incidents or accidents of the MU-2B series airplanes due to pilot error.

#### What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
<p>Incorporate information into the Limitations Section of the Airplane Flight Manual (AFM) that requires pilot training before further flight into known or forecast icing conditions after a certain date. This AFM limitation consist of the following: "On or before June 15, 2004, no person may serve as pilot-in-command (PIC) of a Mitsubishi MU-2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the following training since the beginning of the 24th calendar month before the scheduled flight: FAA-approved Mitsubishi Icing Awareness Training (IAT) video YET-01295. If training mandated by AD 97-20-14 has been received in the 24 months before June 15, 2004, then the new training must be done no later than 24 months after the date of the AD 97-20-14 training. This two-hour training has been available since July 2, 2002, and provided by Mitsubishi Heavy Industries at no cost. To sign up for the planned training schedules or to arrange training at a more convenient time and location, contact Turbine Aircraft Services at (972) 248-3108. Training is also available at Sim Com and Reese Howell Enterprises training facilities and some local Flight Standards District Offices (FSDOs). Pilot logbook endorsements are available after completing this training from: Sim Com, Reese Howell Enterprises, Turbine Aircraft Services (TAS), an FAA Aviation Safety Inspector, or other FAA authorized personnel. Please note that all operators of the affected airplanes must initiate action to notify and ensure that flight crewmembers are aware of this requirement".</p>	<p>Do the AFM incorporation within the next 10 days after December 15, 2003 (the effective date of this AD).</p>	<p>The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish the AFM incorporation requirement of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Inserting a copy of this AD into the Limitations Section of the AFM accomplishes this portion of the AD.</p>

**What About Alternative Methods of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Standards Office, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4110; facsimile: (816) 329-4090.

(1) For information on any already approved alternative methods of compliance, contact Mr. Paul Pellicano, Aerospace Engineer (Icing Specialist), Atlanta Aircraft Certification Office, FAA, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703-6064; facsimile: (770) 703-6097.

(2) Alternative methods of compliance approved in accordance with AD 97-20-14, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

Issued in Kansas City, Missouri, on October 23, 2003.

**Michael Gallagher,**

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

[FR Doc. 03-27210 Filed 10-28-03; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2003-NM-209-AD; Amendment 39-13353; AD 2003-19-51]**

**RIN 2120-AA64**

**Airworthiness Directives; Bombardier Model CL-600-2C10 (Regional Jet Series 700 & 701) and CL-600-2D24 (Regional Jet Series 900) Series Airplanes**

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

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

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2003-19-51 that was sent previously to all known U.S. owners and operators of certain Bombardier Model CL-600-2C10 (Regional Jet Series 700 & 701) and CL-600-2D24 (Regional Jet Series 900) series airplanes by individual notices. This AD requires repetitive detailed inspections for cracking or deformation, or pulled or missing fasteners, on the lower panel of the left- and right-hand main landing gear (MLG) doors, as applicable, and corrective actions if necessary. The actions specified by this AD are intended to prevent failure of the lower panel of the MLG door, the lower panel's departure from the airplane, and consequent damage to airplane structure, which could adversely affect the airplane's continued safe flight and landing. This action is intended to address the identified unsafe condition.

**DATES:** Effective November 3, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2003-19-51, issued September 17, 2003, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before November 28, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-209-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003-NM-209-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

Information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York Aircraft Certification Office, 10 Fifth Street,

Third Floor, Valley Stream, New York 11581; telephone (516) 256-7512; fax (516) 568-2716.

**SUPPLEMENTARY INFORMATION:** On September 17, 2003, the FAA issued emergency AD 2003-19-51, which is applicable to certain Bombardier Model CL-600-2C10 (Regional Jet Series 700 & 701) and CL-600-2D24 (Regional Jet Series 900) series airplanes.

### Background

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model CL-600-2C10 (Regional Jet Series 700 & 701) and CL-600-2D24 (Regional Jet Series 900) series airplanes. The lower panel of the door of the right-hand main landing gear (MLG) of a Model CL-600-2C10 series airplane departed the airplane during landing. The airplane was able to land safely, though the departed panel damaged the trailing edge flap and punctured the rear fuselage near the floor level, below the engine pylon. Investigation revealed cracking of the hinge lug of the door panel, which led to detachment of adjacent fasteners and increased loading on the remaining fasteners. This condition, if not corrected, could result in failure of the lower panel of the MLG door, the lower panel's departure from the airplane, and consequent damage to airplane structure, which could adversely affect the airplane's continued safe flight and landing.

The left- and right-hand MLG doors on certain Model CL-600-2C10 (Regional Jet Series 700 & 701) and CL-600-2D24 (Regional Jet Series 900) series airplanes are identical to the affected right-hand MLG door on the affected Model CL-600-2C10 series airplane. Therefore, the MLG doors on all of these airplanes may be subject to the same unsafe condition.

TCCA has issued Canadian airworthiness directive CF-2003-23R1, dated September 16, 2003, to ensure the continued airworthiness of these airplanes in Canada.

### FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and

determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 2003-19-51 to prevent failure of the lower panel of the MLG door, the lower panel's departure from the airplane, and consequent damage to airplane structure, which could adversely affect the airplane's continued safe flight and landing.

The AD requires repetitive detailed inspections for cracking or deformation, or pulled or missing fasteners, on the lower panel of the left- and right-hand MLG doors, as applicable. These inspections are required to be accomplished in accordance with Figures 1, 2, and 3 of this AD.

Necessary corrective action may involve repair of the lower panel of the MLG door, or replacement with a new or serviceable lower panel. The repair of the lower panel of the MLG door, if accomplished, is required to be accomplished in accordance with a method approved by the FAA or TCCA (or its delegated agent). The replacement of the lower panel of the MLG door, if accomplished, is required to be accomplished in accordance with Task Cards 32-12-01-000-801-A01 and 32-12-01-400-801-A01 of the CRJ 700/900 Regional Jet Aircraft Maintenance Manual. In lieu of repair or replacement, this AD provides for removing the affected door panel assembly; revising the Configuration Deviation List (CDL), Appendix 1, of the airplane flight manual to include new limitations; and operating the airplane in accordance with those CDL limitations.

The AD also requires that operators report the results of the inspections to the airplane manufacturer. Because the cause of the cracking is not known, these required inspection reports will help determine the extent of the cracking or other discrepancies in the affected fleet. The need for further corrective action will be evaluated based on the results of these reports.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on September 17, 2003, to all known U.S. owners and operators of certain Bombardier Model CL-600-

2C10 (Regional Jet Series 700 & 701) and CL-600-2D24 (Regional Jet Series 900) series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

### Interim Action

We consider this AD interim action. If final action is later identified, we may consider further rulemaking then.

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003-NM-209-AD." The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

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

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2003-19-51 Bombardier, Inc. (Formerly Canadair):** Amendment 39-13353. Docket 2003-NM-209-AD.

*Applicability:* Model CL-600-2C10 (Regional Jet series 700 & 701) series airplanes, serial numbers (S/Ns) 10003 through 10999 inclusive; and Model CL-600-2D24 (Regional Jet series 900) series airplanes, S/Ns 15002 through 15990 inclusive; certificated in any category.

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

To prevent failure of the lower panel of the main landing gear (MLG) door, the lower panel's departure from the airplane, and consequent damage to airplane structure, which could adversely affect the airplane's continued safe flight and landing, accomplish the following:

#### Initial Compliance Time

(a) Perform the initial inspection in paragraph (b) of this AD at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes with less than 1,500 total flight cycles as of the effective date of this AD: Do the inspections before the accumulation of 1,050 total flight cycles, or within 50 flight cycles after the effective date of this AD, whichever is later.

(2) For airplanes with 1,500 or more total flight cycles as of the effective date of this AD: Do the inspections within 10 flight cycles after the effective date of this AD.

#### Inspections

(b) Perform detailed inspections of the lower panel, P/N CC670-10520, of the left- and right-hand MLG doors for the conditions and in the areas specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD; and Figures 1, 2, and 3 of this AD.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

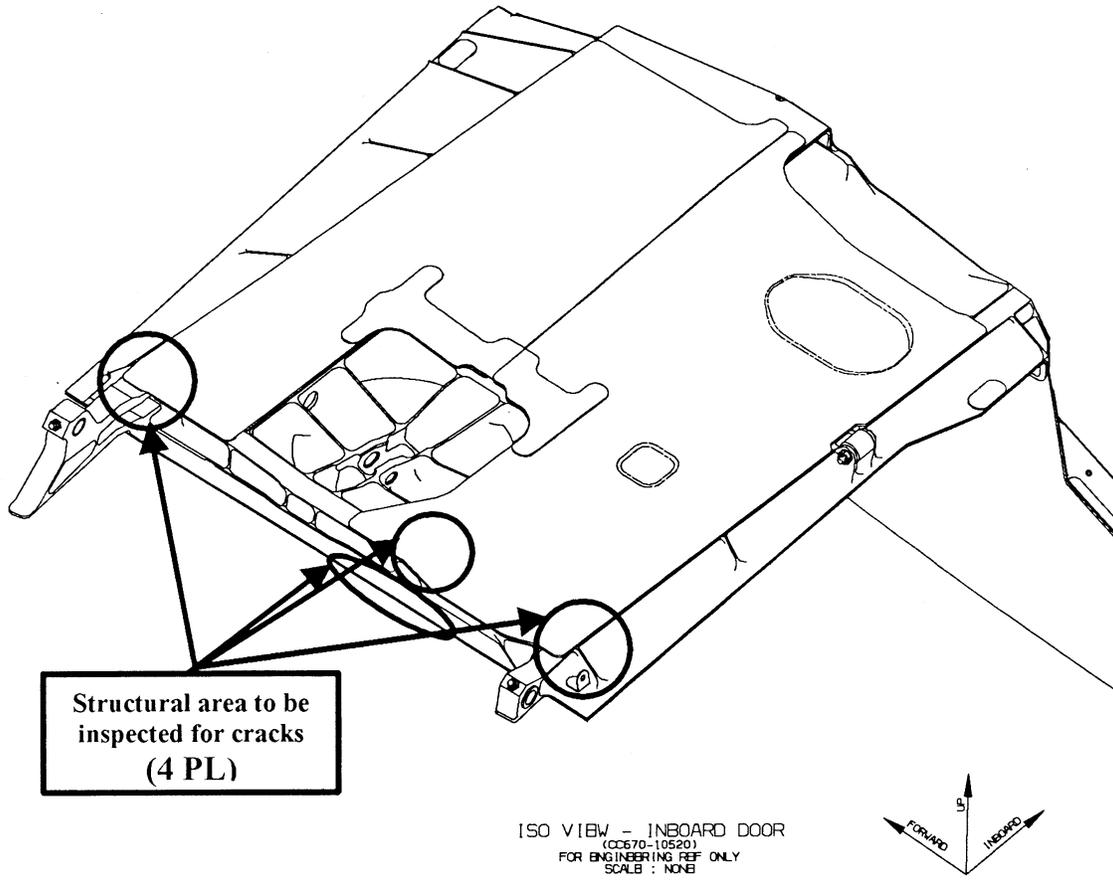
(1) Inspect the cross member, part number (P/N) CC670-10572, of the MLG door lower panel for cracking or deformation, in accordance with Figure 2 of this AD.

(2) Inspect the inner skin, P/N CC670-10577, of the MLG door lower panel at the cross member (P/N CC670-10572) for cracking or deformation, or pulled or missing fasteners, in accordance with Figure 2 of this AD.

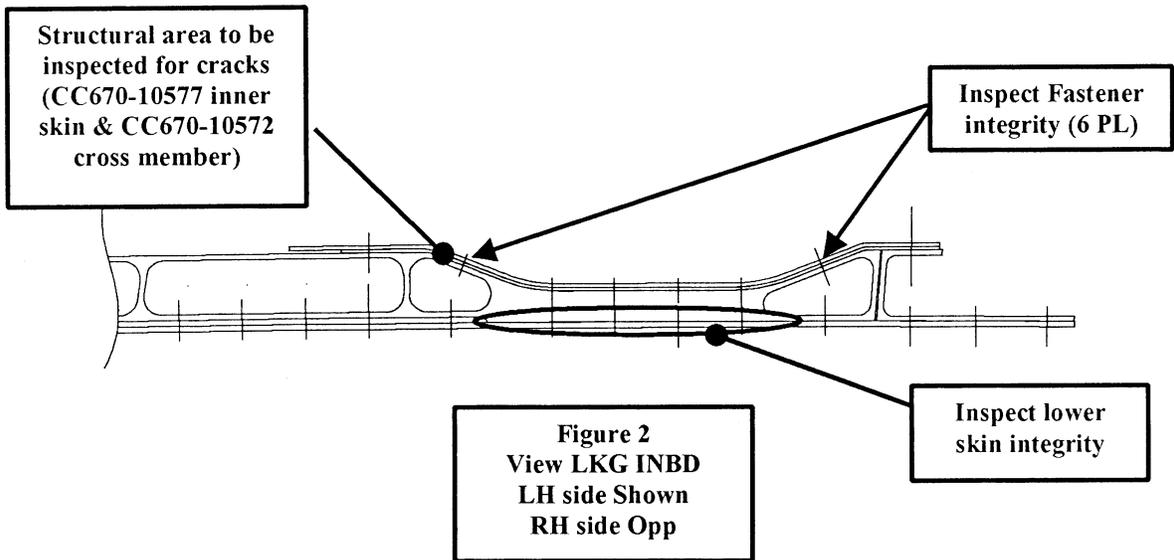
(3) Inspect the outer skin, P/N CC670-10574, of the MLG door lower panel at the cross member (P/N CC670-10572) for cracking or deformation, or pulled or missing fasteners, in accordance with Figure 2 of this AD.

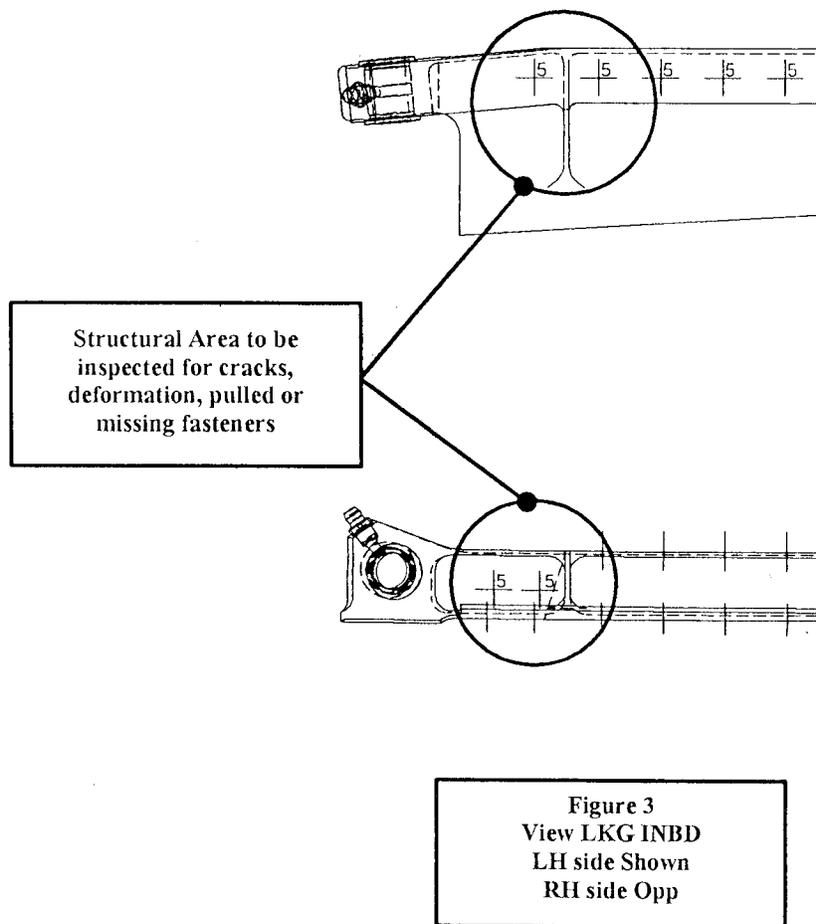
(4) Inspect the forward member, P/N CC670-10570, and aft member, P/N CC670-10571, of the MLG door lower panel, for cracking or deformation, or pulled or missing fasteners, in accordance with Figure 3 of this AD. Figures 1 through 3 of this AD follow.

**BILLING CODE 4910-13-P**



**Figure 1**  
LH side shown  
RH side opposite



**BILLING CODE 4910-13-C****Repetitive Inspections**

(c) If no cracking or deformation, or pulled or missing fastener, as applicable, is found during any inspection required by paragraph (b) or (c) of this AD, repeat the inspections thereafter at intervals not to exceed 100 flight cycles.

**Corrective Actions**

(d) If any cracking or deformation, or pulled or missing fastener, as applicable, is found during any inspection in accordance with paragraph (b) or (c) of this AD: Before further flight, accomplish paragraph (d)(1), (d)(2), or (d)(3) of this AD.

(1) Repair the damage in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (or its delegated agent); and accomplish repetitive inspections in accordance with a method and at a repetitive interval approved by same.

(2) Replace the lower panel assembly, P/N CC670-10520, of the affected MLG door with a new or serviceable lower panel assembly having the same P/N, in accordance with Task Cards 32-12-01-000-801-A01 and 32-12-01-400-801-A01 of the CRJ 700/900 Series Regional Jet Aircraft Maintenance Manual; and repeat the inspections specified in paragraph (b) of this AD at intervals not to exceed 100 flight cycles.

(3) Remove the lower panel assembly, P/N CC670-10520, of the affected MLG door, and accomplish paragraph (d)(3)(i) or (d)(3)(ii), as applicable.

(i) For Model CL600-2C10 (Regional Jet series 700 & 701) series airplanes: Revise the Configuration Deviation List (CDL), Appendix 1, of the airplane flight manual (AFM), to include the following limitations. This may be accomplished by inserting a copy of this AD into the CDL of the AFM.

“For Model CL600-2C10 series airplanes: If one or both door panel assemblies, part number CC670-10520, is missing:

(1) Take-off Weight is reduced by 202.5 kg/door, or 450 lb/door

(2) Enroute Climb is reduced by 445.5 kg/door, or 990 lb/door

(3) Landing Weight is reduced by 202.5 kg/door, or 450 lb/door

(4) Fuel Consumption is increased by +3.42% on fuel used/door

(5) Cruise Airspeed is limited to not more than 0.78 Mach.”

(ii) For Model CL-600-2D24 (Regional Jet series 900) series airplanes: Revise the CDL, Appendix 1, of the AFM, to include the following limitations. This may be accomplished by inserting a copy of this AD into the CDL of the AFM.

“For Model CL600-2D24 series airplanes: If one or both door panel assemblies, part number CC670-10520, is missing:

(1) Take-off Weight is reduced by 245 kg/door, or 540 lb/door

(2) Enroute Climb is reduced by 551 kg/door, or 1,215 lb/door

(3) Landing Weight is reduced by 245 kg/door, or 540 lb/door

(4) Fuel Consumption is increased by +3.42% on fuel used/door

(5) Cruise Airspeed is limited to not more than 0.78 Mach.”

**Reporting Requirement**

(e) Submit a report of the findings (both positive and negative) of the inspections required by paragraph (b), (c), or (d) of this AD, as applicable, to Bombardier Aerospace Technical Help Desk; fax (514) 855-8501; at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120 0056.

(1) If the inspection is done after the effective date of this AD: Submit the report within 5 days after the inspection.

(2) If the inspection was done prior to the effective date of this AD: Submit the report within 5 days after the effective date of this AD.

**Parts Installation**

(f) As of the effective date of this AD, no person may install a lower panel assembly, P/N CC670-10520, on the left- or right-hand MLG door on any airplane, unless the lower panel assembly has been inspected as required by paragraph (b) of this AD and found to be free of cracking or deformation, or pulled or missing fasteners.

**Alternative Methods of Compliance**

(g) In accordance with 14 CFR 39.19, the Manager, New York ACO, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in Canadian airworthiness directive CF-2003-23R1, dated September 16, 2003.

**Effective Date**

(h) This amendment becomes effective on November 3, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2003-19-51, issued September 17, 2003, which contained the requirements of this amendment.

Issued in Renton, Washington, on October 23, 2003.

**Ali Bahrami,**

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

[FR Doc. 03-27209 Filed 10-28-03; 8:45 am]

BILLING CODE 4910-13-P

**RAILROAD RETIREMENT BOARD****20 CFR Part 200****RIN 3220-AB47****Freedom of Information Act Requests**

**AGENCY:** Railroad Retirement Board.

**ACTION:** Direct final rule.

**SUMMARY:** The Railroad Retirement Board (Board) hereby amends its regulations to provide that all requests under the Freedom of Information Act be made to the General Counsel. In addition, the regulation is updated to account for changes in the Freedom of Information Act enacted in the Electronic Freedom of Information Act Amendments of 1996.

**DATES:** This rule shall be effective on January 27, 2004, without further action, unless adverse comment is received by November 28, 2003. If adverse comment is received, the Railroad Retirement Board will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Assistant General

Counsel, (312) 751-4945, TDD (312) 751-4701.

**SUPPLEMENTARY INFORMATION:** The Board has directed that the General Counsel shall respond to all requests under the Freedom of Information Act. In addition, the regulation is updated to account for changes in the Freedom of Information Act enacted in the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231. Nomenclature changes and updates for amendments to the Freedom of Information Act make no substantive changes in the Board's handling of requests under the Freedom of Information Act.

In § 200.4(d), the names of the various offices where various publications are made available have been amended for name changes within the agency. In § 200.4(h), the official designated to receive a Freedom of Information Act request has been amended to the General Counsel. In addition, the Board will accept such requests by e-mail. Section 200.4(i) has been amended to state that the General Counsel or his or her designee shall respond to all Freedom of Information Act requests. In addition, this section is amended to conform to the time limit, 20 work days, set forth in the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231. Sections 200.4(j), (k), (l), and (n)(2) are amended to change the official responsible for action to the General Counsel. Section 200.4(m) is amended to state that the annual Freedom of Information Act report shall be made to the Attorney General no later than February 1, as required by the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231.

**Collection of Information Requirements**

Pursuant to the Paperwork Reduction Act of 1995, the information collection that was associated with section 200.4(n) of this rule, concerning special procedures for handling requests for business information, had been approved by the Office of Management and Budget under control number 3220-0150. The currently-published version of § 200.4 states that: "(The information collection requirements for paragraph (n) were approved by the Office of Management and Budget under control number 3220-0150)". We are now informed that OMB control number 3220-0150 is not an active number, and that the Board's historical files that might have explained the background for that number have been destroyed. Also, the information collection is not an information collection that requires

OMB approval because it is not the same question, seeking the same information, from at least 10 people. Rather, paragraph (n) asks a provider of business information if any of that information should be withheld in response to a FOIA request for the business information. In light of this background, the sentence that referenced an OMB clearance number which no longer exists, is removed.

**Regulatory Impact Statement**

Prior to publication of this direct final rule, the Board submitted the rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of \$100 million or more annually. This direct final rule is not a major rule in terms of the aggregate costs involved. Specifically, we have determined that this direct final rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of \$100 million or more per year.

The amendments made by this direct final rule are not significant. The amendments provide that requests for information under the Freedom of Information Act should be directed to the Board's General Counsel. The revisions also update the agency's regulations to account for changes in the Freedom of Information Act enacted in the Electronic Freedom of Information Act Amendments of 1996.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define "agency" by referencing the definition of "agency" contained in 5 U.S.C. 551(l). Section 551(l)(E) excludes from the term "agency" an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct

compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this direct final rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

**List of Subjects in 20 CFR Part 200**

Claims, Freedom of information, Organization and functions (Government agencies), Privacy, Railroad retirement, Sunshine Act.

■ For the reasons set out in the preamble, title 20, part 200, of the Code of Federal Regulations is amended to read as follows:

**PART 200—GENERAL ADMINISTRATION**

■ 1. The authority citation for part 200 continues to read as follows:

**Authority:** 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

■ 2. Section 200.4 is amended as follows:

- a. By revising paragraphs (d), (h), (i), and (m);
- b. In paragraphs (j) introductory text, (j)(2), (k), (l), and (n)(2) by removing the words “Executive Director” wherever they appear, and adding in their place the words “General Counsel”; and
- c. By removing the parenthetical information collection sentence at the end of paragraph (p).

The revisions read as follows:

**§ 200.4 Availability of information to the public.**

\* \* \* \* \*

(d) The materials and indexes thereto shall be kept, and made available to the public upon request, in the bureaus and offices of the Board that produce or utilize the materials. The following materials currently in use shall, as long as they are in effect as precedents and instructions, be made available in offices of the Board at 844 North Rush Street, Chicago, Illinois 60611-2092:

(1) In the Office of Programs/ Operations: The Retirement Claims Manual, RCM Circulars, Special Services Manual, Policy Decisions, Procedural Memoranda containing information on the adjudication of claims not contained in the Retirement Claims Manual or in RCM Circulars, Field Operating Manual (Parts I and VI), FOM Circulars and Memoranda, the Occupational Disability Rating Schedule, Adjudication Instruction

Manual, Regional Operating Manual (Part I), memorandum instructions on adjudication, and circular letters of instruction to railroad officials.

(2) In the Office of Programs/ Assessment and Training: The Instructions to Employers, and Circular Letters to Employers.

(3) In the Office of General Counsel: Legal Opinions.

(4) In the Office of the Secretary to the Board: Decisions and rulings of the Board.

(5) Regional offices and field offices shall also make available to the extent practicable such of these materials and indexes as are furnished them in the ordinary course of business.

\* \* \* \* \*

(h) Any person or organization requesting records pursuant to this section shall submit such request in writing to the General Counsel, Railroad Retirement Board, Room 836, 844 North Rush Street, Chicago, Illinois 60611-2092. All such requests should be clearly and prominently identified as requests for information under the Freedom of Information Act. If submitted by mail or otherwise submitted in an envelope or other cover, requests should be clearly and prominently identified as such on the envelope or cover. Requests may also be submitted by e-mail, [LAWGroupMailbox@rrb.gov](mailto:LAWGroupMailbox@rrb.gov).

(i) The General Counsel, or any other individual specifically authorized to act on behalf of the General Counsel, shall have the authority to grant or deny a request for information submitted under this section. The General Counsel or such authorized representative shall, within 20 working days following the receipt of a request, except as provided in paragraph (j)(1) of this section, make a determination granting or denying the request and notify the requester of his or her decision, and if a denial, the reasons therefor. The requester shall be further advised that a total or partial denial may be appealed to the Board as provided in paragraph (j) of this section.

\* \* \* \* \*

(m) The Board shall, prior to February 1 of each year, prepare and submit a report to the Attorney General of the United States covering each of the categories of records maintained in accordance with the foregoing for the preceding fiscal year.

\* \* \* \* \*

Dated: October 22, 2003.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 03-27107 Filed 10-28-03; 8:45 am]

**BILLING CODE 7905-01-P**

**DEPARTMENT OF JUSTICE**

**28 CFR Part 16**

[AAG/A Order No. 019-2003]

**Privacy Act of 1974; Implementation**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice, Civil Rights Division, is exempting two Privacy Act systems of records, entitled Central Civil Rights Division Index File and Associated Records (JUSTICE/CRT-001), and Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission (JUSTICE/CRT-007), from the subsections of the Privacy Act listed below. The systems of records were published in the **Federal Register** on August 11, 2003 (68 FR 47610).

**EFFECTIVE DATE:** This final rule is effective October 29, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mary Cahill, (202) 307-1823.

**SUPPLEMENTARY INFORMATION:** The Department is exempting JUSTICE/CRT-001 from 5 U.S.C. 552a (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g). The Department is exempting JUSTICE/CRT-007 from 5 U.S.C. 552a (d)(1), (2), (3) and (4). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k). The Department also is removing the exemptions to the former Civil Rights Division system of records entitled “Freedom of Information/Privacy Act Records (JUSTICE/CRT-010)” at 28 CFR 16.90 (e) and (f). The records in CRT-010 are now covered by DOJ-004, and the exemptions are stated in 28 CFR 16.130.

On August 11, 2003 (68 FR 47519), a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, this order will not have a significant impact on a substantial number of small entities.

**List of Subjects in 28 CFR Part 16**

Administrative practices and procedures, Courts, Freedom of information, and Privacy.

■ Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, amend 28 CFR part 16 as follows:

**PART 16—[AMENDED]**

■ 1. The authority for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, and 9701.

■ 2. Section 16.90 is revised to read as follows:

**§ 16.90 Exemption of Civil Rights Division Systems.**

(a) The following system of records is exempted from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k): Central Civil Rights Division Index File and Associated Records (JUSTICE/CRT-001). These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) *Subsection (c)(3)*. To provide the subject of a criminal, civil, or administrative matter or case under investigation with an accounting of disclosures of records concerning him or her could inform that individual of the existence, nature, or scope of an actual or potential criminal or civil violation to gain valuable information concerning the nature and scope of the investigation, to determine whether he or she is the subject of the investigation, and seriously impede law enforcement efforts by permitting the record subject and other persons to whom he or she might disclose the records to avoid criminal penalties, civil remedies, or administrative measures.

(2) *Subsection (c)(4)*. This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d)(1)*. Disclosure of investigatory information could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others. Disclosure of classified national security information would cause damage to the national security of the United States. In addition, these records may be subject to protective orders entered by federal courts to protect their confidentiality. Further, many of the records contained in this system are copies of documents which are the property of state agencies and were obtained under express or implied promises to strictly protect their confidentiality.

(4) *Subsection (d)(2)*. Amendment of the records could interfere with ongoing criminal or civil law enforcement

proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) *Subsection (d)(3) and (4)*. These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) *Subsection (e)(1)*. It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) *Subsection (e)(2)*. To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigation.

(8) *Subsection (e)(3)*. To inform individuals as required by this subsection could reveal the existence of a criminal or civil investigation and compromise investigative efforts.

(9) *Subsection (e)(5)*. It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(10) *Subsection (e)(8)*. To serve notice could give persons sufficient warning to evade investigative efforts.

(11) *Subsection (g)*. This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

(c) The following system of records is exempted from subsections (d)(1), (2), (3) and (4) of the Privacy Act pursuant to 5 U.S.C. 552a (k): "Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission (JUSTICE/CRT-007)." These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a (k)(2).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) *Subsection (d)(1)*. Disclosure of investigatory information could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others. In addition, these records may be subject to protective orders entered by federal courts to protect their confidentiality. Further, many of the records contained in this system are copies of documents which

are the property of state agencies and were obtained under express or implied promises to strictly protect their confidentiality.

(2) *Subsection (d)(2)*. Amendment of the records could interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(3) *Subsection (d)(1), (2), (3) and (4)*. This system contains investigatory material compiled by the Equal Opportunity Commission pursuant to its authority under 42 U.S.C. 2000e-8. Titles 42 U.S.C. 2000e-5(b), 42 U.S.C. 2000e-8(e), and 44 U.S.C. 3508 make it unlawful to make public in any manner whatsoever any information obtained by the Commission pursuant to the authority.

(4) *Subsection (d)(3) and (4)*. These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

Dated: October 17, 2003.

**Paul R. Corts,**

*Assistant Attorney General for Administration.*

[FR Doc. 03-27193 Filed 10-28-03; 8:45 am]

BILLING CODE 4410-13-P

**DEPARTMENT OF THE INTERIOR****Minerals Management Service****30 CFR Part 250****RIN 1010-AD07****Oil and Gas and Sulphur Operations in the Outer Continental Shelf Civil Penalties**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** The MMS is required to review the maximum daily civil penalty assessment allowable under its regulations at least once every 3 years for the purpose of adjusting this amount in accordance with the Consumer Price Index (CPI), as prepared by the Bureau of Labor Statistics, Department of Labor. The intended effect is for punitive assessments to keep up with inflation. Thus, MMS is publishing a final rule to adjust the civil penalty assessment to comply with the Department of Labor's CPI. This final rule informs the public and the regulated community of the adjusted civil penalty assessment.

**EFFECTIVE DATE:** This rule becomes effective on November 28, 2003.

**FOR FURTHER INFORMATION CONTACT:**  
Doug Slitor, Safety and Enforcement  
Branch at (703) 787-1030 or e-mail at  
[Doug.Slitor@mms.gov](mailto:Doug.Slitor@mms.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380) expanded and strengthened MMS's authority to impose penalties for violating regulations promulgated under the Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.* Section 8201 of OPA 90 authorizes the Secretary of the Interior (Secretary) to assess a civil penalty without providing notice and time for corrective action where a failure to comply with applicable regulations results in a threat of serious, irreparable, or immediate harm or damage to human life or the environment. The goal of the MMS OCS Civil Penalty Program is to ensure safe and clean operations on the OCS. By pursuing, assessing, and collecting civil penalties, the program is designed to encourage compliance with OCS statutes and regulations.

Not all regulatory violations warrant a review to initiate civil penalty proceedings. However, violations that cause injury, death, or environmental damage, or pose a threat to human life or the environment, will trigger such review.

In accordance with OPA 90, every 3 years MMS must analyze the civil penalty maximum amount in conjunction with the CPI prepared by the U.S. Department of Labor. If an adjustment is necessary, MMS informs the public through the **Federal Register** of the new maximum amount. MMS must comply with OPA 90 which specifies the CPI as the index and the MMS action is not discretionary. Therefore, public comments are unnecessary and in accordance with 5 U.S.C. 553(b)(3)(B), MMS is publishing an immediately final rule instead of a proposed rule.

MMS uses Office of Management and Budget (OMB) guidelines for determining how penalty amounts should be rounded. In computing this new civil penalty maximum amount, MMS divided the August 2002 CPI of 180.7 by the previously used August 1995 CPI of 152.9. This resulted in a multiplying factor of 1.18. The previous maximum amount of \$25,000 per violation per day was multiplied by the 1.18 factor and resulted in a new maximum penalty amount of \$29,500. This amount was rounded to \$30,000 as per OMB guidelines. The new civil penalty maximum amount is now

\$30,000 per violation per day. It must be remembered that this is a maximum amount and is only used when a non-compliance issue warrants it.

**Regulatory Planning and Review (Executive Order 12866)**

This final rule is not significant under E.O. 12866 and has not been reviewed by the Office of Management and Budget (OMB).

**Regulatory Flexibility (RF) Act**

The Department of the Interior (DOI) certifies that this rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). This rule applies to all lessees that operate on the OCS. Generally, lessees that operate under this rule would fall under the Small Business Administration's (SBA) North American Industry Classification System Codes 211111, Crude Petroleum and Natural Gas Extraction and 213111, Drilling Oil and Gas Wells. Under these codes, SBA considers all companies with fewer than 500 employees to be a small business. We estimate that of the 130 lessees that explore for and produce oil and gas on the OCS, approximately 90 are small businesses (70 percent). The primary effect of the rule is the increase in civil penalties assessed only for those operators that do not comply with Federal OCS regulations.

This rule will have no impact on the oil and gas industry operators that comply with Federal OCS regulations. For those operators whose non-compliance results in a civil penalty, the increase resulting from the inflation factor of 1.18 amounts to an increase of less than \$200,000 spread over an average of 37 cases per year or slightly over \$5,000 additional per case. This is using data over the past 9 years and averaging civil penalties paid and number of cases paid per year. This dollar amount is very minor considering the considerable sums of money operators must have to operate on the OCS. This is true for even the smallest of OCS operators.

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 actions of MMS, call 1-888-REG-FAIR (1-888-734-3247). You may comment to the Small Business Administration without

fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

**Small Business Regulatory Enforcement Fairness Act (SBREFA)**

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This rule:

1. Does not have an annual effect on the economy of \$100 million or more. As described above, we estimate an annual increase of \$5,000 per civil penalty case.

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 increase in cost 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 ability of United States-based enterprises to compete with foreign-based enterprises. All lessees and drilling contractors, regardless of nationality, will have to comply with the requirements of this rule. Therefore, the rule will not affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

**Paperwork Reduction Act (PRA) of 1995**

This regulation does not contain any information collection requirements subject to the PRA. We will not submit Form 83-I to OMB for review and approval under Section 3507(d) of the PRA.

**Federalism (Executive Order 13132)**

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between Federal and State governments. This final rule only increases the maximum civil penalty amount per day allowed. This is outside State jurisdiction. States have no role in this activity. The rule does not impose costs on States or localities.

**Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)**

In accordance with E.O. 13175, this rule does not have tribal implications that impose substantial direct

compliance costs on Indian tribal governments.

#### Takings Implication Assessment (Executive Order 12630)

According to Executive Order 12630, the rule does not have significant Takings Implications. A Takings Implication Assessment is not required. The rulemaking is not a governmental action capable of interfering with constitutionally protected property rights.

#### 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

The final rulemaking does not introduce requirements that would cause lessees or operators to perform or change any activities on the OCS which would result in environmental impacts beyond those addressed in the National Environmental Policy Act documents associated with the OCS plans.

#### Unfunded Mandates Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have any Federal mandates, nor does the rule have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

#### List of Subjects in 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.

Dated: October 20, 2003.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

■ For the reasons stated in the preamble, MMS amends 30 CFR Part 250 as follows:

#### PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. Authority citation for Part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

■ 2. Section 250.1403 is revised to read as follows:

##### § 250.1403 What is the maximum civil penalty?

The maximum civil penalty is \$30,000 per day per violation.

[FR Doc. 03-27280 Filed 10-28-03; 8:45 am]

BILLING CODE 4310-MR-P

#### POSTAL SERVICE

##### 39 CFR Part 111

##### Price of Semipostal Stamp

AGENCY: Postal Service.

ACTION: Final rule; correction.

**SUMMARY:** The effective date for the pricing and issuance of *Stop Family Violence* Semipostal Stamp published in the **Federal Register** on August 18, 2003 (Vol. 68, No. 159, pages 49362-49363) is changed from October 11, 2003 to October 8, 2003.

**DATES:** This notice is effective October 29, 2003.

**SUPPLEMENTARY INFORMATION:** On October 8, 2003, President George Bush announced the nationwide sale of the *Stop Family Violence* Semipostal Stamp at a White House ceremony recognizing October as Domestic Violence Awareness Month.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 03-27185 Filed 10-28-03; 8:45 am]

BILLING CODE 7710-12-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 180

[OPP-2003-0327; FRL-7330-4]

##### Imidacloprid; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for the combined residues of imidacloprid, (1-[6-chloro-3-pyridinyl] methyl)-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl

moiety, all expressed as parent in or on soybean seed. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide as a seed treatment on soybean seed. This regulation establishes a maximum permissible level for residues of imidacloprid in this food commodity. The tolerance will expire and is revoked on December 31, 2006.

**DATES:** This regulation is effective October 29, 2003. Objections and requests for hearings, identified by docket (ID) number OPP-2003-0327, must be received on or before December 29, 2003.

**ADDRESSES:** Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9367; e-mail address: *Sec-18-Mailbox@epa.gov.*

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a Federal or State government agency involved in administration of environmental quality programs (e.g., Departments of Agriculture, Environment). Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity (NAICS 9241).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

###### B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action

under docket (ID) number OPP-2003-0327. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml/00/Title\\_40/40cfr180\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml/00/Title_40/40cfr180_00.html), a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

## II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for the combined residues of imidacloprid, (1-[6-chloro-3-pyridinyl] methyl)-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on soybean seed at 1.0 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2006. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited

tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

## III. Emergency Exemption for Imidacloprid on Soybean Seed and FFDCA Tolerances

The States of Iowa and Wisconsin requested the use of imidacloprid as a seed treatment on soybean seed to control the bean leaf beetle, a vector of bean pod mottle virus. Due to abnormal weather patterns, the incidence of bean pod mottle virus was expected to be higher than normal in 2003. EPA has authorized under FIFRA section 18 the

use of imidacloprid on soybean seed for control of bean leaf beetle in Iowa and Wisconsin. After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of imidacloprid in or on soybean seed. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2006, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on soybean seed after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether imidacloprid meets EPA's registration requirements for use on soybean seed or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of imidacloprid by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Iowa and Wisconsin to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for imidacloprid, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

**IV. Aggregate Risk Assessment and Determination of Safety**

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCFA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL-5754-7).

Consistent with section 408(b)(2)(D) of the FFDCFA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of imidacloprid and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCFA, for a time-limited tolerance for combined residues of imidacloprid in or on soybean seed at 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

**A. Toxicological Endpoints**

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at

which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for

intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q\*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q\* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q\* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10<sup>-6</sup> or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE<sub>cancer</sub> = point of departure/exposures) is calculated. A summary of the toxicological endpoints for imidacloprid used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR IMIDACLOPRID FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (all populations including infants and children)	NOAEL = not determined LOAEL = 42 milligrams/kilogram/day (mg/kg/day) UF = 300 Acute RfD = 0.14 mg/kg/day	FQPA SF = 1 aPAD = acute RfD FQPA SF = 0.14 mg/kg/day	Acute neurotoxicity - rats LOAEL = 42 mg/kg/day based on decreased motor activity in female rats
Chronic dietary (all populations)	NOAEL = 5.7 mg/kg/day UF = 100 Chronic RfD = 0.057 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD FQPA SF = 0.057 mg/kg/day	Combined chronic toxic/carcinogenicity - rat LOAEL = 16.9 mg/kg/day, based upon increased incidence of mineralized particles in thyroid colloid in males
Short-term oral (1–30 days)	Oral study NOAEL = 10 mg/kg/day	LOC for MOE = 100 (residential, includes the FQPA SF)	Developmental toxicity - rat Maternal LOAEL = 30 mg/kg/day, based upon decreased body weight gain and corrected body weight gain
Intermediate-term oral (1–6 months)	Oral study NOAEL = 9.3 mg/kg/day	LOC for MOE = 100 (residential, includes the FQPA SF)	Subchronic neurotoxicity - rat LOAEL = 63.3 mg/kg/day, based upon decreased body weight gain
Short-term dermal (1–30 days)	Oral study NOAEL = 10 mg/kg/day (dermal absorption rate = (7.2%))	LOC for MOE = 100 (occupational) LOC for MOE = 100 (residential, includes the FQPA SF)	Developmental toxicity - rat Maternal LOAEL = 30 mg/kg/day, based upon decreased body weight gain and corrected body weight gain

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR IMIDACLOPRID FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Intermediate-term dermal (1–6 months)	Oral study NOAEL = 9.3 mg/kg/day (dermal absorption rate = 7.2%)	LOC for MOE = 100 (occupational) LOC for MOE = 100 (residential, includes the FQPA SF)	Subchronic neurotoxicity - rat LOAEL = 63.3 mg/kg/day, based upon decreased body weight gain
Long-term dermal (6 months)	Oral study NOAEL = 5.7 mg/kg/day (dermal absorption rate = 7.2%)	LOC for MOE = 100 (occupational) LOC for MOE = 100 (residential, includes the FQPA SF)	Combined chronic toxic/carcinogenicity - rat LOAEL = 16.9 mg/kg/day, based upon increased incidence of mineralized particles in thyroid colloid in males
Short-term inhalation (1–30 days)	Oral study NOAEL = 10 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (occupational) LOC for MOE = 100 (residential, includes the FQPA SF)	Developmental toxicity - rat Maternal LOAEL = 30 mg/kg/day, based upon decreased body weight gain and corrected body weight gain
Intermediate-term inhalation (1–6 months)	Oral study NOAEL = 9.3 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (occupational) LOC for MOE = 100 (residential, includes the FQPA SF)	Subchronic neurotoxicity - rat LOAEL = 63.3 mg/kg/day, based upon decreased body weight gain
Long-term inhalation (> 6 months)	Oral study NOAEL = 5.7 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (occupational) LOC for MOE = 100 (residential, includes the FQPA SF)	Combined chronic toxic/carcinogenicity - rat LOAEL = 16.9 mg/kg/day, based upon increased incidence of mineralized particles in thyroid colloid in males
Cancer (oral, dermal, inhalation)	No evidence of carcinogenicity for humans	Not applicable	No evidence of carcinogenicity in rats and mice

\* The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

In its objections to a separate imidacloprid tolerance action, NRDC claims that EPA erred by regulating on the basis of a LOAEL for acute and chronic toxicity. As can be seen from the above table, NRDC is mistaken with regard to use of a LOAEL for estimating the RfD for chronic risk. The acute toxicity endpoint was based upon a LOAEL of 42 mg/kg/day from an acute neurotoxicity study in rats. This value was adjusted with a safety factor of 3X to approximate the value of a NOAEL. EPA has high confidence that this value of 3X is sufficient for several reasons. The effect seen at the LOAEL in the acute neurotoxicity study (decreased motor activity), occurred only in one sex of the rat (females), was characterized as minimal, and may have been a result of the use of the gavage dosing in the study. The decreased motor activity was not replicated following repeated dietary administration (non-gavage) at lower and higher doses (10, 70 or 200 mg/kg/day) in the subchronic neurotoxicity study in the same species (rats). Further, using a safety factor of 3X produces a regulatory endpoint lower than the acute effect levels in

other standard studies for determining an acute endpoint, developmental toxicity studies in two species, and in another study that is on occasion used for such a purpose, the developmental neurotoxicity study in rats. Also in these objections, NRDC claims that EPA failed to calculate residential risks for some scenarios, based on low toxicity (no endpoints were chosen). On October 8, 2002, the Health Effects Division (HED), Hazard Identification Assessment Review Committee (HIARC) reviewed the hazard data base for imidacloprid and established additional endpoints. Endpoints were chosen for each of the following exposure scenarios: Acute dietary, chronic dietary, short-term oral, intermediate-term oral, short-term dermal, intermediate-term dermal, long-term dermal, short-term inhalation, intermediate-term inhalation, and long-term inhalation. In the current risk assessment (Unit II.E. of this document), EPA calculated short-term residential risks (oral, dermal, and inhalation) for both adults and children for a wide-range of representative scenarios, including applications to lawns,

ornamental plantings, indoor and outdoor potted plants, and dogs and cats. Based on current residential use patterns for imidacloprid, EPA expects the duration of exposure to be short-term (1–30 days), and would not result in intermediate-term or long-term exposure. EPA also conducted human health aggregate risk assessments for the following exposure scenarios: Acute aggregate (food + drinking water), short-term aggregate exposure (food + drinking water + residential), and chronic aggregate exposure (food + drinking water).

*B. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.472) for the combined residues of imidacloprid, in or on a variety of raw agricultural commodities. Meat, milk, poultry, and egg tolerances have also been established for the combined residues of imidacloprid. In conducting dietary exposure assessments, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM™-FCID) which

incorporates food consumption data as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The 1994–96 and 1998 data are based on the reported consumption of more than 20,000 individuals over two non-consecutive survey days. Consumption data are averaged for the entire U.S. population and within population subgroups for chronic exposure assessment, but are retained as individual consumption events for acute exposure assessment. Risk assessments were conducted by EPA to assess dietary exposures from imidacloprid in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996/1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A Tier 1, deterministic acute dietary exposure assessment was conducted using tolerance-level residues, 100 PCT information for registered and proposed commodities; and modified DEEM™ (vision 7.76) processing factors for some commodities based on guideline processing studies. EPA estimated exposure based on the 95<sup>th</sup> percentile value from this deterministic exposure assessment.

In its objections to a separate imidacloprid tolerance action, NRDC asserts that EPA erred by relying on the exposure value for the 95<sup>th</sup> percentile of the population in estimating exposure. NRDC claims that this approach leaves 5% of the population unprotected. These comments by NRDC represent a misunderstanding of EPA's exposure assessments. Although EPA estimated exposure using the 95<sup>th</sup> percentile, EPA most definitely was not, however, acting in a manner designed to protect only 95% of the population. To the contrary, EPA's exposure estimates were designed to reasonably capture the full range of exposures in each population subgroup. As explained in its science policy paper on this subject, EPA, in estimating exposure for population subgroups, generally considers various population percentiles of exposure between 95 and 99.99, depending on the extent of overestimation in the residue data used

in the assessment. In each exposure assessment EPA is attempting to reasonably estimate the full range of exposures in a subgroup. Accordingly, as EPA noted in its policy paper, just as when EPA uses the 95<sup>th</sup> percentile with non-probabilistic exposure assessments EPA is not suggesting that EPA is leaving 5% of the population unprotected, EPA is not by choosing the 99.9<sup>th</sup> percentile for probabilistic exposure assessments concluding that only 99.9% of the population deserves protection. Rather, it is EPA's view that, with probabilistic assessments, the use of the 99.9<sup>th</sup> percentile generally produces a reasonable high-end exposure such that if that exposure does not exceed the safe level, EPA can conclude there is a reasonable certainty of no harm to the general population and all significant population groups. (Office of Pesticide Programs, EPA, Choosing a Percentile of Acute Dietary Exposure as a Threshold of Regulatory Concern 31 (March 22, 2000)). Importantly, EPA generally uses a population percentile of 95 when EPA relies on worst-case residue values - i.e., all crops covered by the tolerance contain residues at the tolerance value. Even at the 95<sup>th</sup> percentile of estimated exposure, actual exposure, when based on this assumption tends to be significantly overstated. For example, EPA has found that when it uses realistic residue information (e.g., data from monitoring of the food supply), that exposure estimates are generally substantially lower even at the 99.99<sup>th</sup> percentile.

As noted above, EPA did use the worst-case assumption that all food covered by imidacloprid tolerances would bear residues at the tolerance level. Hence, EPA believes its exposure estimate is unlikely to understate exposure; rather, in all likelihood, the estimate probably substantially overstates exposure.

ii. *Chronic exposure.* The following assumptions were made for the chronic exposure assessments: The chronic dietary exposure assessment was performed using published and proposed tolerance levels, DEEM™ default processing factors, and percent crop treated (PCT) information on some commodities.

iii. *Cancer.* A quantitative cancer aggregate risk assessment was not performed because imidacloprid is not carcinogenic.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the

following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: For the acute assessment, 100 PCT was assumed for all registered and proposed commodities. For the chronic assessment, average weighted PCT information was used for the following commodities: Apple 34%; Brussels sprouts 56%; broccoli 35%; cabbage 14%; cantaloupe 31%; cauliflower 52%; collards 10%; corn, field 1%; cotton 3%; cucumber 2%; eggplant 36%; grapefruit 3%; grape 32%; mustard greens 16%; honeydew 26%; kale 30%; lemon 1%; lettuce, head 49%; lime 5%; orange 1%; pear 16%; pepper 62%; pumpkin 7%; spinach 15%; squash 7%; sugarbeet 1%; tangerine 9%; tomato 9%; watermelon 6%; wheat 1%. A default value of 1% was used for all commodities which were reported as having >1% CT.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to

underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which imidacloprid may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for imidacloprid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of imidacloprid.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will generally use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the

Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent reference dose (%RfD) or percent population adjusted dose (%PAD). Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to imidacloprid, they are further discussed in the aggregate risk sections below.

Analysis of monitoring data for degradates (ground water only) shows that imidacloprid parent is the dominant residue with imidacloprid urea the most likely degradate. Based on the available information, modeling of total residue results in only modest increases over the exposure estimates with parent alone. Based on the FIRST and SCI-GROW models the estimated environmental concentrations (EECs) of imidacloprid (total residue) for acute exposures are estimated to be 36.04 parts per billion (ppb) for surface water and 2.09 ppb for ground water. The EECs for imidacloprid (parent only) for acute exposures are estimated to be 35.89 ppb for surface water and 1.43 ppb for ground water. The EECs for imidacloprid (total residue) for chronic exposures are estimated to be 17.24 ppb for surface water and 2.09 ppb for ground water. The EECs for imidacloprid (parent only) for chronic exposures are estimated to be 16.52 ppb for surface water and 1.43 ppb for ground water.

The New York State Department of Environmental Conservation, Division of Solid and Hazardous Materials has submitted extensive water monitoring information from Nassau and Suffolk Counties of New York. Nassau and Suffolk counties have ground water that is exceptionally vulnerable to pesticide contamination and have a long history of a number of pesticides being banned from use in these counties over the years. In general, the kinds of concentrations of imidacloprid (parent only) found in the monitoring/ observation and private drinking water

wells are in the range expected in highly vulnerable ground water. Imidacloprid has been detected in approximately 20 (including some clusters of wells in the same immediate area) out of about 2,000 public and private water supply and monitoring wells. Imidacloprid was detected in 24 of the approximately 3,500 well samples analyzed for imidacloprid in Nassau and Suffolk Counties. Although detection of imidacloprid in about 20 of 2,000 wells in an area with highly vulnerable ground water does not demonstrate particularly widespread ground water contamination, 3 of 2,000 wells in this highly vulnerable ground water have at least one detection greater than the SCI-GROW for imidacloprid (parent only) at 1.43 ppb. The three samples that exceed the SCI-GROW ECs are reported at 2.06 ppb, 5.98 ppb, and 6.69 ppb. Since the surface water model screening levels are greater than the ground water model screening levels and the detection levels reported from the water monitoring from Nassau and Suffolk Counties, New York, the Agency will use the surface water ECs for imidacloprid total residue as a worse case estimate for drinking water in the aggregate risk assessment.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Imidacloprid is currently registered for use on the following residential non-dietary sites: Granular products for application to lawns and ornamental plants; ready-to-use spray for application to flowers, shrubs and house plants; plant spikes for application to indoor and outdoor residential potted plants; ready-to-use potting medium for indoor and outdoor plant containers; liquid concentrate for application to lawns, trees, shrubs and flowers; ready-to-use liquid for directed spot application to cats and dogs. In addition, there are numerous registered products intended for use by commercial applicators to residential sites. These include gel baits for cockroach control; products intended for commercial ornamental, lawn and turf pest control; products for ant control; and products used as preservatives for wood products, building materials, textiles and plastics.

As these products are intended for use by commercial applicators only, they are not addressed in terms of residential pesticide handlers. The risk assessment was conducted using the following residential exposure assumptions: EPA has determined that residential handlers

are likely to be exposed to imidacloprid residues via dermal and inhalation routes during handling, mixing, loading, and applying activities. Based on the current use patterns, EPA expects duration of exposure to be short-term (1–30 days). EPA does not expect imidacloprid to result in exposure durations that would result in intermediate-term or long-term exposure.

The scenarios likely to result in adult dermal and/or inhalation residential handler exposures are as follows:

- Dermal and inhalation exposure from using a granular push-type spreader.
- Dermal exposure from using potted plant spikes.
- Dermal exposure from using a plant potting medium.
- Dermal and inhalation exposure from using a garden hose-end sprayer (dermal and inhalation exposure from using a RTU trigger pump spray is expected to be negligible).
- Dermal and inhalation exposure from using a water can/bucket for soil drench applications.
- Dermal exposure from using pet spot-on.

EPA has also determined that there is potential for short-term (1 to 30 days), post-application exposure to adults and children/toddlers from the many residential uses of imidacloprid. Due to residential application practices and the half-lives observed in the turf transferable residue study, intermediate-term and long-term post-application exposures are not expected. The scenarios likely to result in dermal (adult and child/toddler) and incidental non-dietary (child/toddler) short-term post-application exposures are as follows:

- Toddler oral hand-to-mouth exposure from contacting treated turf.
- Toddler incidental oral ingestion of granules.
- Toddler incidental oral ingestion of pesticide-treated soil.
- Toddler incidental oral exposure from contacting treated pet.
- Toddler dermal exposure from contacting treated turf.
- Toddler dermal exposure from hugging treated pet/contacting treated pet.
- Adult dermal exposure from contacting treated turf.
- Adult golfer dermal exposure from contacting treated turf.
- Adolescent golfer dermal exposure from contacting treated turf.
- Adult dermal exposure from contacting treated pet

#### 4. Cumulative exposure to substances with a common mechanism of toxicity.

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available information” concerning the cumulative effects of a particular pesticide’s residues and “other substances that have a common mechanism of toxicity.”

EPA does not have, at this time, available data to determine whether imidacloprid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imidacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imidacloprid has a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA’s Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA’s website at <http://www.epa.gov/pesticides/cumulative/>.

#### C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to *in utero* exposure in developmental studies. There is no quantitative or qualitative evidence of increased susceptibility of rat offspring in the multi-generation reproduction study. There is evidence of increased qualitative susceptibility in the rat developmental neurotoxicity study, but the concern is low since:

- The effects in pups are well-characterized with a clear NOAEL.
  - The pup effects occur in the presence of maternal toxicity with the same NOAEL for effects in pups and dams.
  - The doses and endpoints selected for regulatory purposes are protective of the pup effects noted at higher doses in the developmental neurotoxicity study.
- Therefore, there are no residual uncertainties for prenatal/postnatal toxicity in this study.

3. *Conclusion.* There is a complete toxicity data base for imidacloprid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be reduced to 1X for the following reasons:

- The toxicological data base is complete for FQPA assessment.
- The acute dietary food exposure assessment utilizes existing and proposed tolerance level residues and 100 PCT information for all commodities. By using these screening-level assessments, actual exposures/risks will not be underestimated.
- The chronic dietary food exposure assessment utilizes existing and proposed tolerance level residues and PCT data verified by the Agency for several existing uses. For all proposed uses, 100 PCT is assumed. The chronic assessment is somewhat refined and based on reliable data and will not underestimate exposure/risk.

The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded.

The residential handler assessment is based upon the residential standard operating procedures (SOPs) in conjunction with chemical-specific study data in some cases and the Pesticide Handlers Exposure Database (PHED) unit exposures in other cases. The majority of the residential post-application assessment is based upon chemical-specific turf transferable residue data or other chemical-specific post-application exposure study data. The chemical-specific study data as well as the surrogate study data used are reliable and also are not expected to underestimate risk to adults as well as to children. In a few cases where chemical-specific data were not available, the SOPs were used alone. The residential SOPs are based upon reasonable worst-case assumptions and are not expected to underestimate risk.

These assessments of exposure are not likely to underestimate the resulting estimates of risk from exposure to imidacloprid.

In its objections to a separate imidacloprid tolerance action, NRDC argues that in light of the outstanding data requirement for prospective ground water monitoring studies, EPA should have retained a 10X FQPA factor for imidacloprid. EPA disagrees. Two small-scale prospective ground water monitoring studies were originally requested by the Agency in 1994. This request predates the development of the Tier 1 ground water screening model in 1997 and the FQPA. The field phase of these prospective ground water monitoring studies commenced in 1996. Results from these studies have now been received and the levels of imidacloprid observed (0.1 ppb) are below the screening concentration of 2.09 ppb calculated on the basis of the SCI-GROW, the Tier 1 ground water screening model. In any event, as noted above, since higher values are predicted for imidacloprid residues in surface water, these higher values were used in conducting the risk assessment.

*D. Aggregate Risks and Determination of Safety*

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model

estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the

calculated DWLOCs, EPA concludes with reasonable certainty that exposures to imidacloprid in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of imidacloprid on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to imidacloprid will occupy 25% of the aPAD for the U.S. population, 17% of the aPAD for females 13 to 49 years, 54% of the aPAD for infants < 1 year old and 64% of the aPAD for children 1–2 years. In addition, despite the potential for acute dietary exposure to imidacloprid in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of imidacloprid in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO IMIDACLOPRID

Population Subgroup	aPAD (mg/kg)	%aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.14	25	36.04	2.09	3,700
Females (13–49 years)	0.14	17	36.04	2.09	3,500
Infants (< 1 year)	0.14	54	36.04	2.09	650
Children (1–2 years)	0.14	64	36.04	2.09	510

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to imidacloprid from food will utilize 11% of the cPAD for the U.S. population, 26% of the cPAD for infants < 1 year, and 35% of the cPAD

for children 1–2 years. Based on the use pattern, chronic residential exposure to residues of imidacloprid is not expected. In addition, there is potential for chronic dietary exposure to imidacloprid in drinking water. After calculating DWLOCs and comparing

them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO IMIDACLOPRID

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.057	11	17.24	2.09	1,800

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO IMIDACLOPRID—Continued

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Infants (< 1 year)	0.057	26	17.24	2.09	420
Children (1–2 years)	0.057	35	17.24	2.09	370
Females (13–49 years)	0.057	8.3	17.24	20.9	1,600

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Short-term aggregate risk assessments are needed for adults as there is potential for both dermal and inhalation handler exposure, and dermal post-application exposure from the residential uses of imidacloprid on turf and pets. In addition, short-term aggregate risk assessments are needed for children/toddlers because there is a potential for oral and dermal, post-application exposure resulting from the residential uses of imidacloprid on turf and pets. The pet-treatment scenario

resulted in the lowest combined MOE for adults (MOE = 400; handler and post-application) and children (MOE = 260; post-application). The turf-treatment resulted in much lower exposures for both adults (MOE = 15,000; handler and post-application) and children (MOE = 1,500; post-application). Therefore, the pet-treatment exposure estimates were aggregated with the chronic dietary (food) to provide a worst-case estimate of short-term aggregate risk for the U.S. population and children 1–2 years old (the child population subgroup with the highest estimated chronic dietary food exposure). Using the exposure assumptions described in this unit for

short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 320 for the U.S. population, and 170 for children 1–2 years. These aggregate MOEs do not exceed the Agency’s level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of imidacloprid in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency’s level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO IMIDACLOPRID

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-term DWLOC (ppb) U.S. population
U.S. population	320	100	17.24	2.09	2,400
Children (1–2 years old)	170	100	17.24	2.09	410

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Intermediate-term and long-term aggregate risk assessments were not performed because, based on the current use patterns, the Agency does not expect exposure durations that would result in intermediate-term or long-term exposures.

5. *Aggregate cancer risk for U.S. population.* There is no evidence of carcinogenicity to humans based on carcinogenicity studies in male and female rats and mice. The Agency concludes that pesticidal uses of imidacloprid are not likely to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children

from aggregate exposure to imidacloprid residues.

**V. Other Considerations**

*A. Analytical Enforcement Methodology*

Adequate enforcement methods are available for determination of imidacloprid residues of concern in plant (Bayer Gas Chromatography/Mass Spectrometry (GC/MS) Method 00200) and livestock commodities (Bayer GC/MS Method 00191). These methods have undergone successful EPA petition method validations (PMVs), and the registrant has fulfilled the remaining requirements for additional raw data, method validation, independent laboratory validation (ILV), and an acceptable confirmatory method (high performance liquid chromatography/ultraviolet (HPLC/UV) Method 00357).

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be

requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

*B. International Residue Limits*

There are no CODEX, Canadian, or Mexican Maximum Residue Limits (MRLs) for imidacloprid on soybean seed.

**VI. Conclusion**

Therefore, the tolerance is established for the combined residues of imidacloprid, (1-[6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on soybean seed at 1.0 ppm.

**VII. Objections and Hearing Requests**

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may

file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

#### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2003-0327 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 29, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open

from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603-0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at [tompkins.jim@epa.gov](mailto:tompkins.jim@epa.gov), or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP-2003-0327, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov). Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an

electronic copy of your request at many Federal Depository Libraries.

#### B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

#### VIII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in

this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any “tribal implications”

as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

**IX. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 17, 2003.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.472 is amended by adding the following commodity to the table in paragraph (b) to read as follows:

**§ 180.472 Imidacloprid; tolerances for residues.**

- (a) \* \* \*
- (b) \* \* \*

Commodity	Parts per million	Expiration/revocation date
Soybean, seed .....	1.0 ppm	12/31/06

[FR Doc. 03-26926 Filed 10-28-03; 8:45 am]  
BILLING CODE 6560-50-S

Treasury” and adding in its place the word “first”.

[FR Doc. 03-55530 Filed 10-28-03; 8:45 am]  
BILLING CODE 1505-01-D

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 021209300-3048-02; I.D. 101003F]

**Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Closure for the Catcher/Processor Sector**

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

**ACTION:** Fishing restrictions; request for comments.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**45 CFR Part 303**

**Standards for Program Operations**

*CFR Correction*

In Title 45 of the Code of Federal Regulations, parts 200 to 499, revised as of Oct. 1, 2002, on page 260, § 303.108, paragraph (c), is corrected by removing the phrase “Secretary of the U.S.

**SUMMARY:** NMFS announces closure of the 2003 catcher/processor fishery for Pacific whiting (whiting) at noon local time (l.t.) October 24, 2003, because the allocation for the catcher/processor sector will be reached by that time. This action is intended to keep the harvest of whiting within the 2003 allocation levels.

**DATES:** Effective from noon l.t. October 24, 2003, until the start of the 2004 primary season for the catcher/processor sector, unless modified, superseded or rescinded. Comments will be accepted through November 13, 2003.

**ADDRESSES:** Submit comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** Becky Renko at 206-526-6110

**SUPPLEMENTARY INFORMATION:** This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On March 7, 2003 (68 FR 11182), the levels of allowable biological catch (ABC), the optimum yield (OY) and the commercial OY (the OY minus the tribal allocation) for U.S. harvests of whiting were announced in the **Federal Register**. For 2003 the whiting ABC is 188,000 metric tons (mt), the OY is 148,200 mt and the commercial OY is 121,200 mt. On June 16, 2003 (68 FR 35575) a subsequent **Federal Register** notice was published to correct an error in the allocation for the catcher processor and mothership sectors of the whiting fishery.

Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the non-tribal catcher/

processor, mothership, and shore-based sectors of the whiting fishery. The catcher/processor sector is composed of vessels that harvest and process whiting. The mothership sector is composed of mothership, and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest. The shoreside sector is composed of vessels that harvest whiting for delivery to shoreside processors. Each of these sectors receives a portion of the commercial OY. In 2003, the catcher/processors received 34 percent, motherships received 24 percent, and the shore-based sector received 42 percent. When applied to the commercial OY for 2003, these percentage allowances of the whiting resulted in the following allocations OY: 41,208 mt for the catcher/processors, 29,088 mt for the motherships, and 50,904 mt for the shore-based sector.

Regulations at 50 CFR 660.323(a)(3)(i) describe the primary season for catcher/processors as the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector. When each sector's allocation is reached, the primary season for that sector is ended.

#### NMFS Action

This action announces achievement of the allocation for the catcher/processor sector only. The best available information on October 23, 2003, indicated that the 41,208 mt catcher/processor allocation would be reached by noon l.t. October 24, 2003, at which time the primary season for the catcher/processor sector ends.

For the reasons stated here and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(A), NMFS herein announces: Effective noon l.t. October 24, 2003, further taking and retaining, receiving or at-sea processing of whiting by a catcher/processor is prohibited. No

additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

#### Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The Assistant Administrator for Fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for comment on this action pursuant to 5 U.S.C. 553 (b)(B), because providing prior notice and opportunity would be impracticable and contrary to the public interest. It would be impracticable and contrary to the public interest because if this closure were delayed in order to provide notice and comment, the fishery would be expected to greatly exceed the sector allocation. A delay to provide a cooling off period also would be expected to cause the fishery to exceed its allocation. Therefore, good cause also exists to waive the 30-day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3). The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(A) and is exempt from review under Executive Order 12866.

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

Dated: October 10, 2003.

**Bruce C. Morehead,**

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

[FR Doc. 03-27248 Filed 10-24-03; 2:59 pm]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 68, No. 209

Wednesday, October 29, 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.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

#### Small Business Size Standards; Waiver of the Nonmanufacturer Rule

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of intent to terminate waiver of the Nonmanufacturer Rule for Ammunition (Except Small Arms) Manufacturing.

**SUMMARY:** The U.S. Small Business Administration (SBA) intends to terminate the waivers of the Nonmanufacturer Rule for Ammunition (Except Small Arms) Manufacturing based on our recent discovery of small business manufacturers for these classes of products. Terminating these waivers will require recipients of contracts set aside for small or 8(a) businesses to provide the products of small business manufacturers or processor on such contracts.

**DATES:** Comments must be received on or before November 7, 2003.

**ADDRESSES:** Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, Tel: (202) 619-0422.

**FOR FURTHER INFORMATION CONTACT:** Edith Butler, Program Analyst, (202) 619-0422 FAX (202) 205-7280.

**SUPPLEMENTARY INFORMATION:** Public Law 100-656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Program must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class

of products" for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on a six digit North American Industry Classification System (NAICS) and the four digit Product and Service Code established by the Federal Procurement Data System.

SBA announced its decision to grant the waiver of Ammunition (Except Small Arms) Manufacturing, in the **Federal Register** on September 29, 2003. It was recently brought to SBA's attention by small business manufacturers and SBA's Procurement Center Representatives that small business manufacturers exist for items within this class of products. For this reason, SBA intends to terminate the waiver for Ammunition (Except Small Arms) Manufacturing, North American Industry Classification System (NAICS) 332993.

Based on the above information, this notice proposes to terminate the class waivers of the Nonmanufacturer Rule for Ammunition (Except Small Arms) Manufacturing, NAICS 332993.

The public is invited to comment to SBA on the proposed termination of the waivers of the nonmanufacturer rule for the class of products specified. All comments by the public will be duly considered by SBA in determining whether to finalize its intent to terminate these classes of products.

Dated: October 22, 2003.

**Linda G. Williams,**

*Associate Administrator for Government Contracting.*

[FR Doc. 03-27200 Filed 10-28-03; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

#### Small Business Size Standards; Waiver of the Nonmanufacturer Rule

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of intent to terminate waiver of the Nonmanufacturer Rule for Small Arms Manufacturing.

**SUMMARY:** The U.S. Small Business Administration (SBA) intends to terminate the waivers of the Nonmanufacturer Rule for Small Arms Manufacturing based on our recent discovery of small business manufacturers for these classes of products. Terminating these waivers will require recipients of contracts set aside for small or 8(a) businesses to provide the products of small business manufacturers or processor on such contracts.

**DATES:** Comments must be received on or before November 7, 2003.

**ADDRESSES:** Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, Tel: (202) 619-0422.

**FOR FURTHER INFORMATION CONTACT:** Edith Butler, Program Analyst, (202) 619-0422 FAX (202) 205-7280.

**SUPPLEMENTARY INFORMATION:** Public Law 100-656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Program must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months.

The SBA defines "class of products" based on a six digit North American Industry Classification System (NAICS) and the four digit Product and Service Code established by the Federal Procurement Data System.

SBA announced its decision to grant the waiver of Small Arms Manufacturing, in the **Federal Register** on June 13, 2003. It was recently brought to SBA's attention by small business manufacturers and SBA's Procurement Center Representatives that small business manufacturers exist for items within this class of products. For this reason, SBA intends to terminate the waiver for Small Arms Manufacturing, identified under the North American Industry Classification System (NAICS) 332994.

Based on the above information, this notice proposes to terminate the class waivers of the Nonmanufacturer Rule for Small Arms Manufacturing, NAICS 332994.

The public is invited to comment to SBA on the proposed termination of the waivers of the nonmanufacturer rule for the class of products specified. All comments by the public will be duly considered by SBA in determining whether to finalize its intent to terminate these classes of products.

Dated: October 22, 2003.

**Linda G. Williams,**

*Associate Administrator for Government Contracting.*

[FR Doc. 03-27201 Filed 10-28-03; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-NM-32-AD]

RIN 2120-AA64

#### **Airworthiness Directives; McDonnell Douglas Model DC-9-31 and DC-9-32 Airplanes**

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-9-31 and DC-9-32 airplanes. This proposal would require replacement of certain power relays, and subsequent repetitive cleaning, inspecting, repairing, and testing of certain replaced power relays. This action is necessary to prevent internal arcing of the left and right generator power relays, auxiliary power relays, and external power relays, and consequent smoke and/or fire in the cockpit and cabin. This action is

intended to address the identified unsafe condition.

**DATES:** Comments must be received by December 15, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-32-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003-NM-32-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5344; fax (562) 627-5210.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

- For each issue, state what specific change to the proposed AD is being requested.

- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003-NM-32-AD." The postcard will be date stamped and returned to the commenter.

#### **Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-32-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### **Discussion**

The FAA has received reports indicating that the alternating current (AC) cross-tie relay shorted out internally on McDonnell Douglas Model DC-9 series airplanes, which caused severe smoke and burn damage to the relay, aircraft wiring, and adjacent panels. Investigation revealed that the electrical fire originated within the cross-tie relay of the power distribution system. The cause of this incident has been attributed to a phase-to-phase short within the relay. This condition, if not corrected, could result in in-flight electrical fires.

#### **Other Relevant Rulemaking**

We have previously issued AD 2002-26-13, amendment 39-13001 (68 FR 33, January 2, 2003), applicable to certain McDonnell Douglas airplane models, as follows:

#### **MCDONNELL DOUGLAS MODELS**

DC-9-11, DC-9-12, DC-9-13, DC-9-14, DC-9-15, and DC-9-15F airplanes. DC-9-21 airplanes.

**MCDONNELL DOUGLAS MODELS—  
Continued**

DC-9-31, DC-9-32, DC-9-32 (VC-9C), DC-9-32F, DC-9-32F (C-9A, C-9B), DC-9-33F, DC-9-34, and DC-9-34F airplanes.  
DC-9-41 airplanes.  
DC-9-51 airplanes.  
DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) airplanes.  
MD-88 airplanes.

That AD requires replacement of certain power relays, and subsequent repetitive cleaning, inspecting, repairing, and testing of certain replaced power relays. The actions specified by that AD are intended to prevent internal arcing of the left and right generator power relays, auxiliary power relays, and external power relays, and consequent smoke and/or fire in the cockpit and cabin.

Since issuance of AD 2002-26-13, we have determined that the same unsafe condition addressed in that AD may exist on four additional Model DC-9 series airplanes. We were advised that Model DC-9-31 airplanes having manufacturer's fuselage numbers 1039 and 1046, and Model DC-9-32 having manufacturer's fuselage numbers 0268 and 0505 were omitted inadvertently from the applicability of that AD because those airplanes had been excluded inadvertently from the effectivity of paragraph 1.A of Boeing Alert Service Bulletin DC9-24A191, Revision 01, dated January 9, 2002, as cited in AD 2002-26-13. Therefore, these additional airplanes are also subject to the same unsafe condition addressed in AD 2002-26-13.

**Explanation of Relevant Service Information**

We have reviewed and approved Boeing Alert Service Bulletin DC9-24A191, Revision 02, dated January 7, 2003. The service bulletin describes procedures for a one-time inspection of the generator power relays, auxiliary power relays, and external power relays to determine if a certain Sundstrand (Westinghouse) part number (P/N) is installed; and corrective actions, if necessary. The corrective actions include modifying and reidentifying the power relay assemblies; installing certain power relay assemblies within service interval limits; replacing the existing power relay assemblies with power relay assemblies that are within service interval limits; and cleaning, inspecting, repairing, and testing of relay assemblies; as applicable. The revised service bulletin adds four fuselage numbers to the effectivity. No more work is necessary on airplanes

changed as shown in Revision 01 of this service bulletin. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The procedures specified by Revision 02 of the service bulletin are essentially the same as those procedures specified in the Revision 01 Boeing Alert Service Bulletin DC9-24A191.

Accomplishment of the actions specified in AD 2002-26-13 is acceptable for compliance with the requirements of this proposed AD.

**Explanation of Requirements of Proposed Rule**

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

Since this proposed AD expands the applicability of AD 2002-26-13, we have considered a number of factors in determining whether to issue a new proposed AD or to supersede the "old" AD. We have considered the entire fleet size that would be affected by superseding AD 2002-26-13 and the consequent workload associated with revising maintenance record entries. In light of this, we have determined that a less burdensome approach is to issue a separate AD applicable only to the four additional airplanes. This proposed AD would not supersede AD 2002-26-13; airplanes listed in the applicability of AD 2002-26-13 are required to continue to comply with the requirements of that AD. This proposed AD is a separate AD action, and is applicable only to McDonnell Douglas Model DC-9-31 airplanes having manufacturer's fuselage numbers 1039 and 1046, and Model DC-9-32 airplanes having manufacturer's fuselage numbers 0268 and 0505; certificated in any category.

**Differences Between Relevant Service Information and Proposed Rule**

Operators should note that, although the procedures described in Boeing Alert Service Bulletin DC9-24A191, Revision 02, dated January 7, 2003, specify maintenance (*i.e.*, clean, inspect, repair, and test) of power relays, Sundstrand (Westinghouse) P/N 9008D09 series, when they are beyond service interval limits, this proposed AD would not require those procedures. The design of the main contact arc box for this relay is entirely different than that of power relays, Sundstrand (Westinghouse) P/Ns 914F567-3 and -4, and is not susceptible to the same type

of failure in the AC cross-tie position. Therefore, we have determined that power relays having Sundstrand (Westinghouse) P/N 9008D09 series are not subject to the identified unsafe condition of this proposed AD.

Operators should also note that the proposed AD would not require installation of certain power relays or replacement of the existing power relays with power relays that are "within service interval limits" (*i.e.*, 7,000 flight hours) as described in the service bulletin. The FAA has determined that any generator power relay, auxiliary power relay, or external power relay having Sundstrand (Westinghouse) P/N 914F567-4 that is removed from the airplane must go through maintenance and be made serviceable before the power relay can be reinstalled on an airplane. Therefore, the proposed AD would require cleaning, inspecting, repairing, and testing of power relays having Sundstrand (Westinghouse) P/N 914F567-4, or replacing those power relays with serviceable power relays having Sundstrand (Westinghouse) P/N 9008D09 series or 914F567-4. The proposed AD also would require subsequent repetitive cleaning, inspecting, repairing, and testing of power relays having Sundstrand (Westinghouse) P/N 914F567-4.

**Cost Impact**

There are approximately 4 airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$260, or \$130 per airplane.

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

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

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

**McDonnell Douglas:** Docket 2003–NM–32–AD.

**Applicability:** Model DC–9–31 airplanes having manufacturer's fuselage numbers 1039 and 1046, and Model DC–9–32 airplanes having manufacturer's fuselage numbers 0268 and 0505; certificated in any category.

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

To prevent internal arcing of the left and right generator power relays, auxiliary power relays, and external power relays, and consequent smoke and/or fire in the cockpit and cabin, accomplish the following:

#### Inspection

(a) Within 24 months after the effective date of this AD, perform a one-time inspection of the left and right generator power relays, auxiliary power relays, and

external power relays, to determine if Sundstrand (Westinghouse) part number (P/N) 914F567–3 or –4 is installed, per Boeing Alert Service Bulletin DC9–24A191, Revision 02, dated January 7, 2003.

#### Replacement or Modification/ Reidentification of Any Generator Power Relay, Auxiliary Power Relay, or External Power Relay, P/N 914F567–3

(b) If any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–3, is found installed during the inspection required by paragraph (a) of this AD, within 24 months after the effective date of this AD, do either action specified in paragraph (b)(1) or (b)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A191, Revision 02, dated January 7, 2003.

(1) Replace the power relay having Sundstrand (Westinghouse) P/N 914F567–3 with either a serviceable power relay having Sundstrand (Westinghouse) P/N 9008D09 series or 914F567–4.

(2) Modify the power relay, Sundstrand (Westinghouse) P/N 914F567–3, to a –4 configuration.

#### Maintenance or Replacement of Any Generator Power Relay, Auxiliary Power Relay, or External Power Relay, P/N 914F567–4

(c) If any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, is found installed during the inspection required by paragraph (a) of this AD, clean, inspect, repair, and test the relay, or replace the power relay with a serviceable power relay having Sundstrand (Westinghouse) P/N 9008D09 series or 914F567–4; per Boeing Alert Service Bulletin DC9–24A191, Revision 02, dated January 7, 2003; at the time specified in paragraph (c)(1) of this AD, except as provided by paragraph (c)(2) of this AD.

(1) Within 7,000 flight hours after installation of the generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, or within 24 months after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the flight hours since installation of any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, cannot be determined: Within 24 months after the effective date of this AD.

#### Repetitive Maintenance of Generator Power Relay, Auxiliary Power Relay, or External Power Relay, Sundstrand (Westinghouse) P/N 914F567–4

(d) Before or upon the accumulation of 7,000 flight hours on any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4 since accomplishing the action(s) required by either paragraph (b) or (c) of this AD, as applicable, clean, inspect, repair, and test; per Boeing Alert Service Bulletin DC9–24A191, Revision 02, dated January 7, 2003. Thereafter, repeat these actions at intervals

not to exceed the accumulation of 7,000 flight hours on the power relay.

#### Credit for AD 2002–26–13, Amendment 39–13001

(e) Accomplishment of the actions specified in AD 2002–26–13 is acceptable for compliance with the requirements of this AD.

#### Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on October 23, 2003.

**Ali Bahrami,**

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

[FR Doc. 03–27213 Filed 10–28–03; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 131

[Docket No. 2000P–0685]

#### Milk and Cream Products and Yogurt Products; Petition to Revoke Standards for Lowfat Yogurt and Nonfat Yogurt and to Amend Standards for Yogurt and Cultured Milk; Reopening of the Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Advance notice of proposed rulemaking; reopening of the comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is reopening for 90 days the comment period for an advance notice of proposed rulemaking (ANPRM) that announced the filing of a petition asking the agency to revoke the standards of identity for lowfat yogurt and nonfat yogurt; amend the standard of identity for yogurt in numerous respects, including incorporation of provisions for lowfat and nonfat yogurt; and amend the standard of identity for cultured milk in numerous respects, including allowing for the use of the alternate term "fermented milk." This action is being taken in response to a request for more time to submit comments to FDA.

**DATES:** Submit written or electronic comments on the ANPRM by January 27, 2004.

**ADDRESSES:** Submit written comments 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>. The ANPRM and the petition are available for review at the Division of Dockets Management or electronically on FDA's Web site at <http://www.fda.gov/ohrms/dockets/98fr/03-16789.pdf> (ANPRM) and <http://www.fda.gov/ohrms/dockets/98fr/00p-0685-cp00001.pdf> (petition). You also may request a copy of these documents from the Division of Dockets Management.

**FOR FURTHER INFORMATION CONTACT:** Ritu Nalubola, Office of Nutritional Products, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS-820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-2371.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the *Federal Register* of July 3, 2003 (68 FR 39873), FDA published an ANPRM announcing that a petition was filed on February 18, 2000, requesting that the agency revoke the standards of identity for lowfat yogurt and nonfat yogurt; amend the standard of identity for yogurt in numerous respects, including incorporation of provisions for lowfat and nonfat yogurt; and amend the standard of identity for cultured milk in numerous respects, including allowing for the use of the alternate term "fermented milk." Interested persons were given until October 1, 2003, to comment on the ANPRM.

Following publication of the July 3, 2003, ANPRM, FDA received a request to allow interested persons additional time to comment. The requester asserted that the time period of 90 days was insufficient to respond fully to FDA's specific requests for comments and to allow potential respondents to thoroughly evaluate and address pertinent issues, including those that have emerged since the petition was filed in 2000.

FDA believes that it is sound public policy to reopen the comment period (21 CFR 10.40(b)(3)(i)), given the variety of scientific and other issues raised in the ANPRM.

##### II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the ANPRM. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that

individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments previously submitted to the Division of Dockets Management do not need to be resubmitted because all comments submitted with that docket number will be considered in any future rulemaking. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 21, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03-27188 Filed 10-28-03; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 314 and 320

[Docket No. 2003N-0341]

#### Requirements for Submission of In Vivo Bioequivalence Data; Proposed Rule

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend its regulations on submission of bioequivalence data to require an abbreviated new drug application (ANDA) applicant to submit data from all bioequivalence studies (BE studies) that the applicant conducts on a drug product formulation submitted for approval. In the past, ANDA applicants have submitted BE studies demonstrating that a generic product meets bioequivalence criteria for FDA to approve the ANDA, but have not typically submitted additional BE studies conducted on the same drug product formulation, such as studies that do not show that the product meets these criteria. FDA is proposing this change because we now believe that data from additional BE studies may be important in our determination of whether the proposed formulation is bioequivalent to the reference listed drug (RLD) and are relevant to our evaluation of ANDAs in general. In addition, such data will increase our understanding of how changes in components, composition, and methods of manufacture may affect formulation performance.

**DATES:** Submit written or electronic comments by January 27, 2004. Submit written comments on the information collection requirements by November 28, 2003.

**ADDRESSES:** Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. The Office of Management and Budget (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 faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202-395-6974.

#### FOR FURTHER INFORMATION CONTACT:

Aida L. Sanchez, Center for Drug Evaluation and Research (HFD-650), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-5847.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 505(j)(2)(A)(iv) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(2)(A)(iv)) requires that ANDA applicants submit, among other things, information showing that the applicant's drug is bioequivalent to a drug that has previously been approved by FDA and designated as an RLD. The statutory requirement is reflected in FDA's regulations in part 314 (21 CFR part 314) at § 314.94(a)(7). Part 320 (21 CFR part 320) at § 320.24 sets forth the types of evidence acceptable to establish bioequivalence. The most common BE studies are those performed on solid oral dosage forms of drugs that are absorbed into the systemic circulation. Data from BE studies provide an estimate of the rate and extent of drug absorption for a test product compared to a reference product. These data are examined, using statistical procedures, to determine whether the test product meets bioequivalence limits.

A BE study may fail to show that a test product meets bioequivalence limits because the test product has significantly higher or lower relative bioavailability (i.e., measures of rate and extent of absorption compared to the reference product). Where the relative bioavailability of a test product is too low, the concern is that not enough of the active ingredient is reaching the site of action and therefore the product may

not be as therapeutically effective as the RLD. Where the relative bioavailability of a test product is too high, the concern with the product generally is not therapeutic efficacy but rather its safety relative to the RLD. In some cases, bioequivalence will not be demonstrated because of inadequate numbers of subjects in the study relative to the magnitude of intrasubject variability rather than either significantly high or low relative bioavailability of the product.

## II. Not All BE Studies Are Currently Being Submitted

The act and FDA regulations require that an ANDA applicant submit information demonstrating bioequivalence of a proposed drug to the RLD, but they do not specify the type or quantity of information that must be submitted to demonstrate bioequivalence. It has been the practice of ANDA applicants to submit evidence of bioequivalence consisting of studies demonstrating that the rate and extent of absorption of the test product meets bioequivalence limits. Thus, ANDA applicants that have conducted multiple studies on a final formulation producing passing and nonpassing results have generally not submitted the results of the nonpassing study or studies to FDA. Similarly, ANDA applicants that have conducted multiple studies on a final formulation producing more than one passing result have generally not submitted the results of all of the passing studies to FDA. As a result, FDA only infrequently sees data from additional studies and is generally unaware of the existence of such studies. In rare instances, ANDA applicants have submitted additional BE studies or the agency has learned about such studies through other means. As discussed in section III of this document, information from additional BE studies conducted on a product can be important in assessing bioequivalence for that product.

## III. Need for Submission of All Studies

In recent years, there have been certain cases where applicants did not submit all of the BE studies conducted on the final formulation of an ANDA product prior to approval, and FDA discovered postapproval that the submission of such studies could have been important in assessing bioequivalence. The agency is not aware of any adverse public health consequences associated with products for which studies were not submitted. Moreover, the agency is not aware of any information regarding any generic product currently on the market that

would suggest that the product is not bioequivalent to a reference listed drug to which it has been designated as therapeutically equivalent. However, the agency now believes that it is necessary for the purposes of evaluating a drug product submitted for approval under an ANDA to have data obtained from all additional BE studies conducted on the final formulation. This view was supported by FDA's Advisory Committee for Pharmaceutical Science, which recommended in a recent meeting that FDA review all BE studies conducted by the applicant on the final formulation (Ref. 1). The agency is proposing that ANDA applicants submit information from all BE studies for the following reasons:

1. Data contained in additional passing and nonpassing BE studies can be important to FDA's assessment of bioequivalence for a specific product.

2. Even when additional BE studies are not critical to the agency's bioequivalence determination for the specific product being reviewed, the data provide valuable scientific information that increases the agency's knowledge and understanding of bioequivalence and generic drug development and promotes further development of science-based bioequivalence policies.

The agency's experience with evaluating additional passing and nonpassing BE studies has shown that information from such studies can be important in assessing whether a formulation is bioequivalent to the RLD. For example, in one recent case, the ANDA applicant conducted an additional BE study on the final formulation prior to submission of its ANDA, but did not submit the results of the study to FDA. The agency found out about the results of the additional study after approval of the ANDA. The additional study indicated that the bioequivalence of the approved product was questionable. Based on the information in the additional study, the agency reconsidered its decision to approve the drug and requested that the firm voluntarily withdraw the product from the market. The firm withdrew the product from the market and withdrew its ANDA. Although cases such as this may occur relatively infrequently, it is imperative that FDA be aware of the additional BE studies and have the information necessary to evaluate their significance.

When FDA receives an ANDA that contains one or more nonpassing BE studies for the final formulation, the agency will evaluate the significance of both the passing and nonpassing BE studies. As an initial matter, for each

study submitted in summary report form, FDA will consider whether it is necessary to request a full report from the applicant. Regardless of the form of the report, however, FDA anticipates that a number of factors will be critical in evaluating both the passing and nonpassing BE studies. For example, FDA may consider: (1) The statistical power of each study, (2) minor differences in the formulation used in each study, (3) whether the product was administered consistent with the RLD's labeling in every study, and/or (4) various other study design issues. In addition, FDA may inspect the sites of the different studies to determine whether there were technical flaws in how the studies were conducted. For example, the reliability of a particular study's results could be undermined by flaws in: (1) Its inclusion and exclusion criteria, (2) an investigator's compliance with standard operating procedures and/or the study protocol, (3) its analytical or assay methodologies, (4) the storage of samples, (5) how between treatment washout periods were carried out, and/or (6) various other flaws in how the study was conducted. The goal of FDA's evaluation will be to determine: (1) The importance and reliability of the data collected in the different studies and (2) how the studies should be weighed in making a bioequivalence determination. Ultimately, however, the responsibility to demonstrate that the ANDA product is bioequivalent to the RLD rests with the applicant. Therefore, if conflicting BE studies are submitted, it will ultimately be the applicant's responsibility to demonstrate why the nonpassing study or studies should not undermine a determination that the ANDA product is bioequivalent to the RLD.

Even in cases where information from additional BE studies is not critical to the agency's bioequivalence determination for a specific product, the data will provide valuable scientific information that increases our knowledge and understanding of bioequivalence and generic drug development issues. Data from additional BE studies also provide FDA with useful and relevant information about drug products submitted for approval, including how minor formulation or composition changes, or changes in study design, affect the performance of a formulation. FDA anticipates that further experience with data from additional passing and nonpassing BE studies will facilitate a more focused and efficient ANDA review process and enhance FDA's

ability to ensure sound science-based decisions.

#### IV. Description of the Proposed Rule

The proposed rule would amend and clarify current BE study submission requirements to specifically require applicants to submit data on all BE studies, including studies that do not meet passing bioequivalence criteria, performed on a drug product formulation submitted for approval under an ANDA or an amendment or supplement to an ANDA that contains BE studies. Applicants would also be required to submit data in an annual report on all postmarketing BE studies conducted or otherwise obtained on the approved drug product formulation during the annual reporting period. In addition to the regulatory changes and clarifications described in this rulemaking, the agency is planning to issue guidance on this subject to help ensure that all affected entities are notified of, and understand, the proposed changes.

##### *A. Proposed Requirements for the Submission of Data From All BE Studies Conducted on the Same Drug Product Formulation Submitted for Approval in ANDAs, Supplements, and Amendments*

###### 1. Proposed Requirements for Reporting BE Studies in ANDAs Submitted Under § 314.94

Current § 314.94(a)(7)(i) states that an ANDA applicant must submit information that shows a drug product to be bioequivalent to an RLD. FDA is proposing to amend § 314.94(a)(7)(i) by adding language requiring an applicant to submit information from all BE studies, both passing and nonpassing, conducted on the same formulation of the drug product submitted for approval. The applicant would continue to be required to submit complete reports of the BE studies upon which the applicant relies for approval. For all other BE studies on the same drug product formulation, the applicant would be required to submit a summary report. FDA plans to issue guidance on the format of a summary report. If a summary report is submitted and the agency believes that there may be bioequivalence issues or concerns with the product, the agency may require that a complete report be prepared and submitted to FDA.

Section 320.21(b)(1) and (b)(2) (21 CFR 320.21(b)(1) and (b)(2)) requires that any person submitting an ANDA include in the application evidence demonstrating that the drug submitted for approval is bioequivalent to the RLD

or information to permit FDA to waive the submission of evidence to demonstrate bioequivalence as provided in § 320.21(f). FDA is proposing to amend current § 320.21(b)(1) to add language requiring an applicant to submit evidence demonstrating bioequivalence that includes information from all BE studies, both passing and nonpassing, conducted on the same formulation submitted for approval. This change is consistent with the change being proposed in § 314.94(a)(7)(i) for ANDA submissions.

###### 2. Proposed Requirements for Reporting BE Studies in ANDA Supplements Submitted Under § 314.97 (21 CFR 314.97)

In addition to modifying the information required in ANDAs, the proposed amendment to § 320.21(b)(1) would also modify the information required to be included in certain supplements to approved ANDAs (which are submitted under § 314.97). Under § 320.21(c), any person submitting a supplement to an ANDA must include the evidence or information required by § 320.21(b) (i.e., BE studies or information permitting waiver) for certain types of changes to the drug product or labeling. For example, a change in the manufacturing process beyond the variations provided for in the ANDA would require a supplement containing BE studies or information permitting waiver of such studies. FDA is not proposing to amend the language of § 320.21(c). However, because § 320.21(c) incorporates the requirements of § 320.21(b) by reference, the proposed amendment to § 320.21(b)(1) would modify the requirements of § 320.21(c). Specifically, for ANDA supplements requiring BE studies under § 320.21(c), applicants would be required to include the information required by proposed § 320.21(b)(1)(i.e., information from all BE studies, both passing and nonpassing, conducted on the same formulation for which the supplement is being submitted).

###### 3. Proposed Requirements for Reporting BE Studies in Amendments to ANDAs Submitted Under § 314.96

Section 314.96(a)(1) states that an ANDA applicant may amend an ANDA that has been submitted but not yet approved to revise existing information or provide additional information. FDA is proposing to amend current § 314.96(a)(1) to require that, where BE studies are submitted in an amendment, the amendment contain information from all BE studies, both passing and nonpassing, conducted by the applicant

on the same drug product formulation, unless the information has previously been submitted to FDA in the applicant's ANDA.

###### 4. Proposed Requirements for the Format of the Reports of BE Studies Submitted in ANDAs, Supplements, and Amendments

Under the proposed rule, proposed §§ 314.94(a)(7)(i), 320.21(b)(1), and 314.96(a)(1), as well as § 320.21(c) (which incorporates the requirements of § 320.21(b)(1) by reference) would require applicants to submit full reports of BE studies upon which the applicant relies for approval and either full or summary reports of all other BE studies conducted on the same drug product formulation. If a summary BE study report is submitted and FDA believes that there may be a bioequivalence issue or concern with the product, FDA may require that a complete report be prepared and submitted to FDA.

##### *B. Proposed Requirement for the Submission of Data From All BE Studies Conducted on the Same Drug Product Formulation Submitted for Approval Under a Petition Approved Under § 314.93*

Section 314.94(a)(7)(ii) states, in relevant part, that if an ANDA is submitted under a petition approved under § 314.93, the applicant must submit the results of any bioavailability or bioequivalence testing required by the agency to show that the active ingredients of the proposed drug product are of the same pharmacological or therapeutic class as those in the RLD and that the proposed drug product can be expected to have the same therapeutic effect as the RLD. The agency is proposing to interpret § 314.94(a)(7)(ii) to require the submission of results from all bioavailability and BE studies conducted on the same formulation. FDA believes that the language in current § 314.94(a)(7)(ii) is sufficient to accomplish this purpose. Therefore, FDA is not amending this language, but is clarifying through this rulemaking that it intends to require applicants that submit ANDAs under petitions approved under § 314.93 to submit information from all BE studies, passing and nonpassing, conducted on the same drug product formulation. Applicants would be required to submit complete reports of the bioavailability or BE studies upon which the applicant relies for approval and either a complete or summary report for all other studies on the same drug product formulation. If a summary report is submitted for an

additional study and the agency believes that there may be bioequivalence issues or concerns with the product, the agency may request that a complete study report be submitted to FDA.

*C. Proposed Requirement for the Submission of Data From All Postmarketing BE Studies Conducted or Otherwise Obtained by the Applicant on the Same Drug Product Formulation That Has Been Approved*

Under § 314.81(b)(2)(vi), an ANDA applicant is required to submit, in an annual report, the results of “biopharmaceutical, pharmacokinetic, and clinical pharmacology studies \* \* \* conducted by or otherwise obtained by the applicant” during the annual reporting period. All BE studies would fall into one or more of the categories of studies (i.e., biopharmaceutical, pharmacokinetic, and clinical pharmacology) required to be submitted under this section. As a result, the agency is proposing to interpret this section to require ANDA applicants with approved ANDAs to submit postmarketing reports of all BE studies, both passing and nonpassing, conducted or obtained by the applicant during the annual reporting period on the same drug product formulation that has been approved. FDA believes that the language in current § 314.81(b)(2)(vi) is sufficient to accomplish this purpose. Therefore, FDA is not amending this language, but is clarifying through this rulemaking that it intends to interpret the section to require submission of postmarketing reports of all BE studies conducted or otherwise obtained by ANDA applicants. Under this section, applicants may submit either complete or summary reports of the BE studies conducted or otherwise obtained during the annual reporting period. If a summary report is submitted for a BE study and FDA believes that there may be bioequivalence issues or concerns with the product, the agency may require that a complete study report be prepared and submitted to FDA.

FDA believes that clarifying its interpretation of § 314.81(b)(2)(vi) is important for ensuring consistency in its premarketing and postmarketing requirements regarding the submission of BE studies. However, the agency also believes that it would be highly unusual for an ANDA applicant to conduct a postmarketing BE study. In particular, the agency believes that an applicant would rarely, if ever, conduct a postmarketing BE study other than one required for an ANDA supplement.

*D. What Constitutes the “Same Drug Product Formulation” for the Purposes of Required BE Study Submissions*

FDA is proposing to require ANDA applicants to submit information from all BE studies, both passing and nonpassing, conducted on the same drug product formulation in conjunction with the submission of ANDAs, amendments, and supplements containing BE studies. FDA intends that the terminology “same drug product formulation” would include formulations that have minor differences in composition or method of manufacture from the formulation submitted for approval, but are similar enough to be relevant to the agency’s determination of bioequivalence. For example, where an applicant makes formulation or manufacturing changes of the type that qualify as level 1 or level 2 changes in FDA’s current guidances on scale up and postapproval changes (SUPAC) listed below, the agency would consider the original and modified products to be similar enough to constitute the same drug product formulation for the purposes of the proposed rule. The SUPAC guidances include:

1. “SUPAC-IR: Immediate-Release Solid Oral Dosage Forms: Scale-Up and Postapproval Changes: Chemistry, Manufacturing and Controls, In Vitro Dissolution Testing, and In Vivo Bioequivalence Documentation” (November 1995);
2. “SUPAC-IR: Questions and Answers about the SUPAC-IR Guidance” (February 1997);
3. “SUPAC-MR: Modified Release Solid Oral Dosage Forms: Scale-Up and Postapproval Changes: Chemistry, Manufacturing and Controls; In Vitro Dissolution Testing and In Vivo Bioequivalence Documentation” (September 1997);
4. “SUPAC-IR/MR: Immediate-Release and Modified Release Solid Oral Dosage Forms: Manufacturing Equipment Addendum” (January 1999);
5. “SUPAC-SS: Nonsterile Semisolid Dosage Forms: Scale-Up and Postapproval Changes: Chemistry, Manufacturing and Controls; In Vitro Release Testing and In Vivo Bioequivalence Documentation” (May 1997); and
6. “SUPAC-SS: Nonsterile Semisolid Dosage Forms: Manufacturing Equipment Addendum” (Draft Guidance, December 1998).

Persons interested in a full discussion of level 1 and level 2 changes should consult the SUPAC guidances listed previously in section IV.D of this document. The guidances may be

obtained upon request from the Center for Drug Evaluation and Research, Office of Training and Communications, Division of Drug Information (HFD-240), 5600 Fishers Lane, Rockville, MD, 20857, 301-827-4573. The guidances are also available on the Internet at <http://www.fda.gov/cder/guidance/index.htm> under the Chemistry heading.

**V. Legal Authority**

Under section 505(j)(2)(A)(iv) of the act, an ANDA applicant must submit “information to show that the new drug is bioequivalent to the [reference] listed drug \* \* \*.” If this requirement is not met because information submitted in the application is insufficient to show that the drug is bioequivalent to the listed drug referred to in the application, FDA may deny approval of an ANDA (section 505(j)(4)(F) of the act; § 314.127(a)(6)(i) and (ii)). FDA believes that an application may not be complete if a BE study that is conducted by an applicant on the same drug product formulation is not submitted for review because the agency is being asked to make a bioequivalence determination based on a review of only part of the available bioequivalence data. As discussed in section III of this document, the agency’s experience with additional bioequivalence data on the same drug product formulation has shown that such data can be important, and even critical, to the agency’s bioequivalence determination.

Requiring the reporting of all BE studies is consistent with the act’s requirement that applications must not contain untrue statements of material fact (section 505(j)(4)(K) of the act, § 314.127(a)(13)). FDA believes that failure to report all BE studies conducted on the same formulation of a drug product submitted for approval in an ANDA, amendment, or supplement may constitute selective reporting of a material fact, which can result in withdrawal of approval of an application under § 314.150(b)(6). Selective reporting refers to reports that contain certain passing results only. Selective reporting does not consistently contain nonpassing results and does not consistently contain a scientific justification for rejecting the nonpassing data (see FDA’s notice describing selective reporting of stability tests (60 FR 32982 at 32983, June 26, 1995)).

**VI. Implementation**

FDA proposes that any final rule that may issue based on this proposal become effective 6 months after its date of publication in the **Federal Register**. Proposed §§ 314.94(a)(7)(i), 314.96(a)(1), and 320.21(b)(1), as well as § 320.21(c)

(which references the requirements of § 320.21(b)(1) and § 314.94(a)(7)(ii) (as interpreted in section IV.B of this document), would apply only to ANDAs, amendments, or supplements submitted on or after the effective date of the final rule. Thus, applicants who have submitted these applications prior to the effective date of the final rule would not be required to report additional BE studies that were conducted in conjunction with their applications. However, where an ANDA has been approved or submitted prior to the effective date of the final rule, and a supplement or amendment to the ANDA containing a BE study or studies is submitted on or after the effective date of the final rule, the applicant would be required under proposed §§ 314.96(a)(1) and 320.21(b)(1), as well as § 320.21(c) (which refers to the requirements of § 320.21(b)(1), to submit all BE studies, both passing and nonpassing, conducted in conjunction with the supplement or amendment. In addition, on and after the effective date of the final rule, all applicants with approved ANDAs, including ANDAs that have been approved or submitted for approval prior to the effective date of the final rule, would be required to comply with § 314.81(b)(2)(vi), as interpreted by FDA in section IV.C of this document. However, the agency is proposing to use its discretion in the enforcement of § 314.81(b)(2)(vi) such that it would apply only to those additional BE studies conducted after the effective date of the final rule. Thus, applicants with approved ANDAs would be required to provide information in an annual report on additional passing or nonpassing BE studies conducted or obtained by the applicant on the approved drug product formulation after the effective date of the final rule.

#### VII. Comments on the Proposed Rule

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

#### VIII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type

that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### IX. Analysis of Economic Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612 (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121))), and the Unfunded Mandates Reform Act (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to prepare a Regulatory Flexibility Analysis for each rule unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866. With respect to the Regulatory Flexibility Act, the agency does not believe that the proposed rule is likely to have a significant economic impact on a substantial number of small entities. Nevertheless, because our projections are uncertain, the analysis presented below also constitutes the agency's Initial Regulatory Flexibility Analysis. Because the rule does not impose mandates on State, local, or tribal governments, or the private sector, that will result in an expenditure in any one year of \$100 million or more, FDA is not required to perform a cost-benefit analysis according to the Unfunded Mandates Reform Act.

##### A. Background

Under current regulations, ANDA applicants are required to submit information demonstrating that a generic product is bioequivalent to an RLD. In the past, firms have submitted

only the results of those BE studies that demonstrate that the rate and extent of absorption of the test product meets bioequivalence limits. Firms have not typically submitted the results of any additional BE studies that were conducted on the same product formulation submitted for approval. As discussed in section III of this document, the agency now believes that data and information from additional BE studies, both passing and nonpassing, are important for determining whether the proposed formulation is bioequivalent to the RLD. Therefore, FDA is proposing to require ANDA applicants to submit all BE studies, passing and nonpassing, on a drug product formulation submitted for approval under an ANDA, amendment or supplement.

As discussed in section IV.C of this document, the agency also believes that it is important to clarify that the responsibility to submit all BE studies, passing and nonpassing, continues after approval under the annual report submission requirements. However, the agency believes that it would be highly unusual for an ANDA applicant to conduct a postmarketing BE study. In particular, the agency believes that an applicant would rarely, if ever, conduct a postmarketing BE study other than one required for an ANDA supplement.

##### B. Affected Entities

The proposed rule would affect establishments that submit ANDAs containing BE studies. FDA does not know the precise number of entities, either large or small, that will submit ANDAs in the future. In the year 2000, there were 346 BE studies submitted by 57 applicants in 197 ANDAs, amendments, and supplements. FDA estimates that this proposed rule would result in a 10 percent increase in the number of BE studies submitted annually, or 35 (346 x 0.10) additional studies. This estimate is based on information suggesting that approximately 20 percent of all BE studies conducted produce results that do not meet bioequivalence limits and that approximately 50 percent of these studies are conducted on formulations that are not submitted for approval.

##### C. Compliance Requirements and Costs

The main cost of complying with this proposed rule would be staff time. This analysis assumes a weighted average wage rate of \$40 per hour (Ref. 2). FDA estimates it would require approximately 120 hours of staff time to prepare and submit each additional complete BE study report, and approximately 60 hours of staff time for

each additional BE study summary report. The agency believes that a complete report would be required approximately 20 percent of the time, while a summary would suffice approximately 80 percent of the time.

Based on a weighted-average calculation using the information presented above, the submission of each additional BE study is expected to cost \$2,880 ( $[120 \times \$40 \times 0.2] + [60 \times \$40 \times 0.8]$ ). Thus, the overall impact on the industry of reporting an additional 35 BE studies per year would be \$100,800 ( $\$2,880 \times 35$ ).

Assuming it is equally likely that each of the 35 additional BE studies would be conducted by any of the 57 applicants, a binomial distribution can be used to predict how many firms would submit additional studies. Based on this distribution, 19 firms would incur costs of \$2,880 for 1 additional BE study, 6 firms would incur costs of \$5,760 ( $2 \times \$2,880$ ) for two additional studies, and 1 firm would incur costs of \$8,640 ( $3 \times \$2,880$ ) for 3 additional studies (the total number of studies in the calculation does not equal 35 because of rounding). Thus, the maximum expected annual cost burden for any one firm would be \$8,640. More than half (31 of 57, or 54 percent) of all firms would be expected to incur no additional annual costs under the proposed rule.

#### *D. Impact on Small Entities*

FDA recognizes that some of the establishments that would be required to submit additional BE study reports would be small entities with limited resources. As shown in the following paragraphs, the agency estimates that the maximum expected cost of the proposed rule for any one small entity would be between 0.58 percent and 1.9 percent of the total cost of preparing and submitting an ANDA, and that the maximum expected burden for any one of these small entities would be 0.005 percent of average revenues. Although FDA does not believe it likely that the proposed rule would have a significant economic impact on a substantial number of small entities, the agency acknowledges the uncertainty of its estimates with respect to the number of additional BE studies that would be submitted, their distribution among large and small entities, and the number of small entities affected. As a result, the agency has prepared this Initial Regulatory Flexibility Analysis and requests detailed public comment regarding the number of small entities affected by the proposed rule as well as its economic impact.

FDA also recognizes that requiring submission of all BE study results may result in a longer total application review time if these additional BE study results suggest that a generic product is not bioequivalent to the RLD. In these situations, firms would be required to submit additional data that demonstrate bioequivalence in order to obtain marketing approval. Marketing approval may be denied if evidence from the additional BE studies fails to establish bioequivalence. The agency does not know how frequently these situations might occur.

According to standards established by the Small Business Administration (SBA), a small pharmaceutical preparation manufacturer (NAICS Code 325412) employs fewer than 750 employees (Ref. 3). An FDA review of ANDAs submitted during the 3-year period from October 1996 to September 1999 found that 32 percent of the applications (322 of 1,007) were from small entities and that 39 percent of ANDA sponsors (64 of 164) were small entities. Thus, the majority of ANDAs are neither submitted nor sponsored by small entities. Assuming these proportions continue to hold, there would be 22 small entities ( $0.39 \times 57$ ) submitting ANDAs annually. FDA also assumes that this group of small entities would submit 11 of the additional 35 BE studies ( $0.10 \times 0.32 \times 346$ ) per year.

Assuming it equally likely that each of the 11 additional BE studies would be reported by any of the 22 small entities, a binomial distribution can be used to predict how many firms would submit additional studies. Based on this distribution, seven small entities would incur costs of \$2,880 for one additional BE study, and two firms would incur costs of \$5,760 ( $2 \times \$2,880$ ) for two additional BE studies. Thus, the maximum expected burden for any one small entity would be \$5,760. More than half (13 of 22, or 59 percent) of all small entities would be expected to incur no additional annual costs under the proposed rule.

The cost of preparing and submitting an ANDA is believed to be between \$300,000 (Ref. 4) and \$1 million (Ref. 5). Based on this information, the maximum expected cost burden of the proposed rule on any one firm would be between 0.86 percent and 2.9 percent of the total cost of preparing and submitting an ANDA. The maximum expected cost burden for any one small entity would be between 0.58 percent and 1.9 percent of the total cost of preparing and submitting an ANDA.

A year 2000 survey of 26 public generic drug companies revealed 15 firms with fewer than 750 employees

(Ref. 5). These 15 small entities had an average of 331 employees and average annual revenues of \$115 million. The maximum expected burden of this proposed rule for any one of these small entities therefore would be only 0.005 percent of average revenues. The agency believes this cost could be recovered through drug sales after marketing approval.

In recognition of the potential economic impact on small entities, the agency has structured the rule to minimize the reporting burden. For example, the agency believes that summary reports of additional BE studies would suffice 80 percent of the time provided that complete results are available to FDA upon request. The agency believes that a summary report would require only 60 hours of staff time per BE study, or half the time and expense required to prepare and submit a complete report. This provision should prove particularly beneficial for small entities.

Furthermore, no specific educational or technical skills are required to complete and submit the additional BE study reports. Trained and qualified employees of an establishment who are involved in normal operations generally complete similar activities. Also, FDA has reviewed related Federal rules and has not identified any rules that duplicate, overlap, or conflict with the proposed rule.

FDA has evaluated only two regulatory options: (1) Continuing the current practice of requiring the submission of only pivotal BE study results, or (2) requiring the submission of results from all BE studies conducted by an applicant on a final drug product formulation. Under the first option, firms would incur no additional reporting costs, although some firms might experience significant costs if their product were initially approved and subsequently recalled or had approval withdrawn because the product is found not to be bioequivalent to the RLD. The agency believes that the second option, requiring that results from all BE studies conducted on the final drug product formulation be submitted for approval, is important for assessing bioequivalence. The proposed rule would require reporting of all BE studies, but would permit summary reports for nonpivotal BE studies except where full reports are specifically requested by the agency. The agency believes that the proposed rule therefore addresses the perceived regulatory need in the least intrusive and most cost effective way. FDA specifically requests public comment regarding any other viable alternatives to this proposed rule.

### E. Benefits of the Proposed Rule

The proposed rule would generate economic benefits both for individuals and for society as a whole to the extent that the reporting of data from all BE studies would prevent product discontinuation and adverse health effects. Also, the data from additional BE studies could provide valuable scientific information, thereby increasing the agency's understanding of bioequivalence and generic drug development issues, and improving the drug approval process. Therefore, this proposed rule would permit FDA to make more informed BE determinations in the future.

### X. Paperwork Requirements

This proposed rule contains information collection requirements that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these requirements is given below with an estimate of the annual reporting burden. Included in this estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for 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.

*Title:* Requirements for Submission of In Vivo Bioequivalence Data; Proposed Rule.

*Description:* FDA is proposing to alter the requirements for certain ANDAs, ANDA amendments, and ANDA supplements submitted under §§ 314.94, 314.96, and 314.97. Specifically, FDA is proposing to amend §§ 314.94(a)(7)(i), 314.96(a)(1), and 320.21(b)(1), as well as modify the requirements of § 320.21(c) (which refers to § 320.21(b)(1)), to require an ANDA applicant to submit information from all BE studies, both passing and nonpassing, conducted by the applicant on the same formulation of the drug product submitted for approval under an ANDA, amendment, or supplement.

In addition, FDA is proposing through this rulemaking to interpret § 314.94(a)(7)(ii) as requiring that ANDA applicants who submit ANDAs under a petition approved under § 314.93 submit information on all bioavailability or BE studies conducted on the same drug product formulation submitted for approval.

FDA is also proposing to clarify through this rulemaking that it intends to interpret § 314.81(b)(2)(vi) as requiring the submission of postmarketing reports of all BE studies conducted or otherwise obtained by ANDA applicants in the applicant's annual report. However, as discussed in section IV.C of this document, FDA believes it would be highly unusual that an applicant would conduct a postmarketing BE study. In particular, the agency believes that an applicant would rarely, if ever, conduct a postmarketing BE study, other than one required for an ANDA supplement.

*Description of Respondents:* Persons and businesses, including small businesses and manufacturers.

*Burden Estimate:* Table 1 of this document provides an estimate of the annual reporting burden under the proposed rule.

The proposed rule would affect establishments that submit ANDAs. FDA does not know the precise number of entities, either large or small, that will submit ANDAs in the future. In the year 2000, 57 applicants submitted 346 BE studies in 197 ANDAs, amendments,

and supplements. FDA estimates that this proposed rule would result in a 10 percent increase in the number of BE studies submitted annually, or 35 (346 x 0.10) additional studies. This estimate is based on the assumptions that approximately 20 percent of all BE studies conducted produce results that do not meet bioequivalence limits and that about half of these studies are conducted on formulations that are not submitted for approval.

FDA estimates it would require approximately 120 hours of staff time to prepare and submit each additional complete BE study report and approximately 60 hours of staff time for each additional BE summary report. The agency believes that a complete report would be required approximately 20 percent of the time, while a summary would suffice approximately 80 percent of the time. Based on a weighted-average calculation using the information presented above, the submission of each additional BE study is expected to take 72 hours of staff time ( $[(120 \times 0.2) + (60 \times 0.8)]$ ).

In table 1, FDA has estimated the reporting burden associated with each section of the proposed rule. FDA believes that the vast majority of additional BE studies would be reported in ANDAs (submitted under § 314.94) rather than supplements (submitted under § 314.97) because it is unlikely that a sponsor will conduct BE studies with a drug after the drug has been approved. Moreover, drugs approved under an ANDA prior to the effective date of the final rule would only be required to report additional BE studies conducted after the effective date, which should not result in the submission of many BE study reports in supplements. With respect to the reporting of additional BE studies in amendments (submitted under § 314.96), this should also account for a small number of reports because most BE studies would be conducted on a drug prior to the submission of the ANDA and would be reported in the ANDA itself.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

21 CFR Section	No. of Respondents	Annual Frequency of Response	Total Annual Responses	Hours per Response	Total Hours
314.94(a)(7)	33	1	33	72	2,376
314.96(a)(1)	1	1	1	72	72
314.97	1	1	1	72	72
Total					2,520

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding this information collection to the Office of Information and Regulatory Affairs, OMB (see ADDRESSES).

## XI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

## XII. References

The following references have been placed on display in the Division of Dockets Management (see ADDRESSES) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Minutes, Pharmaceutical Sciences Advisory Committee, November 16, 2000.
2. U. S. Department of Labor, Bureau of Labor Statistics, Table 20: Private Industry, Health Services, Employer Costs per Hour Worked for Employee Compensation, Professional Specialty and Technical Occupations, available online at [www.bls.gov/ncs/ect/sp/ecechist.pdf](http://www.bls.gov/ncs/ect/sp/ecechist.pdf).
3. U. S. Small Business Administration, Office of Size Standards, Table of Size Standards, available online at [www.sba.gov/size/indextableofsize.html](http://www.sba.gov/size/indextableofsize.html).
4. Balaji, K., "Generics, The Opportunity Beckons," as reported by Frost and Sullivan ([www.frost.com](http://www.frost.com)), 4 July 2001.
5. Humphreys, A., "Generics: Gaining Momentum, Special Report," *Med Ad News*, vol. 19, p. 42, October 2000.

## List of Subjects

### 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

### 21 CFR Part 320

Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, it is proposed that 21 CFR parts 314 and 320 be amended as follows:

## PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

2. Section 314.94 is amended by revising paragraph (a)(7)(i) to read as follows:

### § 314.94 Content and format of an abbreviated application.

(a) \* \* \*

(7) *Bioequivalence.* (i) Information that shows that the drug product is bioequivalent to the reference listed drug upon which the applicant relies. A complete study report must be submitted for the bioequivalence study upon which the applicant relies for approval. For all other bioequivalence studies conducted on the same drug product formulation, the applicant must submit either a complete or summary report. If a summary report of a bioequivalence study is submitted and FDA determines that there may be bioequivalence issues or concerns with the product, FDA may require that the applicant submit a complete report of the bioequivalence study to FDA; or

\* \* \* \* \*

3. Section 314.96 is amended by adding four sentences at the end of paragraph (a)(1) to read as follows:

### § 314.96 Amendments to an unapproved abbreviated application.

(a) \* \* \*

(1) \* \* \* Amendments containing bioequivalence studies must contain reports of all bioequivalence studies conducted by the applicant on the same drug product formulation, unless the information has previously been submitted to FDA in the abbreviated new drug application. A complete study report must be submitted for any bioequivalence study upon which the applicant relies for approval. For all other bioequivalence studies conducted on the same drug product formulation, the applicant must submit either a complete or summary report. If a summary report of a bioequivalence study is submitted and FDA determines that there may be bioequivalence issues or concerns with the product, FDA may require that the applicant submit a complete report of the bioequivalence study to FDA.

\* \* \* \* \*

## PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

4. The authority citation for 21 CFR part 320 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 355, 371.

5. Section 320.21 is amended by revising paragraph (b)(1) to read as follows:

### § 320.21 Requirements for submission of in vivo bioavailability and bioequivalence data.

\* \* \* \* \*

(b) \* \* \*

(1) Evidence demonstrating that the drug product that is the subject of the abbreviated new drug application is bioequivalent to the reference listed drug (defined in § 314.3(b)). A complete study report must be submitted for the bioequivalence study upon which the applicant relies for approval. For all other bioequivalence studies conducted on the same drug product formulation, the applicant must submit either a complete or summary report. If a summary report of a bioequivalence study is submitted and FDA determines that there may be bioequivalence issues or concerns with the product, FDA may require that the applicant submit a complete report of the bioequivalence study to FDA; or

\* \* \* \* \*

Dated: October 7, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03-27187 Filed 10-28-03; 8:45 am]

BILLING CODE 4160-01-S

## POSTAL SERVICE

### 39 CFR Part 111

#### Refund Procedures for Metered Postage

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service proposes to revise the *Domestic Mail Manual* (DMM) to allow refunds for unused, undated metered postage. The proposed mailing standard would benefit any mailer who generates significant quantities of unused, undated metered postage and is able to meet the refund criteria. The Postal Service also proposes minor clarifications to the procedures for requesting refunds for unused, dated metered postage.

**DATES:** Submit comments on or before November 28, 2003.

**ADDRESSES:** Mail or deliver written comments to Charles Tricamo, New

York Rates and Classification Service Center, Postal Service, 1250 Broadway FL 14, New York, NY, 10095-9599. You can view and copy all written comments at the same address between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Charles Tricamo, New York Rates and Classification Service Center, at 212-613-8676.

**SUPPLEMENTARY INFORMATION:** Inclusion of a date in meter indicia is optional for Standard Mail and Package Services items. Many mailers choose to omit the date to increase their production flexibility and allow them to deposit the mailing at any time, even though Postal Service mailing standards do not allow refunds for unused meter indicia lacking a date. The Postal Service grants refunds only for unused, dated meter indicia if requested within 60 days of printing the indicia. The Postal Service proposes that if the mailer can provide sufficient documentation with the refund request to support and validate the proper amount of the refund, the date the mailing was prepared, and the validity of the indicia on the mailpieces, then it could grant refunds for undated metered mail. The Postal Service proposes to apply the existing time frame restrictions for dated metered mail to undated metered mail. Additionally, the Postal Service proposes that refunds for unused, undated metered postage will only be considered when the customer submits at least 500 mailpieces from a single mailing, or, as an alternative, indicia worth at least \$500 from a single mailing, along with the required supporting documentation. When more than one meter was used to prepare the mailing, a separate PS Form 3533, *Application and Voucher for Refund of Postage, Fees, and Services*, must be submitted for each meter used to print the unused indicia submitted for refund. Mailers concerned about their inability to obtain a refund for unused, undated metered postage because they have less than the required mail volume or cannot provide the required documentation should use dated meter indicia or permit imprint for their Standard Mail and Package Services mailpieces, as permitted, in lieu of undated meter indicia.

As part of this proposed rule, the Postal Service also proposes to revise DMM P014, Refunds and Exchanges, to clarify the mailing standards for refunds of unused, dated meter indicia. Portions of P014 are reorganized to consolidate all of the information related to submitting a refund request for unused meter indicia. Also included is a

proposed clarification to specify that a contract postal unit (CPU) will handle refunds for unused meter indicia in accordance with the contract each CPU has executed with the Postal Service for the sale of metered postage.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the *Domestic Mail Manual*, incorporated by reference in the *Code of Federal Regulations*. See CFR part 111.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

For reasons stated in the preamble, the Postal Service proposes to amend 39 CFR part 111 as follows:

**PART 111—[AMENDED]**

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001, 3011, 3201, 3219, 3403-3406, 3621, 3626, 5001.

2. Revise *Domestic Mail Manual* (DMM) as set forth below:

**Domestic Mail Manual (DMM)**

\* \* \* \* \*

**P Postage and Payment Methods**

*P000 Basic Information*

*P010 General Standards*

\* \* \* \* \*

*P014 Refunds and Exchanges*

\* \* \* \* \*

**2.0 Postage and Fees Refunds**

**2.1 Refund Standards**

A refund for postage and fees may be made:

\* \* \* \* \*

[Add new item e to read as follows:]

e. Under the terms of a contract between the contract postal unit (CPU) and the USPS® for unused postage printed by the CPU.

\* \* \* \* \*

[Delete 2.5 and 2.6. Renumber current 2.7 through 2.12 as new 2.5 through 2.10, respectively.]

\* \* \* \* \*

**2.7 Applying for Refund**

[Revise text of renumbered 2.7 to read as follows:]

For refunds under 2.0, the customer must apply for a refund on PS Form 3533; submit it to the postmaster; and

provide the envelope, wrapper, or a part of it showing the names and addresses of the sender and addressee, canceled postage and postal markings, or other evidence of postage and fees paid. Refunds for metered postage are submitted under 3.0.

**2.8 Ruling on Refund Request**

[Revise text of renumbered 2.8 to read as follows:]

Refund requests are decided based on the specific type of postage or mailing:

a. Refunds under 2.0. The local postmaster grants or denies refunds under 2.0. The customer may appeal an adverse ruling through the postmaster to the rates and classification service center (RCSC) manager who issues the final agency decision.

b. Dated metered postage, except for PC Postage® systems, under 3.0. The postmaster at the licensing Post Office™ grants or denies requests for refunds for dated metered postage under 3.0. The licensee may appeal an adverse ruling within 30 days through the manager of Postage Technology Management, USPS Headquarters (see G043 for address), who issues the final agency decision. The original meter indicia must be submitted with the appeal.

c. Undated metered postage under 3.0. The manager, business mail entry (MBME) at the district Post Office overseeing the mailer's licensing Post Office, or designee, grants or denies requests for refunds for undated metered postage under 3.0. The customer may appeal a decision on undated metered postage within 30 days through the MBME, or designee, to the RCSC manager who issues the final agency decision. The original meter indicia must be submitted with the appeal.

d. PC Postage systems under 3.0. The system provider grants or denies a request for a refund for dated indicia printed by PC Postage systems under 3.0 using established USPS criteria. For dated PC Postage indicia only, the licensee may appeal an adverse ruling within 30 days through the manager of Postage Technology Management, USPS Headquarters, who issues the final agency decision. The original indicia must be submitted with the appeal.

e. Optional procedure (OP) mailings. Mailer's request for a refund must be submitted to the manager of Business Mailers Support (BMS), USPS Headquarters (see G043 for address).

\* \* \* \* \*

### 3.0 Refund Request for Postage Evidencing Systems and Metered Postage

\* \* \* \* \*

*[Revise title and text of 3.2 to read as follows:]*

#### 3.2 Unused, Dated Postage Evidencing System Indicia, Except for PC Postage Indicia

Unused, dated postage meter indicia are considered for refund only if complete, legible, and valid. PC Postage indicia refunds are processed under 3.3. All other metered postage refund requests must be submitted as follows:

a. The licensee must submit the request. The refund request must include proof that the person or entity requesting the refund is the licensee for the postage meter that printed the indicia. Acceptable proof includes a copy of the lease, rental agreement, or contract.

b. The licensee must submit the request, along with the items bearing the unused postage, to the licensing Post Office. The items must be sorted by meter used and then by postage value shown in the indicia, and must be properly faced and packaged in groups of 100 identical items when quantities allow. The request is processed by the USPS. The postmaster approves or denies the refund request.

c. The licensee must submit the refund request within 60 days of the date(s) shown in the indicia.

d. When the unused metered postage is affixed to a mailpiece, the refund request must be submitted with the entire envelope or wrapper. The unused metered postage must not be removed from the mailpiece once applied.

e. Indicia printed on labels or tapes not stuck to wrappers or envelopes must be submitted loose and must not be stapled together or attached to any paper or other medium. However, self-adhesive labels printed without a backing may be submitted on a plain sheet of paper.

f. If a part of one indicium is printed on one envelope or card and the remaining part on one or more others, they must be fastened together to show that they represent one indicium.

g. Refunds are allowable for indicia on metered reply envelopes only when it is obvious that an incorrect amount of postage was printed on them.

h. The refund request must be submitted with a properly completed PS Form 3533 (see I021). A separate PS Form 3533 must be completed for each meter for which a refund is requested. All identifying information and all sections related to the refund requested

must be completed. Charges for processing a refund request for unused, dated meter indicia are as follows:

(1) If the total face value of the indicia is \$350 or less, the amount refunded is 90% of the face value. USPS may process the refund payment locally via a no-fee postal money order.

(2) If the total face value is more than \$350, the amount refunded is reduced by a figure representing \$35 per hour, or fraction thereof, for the actual hours to process the refund, with a minimum charge of \$35. The postmaster will submit the approved PS Form 3533 to the USPS Imaging and Scanning Center for payment processing through the Accounting Service Center.

*[Renumber current 3.3 and 3.4 as new 3.5 and 3.6, respectively. Add new 3.3 and 3.4 to read as follows:]*

#### 3.3 Unused, Dated PC Postage Indicia

Unused, dated PC Postage indicia are considered for refund only if complete, legible, and valid. The refund request must be submitted as follows:

a. Only the PC Postage licensee may request the refund. The licensee must submit the request, along with the items bearing the unused postage, to the system provider. The request is processed by the provider, not the USPS.

b. The licensee must submit the refund request within 30 days of the date(s) shown in the indicia.

c. The refund request must be submitted as required by 3.2.d through 3.2.g.

d. The provider may, at its discretion, charge for processing a refund request.

#### 3.4 Undated Metered Postage

Unused, undated postage evidencing system indicia are considered for refund only if complete, legible, and valid. The refund request must be submitted as follows:

a. Only the meter licensee or the commercial entity that prepared the mailing for the licensee using the licensee's meter may request the refund. The request must include a letter signed by the meter licensee or the commercial entity that prepared the mailing for the licensee explaining why the mailpieces were not mailed.

b. The minimum quantity of unused, undated metered postage that may be submitted for refund is 500 pieces from a single mailing or, as an alternative, indicia with a total postage value of at least \$500 from a single mailing.

c. The meter licensee, or the commercial entity that prepared the mailing for the licensee using the licensee's meter, must submit the request, along with the items bearing the

unused postage and the required documentation, to the manager of business mail entry at the district Post Office overseeing the mailer's licensing Post Office, or to a designee. The manager or designee approves or denies the refund request.

d. The request must include the items bearing the unused postage, sorted by meter used and then by postage value shown in the indicia. The items must be properly faced and packaged in groups of 100 identical items, when quantities allow, and must meet the requirements of 3.2.d through 3.2.g.

e. The request must be submitted within 60 days of the date the mail was metered. Supporting documentation must be submitted to validate the date. Examples of supporting documentation include the job order from the customer, production records, the USPS qualification report, spoilage report, and reorders created report, as well as customer billing records, postage statements, and a sample mailpiece.

f. The refund request must be submitted with a properly completed PS Form 3533 (see I021). All identifying information and all sections related to the refund requested must be completed. When more than one meter was used to prepare the mailing, a separate PS Form 3533 must be completed for each.

(1) If the total face value of the indicia for a single mailing submitted for refund is \$350 or less, the amount refunded is 90% of the face value. USPS may process the refund payment locally via a no-fee postal money order.

(2) If the total face value of the indicia for a single mailing submitted for refund is more than \$350, the amount refunded is reduced by a figure representing \$35 per hour, or fraction thereof, for the actual hours to process the refund, with a minimum charge of \$35. The MBME will submit the approved PS Form 3533 to the USPS Imaging and Scanning Center for payment processing through the Accounting Service Center.

#### 3.5 Ineligible Metered Postage Items

The following metered postage items are ineligible for refunds:

\* \* \* \* \*

*[Revise text of renumbered 3.5.d to read as follows:]*

d. Indicia lacking identification of the licensing Post Office, or other required information.

\* \* \* \* \*

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if the proposal is adopted.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 03-27186 Filed 10-28-03; 8:45 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[SIP NO. MT-001-0048; FRL-7580-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Montana; Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove a State Implementation Plan revision submitted by the State of Montana on January 16, 2003. This revision provides existing aluminum plants an exemption to meeting emission limits during scheduled maintenance. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Written comments must be received on or before November 28, 2003.

**ADDRESSES:** Written comments may be submitted by mail to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in (Part (I)(B)(1)(i) through (iii)) of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Laurie Ostrand, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202, (303) 312-6437, [oststrand.laurie@epa.gov](mailto:oststrand.laurie@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Contents**

- I. General Information
- II. Background
- III. Why EPA is Proposing to Disapprove the State of Montana's January 16, 2003 Submittal
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

#### *Definitions*

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The *MACT standard* refers to the National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

#### **I. General Information**

##### *A. How Can I Get Copies of This Document and Other Related Information?*

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under MT-001-0048. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air and Radiation Program, EPA Region 8, 999 18th Street, Suite 300, Denver, CO. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. You may view the public rulemaking file at the Regional Office Monday through Friday, 8 a.m. to 4 p.m., excluding federal Holidays.

2. Copies of the State submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

3. **Electronic Access.** You may access this **Federal Register** document electronically through the Regulations.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments

on, Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

##### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking MT-001-0048" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. **Electronically.** If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD-ROM you submit, and in any cover letter accompanying the disk or CD-ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail). Please send any comments simultaneously to [long.richard@epa.gov](mailto:long.richard@epa.gov) and [ostrand.laurie@epa.gov](mailto:ostrand.laurie@epa.gov) and include the text "Public comment on proposed rulemaking MT-001-0048" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through "Regulations.gov" (see below), EPA's e-mail system will automatically capture your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at <http://www.regulations.gov>, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE" and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD-ROM.* You may submit comments on a disk or CD-ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Please include the text "Public comment on proposed rulemaking MT-001-0048" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal Holidays.

*C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically to EPA.

You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

*D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## II. Background

On January 16, 2003, the State of Montana submitted a new rule for incorporation into the SIP. The rule is titled Administrative Rules of Montana (ARM) 17.8.335, Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants. On April 1, 2003, we sent a letter to the State

indicating that the submittal was complete pursuant to the requirements in 40 CFR part 51, appendix V.

The rule was adopted as part of the SIP. The rule covers maintenance of air pollution control equipment for existing aluminum plants. There is currently one source that is subject to this rule, the Columbia Falls Aluminum Company (CFAC) in Columbia Falls, Montana. CFAC operates a primary aluminum reduction plant. The plant is equipped with air pollution control equipment, including ducts conveying exhaust to dry scrubbers. The State and CFAC have indicated they believe that air pollution control equipment requires periodic maintenance to keep it in good operating order. The State and CFAC have also indicated that the failure to maintain the air pollution control equipment eventually results in the failure of the equipment. Finally, the State and CFAC have indicated that the failure of the equipment would result in air pollution emissions from the plant that exceed those allowed and may create an unacceptable risk to public health.

Further, the State and CFAC contend that the maintenance of the air pollution control equipment requires the plant to shut down the dry scrubbers and to bypass some of the dry scrubbers during the maintenance event. If the plant continues to operate during the shutdown of the dry scrubbers, the air pollution emissions from the plant may exceed those allowed by rules governing emission of air pollutants.

In the past the plant has applied to the State for a variance from rules governing emission of air pollutants so that the plant could conduct maintenance on the air pollution control equipment while continuing to operate the plant. CFAC contends that the process for obtaining a variance is time consuming. The State has adopted a rule that allows the plant to maintain air pollution control equipment while the plant is operating, without requiring the plant to obtain a variance.

Our review of ARM 17.8.335, Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants, indicates that it is not approvable and we are proposing to disapprove Montana's SIP revision submitted on January 16, 2003 for the reasons indicated below.

### III. Why EPA Is Proposing To Disapprove the State of Montana's January 16, 2003 Submittal

#### *ARM 17.8.335 Is Not Consistent With the Clean Air Act (CAA) and EPA Policy*

First, ARM 17.8.335 provides an exemption to meeting emission limits for a specified source category during scheduled maintenance. Generally, since SIPs must provide for attainment and maintenance of the national ambient air quality standards (NAAQS) and the achievement of the prevention of significant deterioration of air quality (PSD) increments, all periods of excess emissions must be considered violations.<sup>1</sup> Accordingly, any provision that allows for an automatic exemption for excess emissions is prohibited. The appropriate mechanism for excusing excess emissions in this situation is through the exercise of enforcement discretion. We understand that the source conducted modeling to demonstrate that excess emissions during the maintenance procedures would not cause or contribute to violations of the Montana Ambient Air Quality Standards (MAAQS) or NAAQS. Our concerns with the modeling are discussed below.

The State contends that the new rule only indicates that the Department may not initiate an enforcement action for excess emissions during maintenance of air pollution control equipment that results in a violation of emission standards and that the rule does not contain an exemption from enforcement for maintenance activities that violate a federal or state ambient air quality standard or PSD increments.

We do not agree with the State. The 1970 Act established the air quality management process as a basic philosophy for air pollution control in this country. Under this system, we establish air quality goals (NAAQS) for common pollutants. States develop control programs (termed SIPs) and also issue permits under the PSD or nonattainment new source review programs, to assure that the NAAQS are attained and maintained. The NAAQS themselves are not an emission standard or limitation. *Coalition Against Columbus Center v. New York*, 967 F.2d 764, 769 (2d Cir. 1992). States establish enforceable emission limits in SIPs or permits at sources to assure that the NAAQS are met.

Second, in guidance documents issued by EPA and other final rulemakings, we have indicated that scheduled maintenance is a predictable event which can be scheduled at the discretion of the operator, and which can therefore be made to coincide with maintenance on production equipment, or other source shutdowns. Consequently, excess emissions during periods of scheduled maintenance should be treated as a violation unless a source can demonstrate that such emissions could not have been avoided through better scheduling for maintenance or through better operation and maintenance practices.<sup>2</sup>

The State contends that the aluminum process is unique in that the process does not include periodic shutdowns; the startup and shutdown process is expensive and lengthy; maintenance of the control equipment requires the plant to bypass some of the dry scrubbers. We are not convinced that the CFAC aluminum process is so unique, or that redundant control technology could not be added, to address scheduled maintenance. We are not aware of other aluminum facilities that have asked for an exemption to emission limits for scheduled maintenance. Some other aluminum facilities are designed so that maintenance can be completed on portions of the control equipment without having to shut down all of the control equipment.

We are proposing to disapprove ARM 17.8.335 because we believe it is inconsistent with the Act (*e.g.*, sections 110(a)(2)(E) and 110(i)), prior rulemakings and our guidance.

#### *Concerns With Impacts in the Columbia Falls PM-10 Nonattainment Area*

The impact of the "maintenance" emissions (*i.e.*, the additional 700 lbs of PM per 24-hour period expected during maintenance) on the Columbia Falls PM-10 nonattainment area were not analyzed. The State believes CFAC is in a different airshed from the nonattainment area and that emissions from CFAC do not have a significant impact on the Columbia Falls PM-10 nonattainment area. We believe that further analyses need to be completed before it can be determined that CFAC does not impact the Columbia Falls PM-10 nonattainment area. CFAC is only about one mile from the City of Columbia Falls. The State has not demonstrated that this plan revision

will not interfere with the attainment plan for the Columbia Falls PM-10 nonattainment area. Because of the potential impact in the Columbia Falls nonattainment area, we believe ARM 17.8.335, Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants, may not be consistent with section 110(l) of the CAA. That is, EPA cannot approve a SIP revision if it interferes with any applicable requirement concerning attainment and reasonable progress or any other applicable requirement of the Act.

#### *Concerns With the Modeling*

DEQ's testimony in the matter of the amendment of air quality rules pertaining to maintenance of air pollution control equipment for existing aluminum plants indicates that CFAC modeled its normal operations plus 700 lbs of PM-10 per 24-hour period.<sup>3</sup> Therefore, the normal operating emissions were considered along with the maximum allowable increase (700 lbs of PM-10 per 24-hour period) from the proposed maintenance procedure. Additionally, only emissions from the CFAC facility were considered in the analysis because the State determined that adding background concentration of PM-10 emissions measured at the onsite PM-10 monitor adequately represented the emissions from other sources in the area. We believe this modeling approach is inconsistent with the modeling rules and will not assure protection of the NAAQS for several reasons.

Allowable emissions, rather than normal operating emissions, should be used in modeling. This requirement is contained in EPA's Guideline on Air Quality Models, 40 CFR part 51, appendix W, Table 9-1. Montana adopted these rules by reference and we have approved them into the State's SIP (see ARM 17.8.802(1)(g)). Additionally, "normal operating emissions" is not defined in the State's new rule and the rule does not explain how "normal operating emissions" are calculated. Finally, EPA's "Guideline on Air Quality Models" requires that any nearby point sources that cause a significant concentration gradient should also be included in the modeling. See 40 CFR part 51, appendix W, section 9.2.3. Other sources in the airshed including those at CFAC should also be included in the modeling.

The State only required that the source model one month (*i.e.*, September) for three years. We believe

<sup>1</sup> See EPA's September 20, 1999 memorandum from Steven A. Herman and Robert Perciasepe to Regional Administrators entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown."

<sup>2</sup> See EPA's September 28, 1982 policy memorandum from Kathleen M. Bennett to Regional Administrators, entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction," page 3 of the Attachment. See also, 65 FR 51412, 51426 (August 23, 2000).

<sup>3</sup> The testimony is contained in the documents submitted with the January 16, 2003 SIP. See Tab 10 of the submittal.

this is problematic because it is extremely unlikely that one would capture worst case conditions that may occur in future September periods. Three months of data is not enough to find even slightly adverse conditions. The State believes that since maintenance is only allowed in September using three years of onsite meteorological data for September should adequately represent the types of meteorological conditions that would be encountered during the maintenance procedures. We do not agree. EPA's Modeling Guidelines requires five years of National Weather Service meteorology data be used in modeling to assure that the most adverse meteorological conditions are considered in the analysis. See Guideline on Air Quality Models, 40 CFR part 51, appendix W, section 9.3.1. Three months of data is clearly insufficient.

Lastly, the modeling assumed a background concentration of 17  $\mu\text{g}/\text{m}^3$ . This value was taken from the monitor near the plant and not the monitor in Columbia Falls. We are not convinced that the 17  $\mu\text{g}/\text{m}^3$  value is an appropriate value to be used for background concentration. Maximum ambient concentrations measured in Columbia Falls over the past several years in the August to October time frame have been on the order 16 to 48  $\mu\text{g}/\text{m}^3$ .

#### Concerns With the Maximum Achievable Control Technology (MACT) Requirements

EPA has two concerns regarding the interaction of this rule with the National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants (the MACT standard). First, we are concerned that by adopting this rule, the State of Montana may impact its automatic delegation of the MACT standard (40 CFR subpart LL, at ARM 17.8.103(1)(j) and 17.8.342) because the new rule could be interpreted to alter the requirements of the delegated MACT standard. Although the MACT standard adopted by Montana is not being revised, the new rule has a direct impact on the requirements of the MACT standard. EPA's MACT standard does not have any provision for exempting excess emissions during a maintenance event. Any excess emissions have to be reported and enforcement discretion used in determining what, if any, penalty is appropriate for the event. The MACT standard was automatically delegated to the State under the condition that the State's rule is identical to the EPA rule (40 CFR

63.91(a)(1)). If changes are made, the automatic delegation could be withdrawn and the State would have to undergo a formal delegation process in order to receive delegation for this MACT standard (40 CFR 63.91(a)(2)). This process would include a demonstration that the changed rule is at least as stringent as the EPA rule. Second, we are concerned that by adopting ARM 17.8.335, the State has rules with conflicting requirements—one set in the MACT standard adoption and one set in this SIP rule, leading to confusion for the source and public as to which one applies. We intend to engage the State in discussion to clarify this matter.

#### IV. Proposed Action

For the reasons identified above, EPA is proposing to disapprove the SIP revision submitted by the State of Montana on January 16, 2003. The submittal requests that ARM 17.8.335, Maintenance of Air Pollution Control Equipment For Existing Aluminum Plants, be added to the SIP. We are continuing to evaluate the impacts of the new rule on the delegation of the MACT standard, 40 CFR subpart LL, at ARM 17.8.103(1)(j) and 17.8.342, to the State. We are soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

#### V. Statutory and Executive Order Reviews

##### A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

##### B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to \* \* \* identical reporting or recordkeeping requirements imposed on ten or more persons \* \* \*" 44 U.S.C. 3502(3)(A). Because this proposed rule does not impose an information collection burden, the Paperwork Reduction Act does not apply.

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct

a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because EPA's proposed disapproval action only affects one industrial source of air pollution; Columbia Falls Aluminum Corporation. Only one source is impacted by this action. Furthermore, as explained in this action, the submission does not meet the requirements of the Clean Air Act and EPA cannot approve the submission. The proposed disapproval will not affect any existing State requirements applicable to the entity. Federal disapproval of a State submittal does not affect its State enforceability. Therefore, because the Federal SIP disapproval does not create any new requirements nor impact a substantial number of small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

##### D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more

to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *E. Executive Order 13132, Federalism*

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (*Federalism*) and 12875 (*Enhancing the Intergovernmental Partnership*). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132, because it merely proposes to disapprove 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

#### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and

explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

#### *H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

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

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: October 17, 2003.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

[FR Doc. 03–27269 Filed 10–28–03; 8:45 am]

**BILLING CODE 6560–50–P**

# Notices

Federal Register

Vol. 68, No. 209

Wednesday, October 29, 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

### Notice of Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Modoc County RAC Meetings.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393), the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday, November 3, 2003, from 6 to 8 p.m. in Alturas, California. The meeting is open to the public.

**SUPPLEMENTARY INFORMATION:** Agenda topics for the meeting include approval of the October 6, 2003 minutes, quarterly review of projects approved, consideration of a modification to the Sugar Hill project, and election of new officers. The meeting will be held at Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas, California on Monday, November 3, 2003 from 6 to 8 p.m. Time will be set aside for public comments at the beginning of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Forest Supervisor Stan Sylva, at (530) 233-8700; or Public Affairs Officer Nancy Gardner at (530) 233-8713.

**Stanley G. Sylva,**

*Forest Supervisor.*

[FR Doc. 03-27206 Filed 10-28-03; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### Advisory Committee Meeting

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), this constitutes notice of the upcoming meeting of the Grain Inspection Advisory Committee ("the Committee").

**DATES:** November 4, 2003, 7:30 a.m. to 5 p.m.; and November 5, 2003, 7:30 a.m. to 12 p.m.

**ADDRESSES:** The advisory committee meeting will take place at the Embassy Suites Hotel-Kansas City Country Club Plaza, 220 West 43rd Street, Kansas City, MO.

Requests to address the Committee at the meeting or written comments may be sent to: Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250-3601. Requests and comments may also be Faxed to (202) 205-9237.

**FOR FURTHER INFORMATION CONTACT:** Ms. Terri Henry, (202) 205-8281 (telephone); (202) 205-9237 (facsimile).

**SUPPLEMENTARY INFORMATION:** The purpose of the Committee is to provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda will include financial status, general program plans, and grain end-use functionality research.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri Henry, at the telephone number listed above.

**Donna Reifschneider,**

*Administrator.*

[FR Doc. 03-27235 Filed 10-28-03; 8:45 am]

**BILLING CODE 3410-EN-P**

## DEPARTMENT OF COMMERCE

[I.D. 102303A]

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Southeast Region Logbook Family of Forms.

*Form Number(s):* None.

*OMB Approval Number:* 0648-0016.

*Type of Request:* Regular submission.

*Burden Hours:* 13,084.

*Number of Respondents:* 4,783.

*Average Hours Per Response:* 18 minutes for a headboat survey; 10 minutes for a logbook in the golden crab, reef fish-mackerel, or wreckfish fisheries; 18 minutes for a log for Columbian Treaty Waters; 15 minutes for a logbook for aquacultured live rock; 10 minutes for an economic trip-cost report; 30 minutes for an annual fixed cost report; and 15 minutes for a supplemental discard report.

*Needs and Uses:* The catch and effort data are needed for scientific analyses that support critical conservation and management decisions that are made by national and international fishery management agencies. In addition, biologist need data on the amount of fish, marine mammals, and sea turtles are caught or interacted with. This family of forms also includes the collection of cost-earning information and discards reported by fishermen.

*Affected Public:* Business or other for-profit organizations, individuals or households.

*Frequency:* By trip, annually.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202-395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: October 23, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03-27252 Filed 10-28-03; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**

[I.D. 102303B]

**Submission for OMB Review;  
Comment Request**

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Information for Share Transfer in the Wreckfish Fishery.

*Form Number(s):* None.

*OMB Approval Number:* 0648-0262.

*Type of Request:* Regular submission.

*Burden Hours:* 1.

*Number of Respondents:* 4.

*Average Hours Per Response:* 15 minutes.

*Needs and Uses:* The individual transferable quota system in the wreckfish fishery is based on percentage shares. Persons holding shares may sell or otherwise transfer them to others, but information about the proposed transfer must first be provided to NOAA. The information is needed to manage the quota system, and information about the sales price is used in economic analyses.

*Affected Public:* Business or other for-profit organizations, individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to David Rostker, OMB Desk Officer, FAX number 202-395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: October 23, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03-27253 Filed 10-28-03; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-886, A-557-813, A-549-821]

**Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations: Polyethylene Retail Carrier Bags From the People's Republic of China, Malaysia, and Thailand**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of postponement of preliminary determinations in antidumping duty investigations.

**EFFECTIVE DATE:** October 29, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Hermes Pinilla (People's Republic of China), David Dirstine (Malaysia) or Lyn Johnson (Thailand), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3477, (202) 482-4033 and (202) 482-5287, respectively.

**SUMMARY:** The Department of Commerce is postponing the preliminary determinations in the antidumping duty investigations of polyethylene retail carrier bags from the People's Republic of China, Malaysia, and Thailand from November 27, 2003, until January 16, 2004. These postponements are made pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended.

**SUPPLEMENTARY INFORMATION:**

**Postponements of Due Dates for Preliminary Determinations**

On July 10, 2003, the Department of Commerce ("the Department") initiated the antidumping duty investigations of imports of polyethylene retail carrier bags from the People's Republic of China, Malaysia, and Thailand. See *Initiation of Antidumping Duty Investigations: Polyethylene Retail Carrier Bags From The People's Republic of China, Malaysia, and Thailand*, 68 FR 42002 (July 16, 2003). In accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended

("the Act"), the notice of initiation stated that the Department would issue its preliminary determinations no later than 140 days after the date of initiation, or November 27, 2003. See *id.*

On October 16, 2003, the petitioners, the Polyethylene Retail Carrier Bag Committee and its individual members, PCL Packaging, Inc., Sonoco Products Company, Superbag Corp., Vanguard Plastics, Inc., and Intoplast Group, Ltd., made a request for a 50-day postponement of the preliminary determinations, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e). Under section 733(c)(1)(A) of the Act, if the petitioners make a timely request for an extension of the period within which the preliminary determination must be made under subsection 733(b)(1), the Department may postpone making its preliminary determination by no more than 50 days after the date on which the preliminary determination is normally due. Petitioner's request for postponement was timely, and the Department finds no compelling reason to deny the request. Therefore, in accordance with section 733(c)(1) of the Act, the Department is postponing the deadlines for issuing the preliminary determinations.

January 16, 2004, is 50 days from November 27, 2003, and therefore, in accordance with section 733(c)(1)(A) of the Act, the Department is postponing the preliminary determinations in these investigations until January 16, 2004.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: October 23, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03-27247 Filed 10-28-03; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**Federal Consistency Appeal by John T. Keegan From an Objection by the Puerto Rico Planning Board**

**AGENCY:** National Oceanic and Atmospheric Administration.

**ACTION:** Notice of closure—administrative appeal decision record.

**SUMMARY:** This announcement provides notice that the appeal record has been closed for an administrative appeal filed with the Department of Commerce by John T. Keegan.

**DATES:** The appeal record for the Keegan administrative appeal will close as of October 29, 2003.

**ADDRESSES:** Materials from the appeal record are available at the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Bass, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 or at (301) 713-2967, extension 213.

**SUPPLEMENTARY INFORMATION:** John T. Keegan (Appellant) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 et seq., (CZMA) and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H (revised, effective January 8, 2001). The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's consistency certification for a U.S. Army Corps of Engineers' permit to install 50 helix-screw anchor moorings at Guanica Bay, Guanica, Puerto Rico. The Appellant requested that the Secretary override the PRPB's consistency objections based on the ground that the proposed activity is consistent with the objectives of the CZMA.

The decision of the Secretary is based on information and documents contained in the administrative record. The Keegan appeal administrative decision record includes materials submitted by the parties, the public and interested Federal agencies. It is expected that no further information, briefs or comments will be considered in deciding the appeal.

The CZMA requires that a notice be published in the **Federal Register** indicating the date on which the decision record has been closed. A final decision on the Keegan appeal is to be issued no later than 90 days after the date of the publication of this notice. 16 U.S.C. 1465(a). The deadline may be extended by publishing (within the 90-day period) a subsequent notice explaining why a decision cannot be issued within the time frame. In this event, a final decision is to be issued no later than 45 days after the date of publication of the subsequent notice. 16 U.S.C. 1465(b).

For additional information about the Keegan appeal contact Suzanne Bass, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910 or at 301-713-2967, extension 213.

Dated: October 21, 2003.

**James R. Walpole,**  
*General Counsel.*

[FR Doc. 03-27219 Filed 10-28-03; 8:45 am]

**BILLING CODE 3510-08-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Federal Consistency Appeal by Barnes Nursery, Inc. From an Objection by the Ohio Department of Natural Resources

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of closure—administrative appeal decision record.

**SUMMARY:** This announcement provides notice that the appeal record has been closed for an administrative appeal filed with the Department of Commerce by Barnes Nursery, Inc.

**DATES:** The appeal record for the Barnes Nursery, Inc. administrative appeal will close as of the date of publication of this notice.

**ADDRESSES:** Materials from the appeal record are available at the Internet site <http://www.ogc.doc.gov/czma.htm> and at the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Molly Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 or at (301) 713-2967, extension 215.

**SUPPLEMENTARY INFORMATION:** On July 10, 2001, Barnes Nursery, Inc. (Appellant) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 et seq., (CZMA) and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H (revised,

effective January 8, 2001). The appeal is taken from an objection by the Ohio Department of Natural Resources (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers after-the-fact permit to maintain an excavated channel and berm system intended to store water for agricultural purposes. This project is located in Erie County, Ohio adjacent to East Sandusky Bay.

The decision of the Secretary is based on information and documents contained in the administrative record. The Barnes Nursery appeal administrative decision record includes materials submitted by the parties, the public and interested Federal agencies. It is expected that no further information, briefs or comments will be considered in deciding the appeal.

The CZMA requires that a notice be published in the **Federal Register** indicating the date on which the decision record has been closed. A final decision on the Barnes Nursery appeal is to be issued no later than 90 days after the date of the publication of this notice. 16 U.S.C. 1465(a). The deadline may be extended by publishing (within the 90-day period) a subsequent notice explaining why a decision cannot be issued within the time frame. In this event, a final decision is to be issued no later than 45 days after the date of publication of the subsequent notice. 16 U.S.C. 1465(b).

Additional information about the Barnes Nursery appeal and the CZMA process is available from the Department of Commerce CZMA appeals Web site <http://www.ogc.doc.gov/czma.htm>.

Dated: October 21, 2003.

**James R. Walpole,**  
*General Counsel.*

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

[FR Doc. 03-27220 Filed 10-28-03; 8:45 am]

**BILLING CODE 3510-08-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Marine Protected Areas Federal Advisory Committee; Public Meeting

**AGENCY:** National Ocean Service, NOAA, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** Notice is hereby given of the second meeting of the Marine Protected Areas Federal Advisory Committee (MPAFAC) in San Mateo, California.

**DATES:** The meeting will be held Monday, November 17, 2003, from 8:30 a.m. to 5 p.m., Tuesday, November 18, 2003, from 8:30 a.m. to 5 p.m., and Wednesday, November 19, 2003, from 8:30 a.m. to 12 p.m. These times and the agenda topics described below may be subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

**ADDRESSES:** The meeting will be held at the San Mateo Marriott San Francisco Airport Hotel, 1770 South Amphlett Boulevard, San Mateo, California 94402-2708. The hotel is located seven miles south of the San Francisco International Airport and northwest of the intersection of Highways 101 and 92.

**FOR FURTHER INFORMATION CONTACT:** Marjorie Ernst, Designated Federal Officer, MPAFAC, National Marine Protected Areas Center, NOAA, Rm. 12227, 1305 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301-563-7111; Fax: 301-713-3110; e-mail: [marjorie.ernst@noaa.gov](mailto:marjorie.ernst@noaa.gov); or visit the National MPA Center Web site at <http://www.mpa.gov>).

**SUPPLEMENTARY INFORMATION:** The MPAFAC, composed of external, knowledgeable representatives of stakeholder groups, has been established by the Department of Commerce to provide advice to the Secretaries of Commerce and Interior on implementation of section 4 of Executive Order 13158 on MPAs. The meeting will be open to public participation, with a 1.5-hour time period set aside from 9 a.m.-10:30 a.m. on Wednesday, November 19, 2003, for the Committee to receive verbal comments from the public. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Copies of written statements should be submitted to the Designated Federal Official by Friday, November 14, 2003.

**Matters to be Considered:** On Monday, November 17, the Committee will elect and install a Chair and Vice-Chair. This will be followed by a discussion and adoption of procedural rules by which the Committee will operate. The Committee will receive several presentations from NOAA officials both to help place their mission in perspective vis-a-vis the two Departments and to clarify their charge and relationship to the National MPA Center. The Committee will then be briefed by representatives from both Departments on the status of selected Federal Marine Protected Area programs. The Committee will spend the remainder of the day exploring the

formation of suitable subcommittees and working groups for addressing facets of its mission.

On Tuesday, November 18, the Chair will oversee the process for the establishment of proposed subcommittees. Once formed, members will break into these smaller groups over the course of the day to discuss their respective goals, tasks, individual assignments, and the nature of the reports and other products that the full committee will deliberate on and issue, based on the input developed by the subcommittees. At several junctures on Tuesday, the subcommittees will report back on progress during plenary sessions. The public is welcomed to observe these breakout sessions, although space may be limited in some cases.

On Wednesday morning, the Committee will reconvene to review and conclude discussions based on the previous day's work before they receive verbal comments or questions from the public. The Committee will conclude the meeting with a discussion of the timing and location of the next meeting, as well as a consideration of potential agenda items.

Dated: October 21, 2003.

**Richard W. Spinrad,**

*Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.*

[FR Doc. 03-27207 Filed 10-28-03; 8:45 am]

**BILLING CODE 3510-08-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 November 28, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address [Lauren\\_Wittenberg@omb.eop.gov](mailto:Lauren_Wittenberg@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: October 22, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### Office of Postsecondary Education

*Type of Review:* Revision.

*Title:* Comprehensive Program Annual Performance Report.

*Frequency:* Annually.

*Affected Public:*

Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 140.

Burden Hours: 2,800.

*Abstract:* The Comprehensive Program is a discretionary grant program that makes competitive awards to support reform and innovations through projects that improve educational practice at the postsecondary level. Grantees annually submit a performance report to demonstrate that substantial progress is being made toward meeting the objectives of their projects. Reporting requirements are currently based on broad criteria from the Education Department General Administrative Regulations (EDGAR). This request is to use a reporting format that elicits needed information on program-specific outcomes within the annual report without posing additional burden to the grantee.

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 2319. 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 Joseph Schubart at his e-mail address [Joe.Schubart@ed.gov](mailto:Joe.Schubart@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 03-27197 Filed 10-28-03; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

### Office of Science; DOE/NSF Nuclear Science Advisory Committee; Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with Title 41 of the Code of Federal Regulations, Section 102-3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the DOE/NSF Nuclear Science Advisory Committee has been renewed for a two-year period, beginning in October 2003. The Committee will provide advice to the Director of the Office of Science (DOE), and the Assistant Director, Mathematical and Physical Sciences Directorate (NSF), on scientific priorities within the field of basic nuclear science research. The Secretary of Energy has determined that renewal of the Committee is essential to conduct business of the Department of Energy and the National Science Foundation and is in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Public Law 95-91), and implementing regulations.

Further information regarding this advisory committee can be obtained from Ms. Rachel Samuel at (202) 586-3279.

Issued in Washington, DC, on October 23, 2003.

**James N. Solit,**

*Advisory Committee Management Officer.*

[FR Doc. 03-27231 Filed 10-28-03; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Savannah River

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, November 17, 2003, 1 p.m.-6 p.m.; Tuesday, November 18, 2003, 8:30 a.m.-4 p.m.

**ADDRESSES:** Embassy Suites, 5055 International Boulevard, North Charleston, SC 29418.

**FOR FURTHER INFORMATION CONTACT:**

deLisa Bratcher, Closure Project Office, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952-8607.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:*

Monday, November 17, 2003

1 p.m.—Combined Committee Session

5:15 p.m.—Executive Committee

Meeting

6 p.m.—Adjourn

Tuesday, November 18, 2003

8:30-9:15 a.m.—Approval of Minutes; Agency Updates; Public Comment Session; Chair and Facilitator Update

9:15-9:45 a.m.—Facilities Disposition & Site Remediation Committee Report

9:45-10:15 a.m.—Nuclear Materials Committee Report

10:15-11:45 a.m.—Strategic & Legacy Management Committee Report

11:45-12 noon—Public Comments

12 noon—Lunch Break

1-2 p.m.—Strategic & Legacy

Management Committee Report

2-4 p.m.—Administrative Committee Report

—Leadership Elections

—Presentation of 2004 Candidates

3:45-4 p.m.—Public Comments

4 p.m.—Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, November 17, 2003.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct business. Each individual wishing to make public comment will be provided equal time to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to deLisa Bratcher, Department of Energy Savannah River Operations Office, PO Box A, Aiken, SC 29802, or by calling her at (803) 952-8607.

Issued at Washington, DC, on October 24, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03-27232 Filed 10-28-03; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

[Docket No. PP-89-1]

### Application To Amend Presidential Permit; Bangor Hydro-Electric Company

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Bangor Hydro-Electric Company (BHE) has applied to amend Presidential Permit PP-89 that authorized the construction, operation, maintenance, and connection of a single-circuit, 345,000-volt (345-kV)

alternating current (AC) electric transmission line across the U.S. border with Canada.

**DATES:** Comments, protests or requests to intervene must be submitted on or before November 28, 2003.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-287-5736).

**FOR FURTHER INFORMATION CONTACT:**

Ellen Russell or Xavier Puslowski (Program Office) (202) 586-9624 or (202) 586-4708 or Michael Skinker (Program Attorney) (202) 586-2793.

**SUPPLEMENTARY INFORMATION:** The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On January 22, 1996, the U.S. Department of Energy (DOE) issued Presidential Permit PP-89 authorizing BHE to construct, operate, maintain, and connect a 345-kV electric transmission line that extends approximately 83-miles from the U.S.-Canada border at Baileyville, Maine, to Orrington, Maine. At the Canadian border, the proposed transmission line was to connect to similar facilities to be built by New Brunswick Electric Power Commission (NB Power), a Crown corporation of Canada's Province of New Brunswick. The authorized facilities were not constructed.

On September 30, 2003, BHE applied to the Office of Fossil Energy (FE) of DOE to amend Presidential Permit PP-89. Since the issuance of PP-89, a natural gas transmission line has been constructed by Maritimes and Northeast Pipeline, L.L.C. in the same general vicinity as the BHE project in a corridor approved by Maine's Department of Environmental Protection. Now the Board of Environmental Protection, Maine's primary environmental review entity, has indicated to BHE its preference for BHE to construct the proposed electric transmission line in a corridor more closely consolidated with that of the natural gas line.

The international transmission line now proposed by BHE would be a single circuit 345-kV AC transmission line consisting of two overhead shield wires and three phases with two conductors per phase. The transmission line is

proposed to have a thermal capacity of at least 1,000 megawatts (MW). From the U.S.-Canada border near Baileyville, Maine, the proposed transmission line would continue approximately 80 miles to an existing substation in Orrington, Maine. In Canada, the BHE facilities would interconnect with similar facilities to be owned by New Brunswick Power Corporation and continue approximately 60 miles to Point Lepreau, New Brunswick. Canada's National Energy Board authorized construction of these facilities in May 2003.

Since the restructuring of the electric power industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities constructed pursuant to Presidential permits to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in Federal Energy Regulatory Commission Order No. 888, as amended (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Services by Public Utilities). In furtherance of this policy, DOE intends to condition any Presidential permit issued in this proceeding on compliance with these open access principles.

*Procedural Matters:* Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: Mr. Robert Bennett, Bangor Hydro Electric Co., 33 State Street, P.O. Box 920, Bangor, ME 04402-0920; and Mr. Jim Connors, Esq., Emera, Inc., 1894 Barrington Street, Barrington

Tower, Halifax, Nova Scotia, Canada B3J2A8.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (*i.e.*, granting the Presidential permit with any conditions and limitations, or denying it) pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, state governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the Environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Notice of upcoming NEPA activities and information on how the public can participate in those activities will appear in the **Federal Register**.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded from the Fossil Energy home page at <http://www.fe.doe.gov>. Upon reaching the Fossil Energy Home page, select "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on October 22, 2003.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 03-27233 Filed 10-28-03; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY****Energy Information Administration****Agency Information Collection****Activities: Submission for OMB****Review; Comment Request; Correction**

**AGENCY:** Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Agency Information Collection Activities: Submission for OMB Review; Comment Request; Correction.

**SUMMARY:** This notice corrects a document published in the **Federal Register** on October 22, 2003 (68 FR 60342) FR Doc. No. 03-26652. The EIA submitted the Supplemental Electric Power Program Survey to the Office of Management and Budget (OMB) for review under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (44 U.S.C. 3501 *et seq.*). Instead of a review and three-year extension, the request is for a revision to three surveys: Forms EIA-826, 861, and 906, and the creation of a fourth, EIA-920. The proposed changes to the Form EIA-826 and Form EIA-861 are identical. The proposed changes are intended to eliminate reporting of data under an industry sector category of "other" which has proven to be too vague to be useful for analytical purposes, and to collect more specific data on electricity use for transportation. The changes to the Form EIA-906 are intended to facilitate data collection from combined heat and power plants, and to improve the overall quality of EIA's data on power plants. The Form EIA-906 will split into two forms, with the new Form EIA-920, "Combined Heat and Power (CHP) Plant Report," designed for the specific purpose of collecting data from CHP facilities. Also, in "Supplementary Information," numeral "4." should say, "Revision," not "Three-year extension and revision."

**DATES:** Comments are to be filed by November 21, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

**ADDRESSES:** Send comments to Bill Nickerson, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by Fax (202) 395-7285 or e-mail ([William\\_Nickerson@omb.eop.gov](mailto:William_Nickerson@omb.eop.gov)) is recommended. The mailing address is 726 Jackson Place, NW., Washington,

DC. 20503. The OMB DOE Desk Officer may be telephoned at (202) 395-7151. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by Fax (202) 287-1705 or e-mail ([grace.sutherland@eia.doe.gov](mailto:grace.sutherland@eia.doe.gov)) is recommended. The mailing address is Statistics and Methods Group (EI-70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585-0670. Ms. Sutherland may be contacted by telephone at (202) 287-1712.

Issued in Washington, DC, October 24, 2003.

**Jay H. Casselberry,**

*Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 03-27230 Filed 10-28-03; 8:45 am]

**BILLING CODE 6450-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**[Regional Docket Nos. II-2002-10, II-2001-08; FRL-7580-2]**

**Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permits for the Consolidated Edison Company Hudson Avenue Station and the Ravenswood Steam Plant**

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

**ACTION:** Notice of final orders on petitions to object to two State operating permits.

**SUMMARY:** This document announces that the EPA Administrator has responded to two citizen petitions asking EPA to object to operating permits issued to two facilities by the New York State Department of Environmental Conservation (NYSDEC). Specifically, the Administrator has partially granted and partially denied each of the petitions submitted by the New York Public Interest Research Group (NYPIRG) to object to each of the State operating permits issued to the following facilities:

- (1) Consolidated Edison's Hudson Avenue Station in Brooklyn, NY.
- (2) Consolidated Edison's Ravenswood Steam Plant in Long Island City, NY.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioner may seek judicial review of those portions of the

petitions which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

**ADDRESSES:** You may review copies of the final orders, the petitions, and other supporting information at the EPA, Region 2, 290 Broadway, New York, New York 10007-1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for the Con Edison Hudson Avenue Station is available electronically at: <http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2002.htm>. The final order for the Ravenswood Steam Plant is available electronically at: <http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2001.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone (212) 637-4074.

**SUPPLEMENTARY INFORMATION:** The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

**I. Con Edison's Hudson Avenue Station**

On September 27, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit to the Consolidated Edison Hudson Avenue Station. The petition raises issues regarding the permit application, the permit issuance process, and the permit itself. NYPIRG asserts that: (1) The permit was issued in violation of the requirements of the New Source Review program; (2) the permit is deficient because it fails to incorporate the requirements from pre-existing

permits issued to the facility; (3) the permit distorts the annual compliance certification requirement of Clean Air Act section 114(a)(3) and 40 CFR 70.6(c)(5); (4) the permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 CFR 70.6(a)(3)(iii)(B); (5) the permit does not assure compliance with all applicable requirements as mandated by 40 CFR 70.1(b) and 70.6(a)(1) because it illegally sanctions the systematic violation of applicable requirements during startup/shutdown, malfunction, maintenance and upset conditions; (6) the permit is not supported by an adequate statement of basis; (7) the permit does not assure compliance with all applicable requirements as mandated by 40 CFR 70.1(b) and 70.6(a)(1) because many individual permit conditions lack adequate periodic monitoring and are not practically enforceable; (8) the permit lacks federally enforceable conditions that govern the procedures for permit renewal in accordance with 40 CFR 70.5(a)(1)(iii); (9) the permit is based upon an inadequate permit application; (10) the final permit improperly limits the dates during which the permit conditions apply; (11) the permit does not include an adequate compliance schedule for an opacity violation; and (12) the permit should include language indicating the availability of any credible evidence to demonstrate non-compliance.

On September 30, 2003, the Administrator issued an order partially granting and partially denying the petition on the Con Edison Hudson Avenue Street Station. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Adequately address Petitioner's comments on non-attainment NSR; (2) work with EPA to identify items that may be excluded from annual certification requirements; (3) supplement the PM monitoring requirements for the boilers; (4) include the SIP version of the excuse provision on the federally enforceable side of the permit; (5) revise the statement of basis to include a detailed explanation regarding the basis of granting a permit shield for 6 NYCRR Part 231 and (6) require record keeping to assure compliance with the facility's episode action plan. The order also explains the reasons for denying NYPIRG's remaining claims.

## II. Ravenswood Steam Plant

On December 17, 2001, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit

to the Consolidated Edison Ravenswood Steam Plant, on the grounds listed above except for the New Source Review, permit condition effective date, adequacy of compliance schedule and credible evidence issues. On September 30, 2003, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Remove the "excuse provision" that cites 6 NYCRR section 201-1.4 from the federal side of the permit; (2) supplement the PM monitoring requirements for the boilers; (3) establish a relationship between any of the permit holders or operators and the system of fossil-fuel fired facilities that satisfies the criteria of 6 NYCRR section 227-2.5; (4) list, in the permit, those units that are defined as "NO<sub>x</sub> Budget Units"; (5) prescribe an analytical method for monitoring the sulfur-in-fuel limit; (6) specify the applicable compliance method that is used in the monitoring of sulfur dioxide emissions; and (7) identify in the permit the correct SIP version that constitutes the legal basis for the sulfur-in-fuel limit. The order also explains the reasons for denying NYPIRG's remaining claims.

Dated: October 20, 2003.

**Jane M. Kenny,**

*Regional Administrator, Region 2.*

[FR Doc. 03-27260 Filed 10-28-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7579-9]

### Gulf of Mexico Program Policy Review Board Meeting

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

**ACTION:** Notice of meeting.

**SUMMARY:** Under the Federal Advisory Committee Act (Public Law 92-463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Policy Review Board (PRB).

**DATES:** The meeting will be held on Tuesday, November 18, 2003, from 8:30 a.m. to 3 p.m.

**ADDRESSES:** The meeting will be held at the Renaissance Grand Hotel, 800 Washington Avenue, St. Louis, MO 63101 (314-621-9600).

**FOR FURTHER INFORMATION CONTACT:**

Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space

Center, MS 39529-6000 at (228) 688-2421.

**SUPPLEMENTARY INFORMATION:** Proposed agenda includes FY 2003 Gulf of Mexico Program Accomplishments, Executive Order Status and Update, Briefings on Emerging Initiatives: PEW Commission Report, Ocean Commission Report, U.S. Mexico Gulf Programs Integration, White Water to Blue Water, Gulf Hypoxia, FY 2004 Program Workplan Overview. The meeting is open to the public.

Dated: October 22, 2003.

**Gloria D. Car,**

*Designated Federal Officer.*

[FR Doc. 03-27271 Filed 10-28-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[RCRA-1999-0031; FRL-7580-3]

### RCRA Burden Reduction Initiative; Notice of Data Availability

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

**ACTION:** Notice of data availability.

**SUMMARY:** The Environmental Protection Agency (EPA) is requesting additional comment on ideas for reducing the recordkeeping and reporting burden imposed on the states, the public, and the regulated community under the Subtitle C hazardous waste regulations of the Resource Conservation and Recovery Act (RCRA). The burden reduction ideas in today's notice were suggested by commenters on our Proposed Rulemaking, published in the *Federal Register* on January 17, 2002. This notice provides EPA with the opportunity to receive public input on these ideas before we issue a final burden reduction rule. EPA is only taking comment on the ideas discussed in today's notice. We are not reopening for comment any of the other ideas discussed in the proposed rule.

**DATES:** Submit comments on or before December 15, 2003.

**ADDRESSES:** Comments may be submitted by mail to: EPA Docket Center, Mailcode: 5305T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID Number RCRA-1999-0031. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Section 1.B. of the Supplementary Information section.

**FOR FURTHER INFORMATION CONTACT:** For general information, call the RCRA Call

Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial (703) 412-9810 or TDD (703) 412-3323 (hearing impaired). For more information on specific aspects of this NODA, contact Robert Burchard at (703) 308-8450, [burchard.robert@epa.gov](mailto:burchard.robert@epa.gov), or write him at EPA Office of Solid Waste (5302W), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. How Can I Get Copies of This Document and Other Related Information?

###### 1. Docket

EPA has established an official public docket for this action under Docket ID No. RCRA-1999-0031. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center at 1301 Constitution Avenue, 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 phone number for the Reading Room is (202) 566-1744. Copies cost \$0.15/page.

###### 2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>, and you can make comments on this notice at the federal e-rulemaking portal, <http://www.regulations.gov>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket or to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Docket, although they will be part of the rulemaking record. Information claimed as CBI and

other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

###### B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late."

EPA is not required to consider these late comments.

###### 1. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD-ROM you submit, and in any cover letter accompanying the disk or CD-ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID Number RCRA-1999-0031. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. *E-mail*. Comments may be sent by electronic mail (e-mail) to [rcra-docket@epamail.epa.gov](mailto:rcra-docket@epamail.epa.gov), Attention Docket ID Number RCRA-1999-0031. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

c. *Disk or CD-ROM*. You may submit comments on a disk or CD-ROM that

you mail to the mailing address identified in this section. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

#### 2. By Mail

Send your comments to: OSWER Docket, EPA Docket Center, Mailcode: 5305T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID Number RCRA-1999-0031.

#### 3. By Hand Delivery or Courier

Deliver your comments to: Environmental Protection Agency, EPA Docket Center, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID Number RCRA-1999-0031. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

#### 4. By Facsimile.

Fax your comments to: (202) 566-0272, Attention Docket ID Number RCRA-1999-0031.

#### *C. How Should I Submit Confidential Business Information (CBI) to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA-1999-0031. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior

notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### *D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## **II. Background**

#### *A. What Is the Resource Conservation and Recovery Act (RCRA) Burden Reduction Initiative?*

The RCRA Burden Reduction Initiative is the Office of Solid Waste's effort to reduce recordkeeping and reporting burden, while maintaining the protections the Agency has in place to safeguard human health and the environment. This notice seeks additional comment on ideas to reduce burden imposed by the reporting and recordkeeping requirements under the RCRA Subtitle C hazardous waste regulations at 40 CFR, Chapter I (Environmental Protection Agency), Subchapter I ["Eye"] ("Solid Wastes"). For more information on this Initiative, as well as the definition of burden, how burden is estimated and the baseline burden estimates for the RCRA hazardous waste program, see the proposed rule published in the **Federal Register** on January 17, 2002 (67 FR 2518).

#### *B. What Are the Recordkeeping and Reporting Requirements for Generators and Treatment, Storage and Disposal Facilities (TSDFs)?*

##### 1. What Are the Existing Reporting and Recordkeeping Requirements?

The existing hazardous waste regulations require the submittal of 334 notifications, reports, certifications, demonstrations, and plans from generators and TSDFs to demonstrate compliance with the RCRA regulations. We also ask for this information as part of applications for extensions, permits, variances, and exemptions. In addition, the regulations require generators and facility owners and operators to keep certain records on-site.

##### 2. Why Do We Collect This Information?

When we promulgated the hazardous waste regulations, we decided to collect as much information as we thought was necessary about facility operations. Without prior experience as a guide, our philosophy was that it was better to collect information in all cases, knowing that we could eliminate information requirements later if they turned out to not be useful.

We are using what we have learned during our 25-year operating history in RCRA to reevaluate this all-encompassing information collection approach, and we are moving towards collecting only the information that has actually proven useful to the RCRA hazardous waste program. This is consistent with the President's Management Agenda, which directs federal agencies to show that their programs actually accomplish their goals. Requiring facilities to collect and submit information that is seldom or never used is not only wasteful, but it diverts available environmental protection resources away from the RCRA goals of protecting human health and the environment to generating unnecessary paperwork.

##### C. How Have We Identified Burden Reduction?

The RCRA Burden Reduction Initiative has weighed the RCRA reporting and recordkeeping requirements versus the burden they impose to answer the question "Which recordkeeping and reporting requirements can be eliminated or modified without compromising protection of human health and the environment." We obtained input from program offices at EPA Headquarters and Regions, the States, the regulated community, and public interest groups in this process. To answer this question, we asked the following specific

questions: who uses the hazardous waste information?; why do they need it?; is the information useful as it is currently collected?; and how can the quality and timeliness of the information be improved?

Our ideas were announced for comment in a June 18, 1999, **Federal Register** "Notice of Data Availability" (64 FR 32859). In the "Notice" and background documents (*see* <http://www.epa.gov/epaoswer/hazwaste/data/index.htm#burden>), we included every burden reduction idea we considered. Based on comments we received on the "Notice," we eliminated ideas when a practical use for the information was demonstrated, or information was presented showing how eliminating/modifying a requirement would negatively impact protection of human health and the environment. Based on these comments, we added ideas which appeared in our January 17, 2002, "Proposed Rulemaking" (67 FR 2518). Today's notice seeks comment on some additional ideas that were suggested by commenters or are outgrowths of the Proposed Rule, based on our evaluation of those comments.

### III. Discussion of Additional Items for Comment

#### A. Small Quantity Generator Tanks and Tank Ancillary Equipment Inspection Frequencies

In the Proposed Rule, we requested comment on changing the tank self-inspection frequencies from daily to weekly for large quantity generators. We received comments suggesting that we expand this change to include tanks located at small quantity generator sites (*see* § 265.201(c)) and ancillary equipment at small and large quantity generator facilities (*see* § 264.193(f) and § 265.193(f)). Changing these inspection frequencies would be consistent with our intent, as discussed in the 1999 "Notice of Data Availability," the Proposed Rule, and background documents to establish weekly tank inspections for all tanks and tank systems. The estimated burden hour savings from extending to weekly the inspection frequency for tanks located at small quantity generator sites ranges from 200,000–600,000 burden hours (depending on the percentage of small quantity generators assumed to have tanks). We consider this to be substantial savings. We request comment on the merits of this change.

#### B. Further Reduced Inspection Frequencies for Performance Track Facilities

In addition to allowing weekly inspection frequency for tanks, we also proposed to allow, on a case-by-case basis, decreased inspection frequencies for tanks, containers, and containment buildings (from the frequency currently required by regulation). In all cases, inspections would have to occur at least monthly and would be established on a site-specific basis by authorized States or by EPA in States that do not have a delegated program. In proposing this change, we suggested that decreased inspection frequencies should be based on factors such as: (1) A demonstrated commitment by facility management to sound environmental practices; (2) demonstrations of good management practices over the years—that is, having a record of sustained compliance with environmental laws and requirements; (3) a demonstrated commitment to continued environmental improvement; (4) a demonstrated commitment to public outreach and performance reporting; (5) the installation of automatic monitoring devices at the facility; and (6) the chemical and physical characteristics of the waste being managed in the unit.

Based on comments received on the proposal, the Agency is reconsidering whether to make such a change available to all generators because of the burden it might impose on authorized States to evaluate compliance with the criteria. However, at a minimum, we believe that providing relief is appropriate for companies that are demonstrated "good performers." Therefore, the Agency is soliciting comment on whether to limit this provision—the ability to file a case-by-case application for reduced self-inspection frequencies—to member companies of the National Performance Track Program. The National Environmental Performance Track Program recognizes and encourages top environmental performance among private and public facilities in the United States. Performance Track facilities go beyond compliance with regulatory requirements to achieve environmental excellence. Currently, the program has approximately 300 members. See the following Web site for information about the National Performance Track Program: <http://www.epa.gov/performance-track>. Today, we also are clarifying that this provision was meant to apply not just to the tanks, but to the complete tank systems. This includes piping, pumps, valves and other associated equipment.

We also received a comment suggesting that we extend reduced inspection frequencies, granted on a case-by-case basis, to areas subject to spills (*see* § 264.15(b)(4)). While the Agency is considering this comment as a general matter, we also solicit comment on whether to grant relief only to companies that are National Performance Track members. We think the risk from this change is minimal at facilities that have met the requirements to be accepted into the National Performance Track Program. Again, the Agency believes it is important to recognize the difference in the need for oversight of companies that are top environmental performers and, therefore, believes that such a change may be appropriate.

#### C. RCRA/OSHA Overlap in Emergency Response Training

EPA and the Occupational Safety and Health Administration (OSHA) have both promulgated regulations to ensure the safety and health of workers at hazardous waste facilities. While RCRA Subtitle C includes requirements to provide protection to workers, worker safety and health are not its primary goal. This is the goal of OSHA, the Federal agency responsible for enforcing the safety and health of workers at facilities producing, using, storing, transporting, and disposing of hazardous materials.

In a study by the General Accounting Office (GAO) published in October 2000, OSHA and EPA worker training requirements in emergency response procedures were found to be duplicative. GAO concluded that this overlap in training requirements creates an unnecessary burden by confusing the regulated community, diminishes the efficiency of the facility (which could jeopardize worker safety), and wastes funds.

Hazardous waste treatment, storage and disposal facility (TSDF) workers are required to receive OSHA training, including training for emergency response, under 29 CFR 1910.120(p). OSHA's regulations have specific training requirements for RCRA-permitted facilities to teach hazardous waste workers how to respond to emergencies.

Based primarily on the GAO findings, EPA proposed to eliminate the RCRA emergency response training requirements in favor of the OSHA requirements. Unfortunately, there has been some confusion about what we proposed. We did not propose to eliminate the entire RCRA personnel training requirements, only the emergency response training

requirements located at § 264.16(a)(3) and § 265.16(a)(3).

While many of the commenters supported the proposal, we received a number of comments expressing concern that two of the RCRA emergency response training requirements are not covered in OSHA's requirements, which could lead to gaps in workplace safety and health. After consultation with OSHA, we determined that the two requirements identified in comments (key parameters for automatic waste feed cut-off systems and response to ground-water contamination incidents) would be captured under the OSHA performance standard that employees must be trained in the safe use of engineering controls and equipment on the site, and the OSHA requirement that a site safety and health plan must contain a spill containment program. Moreover, the RCRA requirements are duplicated elsewhere in the RCRA regulations, where we establish requirements for safe facility operations. For example, § 266.102(e)(7)(ii) establishes automatic waste feed cutoff requirements for combustors, § 264.194(b)(2) establishes controls for tanks, and § 264.193 requires groundwater release training. Thus, we do not find any gaps between the two programs on the subject of emergency response training.

Deferring to the standards of other organizations whose expertise is greater than ours has precedent in the RCRA regulations. An example is § 264.198(b), which establishes special requirements for ignitable or reactive wastes. We require facilities storing or treating these wastes to comply with the standards of the National Fire Protection Association, a non-profit organization that develops consensus codes and standards to protect the public against fire dangers.

However, a number of commenters suggested that the Agency provide additional flexibility to this change by allowing the facility owner/operator to determine whether to follow the RCRA or OSHA requirements (as opposed to the proposed rule's approach of requiring facilities to follow the OSHA regulations), especially for those facilities which are not otherwise required to comply with OSHA training requirements. This seems a reasonable accommodation to facilities, that, for any of a number of reasons, have elected to comply with the RCRA regulation and would be burdened by the need to demonstrate compliance under the OSHA rule. Therefore, we request comment on this approach.

#### *D. Professional Certifications*

Currently, the RCRA regulations require an independent, qualified, registered professional engineer (or registered geologists for some requirements) to certify the effectiveness of the design and operation of certain hazardous waste treatment units. We received a comment on our "Notice of Data Availability" dated June 18, 1999 (64 FR 32859) from the Certified Hazardous Materials Managers' organization asking that their members also be allowed to make certifications. Based on our review of the qualifications of Certified Hazardous Materials Managers, it appeared to the Agency that these certified professionals were qualified to provide the certifications, increasing marketplace competition and potentially reducing the cost of those certifications. As a result, the Agency proposed to add Certified Hazardous Materials Managers as professionals qualified to make these certifications. We did not receive similar requests from other professional organizations.

In response to this proposal, the Agency received about 1,900 comments, mostly requesting that we expand the list of individuals who can do such certifications to include other kinds of professionals, such as expanding the list of certifications to registered geologists. These commenters believe that the Agency was being arbitrary in allowing only two disciplines to certify operations.

On the other hand, professional engineers were strongly opposed to the proposal. They suggested that Certified Hazardous Materials Managers are not qualified to certify the design, construction, and structural integrity of hazardous waste management units.

States likewise suggested that the certifications we proposed to modify involve the design, installation, and assessment of structures, and that their laws allow only licensed engineers to make these kinds of certifications. The States also indicated that their licensing boards can investigate complaints of negligence or incompetence, and may impose fines and other disciplinary actions such as cease-and-desist orders or license revocation. This personal liability of the professional engineer is one of the reasons why the States believe that RCRA certifications should only be done by state-licensed professional engineers.

Other commenters suggested that, rather than deciding which professions are qualified to make certifications, we should instead establish an environmental professional performance

standard based on membership in a recognized professional organization. This would be consistent with our principle of allowing the regulated community to meet our standards at the lowest possible cost. The challenge we faced in developing a performance standard was determining which professional organizations are legitimate. Commenters helped by offering the suggestion that we recognize only the organizations which meet the criteria for assessing certification programs for environmental professionals established by the American Society for Testing and Materials (ASTM). ASTM is a nonprofit organization that provides a forum for the development and publication of voluntary, consensus standards for materials, products, systems, and services. The advantage of an ASTM standard is that it is developed by individuals with a diversity of backgrounds, expertise, and knowledge. Through a consensus approach, the standards that are developed reflect the needs of all the stakeholders.

ASTM E1929-98, Standard Practice for the Assessment of Certification Programs for Environmental Engineers: Accreditation Criteria assesses the credibility of certification programs for environmental professionals. Under these standards, the certifying body must have a program to evaluate individual competence for certification that is objective and based on the knowledge, skills, and abilities needed to function in the specialty area. Applicants must document their level of education, supply reference materials, sign and abide by a code of ethics established by the certifying body, and pass a comprehensive examination. The ASTM standard also requires that environmental certification programs be accredited by an independent entity. This ASTM standard is available for review at the OSWER Docket in the EPA Docket Center.

Therefore, we are considering allowing only professionals certified by organizations meeting the ASTM standard to conduct a limited number of the certifications. Under this standard, anyone who certifies the operation of facilities must (a) be licensed to practice in the state where the facility is located or recognized by a certification program that is compliant with ASTM E1929-98 Standard Practice for the Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria, and (b) have the knowledge and experience to undertake the tasks required for the certification. Based on comments from and extensive discussions with the States, we may

limit the flexibility to use persons meeting the criteria of the new performance standard to three certifications:

Subject to New Performance Standard

264.573(a)(4)(ii),(g);

265.443(a)(4)(ii),(g) *Drip pads—evaluate drip pads.*

264.574(a); 265.444(a) *Drip pads—inspections.*

266.111(e)(2) *BIF Direct transfer equipment—assessment of equipment.*

At the same time, EPA is persuaded by commenters—particularly the States—who suggested that the remaining RCRA certifications are inherently “engineering” activities and should only be conducted by a qualified professional engineer. We solicit comment on this revised approach.

Some commenters further suggested that we streamline the existing professional engineer requirement by changing it from “independent, qualified, registered professional engineer” to “qualified professional engineer.” They believe that this retains the most important requirements—that the engineer be qualified to perform the task, and that she or he be a professional (following a code of ethics and the potential of losing his/her license for negligence) engineer. The professional engineers who commented, as well as the professional engineer advocacy organizations, emphasized the importance of the “professional” part of the engineering requirement, rather than the “independent” part. Making this change in the RCRA regulations would allow certifications to be done by a professional engineer employed by the facility. Commenters believe that this would save facilities money without compromising environmental safety. This would also be consistent with the approach we have taken in some newer requirements for certifications. See the 265.1101(c)(2) containment building design certification, and the 266.103(b)(2)(ii)(D) evaluation of data for boilers and industrial furnaces, which allow for certification by “qualified, registered professional engineers.”

As a point of reference to check the reasonableness of this change, we examined the certification requirements of another federal regulatory agency responsible for ensuring the safety of the public, the Department of Transportation’s Federal Highway Administration. The Federal Highway Administration (FHA) recently proposed revisions and improvements to its National Bridge Inspection Standards (68 FR 53063). These standards ensure the safety of the

traveling public by establishing proper safety inspection and evaluation requirements for highway bridges. The standards apply to publicly-owned bridges, and are strongly advised for privately-owned bridges. FHA points out in their preamble discussion that it is extremely important that privately owned highway bridges be inspected to a nationally-recognized standard, for at a minimum, private bridge owners that do not inspect their highway bridges to the standards can open themselves to liability for deaths or injuries because of possible highway bridge failure. The standards currently require the person responsible for inspecting bridges to be a professional engineer. Interestingly, FHA’s proposed rule’s preamble discussion on the professional engineer requirement covers the necessity of these professional engineers having adequate experience to do the job, which is emphasized in today’s notice—and FHA does not require, nor does it discuss in its proposal for improving the standards, the need for the professional engineer be “independent.”

The Occupational Safety and Health Administration (OSHA) Safety and Health Regulations for Construction; Specific Requirements for Excavation (see 29 CFR 1926.651) provide another example of a federal regulatory agency requiring certification by professional engineers, but not requiring that the engineers be “independent.” Under these regulations, OSHA requires structural ramps that are used to access or exit excavations to be designed by a “competent person” qualified in structural design. OSHA also requires professional engineers to ensure the stability of structures adjacent to excavations.

In addition, our understanding of what it means to be “registered” is that it means one who is licensed by a State. Since only States license professional engineers and geologists, we believe that “registered” and “professional” mean the same thing in the context of “registered professional engineer or geologist.” Thus, “registered” appears to be a redundant requirement. We request comment on whether to make this conforming change to provide consistency to our rules, which sometimes include the term “registered” and in other cases do not.

In summary, we have identified the following certifications as needing a qualified professional engineer:

Only Qualified Professional Engineers

264/265.115 *Certification of closure.*

264/265.120 *Certification of post-closure care.*

264/265.191(a), (b)(5)(ii) *Assessment of tank system’s integrity.*

264/265.192(a), (b) *Assessment of new tank system and components (also may be done by a qualified installation inspector).*

264/265.196(f) *Tank systems—submit certification of completion of major repairs.*

264.280(b) *Land treatment units, certification of closure (also may be done by a qualified soil scientist).*

264.571(a), (b), (c); 265.441(a), (b), (c) *Drip pads—submit written plan, as-built drawings, and certification for upgrading, repairing and modifying the drip pad.*

265.1101(c)(2) *Containment building design certification.*

266.103(b)(2)(ii)(D) *BIFs—Evaluation of data.*

270.16(a) *Assessment of tank system structural integrity.*

270.17(d) *Assessment of surface impoundment structural integrity.*

The Agency solicits comments on whether the ASTM standard is appropriate; whether the Agency made the right choices in determining which certifications must be conducted by qualified professional engineers, as opposed to persons that are accredited by programs meeting the ASTM standard; and whether the Agency should modify the requirement to allow “qualified professional engineers” to conduct the certification instead of “independent, qualified, registered professional engineers.”

#### *E. General Facility Standards*

When the Agency promulgated the operating record requirements in the hazardous waste regulations, we believed that records should routinely be kept for the life of the facility. Our rationale for this position was that if an issue or problem came up about an earlier practice at a facility, the records would be available.

After many years of experience in implementing the RCRA hazardous waste rules, we are better able to distinguish those records that must be kept for the life of the facility from those which can be discarded after some period of time without affecting protections of human health and the environment.

As discussed in the Proposed rule, information about which wastes are disposed of at a facility and where the disposed waste is located must be kept for the life of the facility. More routine information, such as whether certain notices were filed and records of inspections, can be discarded after three years. In the RCRA regulations, we have generally settled on three years as a

reasonable time frame for keeping records. This is consistent with other Agency programs, such as the Toxics Substance Control Act and the Toxic Chemical Release Reporting Community Right to Know programs, that impose a three year record retention time in their regulations. Therefore, we proposed to modify the §§ 264.73 and 265.73 operating record requirements to require only a three-year limit for keeping certain information.

In response to this proposal, we received a comment that for §§ 264.73(b)(8) and 265.73(b)(8) closure and post-closure cost estimates, we should only require current estimates to be kept at the facility. In fact, the commenter argues that 264.142(d) and 264.144(d) only requires the facility to “keep . . . at the facility during the operating life of the facility (the latest” closure and post-closure cost estimates. We agree with the commenter that there is an apparent inconsistency in the rules and thus request comment on the merits of this change.

We also received a request for clarification of the operating record requirements for incinerators. The commenter pointed out that for incinerators, voluminous data is produced and is required to be kept for the life of the facility, which is burdensome to maintain. Specifically, data that is required to be collected and maintained include continuous monitoring of combustion temperature, waste feed rate, the indicator of combustion gas velocity specified in the facility permit, and other operating parameters. At the commenter’s facilities, monitoring is done at 75 points, some instantaneously (every 15 seconds), but all requiring maintenance of 15-second data, minute averages and rolling hourly averages. This is a large volume of data that is generated annually. We are requesting comment on requiring a three year retention for these records instead of for the life of the facility.

#### *F. Groundwater Monitoring Requirements*

Treatment, storage, and disposal facilities must implement a groundwater monitoring system for hazardous waste land disposal units to detect the presence of contaminants in groundwater. If contamination is detected, more extensive monitoring must be performed. If the level of contamination exceeds the groundwater protection standard, corrective action must be undertaken.

We proposed allowing owners/operators of facilities to report on the effectiveness of corrective action on an

annual basis instead of the current semi-annual basis. In combination with other forms of oversight by regulatory agencies, we suggested that annual reporting will provide adequate information to ensure compliance.

In addition, we proposed modifying the § 264.99(g) requirement that facilities who are undertaking compliance monitoring also conduct an annual Appendix IX analysis of all monitoring wells. Specifically, we proposed allowing, on a case-by-case basis, sampling in a subset of the wells.

We received a comment asking that we clarify an inconsistency in our groundwater regulations. Specifically, we were asked to revise the § 264.98(d) detection monitoring requirements, which say that a facility must collect at least four samples from each well at least semi-annually. Elsewhere in our groundwater regulations—§ 264.97(g)(2) (the general groundwater monitoring requirements) we allow facilities to propose (with the Regional Administrator’s approval) alternate sampling procedures. The commenter would like us to extend this flexibility to the detection monitoring requirements. This appears to be a reasonable request.

Another commenter suggested that we provide flexibility in another part of both the groundwater detection and compliance monitoring requirements. Currently, facilities that find appendix IX compounds in the groundwater may resample within a month to check again for the compounds. If found again, the constituents will form the basis for compliance monitoring (and for detection monitoring, any new constituents that are found are added to the monitoring list). The commenter asked that we add language saying that the resampling may occur within a different time frame, upon approval by the State or EPA. This also appears to be a reasonable request. This change would increase the flexibility facilities have in complying with our regulations, without impacting protections for human health and the environment.

Finally, we received a comment asking us to change § 264.100(g) to maintain consistency with our change to 264.113(e)(5)—requiring an annual instead of semi-annual corrective action report. We inadvertently omitted this change despite it being consistent with our preamble discussion. We solicit comment on the merits of this change.

#### *G. Military Munitions*

We currently require conditionally exempt munitions to be transported under shipping controls specified in § 266.203(c). This section (266.203(c))

requires all shipments to be accompanied by 5 specific forms (the regulations currently lists the name of each form, as well as the accompanying form identification number). The problem, according to a commenter, is that every time the name of one of these forms, or the form identification number changes, the Department of Defense must publish a **Federal Register** notice announcing the change. It was not our intent for this type of minor, administrative action to require public notification. We believe that reasonable streamlining can be achieved by eliminating the requirement for a **Federal Register** notice and replacing it with a requirement for written notification to the Director of EPA’s Office of Federal Facilities Enforcement. We request comment on this potential change.

#### *H. Permit Modifications*

Several commenters pointed out that implementing many of the changes in the proposed rule will require a Class 2 Permit modification for facilities with permits (*see* the following Web site for information about Permit modifications: <http://www.epa.gov/epaoswer/hotline/training/perm.pdf>). We believe the changes represented in this notice will provide no significant threat to human health or the environment. Therefore, our intention is to allow these changes, if finalized, to be made as quickly as possible as opposed to making a change on paper, but not being able to implement it quickly. Because of the magnitude of the savings represented by these changes, delaying implementation would be costly for no apparent gain in environmental protection. Due to an oversight on our part, we did not address this issue in the proposed rule. Therefore, we are requesting comment today on allowing permitted facilities to use the Class 1 permit modification procedure, with prior Agency approval, to implement the changes arising from this rulemaking. However, we also request comment on whether the Class 1 permit modifications should be without prior Agency approval. Where States have an authorized RCRA program, the “Agency approval” refers to approval by the State.

#### **IV. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)**

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency

certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's notice on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's notice on small entities, we are certifying that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule. Today's notice is specifically intended to be de-regulatory and to reduce, not increase, the paperwork and related burdens of the RCRA hazardous waste program. For businesses in general, including all small businesses, the changes would reduce the labor time and other costs of preparing, keeping records of, and submitting reports to the agency. The notice also reduces the frequency by which businesses must conduct specified recordkeeping and reporting activities. It also eliminates recordkeeping and reporting requirements, thereby streamlining facilities' compliance activities. Finally, the rule increases flexibility in how waste handlers may comply with the regulations. We therefore conclude that today's notice relieves regulatory burden for small entities. We continue to be interested in the potential impacts of the notice on small entities and welcome comments on issues related to such impacts.

Dated: October 17, 2003.

**Robert Springer,**

*Director, Office of Solid Waste.*

[FR Doc. 03-27270 Filed 10-28-03; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement Nos.:* 010050-012.

*Title:* U.S. Flag Discussion Agreement.

*Parties:* American President Lines, Ltd. and A.P. Moller-Maersk A/S.

*Synopsis:* The amendment expands the geographic scope of the agreement to include ports in Africa and Eastern Europe and updates Maersk Sealand's name.

*Agreement No.:* 011075-064.

*Title:* Central America Discussion Agreement.

*Parties:* APL Co. Pte Ltd.; A.P. Moller-Maersk A/S; Crowley Liner Services, Inc.; Dole Ocean Cargo Express; King Ocean Services Limited; and Seaboard Marine, Ltd.

*Synopsis:* The amendment adds Lykes Lines Limited, LLC as a party to the agreement.

*Agreement No.:* 011865.

*Title:* CMA-CGM/LT Amerigo Express MUS Slot Charter Agreement.

*Parties:* CMA CGM, S.A. and Lloyd Triestino di Navigazione S.p.A.

*Synopsis:* The proposed agreement would authorize CMA CGM to charter space to Lloyd Triestino in the trade between the East Coast of the United States and the western Mediterranean Sea.

Dated: October 24, 2003.

By Order of the Federal Maritime Commission

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03-27278 Filed 10-28-03; 8:45 am]

**BILLING CODE 6730-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day-78-03]

### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498-1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

*Proposed Project:* National Public Health Performance Standards Program Local Public Health Governance Performance Assessment Instrument—Revision—Public Health Practice Program Office (PHPPPO), Centers for Disease Control and Prevention (CDC).

CDC received approval for this data collection February 19, 2002. This request seeks approval for a revised evaluation document. The previous instrument included 23 open-ended questions. The revised instrument includes 13 questions, the majority of which are close-ended. This revised instrument will provide us better data for the purposes of analysis and elicit more valuable information for improving the instruments in the future. Additionally, the revised evaluation is similar to the evaluations included in the State Public Health System and Local Public Health System Performance Assessment Instruments (0920-0557 and 0920-0555), thus offering more opportunities for cross-analysis.

### Background

Since 1998, the CDC National Public Health Performance Standards Program has convened workgroups with the National Association of County and City Health Officials (NACCHO), the Association of State and Territorial Health Officials (ASTHO), the National Association of Local Boards of Health (NALBOH), the American Public Health Association (APHA), and the Public Health Foundation (PHF) to develop performance standards for public health systems based on the ten Essential

Services of Public Health. In the Spring of 2001, CDC conducted field tests with the local public health governance instruments in the State of Massachusetts.

CDC received approval to implement a voluntary data collection to assess the capacity of local boards of health to deliver the Essential Public Health Services. This data collection will

provide a framework for local boards of health to evaluate their effectiveness. Electronic data submission will be the method of choice. If computer technology in local jurisdictions does not support electronic submission, hard copy survey instruments will be available. Local jurisdictions using hard copy survey instruments will receive

assistance from State or local level field coordinators for web-based data entry.

Local boards of health will respond to the survey. An estimated 33% of approximately 3,200 United States local boards are expected to participate in the National Performance Standards Program per year. The burden hours are estimated to be 19,200.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Local Boards of Health Year 1 .....	1,066	1	6
Local Boards of Health Year 2 .....	1,067	1	6
Local Boards of Health Year 3 .....	1,067	1	6

Dated: Friday, October 14, 2003.

**Gaylon D. Morris,**  
*Acting Director, Executive Secretariat,  
 Centers for Disease Control and Prevention.*  
 [FR Doc. 03-26987 Filed 10-28-03; 8:45 am]  
**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 02N-0278]

**Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 10, 2003 (68 FR 58974 at 59067), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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 has now approved the information collection and has assigned OMB control number 0910-0520. The approval expires on October 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

October 22, 2003.

**Jeffrey Shuren,**  
*Assistant Commissioner for Policy.*  
 [FR Doc. 03-27189 Filed 10-28-03; 8:45 am]  
**BILLING CODE 4160-01-S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 2003N-0486]

**Determination That PIPRACIL (Piperacillin Sodium) 2-Gram, 3-Gram, and 4-Gram Vials Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that PIPRACIL (piperacillin sodium) 2-gram, 3-gram, and 4-gram vials were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for piperacillin sodium 2-gram, 3-gram, and 4-gram vials.

**FOR FURTHER INFORMATION CONTACT:** Nicole Mueller, Center for Drug Evaluation and Research (HFD-7), Food

and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162) (21 CFR 314.162)).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of

safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

PIPRACIL (piperacillin sodium) 2-gram, 3-gram, and 4-gram vials are the subject of approved NDA 50-545 held by Lederle (part of Wyeth-Ayerst Pharmaceuticals). PIPRACIL is a broad-spectrum penicillin indicated for the treatment of serious infections and for prophylactic use in surgery. The holder of the application for PIPRACIL (piperacillin sodium) 2-gram, 3-gram, and 4-gram vials has informed FDA that the drug products have been withdrawn from sale.

The agency has determined that Wyeth-Ayerst's PIPRACIL 2-gram, 3-gram, and 4-gram vials were not withdrawn from sale for reasons of safety or effectiveness. FDA has independently evaluated relevant literature and data for possible postmarketing adverse event reports and has found no information that would indicate these products were withdrawn for reasons of safety or effectiveness.

For the reasons outlined, FDA determines that Wyeth-Ayerst's

PIPRACIL 2-gram, 3-gram, and 4-gram vials were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list PIPRACIL (piperacillin sodium) 2-gram, 3-gram, and 4-gram vials in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to PIPRACIL (piperacillin sodium) 2-gram, 3-gram, and 4-gram vials may be approved by the agency.

Dated: October 21, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03-27190 Filed 10-28-03; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

#### Program Exclusions: September 2003

**AGENCY:** Office of Inspector General, HHS.

**ACTION:** Notice of program exclusions.

During the month of September 2003, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

#### OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS CASE INVESTIGATION MANAGEMENT SYSTEM

[For press release from 09/01/2003–09/30/2003]

Subject name	Address	Effective date
<b>Program-Related Convictions</b>		
Arca, William .....	Oceanside, NY .....	10/20/2003
Arias, Grisel .....	Miami, FL .....	10/20/2003
Arias, Idania .....	Miami, FL .....	10/20/2003
Badalyan, Arsen .....	Van Nuys, CA .....	10/20/2003
Batiste, Vernida .....	Marrero, LA .....	10/20/2003
Benson, Kelly .....	North Mankato, MN .....	10/20/2003
Bishop, Michael .....	Casa Grande, AZ .....	10/20/2003
Boisseau, Carlene .....	Chester, VA .....	10/20/2003
Boland, C .....	Easley, SC .....	10/20/2003
Bouza, Vicente .....	Miami, FL .....	10/20/2003
Burgos, Marco .....	Miami Beach, FL .....	10/20/2003
Burgos, Suzanne .....	Miami Beach, FL .....	10/20/2003
Carter, Valarie .....	Los Angeles, CA .....	10/20/2003
Cash, Lenard .....	San Antonio, TX .....	10/20/2003
Clark, Merle .....	Oceanside, NY .....	10/20/2003
Clements, Deborah .....	Whitehall, OH .....	10/20/2003
Coppin, Leslie .....	Highlands Ranch, CO .....	10/20/2003
Cortez, Josie .....	Alhambra, CA .....	10/20/2003
Crow, Ronald .....	Beaver, WV .....	10/20/2003
Curran, Joan .....	Avon, OH .....	10/20/2003
De Jesus, Lorna .....	Long Beach, CA .....	10/20/2003
Deshields, Cynthia .....	Philadelphia, PA .....	10/20/2003
Dewan, Suman .....	New Orleans, LA .....	12/4/2002
Donaghy, Thomas .....	Whitehall, OH .....	10/20/2003
Donohue, Joseph .....	Sheridan, OR .....	10/20/2003
Edgar, Daniel .....	Peachtree City, GA .....	10/20/2003
EMA Medical Laboratory, Inc .....	Ridgewood, NY .....	10/20/2003
Exsted, Melody .....	Sandstone, MN .....	10/20/2003
Feldman, Gary .....	Lompoc, CA .....	10/20/2003
Ferran, Osmin .....	Miami, FL .....	10/20/2003
Flemons, Michael .....	Venus, TX .....	10/20/2003
Franklin, Dwonne .....	Minneapolis, MN .....	10/20/2003
Gezvkaryan, Khachik .....	Eloy, AZ .....	10/20/2003

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS CASE INVESTIGATION MANAGEMENT SYSTEM—  
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[For press release from 09/01/2003–09/30/2003]

Subject name	Address	Effective date
Gibson, Michelle	Grove City, OH	10/20/2003
Greenwood, Billy	Eglin AFB, FL	10/20/2003
Guardado Valle, Priscilia	Los Angeles, CA	10/20/2003
Guarglia, Gerald	Raleigh, NC	10/20/2003
Hahn, Madelyn	Buda, TX	10/20/2003
Harris, Sara	Albuquerque, NM	10/20/2003
Henderson, Burgandy	Columbus, OH	10/20/2003
Iheagwara, Michael	North Bay Village, FL	10/20/2003
Judge, Michael	Warwick, RI	10/20/2003
Katona, Tibor	Mequon, WI	10/20/2003
Khanin, Yuliy	Fort Dix, NJ	10/20/2003
Kobrin, Kennard	Barrington, RI	10/20/2003
Landau, Herbert	Fort Salonga, NY	10/20/2003
Landrove, Dalia	Miami, FL	10/20/2003
Lewis, Robert	Los Angeles, CA	10/20/2003
Lievertz, Randolph	Rochester, MN	10/20/2003
Livio, Renee	Coleman, FL	10/20/2003
Lopez, Jose	Hialeah, FL	10/20/2003
Manzano, Carlos	Miami, FL	10/20/2003
Margulis, Eugene	Brooklyn, NY	10/20/2003
Mason, Ellen	O'Fallon, IL	10/20/2003
Mason, Samuel	Reisterstown, MD	10/20/2003
Murphy, Terry	Miami, FL	10/20/2003
Nazaryan, Tigran	Fresno, CA	10/20/2003
Nepokroeff, Mark	Lewisburg, PA	10/20/2003
Nickelson, Betty	Mabank, TX	10/20/2003
Nuckols, Cardwell	Apopka, FL	10/20/2003
O & J Pharmacy Inc	Hempstead, NY	10/20/2003
Pal, Anceline	La Habra, CA	5/23/2003
Perry, Mary	Rye, NY	10/20/2003
Rasoulinejad, Zohreh	Alpine, NJ	10/20/2003
Reed-Proctor, Alfredia	Houston, TX	10/20/2003
Richman, Darlena	Tampa, FL	10/20/2003
Rivera, Victor	Miami, FL	10/20/2003
Rohr, Carl	Forest City, AR	10/20/2003
Rolle, Leon	Miami Shores, FL	10/20/2003
Ross, Chom	Long Beach, CA	6/16/2003
Ross, Vanareth	Long Beach, CA	5/21/2003
Sajan, John	Avon Lake, OH	10/20/2003
Salih, Tariq	Richmond, VA	10/20/2003
Sanchez, Donald	Apple Valley, CA	10/20/2003
Sarduy, Pedro	Aventura, FL	10/20/2003
Scarboro, Michael	Petersburg, VA	10/20/2003
Servillas, Emmanuel	Bensalem, PA	10/20/2003
Sheikh, Mohammad	Ridgewood, NY	10/20/2003
Sklar, Herbert	Plainview, NY	10/20/2003
Smith, Cynthia	Beaverdam, VA	10/20/2003
Steffens, Paul	Manchester, NJ	10/20/2003
Strickland, Cynthia	Natchez, MS	10/20/2003
Thomas, Evelyn	Bryan, TX	10/20/2003
Thomsen, Violet	La Grande, OR	10/20/2003
Turin, Jill	Weston, FL	10/20/2003
Udi, Joseph	Los Angeles, CA	10/20/2003
Valencia, Richard	Miami, FL	10/20/2003
Vargas, Barbara	Middletown, CA	10/20/2003
Voloshin, Emma	Milwaukee, WI	10/20/2003
Ward, Aneta	Portsmouth, VA	10/20/2003
Ward, John	Pensacola, FL	10/20/2003
Watson, Candace	Coshocton, OH	10/20/2003
Watson, Douglas	Cadwell, OH	10/20/2003
Watson, Michkell	Marysville, OH	10/20/2003
Womer, Jon	W Berlin, VT	10/20/2003

**Felony Conviction for Health Care Fraud**

Bako, Joseph	Maineville, OH	10/20/2003
Caminita, Paula	Moulton, AL	10/20/2003
Chatterjee, Ranendra	Hull, MA	10/20/2003
Evans, Roland	New Brunswick, NJ	10/20/2003
Hamilton, John	N Las Vegas, NV	10/20/2003

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[For press release from 09/01/2003–09/30/2003]

Subject name	Address	Effective date
Harvey, Edward .....	Fairfield, CA .....	10/20/2003
Heater, Rebecca .....	Barberton, OH .....	10/20/2003
Higgwe, Golden .....	Canton, MI .....	10/20/2003
Hoffman, Janie .....	Clanton, AL .....	10/20/2003
Lakhter, Alexander .....	Brooklyn, NY .....	10/20/2003
Manassa, Verjean .....	Dearborn, MI .....	10/20/2003
Mount, Patricia .....	Marianna, FL .....	10/20/2003
Pattat, Clayton .....	Ripley, TN .....	10/20/2003
Peistrup, Gordon .....	St. Louis, MO .....	10/20/2003
Provost, Linda .....	Woburn, MA .....	10/20/2003
Provost, Robert .....	Malone, NY .....	10/20/2003
Ragains, Vicki .....	Palm Harbor, FL .....	10/20/2003
Rassel, John .....	Perry, MI .....	10/20/2003
Redmon, Ruth .....	Rio Linda, CA .....	10/20/2003
Sapronetti, Constance .....	Marysville, OH .....	10/20/2003
Sternberg, Barbara .....	Yorktown Heights, NY .....	10/20/2003
Sullivan, Daniel .....	Bridgeport, CT .....	10/20/2003

**Felony Controlled Substance Conviction**

Butler, Jason .....	Bedford, IN .....	10/20/2003
Cramer, Mary .....	Freeport, IL .....	10/20/2003
Dover, Nikie .....	Rolla, MO .....	10/20/2003
Easter, Thomas .....	El Paso, TX .....	10/20/2003
Hunter, Frances .....	Dayton, OH .....	10/20/2003
Johnson, Terri .....	Oregon, WI .....	10/20/2003
Kader, Ayman .....	Dennison, OH .....	10/20/2003
Lynch, Kevin .....	Cumberland, MD .....	10/20/2003
Manno, Michael .....	Fort Dix, NJ .....	10/20/2003
Margavage, Annette .....	Wilkes-Barre, PA .....	10/20/2003
Martinez, Alfredo .....	Lowell, MI .....	10/20/2003
Murphy, Amy .....	Milwaukee, WI .....	10/20/2003
Newby, Michelle .....	Des Moines, IA .....	10/20/2003
Ramos, Jesus .....	Strongsville, OH .....	10/20/2003
Renshaw, Jason .....	Harleysville, PA .....	10/20/2003
Stewart, Paula .....	Friendswood, TX .....	10/20/2003
Weathersbee, Lisa .....	Graniteville, SC .....	10/20/2003
Wilson, Jennifer .....	Tacoma, WA .....	10/20/2003

**Patient Abuse/Neglect Convictions**

Alston, Katie .....	Columbia, LA .....	10/20/2003
Bajaj, Anil .....	London, OH .....	10/20/2003
Bernstein, Marc .....	Slingerlands, NY .....	10/20/2003
Broadnax, Frederick .....	Columbia, LA .....	10/20/2003
Brown, Robin .....	Las Vegas, NV .....	10/20/2003
Burton, Tomekie .....	Prosperity, SC .....	10/20/2003
Davis, Jency .....	Alexandria, LA .....	10/20/2003
Ealy, Carole .....	Las Vegas, NV .....	10/20/2003
Fernando-Castillo, Maria .....	Las Vegas, NV .....	10/20/2003
Friedman, Kenneth .....	Waterford, MI .....	10/20/2003
Galler, Marvin .....	Williamsville, NY .....	7/10/2003
Hayes, Dorothy .....	Savannah, GA .....	10/20/2003
Hubbard, Robert .....	Jackson, MS .....	10/20/2003
Hutson, Francis .....	Iuka, MS .....	10/20/2003
Jones, Sharon .....	Detroit, MI .....	10/20/2003
Lin, John .....	Walnut Creek, CA .....	10/20/2003
Martinez, Irma .....	Waco, TX .....	10/20/2003
Masters, Sylvia .....	Davisburg, MI .....	10/20/2003
Mondragon, Anita .....	Blanca, CO .....	10/20/2003
Moore, Carol .....	Winona, MS .....	10/20/2003
Morgan, Leona .....	Bruceton, TN .....	10/20/2003
Mosley, Vincent .....	Meridian, MS .....	10/20/2003
Nalabolu, Dasharathram .....	Centerville, OH .....	10/20/2003
Nieto, Corazon .....	Ewa Beach, HI .....	10/20/2003
Robertson, Laura .....	Baton Rouge, LA .....	10/20/2003
Stroman, Ken .....	Romulus, MI .....	10/20/2003
Walton, Glenda .....	Kentwood, LA .....	10/20/2003
Watkins, Connell .....	Canon City, CO .....	10/20/2003
Welch, John .....	Concord, NH .....	10/20/2003

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Subject name	Address	Effective date
Wells, Sue .....	Union Grove, WI .....	10/20/2003
<b>Conviction for Health Care Fraud</b>		
Lewis, Mary .....	Mahopac, NY .....	10/20/2003
Morrison, Dolores .....	Tacoma, WA .....	10/20/2003
<b>Conviction-Obstruction of an Investigation</b>		
Sviridovskaya, Galina .....	Brooklyn, NY .....	10/20/2003
<b>Controlled Substance Convictions</b>		
Vique, Debra .....	Hemlock, MI .....	10/20/2003
<b>License Revocation/Suspension/Surrendered</b>		
Aldenhagen, Elizabeth .....	Columbus, IN .....	10/20/2003
Allen, Sally .....	Raleigh, NC .....	10/20/2003
Anderson, David .....	Trenton, NJ .....	10/20/2003
Anderson, Kimberly .....	Burtonsville, MD .....	10/20/2003
Arora, Ram .....	Bloomfield Hills, MI .....	10/20/2003
Asberry, Ayanna .....	San Bernardino, CA .....	10/20/2003
Asberry, Norman .....	Moreno Valley, CA .....	10/20/2003
Avance, Dale .....	Anaheim, CA .....	10/20/2003
Bales, Kristina .....	Fayetteville, NC .....	10/20/2003
Ballenger, Linda .....	Winchester, IN .....	10/20/2003
Bank, Daniel .....	Charleston, SC .....	10/20/2003
Bass, Kolby .....	Pueblo, CO .....	10/20/2003
Baxter, Lisa .....	Little Rock, AR .....	10/20/2003
Beavers Vaughn, Kendra .....	El Reno, OK .....	10/20/2003
Benites, Adelaida .....	Providence, RI .....	10/20/2003
Bennett, Polly .....	Tulsa, OK .....	10/20/2003
Bennett, Sandra .....	Pottersville, MO .....	10/20/2003
Betz, Wendy .....	Winthrop, MA .....	10/20/2003
Black, Diane .....	Sun Prairie, WI .....	10/20/2003
Bleakney, Christine .....	Seattle, WA .....	10/20/2003
Boaman, Bethany .....	Madison, WI .....	10/20/2003
Bond, Mark .....	Hamlin, PA .....	10/20/2003
Boone, Catherine .....	Richfield, MN .....	10/20/2003
Boyd, Susan .....	Santa Clara, CA .....	10/20/2003
Branham, Kristin .....	Bedford, IN .....	10/20/2003
Brown, Kristie .....	Tulsa, OK .....	10/20/2003
Brown, Sandors .....	Leesburg, VA .....	10/20/2003
Buck, Donna .....	Grifton, NC .....	10/20/2003
Buck, Lori .....	Shelton, WA .....	10/20/2003
Byrnes, Lori .....	Tampa, FL .....	10/20/2003
Cade, Stephen .....	Montana City, MT .....	10/20/2003
Cairns, Kathey .....	Bremerton, WA .....	10/20/2003
Carpenter, Sandra .....	Brooksville, FL .....	10/20/2003
Carter, Rachel .....	Charlotte, NC .....	10/20/2003
Catchings, Marsha .....	Michigan City, IN .....	10/20/2003
Champion, Tiffani .....	Clifton Heights, PA .....	10/20/2003
Charlet, Alan .....	Paducah, KY .....	10/20/2003
Chase, Carolyn .....	Show Low, AZ .....	10/20/2003
Clark, Cheryl .....	Midwest City, OK .....	10/20/2003
Claussen, Christy .....	Martin, OH .....	10/20/2003
Colangelo, Carrie .....	Marathon, FL .....	10/20/2003
Conley, Christine .....	Quincy, MA .....	10/20/2003
Cornelison, Wanda .....	Oklahoma City, OK .....	10/20/2003
Dacey, Michelle .....	Chicago, IL .....	10/20/2003
Daskauskas, Donna .....	Baco Raton, FL .....	10/20/2003
Davis, Clifford .....	Sherman Oaks, CA .....	10/20/2003
Davis, Dennis .....	Blue River, WI .....	10/20/2003
Davis, Jennifer .....	Tulsa, OK .....	10/20/2003
Davison, Mark .....	Manchester, IA .....	10/20/2003
Deibert, Joyce .....	Mohnton, PA .....	10/20/2003
Denhalter, Scott .....	Hackettstown, NJ .....	9/12/2003
Donikian, Serge .....	Granite City, IL .....	10/20/2003
Dorr, Nancy .....	Rochester, MN .....	10/20/2003

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Subject name	Address	Effective date
Downe, Phyllis	Lutz, FL	10/20/2003
Downin, Alisha	Charlotte, NC	10/20/2003
Dudley Beardsworth Bond, Jane	Twin Falls, ID	10/20/2003
Dudzinski, Edward	Herndon, VA	10/20/2003
Dulaney, Debbie	Reno, NV	10/20/2003
Eaton, Hubert	Wilmington, NC	10/20/2003
Eberle, Jeanne	Lynbrook, NY	10/20/2003
England, Elizabeth	Gastonia, NC	10/20/2003
Enriquez, Patricia	Racine, WI	10/20/2003
Evans, Eugene	Montgomery, AL	10/20/2003
Fennessey, Barbara	Gahanna, OH	10/20/2003
Ferguson, Jon	Atascadero, CA	10/20/2003
Foulks, Kimberly	Fort Wayne, IN	10/20/2003
Fox, Barbara	White Horse Beach, MA	10/20/2003
French, Richard	Seattle, WA	10/20/2003
Fry, Robert	Harrah, OK	10/20/2003
Gelfo, Carol	Pinehurst, NC	10/20/2003
Gibson, Susan	Stuart, FL	10/20/2003
Gookin, Stacy	Germantown, TN	10/20/2003
Graham, Donald	New Haven, IN	10/20/2003
Graham, Terri	Murphysboro, IL	10/20/2003
Green, Joyce	Stockton, CA	10/20/2003
Greer, Donna	Inverness, FL	10/20/2003
Griesheimer, Nancy	Toledo, IL	10/20/2003
Griffith, Cynthia	Scottsbluff, NE	10/20/2003
Grindley, Clifford	Spokane, WA	10/20/2003
Gronholz, Jolene	Luverne, MN	10/20/2003
Gunderson, Carol	Des Moines, WA	10/20/2003
Gunter, Penny	Pittsboro, NC	10/20/2003
Gwaltney, Michael	Richmond, VA	10/20/2003
Haden, Blanche	Bluefield, WV	10/20/2003
Handley, Choi	St. Louis, MO	10/20/2003
Hankinson, Theresa	Elizabeth City, NC	10/20/2003
Hardaway, Vida	Biloxi, MS	10/20/2003
Harmer, Bonnie	Springville, UT	10/20/2003
Harrell, Wendy	Kernersville, NC	10/20/2003
Harrison, Tammy	Birmingham, AL	10/20/2003
Hartley, Gail	Guilford, VT	10/20/2003
Hartranft, Elizabeth	Bay Village, OH	10/20/2003
Hefner, Frederick	Moab, Ut	10/20/2003
Henderson, Melissa	Kokomo, IN	10/20/2003
Higgins, Peggy	Pottsville, PA	10/20/2003
Hill, Susan	Corydon, KY	10/20/2003
Holloway, Vickie	Oklahoma City, OK	10/20/2003
Holm, Sadie	Litchfield, IL	10/20/2003
Holmes, Christine	Greenfield, MA	10/20/2003
Honeycutt, Michael	West Allis, WI	10/20/2003
Horn, April	Kernersville, NC	10/20/2003
Hoveland, Laurie	Seattle, WA	10/20/2003
Hudson, Nia	Valencia, CA	10/20/2003
Iodice, Sheryl	Lanesboro, MA	10/20/2003
Jachim, Elizabeth	Chicago, IL	10/20/2003
Jacobson, Kimberly	Lacrescent, MN	10/20/2003
Jakielo, Jane	Aurora, CO	10/20/2003
Jaquish, Sally	Boulder, CO	10/20/2003
Jaros, Todd	Westlake, OH	10/20/2003
Jarvis, Kristen	St. Albans, VT	10/20/2003
Jenkins, Tamala	Yuba City, CA	10/20/2003
Jeon, Crystal	San Antonio, TX	10/20/2003
Jones, Danny	Raleigh, NC	10/20/2003
Jones, Suzette	Centralia, IL	10/20/2003
Joyce, Richard	Elk Grove Village, IL	10/20/2003
Justin, Jeffrey	Dayton, MN	10/20/2003
Kaden, Wendy	Woodstock, IL	10/20/2003
Kane, Patricia	Woburn, MA	10/20/2003
Kaytes, Fred	Hollywood, FL	10/20/2003
Kennedy, Jeffrey	Shelby Township, MI	10/20/2003
Kerr, Kevin	Kansas City, KS	10/20/2003
Kilgrow, Debbie	West Valley City, UT	10/20/2003

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King, Toi	Gary, IN	10/20/2003
Kopiecki, Albert	Salem, MA	10/20/2003
Kubby, David	Des Moines, IA	10/20/2003
Kunka, Monte	Belle Vernon, PA	10/20/2003
Lee, Clifford	Sellersburg, IN	10/20/2003
Lemieszewski, John	Whitestone, NY	10/20/2003
Lennon, Lee	Winston-Salem, NC	10/20/2003
Levering, Carol	Egg Harbor Townshp, NJ	10/20/2003
Lingner, John	Houston, TX	10/20/2003
Lipsky, Melissa	Breinigsville, PA	10/20/2003
Llana, Cynthia	San Diego, CA	10/20/2003
Lukas, Kari	Waupaca, WI	10/20/2003
Lundstrom, Patricia	Vancouver, WA	10/20/2003
Lynn, Mary	S Williamsport, PA	10/20/2003
Mann, Christine	So Pasadena, FL	10/20/2003
Marble, Nancy	Phoenix, AZ	10/20/2003
Marshall, Barbara	Cadott, WI	10/20/2003
Maxwell, Leslie	Colorado Springs, CO	10/20/2003
McCarter-Veeck, Mia	Boulder Creek, CA	10/20/2003
McCoy, Julie	La Porte, IN	10/20/2003
McIntyre, Chelly	Jacksonville Beach, FL	10/20/2003
McIntyre, Gerald	Mt Lake Terrace, WA	10/20/2003
McKinley, Janet	Harrah, OK	10/20/2003
McPhail, Charles	Holly, MI	10/20/2003
Meares, Dianda	Charlotte, NC	10/20/2003
Meyer, James	Watertown, WI	10/20/2003
Meyer, Susan	Johnston, IA	10/20/2003
Mezzacapo, Tori	Erie, PA	10/20/2003
Miccia, Anthony	Apache Junction, AZ	10/20/2003
Milford, Ramanda	Oil City, PA	10/20/2003
Miller, Brenda	Evergreen Park, IL	10/20/2003
Miller, David	Marion, OH	10/20/2003
Miller, Shelley	Elon College, NC	10/20/2003
Miller, Stephen	Sarasota, FL	10/20/2003
Minerly-Wiesenthal, Luann	Hollywood, FL	10/20/2003
Mohorn, Christina	Greensboro, NC	10/20/2003
Moore-Evans, Jacqueline	Missouri City, TX	8/4/2003
Munson, Cheryl	Clearwater, FL	10/20/2003
Murphy, Brandi	Walla Walla, WA	10/20/2003
Neeley, Virginia	Brookville, IN	10/20/2003
Nelsen, John	Goddard, KS	10/20/2003
Nofsinger, Patricia	Holmesville, OH	10/20/2003
Norton, Paul	Auburn, WA	10/20/2003
Nowlin, Cynthia	Virginia Beach, VA	10/20/2003
Oglesbee, Samantha	Broadway, NC	10/20/2003
Olden, Predithia	Belleville, MI	10/20/2003
Oosterhoudt, Gerri	Lake City, FL	10/20/2003
Overman, Tammy	Colorado Springs, CO	10/20/2003
Palmer, Michelle	Corning, IA	10/20/2003
Palumbo, Phyllis	Tamaqua, PA	10/20/2003
Parrish, Sherrin	Raleigh, NC	10/20/2003
Patrick, Amber	Bellingham, WA	10/20/2003
Patrick, Terry	Terre Haute, IN	10/20/2003
Peace, Tammy	Cawood, KY	10/20/2003
Penninger, Tracy	Concord, NC	10/20/2003
Perlstein, Larry	Scottsdale, AZ	10/20/2003
Peterlin, Kimberly	Hinsdale, IL	10/20/2003
Phalon, Rorie	Statington, PA	10/20/2003
Philippi, Deborah	Cheyenne, WY	10/20/2003
Philips, Craig	Madison, WI	10/20/2003
Phipps-Gautrey, Carolyn	Navarro, CA	10/20/2003
Pisterman, Sergio	Louisville, KY	10/20/2003
Pizzorno, Gerard	New York, NY	10/20/2003
Pocurull, Rogelio	Miami, FL	10/20/2003
Polito, Jeannie	Evanston, IL	10/20/2003
Popovich, Michael	Weirton, WV	10/20/2003
Prescimone, Doreen	Perry Hall, MD	10/20/2003
Price, Sandra	Iowa City, IA	10/20/2003
Reed, Kathleen	Skokie, IL	10/20/2003

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Reichel, Joann	Erie, PA	10/20/2003
Rekawik, Peter	Elk Grove Village, IL	10/20/2003
Richardson, Raymond	Chicago, IL	10/20/2003
Rivera, Brenda	Pueblo, CO	10/20/2003
Roark, Valora	Indianapolis, IN	10/20/2003
Roberts, Elizabeth	Oak Park, MI	10/20/2003
Robin, Roberta	Hackettstown, NJ	10/20/2003
Roeser, Jacqueline	Pueblo West, CO	10/20/2003
Romig, Ronda	Montoursville, PA	10/20/2003
Rosania, Nicholas	Long Valley, NJ	10/20/2003
Rosemond, Carlton	Chicago, IL	10/20/2003
Rucker, Cari	Lebanon, TN	10/20/2003
Rucker, Lonie	Chicago, IL	10/20/2003
Ruybalid, Guy	San Jose, CA	10/20/2003
Ryan, John	Painesville, OH	10/20/2003
Salazar, Hector	Chicago, IL	10/20/2003
Schneegas, Peter	Elmhurst, IL	10/20/2003
Scott, Shelly	Senatobia, MS	10/20/2003
Sealy, Gracelia	Jacksonville, FL	10/20/2003
Sexton-Gaidewicz, Kimberly	Riverside, NJ	10/20/2003
Shearer, Wendy	Erie, IL	10/20/2003
Shern, Thomas	Lavale, MD	10/20/2003
Shoemaker, Kristie	Pleasant Grove, AL	10/20/2003
Shuster, Marvin	Hollywood, FL	10/20/2003
Sims, Lisa	Butler, PA	10/20/2003
Smith, Cherie	Chesapeake, VA	10/20/2003
Smith, Eric New	Albany, IN	10/20/2003
Smith, Susan	Noblesville, IN	10/20/2003
Smitherman, Sharon	Greenville, NC	10/20/2003
Spaide, Sharon	Wilkes Barre, PA	10/20/2003
Sparks, Melinda	Indianapolis, IN	10/20/2003
Stanford, Shirley	South Bend, IN	10/20/2003
Stevens, Deborah	Jacksonville, FL	10/20/2003
Stewart, Laura	Hobart, IN	10/20/2003
Stoegbauer, Barbara	Powers Lake, ND	10/20/2003
Sveda, Stephen	Coshocton, OH	10/20/2003
Swinson, Jerry Crown	Pointe, IN	10/20/2003
Tasca, Anthony	Blackwood, NJ	10/20/2003
Taylor, Judith	Renton, WA	10/20/2003
Taylor, Lori	Nakina, NC	10/20/2003
Terry, Rae	Bethel Park, PA	10/20/2003
Thomas, Kathryn	Baltimore, MD	10/20/2003
Thorne, Karen	Clemmons, NC	10/20/2003
Thurston, Patricia	Pardeeville, WI	10/20/2003
Tolbert, Pamela	Bastian, VA	10/20/2003
Tolson McGhee, Bridgett	Jeffersonville, IN	10/20/2003
Townsend, Joanne	Merrimac, MA	10/20/2003
Trahan, Mary	Greenfield, WI	10/20/2003
Udelhoven, Pamela	Livingston, WI	10/20/2003
Upshaw, Bernadine	Country Club HILLS, IL	10/20/2003
Uwamariya, Beatrice	Loma Linda, CA	10/20/2003
Vergoglino, Rocco	Pennsauken, NJ	10/20/2003
Veszpremy-Turner, Patricia	Trabuco Canyon, CA	10/20/2003
Vida, Gretchen	Prescott Valley, AZ	10/20/2003
Walsh, Patrick	Spokane, WA	10/20/2003
Ward, Kelly	Lovell, WY	10/20/2003
Weeks, Robert	Hobart, IN	10/20/2003
Weiss, Jane	Flemington, NJ	10/20/2003
Williams, Nyla	Phoenix, AZ	10/20/2003
Williamson, Kathleen	Philadelphia, PA	10/20/2003
Wilson, Jayne	Mount Prospect, IL	10/20/2003
Winholt, Jeffrey	Cincinnati, OH	10/20/2003
Wood, Monica	Springfield, IL	10/20/2003
Woods, Kyle	Pomeroy, OH	10/20/2003
Woodward, Martha	Manitou Springs, CO	10/20/2003
Wright, Kathy	Lawton, OK	10/20/2003
Young, Jennifer	Zolfo Springs, FL	10/20/2003
Yow, Tara	Sophia, NC	10/20/2003
Zwolinski, Russell	Chicago, IL	10/20/2003

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS CASE INVESTIGATION MANAGEMENT SYSTEM—  
Continued

[For press release from 09/01/2003–09/30/2003]

Subject name	Address	Effective date
<b>Federal/State Exclusion/Suspension</b>		
Salvador, Enrique .....	Chicago, IL .....	10/20/2003
<b>Fraud/Kickbacks</b>		
Eric Wetsman, Do, Inc .....	San Diego, CA .....	5/16/2003
Minor, Sue .....	Auburn, CA .....	7/1/2003
South County Rehabilitation, Inc (SCR) .....	St. Louis, MO .....	3/31/2003
Wetsman, Herman .....	La Jolla, CA .....	5/16/2003
<b>Owned/Controlled by Convicted Entities</b>		
Advocate RX, Inc N .....	Miami Beach, FL .....	10/20/2003
Building Mgmt and Maintenance .....	Cape Coral, FL .....	10/20/2003
Capital Fund, LLC .....	Reno, NV .....	10/20/2003
Compassionate Care Group .....	Minneapolis, MN .....	10/20/2003
Corico International Inc .....	West Palm Beach, FL .....	10/20/2003
Drug Testing Center, LLC .....	N Las Vegas, NV .....	10/20/2003
European Health Care Center .....	Reno, NV .....	10/20/2003
European Management Group, Inc .....	Reno, NV .....	10/20/2003
Fitness Management Services, Inc .....	Reno, NV .....	10/20/2003
Future Fitness, Inc .....	Reno, NV .....	10/20/2003
Global Marketing Center Inc .....	Aventura, FL .....	10/20/2003
Health Management Inc .....	Reno, NV .....	10/20/2003
Pharmacist Rus, Inc .....	Miami, FL .....	10/20/2003
Rainbow Chiropractic .....	Houston, TX .....	8/4/2003
Sajer Medical Inc .....	Miami, FL .....	10/20/2003
Unimed Medical Center, Inc .....	Miami, FL .....	10/20/2003
Y & G Luckstone, Inc .....	Fort Dix, NJ .....	10/20/2003
<b>Default on Heal Loan</b>		
Araghi, Mahbod .....	Hayward, CA .....	10/20/2003
Aufdemberg, Stanley .....	Anaheim, CA .....	10/20/2003
Ayala, Juan .....	San German, PR .....	10/20/2003
Bentley, David .....	San Francisco, CA .....	10/20/2003
Berthelsen, Roger .....	Palm Springs, CA .....	10/20/2003
Denney, Teresa .....	Honolulu, HI .....	9/3/2003
Hunt, Celia .....	San Jose, CA .....	10/20/2003
Jeffcoat, Lori .....	Alameda, CA .....	10/20/2003
Ju, Yue .....	Dolly City, Ca .....	10/20/2003
Kazemipour, Reza .....	Mountain View, CA .....	10/20/2003
Lippay, Ronald .....	Sunnyvale, CA .....	10/20/2003
Martin, Kathleen .....	Forestville, CA .....	10/20/2003
Michail, Medhat .....	Jersey City, NJ .....	8/20/2003
Myers, Karen .....	San Francisco, CA .....	10/20/2003
Nave, Kenneth .....	Des Plaines, IL .....	10/20/2003
Ocon, Luis .....	Salinas, CA .....	10/20/2003
Richardson, John .....	Lakeport, CA .....	10/20/2003
Rogers, Steven .....	Paradise, CA .....	10/20/2003
Short, Adrienne .....	San Raffael, CA .....	10/20/2003
Sloan, Sandra .....	Oakland, CA .....	10/20/2003
Terides, Michael .....	Capitola, CA .....	10/20/2003
Theobald, Patrick .....	Springfield, MO .....	8/26/2003
Wong, Wan-Sing .....	San Francisco, CA .....	10/20/2003
Ziegler, Daniel .....	Healdsburg, CA .....	10/20/2003

Dated: October 17, 2003.

**Katherine B. Petrowski,**

*Director, Exclusions Staff, Office of Inspector General.*

[FR Doc. 03-27192 Filed 10-28-03; 8:45 am]

BILLING CODE 4150-04-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Notice of Establishment**

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C

Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the Renal and Urological Sciences Integrated Review Group (IRG).

The IRG shall advise the Director, National Institutes of Health (NIH), and the Director, Center for Scientific Review (CSR), on the scientific and

technical merit of applications for grants-in-aid for research, research training or research-related grants and cooperative agreements, or contract proposals to investigate systemic or local diseases affecting the kidney, urinary tract, and male genital system, including but not limited to clinical, translational and fundamental studies of the disease state and its treatment as well as of normal growth, development, structure, and function.

Duration of this committee is fourteen months from the date the Charter is filed.

Dated: October 21, 2003.

**Elias Zerhouni,**

*Director, National Institutes of Health.*

[FR Doc. 03-27281 Filed 10-28-03; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4815-N-82]

### Notice of Submission of Proposed Information Collection to OMB: Restrictions on Assistance to Noncitizens

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The submission is a request for extension of the current approval to collect information on baseline performance standards. This information replaced various reporting requirements and places greater emphasis on performance and results in grant programs.

The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* December 29, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2501-0014) and should be sent to: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail [Wayne\\_Eddins@HUD.gov](mailto:Wayne_Eddins@HUD.gov).

**FOR FURTHER INFORMATION CONTACT:** Melosan Bell, Programs Assistant, Public Housing Management and Occupancy Division, PEHP, or Cynthia

Thomas, Housing Project Manager, Housing Assistance Policy Division, HTHH, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail [Melosan\\_Bell@HUD.GOV](mailto:Melosan_Bell@HUD.GOV); or [Cynthia\\_L.Thomas@HUD.GOV](mailto:Cynthia_L.Thomas@HUD.GOV); telephone (202) 708-0744 x4021 or (202) 708-2866 x3686. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Bell or Ms. Thomas.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Restrictions on Assistance to Noncitizens.

*OMB Approval Number:* 2501-0014.

*Form Numbers:* None.

*Description of the Need for the Information and Its Proposed Use:*

Respondents provide written declaration of citizenship, eligible immigration status, alien registration documents and verification consent forms to housing authorities and multifamily property owners to ensure that citizens and legal residents are the recipients of public benefits.

*Respondents:* Individuals or Households, State, Local or Tribal Government, Business or other for-profit.

*Frequency of Submission:* On occasion.

*Reporting Burden:* Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The

number of respondents is 3,030,000, frequency of response is on occasion, the total annual responses are 20,794,000 and the annual burden hours requested is 366,000

*Total Estimated Burden Hours:* 366,000.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 23, 2003.

**Donna Eden,**

*Director, Office of the Chief Information Officer, Office of Investment Strategies, Policy, and Management.*

[FR Doc. 03-27183 Filed 10-28-03; 8:45 am]

BILLING CODE 4210-72-P

## DEPARTMENT OF THE INTERIOR

### Office of Federal Acknowledgment; Documented Petitions for Federal Acknowledgment as an Indian Tribe, Submission to OMB for Renewal

**AGENCY:** Office of Federal Acknowledgment, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Information Collection Request for Documented Petitions for Federal Acknowledgment as an Indian Tribe is submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget for extension.

**DATES:** Submit comments on or before November 28, 2003.

**ADDRESSES:** Send your written comments to Attention: Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503. Please send a duplicate copy to R. Lee Fleming, Director, Office of Federal Acknowledgment, Office of the Assistant Secretary—Indian Affairs, Department of the Interior, 1849 C Street, NW., MS-4660 MIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information or copies of the information collection submission should be directed to R. Lee Fleming, Director, Office of Federal Acknowledgment, Office of the Assistant Secretary—Indian Affairs, Department of the Interior, 1849 C Street, NW., MS-4660 MIB, Washington, DC 20240. You may also call (202) 208-3592.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The information collection is needed to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a sovereign-to-sovereign relationship with the United States. Federal acknowledgment makes the group eligible for benefits from the Federal government.

**II. Method of Collection**

The Federal acknowledgment regulations at 25 CFR Part 83 contain seven criteria (§ 83.7) which groups seeking Federal acknowledgment as Indian tribes must demonstrate that they meet. Information collected from petitioning groups under these regulations provide anthropological, genealogical and historical data used by the Assistant Secretary—Indian Affairs to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a sovereign-to-sovereign relationship with the United States. Respondents are not required to retain copies of information submitted to the Bureau of Indian Affairs, but will probably maintain copies for their own use. No periodic reports are required.

**III. Data**

*Title:* Collection of Information for Federal Acknowledgment Under 25 CFR part 83.

*OMB Number:* 1076-0104.

*Expiration Date:* September 30, 2003.

*Type of Review:* Extension of a currently approved collection.

*Affected Entities:* Groups petitioning for Federal acknowledgment as Indian tribes.

*Response:* Respondents are seeking to obtain the status of a tribal entity in order to be eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes.

*Estimated Number of Petitioners:* 10.  
*Estimated Time per Petition:* 2,237.7 hours.

*Estimated Total Annual Burden Hours:* 22,377.

*Estimated Annual Salary Costs:* \$895,080 (2,237.7 hours × \$40.00 per hour × 10).

**IV. Request for Comments**

You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including hours and cost) 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 collection techniques or the forms of information technology.

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; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, and other contact information (such as Internet address, fax, or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

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 has up to 60 days to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them closer to 30 days than 60 days.

Dated: October 22, 2003.

**Aurene M. Martin,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 03-27199 Filed 10-28-03; 8:45 am]

**BILLING CODE 4310-4J-P**

**DEPARTMENT OF THE INTERIOR****Office of the Secretary****[GWCR Meeting Notice No. 2-03]****Guam War Claims Review Commission; Meeting**

The Guam War Claims Review Commission, pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 10) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business, as follows:

*Date and Time:* Wednesday, November 5, 2003, 5 p.m., Eastern Standard Time.

*Subject Matter:* (1) Approval of minutes of Commission meeting of October 3, 2003; (2) Planning for public hearings scheduled to be held on Guam on December 8 and 9, 2003, including appointment of additional staff, travel and accommodations arrangements, and contracting for services; (3) Progress achieved in locating records on claims under the Guam Meritorious Claims Act, the Philippine Rehabilitation Act, and the War Claims Act.

*Status:* Open.

This meeting will be held in the form of a telephone conference call among the five members of the Commission and its Executive Director, Designated Federal Official, and other staff. Members of the public interested in observing the meeting may do so in the hearing room of the Foreign Claims Settlement Commission of the United States, 600 E Street, NW., Room 6002, Washington, DC. Requests for information, and advance notices of intention to observe the meeting, should be directed to: David Bradley, Executive Director, Guam War Claims Review Commission, c/o Foreign Claims Settlement Commission of the United States, Washington DC 20579, Tel. (202) 616-6975, FAX (202) 616-6993.

Dated at Washington, DC, October 24, 2003.

**Mauricio J. Tamargo,**

*Chairman.*

[FR Doc. 03-27337 Filed 10-28-03; 8:45 am]

**BILLING CODE 4310-93-P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

RIN 1018-AH69

**U.S. Fish and Wildlife Service Manual Chapters on Audits****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice and request for comments.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) plans to establish policy on State audits accomplished by its Division of Federal Assistance by issuing U.S. Fish and Wildlife Service Manual chapters on the subject. The Service is requesting comments and suggestions on the chapters as described below.

**DATES:** Comments must be received by December 29, 2003.

**ADDRESSES:** Comments should be addressed to Kris E. LaMontagne, Chief, Division of Federal Assistance, Attn: Audit Chapters, U.S. Fish and Wildlife Service, Federal Assistance, MBSP 4020, 4401 N. Fairfax Drive, Arlington, VA 22203. Send e-mail comments to *Fw9\_Federal\_Aid@fsw.gov*, with "Audit Chapter Comment" in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Doug Alcorn, Region 7 Chief, Division of Federal Assistance, U.S. Fish and Wildlife Service, Telephone: (907) 786-3545.

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

Through the Federal Assistance in Sport Fish and Wildlife Restoration Program, the Service disburses funds to States in the form of grants to restore and manage the Nation's fish and wildlife resources. The States use the funds to conduct research, surveys, and management; purchase and restore habitat; operate fish hatcheries; build boat access sites; and provide education, outreach, and communications. Generally our State partners are the 50 States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and American Samoa.

The Program is authorized by the Federal Assistance in Sport Fish Restoration Act, 16 U.S.C. 777 *et seq.*, and the Federal Assistance in Wildlife Restoration Act, 16 U.S.C. 669 *et seq.* The Program's regulations can be found in Title 50, Code of Federal Regulations, Part 80, "Administrative Requirements, Federal Assistance in Fish and Federal Assistance in Wildlife Restoration

Acts"; title 43, Code of Federal Regulations, part 12, "Administrative and Cost Principles for Assistance Program"; and other applicable regulations. Various Office of Management and Budget (OMB) circulars and guidance in the form of Service policy also apply to administration of the program.

Funds for the Program are derived from excise and import taxes on fishing equipment, firearms, archery equipment, and certain motorboat fuels paid into the Sport Fish Restoration Account or the Federal Assistance to Wildlife Restoration Fund. The manufacturer or U.S. Customs (on imports) collects these taxes and pays them to the U.S. Department of the Treasury, which transfers the money to the Service for distribution to the States.

Periodically the Service conducts audits of our State partners, testing for compliance with applicable Acts, regulations, accounting principles, and Service policy. In March 2000, the Service Director established the Federal Assistance Audit Policy Implementation Team (FAAPIT) by directing Service staff representing each Service Region and the Washington Headquarters Office to collaboratively develop policies for conducting audits of grantees of the Federal Assistance in Sport Fish and Wildlife Restoration Program. The FAAPIT immediately engaged the States through the International Association of Fish and Wildlife Agencies' (IAFWA) Trust Fund Committee. The Federal Assistance Coordinator for the State of Wyoming participated on the FAAPIT as a representative of the States throughout the policy development process. The policies were designed as six separate chapters to be contained in the Fish and Wildlife Service Manual (417 FW 1-6). Partners, including States and other Federal Assistance grantees, participated by submitting written suggestions for incorporation in early drafts of these audit chapters. The partners submitted these written suggestions through their Federal Assistance Coordinators and their respective Fish and Game Agency Directors. The purpose of the proposed chapters set forth below in this document is to clarify the processes and guidelines for conducting an audit, from beginning through closeout of the audit process and resolution of any findings or other issues.

We published proposed chapters on conducting State audits under the Federal Assistance program in the December 14, 2001, **Federal Register** (66 FR 64845). We solicited comments until February 12, 2002. During the public comment period, we received numerous

comments. Eighteen State agencies and the IAFWA responded to the **Federal Register** publication by providing written comments. The Service responded to each comment and incorporated changes in the draft chapters where feasible. In fall 2002 a Service Director-appointed/invited Task Force of State and Service staff made recommendations concerning the issues addressed by the revised 417 FW 1-6 document, and these comments were incorporated once again. The following Chapters (417 FW 1-6) reflect the input of the FAAPIT and partners over a 3-year period. Since the changes made were so extensive, we are now publishing revised proposed chapters for public comment.

We invite comments on all chapters. Comments are welcome regarding completeness of the content of material in chapters; clarity and understandability of language; presence of any burden placed on any Division of the Service, the Department of the Interior, or a State partner; or any other aspect of these documents. Comments must be written, but e-mailed comments are acceptable. The administrative record for these chapters are available for viewing, by appointment only, Monday through Friday, 9:00 a.m. to 3:00 p.m., in the Division of Federal Assistance, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203.

The draft chapters are as follows:

**Audits—Part 417 Federal Assistance Audits***Chapter 1, Policy and Responsibilities for Grantee Audits, Part 417 Fish and Wildlife Service Manual (417 FW 1)*

*1.1 What is the purpose of this chapter?* This chapter establishes policy and responsibilities for grantee audits, defines terms associated with audits, and provides an overview of the audit process. Other chapters in Part 417 establish policy and procedures for audit planning, conducting and reporting, resolution, and appeals.

*1.2 To what program does this Part apply?* This Part applies to audits of grantees who receive grants through the Federal Assistance Program.

*1.3 What authorities govern the conduct of grantee audits?*

A. Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, Pub. L. 106-408, 16 U.S.C. 669 *et seq.*, 16 U.S.C. 777 *et seq.*

B. 43 CFR 12, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. 50 CFR 80, Administrative Requirements, Federal Assistance in

Sport Fish and Federal Assistance in Wildlife Restoration Acts.

D. 360 Departmental Manual (Departmental Audits).

E. 361 Departmental Manual (Audit Followup).

F. 415 Fish and Wildlife Service Manual (Departmental Audits).

G. Government Auditing Standards (Yellow Book).

H. OMB Circular A-50, Audit Followup.

I. OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments.

J. OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

K. OMB Circular A-102, Grants and Cooperative Agreements with States and Local Governments.

1.4 *What is the Service's policy regarding grantee audits?* We will:

A. Audit each grantee once in each 5-year period as specified in the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000. The audit period will cover revenues and expenditures associated with protected license fees and grant funds during the two most recently completed State fiscal years (SFYs). This 2-year period is a sample of the 5-year period specified in the Improvement Act to achieve audits that are efficient and cost effective. Factors affecting the selection of the two most recently completed SFYs may be, but are not limited to, completion of the Single Audit, completion and submission of final Financial Status Reports (SF-269s), changes to the accounting system, or the introduction and use of new accounting software. The auditor should confer with the Regional Federal Assistance Office and the grantee to determine the feasibility of auditing the two most recent SFYs. The Regional Federal Assistance Office will formally approve the two SFYs to be audited.

This 2-year period applies to the audit period itself and does not eliminate Service responsibilities for general oversight of the Federal Aid program outside of that timeframe. The auditor may use previous audits or other information from outside the audit period as reference to improve the effectiveness and efficiency of the audit.

All reports will be limited to addressing the 2-year audit period unless there is some extraordinary finding. To be considered extraordinary, a finding must meet the threshold of: (a) Fraud; (b) direct and material illegal acts; or (c) noncompliance that could result in exclusion from further participation. With the exception of a fraud investigation, expanding the audit

period to investigate extraordinary findings requires the express written approval of the Director. Justification for requesting an expanded audit period must address the elements of criteria, condition, and effect (measure of consequences) of the finding. The audit period may be expanded to include all unaudited Federal funds and license fee revenues.

B. Provide adequate oversight and financial resources to ensure timely audit completion.

C. Cooperate and coordinate fully with grantees, auditors, the Office of Inspector General (OIG), and Office of Financial Management (PFM).

1.5 *What are the objectives of the Federal Assistance Program grantee audit?* The Federal Assistance Audit Program supplements Single Audit Act audits performed according to the requirements of OMB Circular A-133 (see 417 FW 6). The objectives of Federal Assistance grantee audits are to:

A. Promote economy, efficiency, and effectiveness in administration of programs and operations.

B. Aid in deterring and detecting of fraud and abuse in programs and operations.

C. Assess financial integrity, accountability, and financial controls of the Federal Assistance Program in accordance with generally accepted accounting principles.

D. Monitor compliance with applicable Federal laws, rules, and regulations.

1.6 *Who is responsible for administering the Federal Assistance Audit Program?*

A. The Director will:

(1) Oversee the Federal Assistance Audit Program.

(2) Make the final decision on internal Service disagreements associated with resolving audit findings and preparing Corrective Action Plans (CAPs).

(3) Make the final decision on all grantee appeals to the Service.

(4) Respond to the Department of the Interior, Office of Hearings and Appeals.

B. Regional Directors will:

(1) Ensure that Federal Assistance Program staff receive the training necessary to oversee audits.

(2) Provide information to the auditor on Region-specific issues proposed for audit.

(3) Provide guidance and interpret laws, rules, regulations, and policies for the auditor during an audit.

(4) Promptly notify the grantee in writing of significant changes in audit scope, such as a change in the period being audited. The notification will include the reason for the change.

(5) Work with the grantee and auditor throughout the audit to resolve issues as

they arise and to identify those issues with potential national implications.

(6) Determine to sustain or reject the auditor's findings and recommendations in accordance with applicable laws, regulations, and policies.

(7) Negotiate with grantees to develop corrective actions to resolve audit findings. Approve, distribute, and monitor implementation of the CAP.

(8) Brief the Director when there is a disagreement between the Regional Director and the Assistant Director—Wildlife and Sport Fish Restoration on the CAP.

(9) Request closeout of the audit when the grantee has resolved all findings.

(10) Retain the final audit report, CAP, resolutions, and appeals through the completion of the succeeding audit of the grantee.

(11) Notify the grantees of the 5-year schedule of audits.

(12) Address written complaints from grantees regarding the conduct or scope of an audit.

C. The Assistant Director—Wildlife and Sport Fish Restoration will:

(1) Ensure consistent interpretation and application of rules, regulations, and laws concerning the Federal Assistance Audit Program.

(2) Establish the national audit schedule pursuant to the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000.

(3) Coordinate Washington Office review of the CAP prior to signature by the Regional Director.

(4) Brief the Director when there is a disagreement with the Regional Director on the CAP.

(5) Evaluate the Federal Assistance Audit Program for efficiency, timeliness, and effectiveness prior to initiating each national audit cycle. The Assistant Director consults with States and Regional Directors to produce a written report for the Director at least once every 5 years. The report identifies issues and makes recommendations for improving the Audit Program.

D. The Chief, Division of Federal Assistance (Washington Office), will:

(1) Advise the Assistant Director—Wildlife and Sport Fish Restoration on scheduling of grantee audits.

(2) Coordinate audits and provide for an independent audit of grantees. Serve as a point of contact for Service staff and the auditor.

(3) Require that audits are conducted in accordance with generally accepted Government Auditing Standards and Federal policies, regulations, and laws.

(4) Identify national audit training needs and make training available. Ensure that appropriate Washington Office Federal Assistance Program staff

receives the training necessary to oversee audits. Provide the auditor with orientation in Sport Fish and Wildlife Restoration program administrative processes, policies, and procedures.

(5) Establish the objectives of the audit of the Federal Assistance Program grantees.

(6) Develop and maintain the Audit Guide.

(7) Ensure the auditor adheres to the Audit Guide.

(8) Summarize and disseminate common findings from ongoing audits and their resolutions, without breaching the confidentiality of the audit process. Information will be provided on a regularly scheduled basis.

(9) Provide technical assistance on audit issues to the Regional Office staff and the Assistant Director—Wildlife and Sport Fish Restoration prior to and during the development of the CAP.

(10) Coordinate with the Chief, Division of Policy and Directives Management, and the OIG to determine appropriate means of responding to audit-related Freedom of Information Act (FOIA) requests and for distributing final audit reports and final CAPs.

E. The Chief, Division of Policy and Directives Management, will:

(1) Oversee activities of the Service Audit Liaison Officer, who, in turn, serves as liaison to PFM and OIG regarding Federal Assistance grantee audit followup as described in 417 FW 4.

(2) Advise Service officials on audit liaison matters.

(3) Track the implementation of audit recommendations and report to the Directorate and PFM on grantee audit followup.

**1.7 Who maintains audit resolution files?** The Regional Director is responsible for maintaining audit resolution files through the completion of the succeeding audit of the grantee. The office or Region that administers the grants being audited will maintain the following documents in the audit resolution file:

A. Audit resolution correspondence, incoming and outgoing.

B. OIG final audit report.

C. Approved CAP for audit findings.

D. Documentation provided by the grantee and used by the Regional Director to verify that the grantee resolved each finding or implemented the auditor's recommendation.

E. Documentation that the audit has been officially closed out.

**1.8 What are the definitions for terms used in this Part?**

A. *Appeal*. A deliberative process that the grantee initiates when he/she does not agree with the Service's

determinations, corrective actions, or the resolutions contained in the CAP.

B. *Audit*. Examination of Federal Assistance Program grantees conducted by the Department of the Interior, OIG, other Federal agencies, or independent public accountants for compliance with applicable Acts, regulations, accounting principles, and Service policy.

(1) *Audit Finding*. Questioned costs, compliance issues, and other matters identified in the audit report.

(2) *Audit Recommendation*. Actions proposed by the auditor to address audit findings.

C. *Audit Guide*. A document prepared by the auditor in consultation with the Chief, Division of Federal Assistance (Washington Office). The Chief will consult with the Regional Director(s) and grantee(s) as necessary. This guide provides the information, background, and general guidelines necessary to conduct audits. It will be available to all parties.

D. *Audit Reports*

(1) *Draft Audit Report*. The report that is prepared by the auditor after the audit exit conference and provided to the Service and the grantee for official comments.

(2) *Final Audit Report*. The auditor's report issued after the official comment period has expired. It includes the auditor's findings and recommendations, comments received on the draft audit report, and the auditor's response.

E. *Auditor*. A public accountant or a Federal, State, or local government audit organization that meets the general standards specified in Generally Accepted Government Auditing Standards.

F. *Corrective Action*. Specific action(s) to resolve an audit finding in a manner consistent with the Service determination.

G. *Corrective Action Plan*. A plan prepared by the Service in consultation with the grantee for addressing all audit findings and implementing sustained recommendations contained in audit reports. At a minimum, it contains four components: Auditor's Findings and Recommendations, Service Determination, Corrective Action, and Resolution.

H. *Engagement Letter*. The official notification of a pending audit from the auditor to the grantee, including a request for information.

I. *Entrance Conference*. The meeting involving the auditor, the Service, the grantee, and others, if needed, that officially begins the audit fieldwork.

J. *Exit Conference*. The optional meeting at the conclusion of the fieldwork, involving the auditor, the

Service, the grantee, and others, to review the preliminary results of the audit.

K. *Federal Assistance Program*. A Program that administers the responsibilities of the Secretary of the Interior under the Federal Assistance in Sport Fish Restoration Act, Federal Assistance in Wildlife Restoration Act, Clean Vessel Act, Coastal Wetlands Act, the Partnerships for Wildlife Act, and other Acts that establish grant programs. The Service's Division of Federal Assistance fulfills these responsibilities.

L. *Fieldwork*. Work that the auditor performs between the entrance and exit conference.

M. *Final Action*. The completion of all actions, including documentation, necessary to implement a specific audit recommendation and resolve an audit finding.

N. *Grantee*. The entity to which the Service awards a grant and who is accountable for use of the Federal funds provided.

O. *Office of Financial Management (PFM)*. The Department of the Interior organization under the Assistant Secretary—Policy, Management, and Budget, that tracks audit recommendations to final action.

P. *Office of Hearings and Appeals*. The Department of the Interior organization responsible for disposition of grantee appeals to the Secretary of the Interior.

Q. *Office of Inspector General (OIG)*. The Department of the Interior organization responsible for conducting, supervising, and coordinating audits, evaluations, investigations, and other activities relating to programs and operations of the Department.

R. *Planning*. A dynamic process involving the auditor, the Service, and grantees, that continues throughout the audit and which includes identifying the scope of the audit, the audit schedule, and milestones; who will conduct the audit; points of contact; logistical requirements; issues of potential concern; and the detailed steps for conducting the audit.

S. *Resolution*. A process to address and resolve each finding and recommendation in the audit report.

T. *Scope*. The depth and coverage of work conducted to accomplish the audit objectives. The scope of the audit includes the financial and program elements, time period, and locations to be covered by the audit. Scope is set by the auditor, who should exercise due professional care, sound judgment, and consideration of the nature and character of the engagement.

U. *Service Audit Liaison Officer*. The Washington Office representative who

serves as the point of contact for followup activities pertaining to grantee audits.

V. *Service Determination*. The Service decision to sustain (accept) or not sustain (reject) the auditor's finding and recommendation.

W. *Single Audit Report*. An audit of a grantee completed in accordance with the requirements of the Single Audit Act of 1984, as amended, and OMB Circular A-133. These audits are separate from Federal Assistance Program specific audits (grantee audits).

X. *We/Us*. As used throughout this Part, the terms "we" and "us" refer to the Fish and Wildlife Service.

### 1.9 What phases are included in a Federal Assistance Program grantee audit?

A. *Planning* (417 FW 2). The auditor, in consultation with the Service and the grantee, identifies programmatic and financial elements to be audited, establishes the period to be audited, identifies issues of potential concern, and ensures that the audit meets Government standards. The planning phase helps to ensure a nationally consistent, effective, and timely audit process. Audit planning establishes the audit schedule, identifies who will conduct the audit, identifies point(s) of contact, sets milestones, and describes logistical requirements.

B. *Conducting and Reporting* (417 FW 3). The audit conducting and reporting phase helps to ensure independent examination of grantees consistent with Government auditing standards.

C. *Audit Resolution* (417 FW 4). The audit resolution phase ensures that we track and resolve all findings and recommendations in a timely and efficient manner.

D. *Appeals* (417 FW 5). The appeals process allows a grantee to appeal Service determinations, corrective actions, or resolutions.

E. *Single Audit Act Audits* (417 FW 6). Policy for resolving findings from audits conducted under the Single Audit Act.

### Chapter 2, Planning (417 FW 2)

2.1 *What is the purpose of this chapter?* This chapter describes audit planning. See 417 FW 1 for authorities, responsibilities, and definitions. Other chapters in this Part establish policy and procedures for audit conducting and reporting, resolution, and appeals.

2.2 *What is audit planning and why do it?* During the audit planning phase, the auditor, in conjunction with the Service and the grantee, identifies the scope of the audit, the audit schedule and milestones, the personnel who will conduct the audit, points of contact,

logistical requirements, issues of potential concern, and the detailed steps for conducting the audit. The scope of the audit includes the financial and program elements, time period, and locations to be covered by the audit. Audit planning helps to ensure that we have a nationally consistent, effective, and timely audit process.

### 2.3 What are the key coordination steps in audit planning?

A. *Engagement Letter*. The auditor is responsible for notifying a grantee of a pending audit. The auditor sends an engagement letter to the grantee, with a copy to the Regional Director, approximately 90 calendar days, or as negotiated with the grantee, prior to the audit entrance conference. This letter informs the grantee of the audit objectives, the audit period, the key program elements being audited, the information and documents the grantee must make available, and the logistical needs for conducting the fieldwork.

B. *Grantee's initial reply to the Auditor's engagement letter*. The grantee will respond to the auditor's engagement letter within 45 calendar days after receipt, and provide available information. The grantee acknowledges the auditor's engagement letter by providing a written response, including as much requested data as is practical at that time. The grantee notifies the auditor of any information that is not available and estimates the date when the information will be available or explains why it cannot be provided. Auditors should review data prior to arriving on site in order to ensure a more timely and efficient onsite audit with minimal disruption of the grantee's normal operations.

C. *Pre-Audit Coordination*. The auditor schedules a pre-audit coordination meeting with the Regional Director and regional Federal Assistance staff. The purposes of the meeting are for the auditor to become familiar with grants that were active during the audit period and for the Service to discuss specific concerns. The regional Federal Assistance staff may solicit grantee input prior to this meeting.

D. *Coordination with State Auditor*. The auditor contacts the audit agency or group that performed the statewide audit or agency-specific audit to obtain access to audit work papers. The auditor reviews prior audits of the grantee's program to aid in identifying issues to be evaluated, obtain a general understanding of the grantee's accounting and internal control systems, and avoid duplication of effort.

E. *Auditor review of past audit findings*. Using Government Auditing Standards, the auditor is required to

review corrective actions from prior audits to determine if the grantee has implemented them or if additional actions are needed.

2.4 *What could the scope of an audit include?* The scope of an audit may include one or more of the following components:

A. A financial compliance component to determine if:

(1) A grantee properly conducts financial operations.

(2) Financial reports are submitted timely in accordance with established due dates and conform with generally accepted accounting principles.

(3) Operations comply with applicable laws and regulations.

(4) Expenditures claimed by the grantee were eligible, approved, allowable, and allocable for costs necessary to accomplish the objectives in the approved grant.

B. A component to determine whether or not the grantee accomplished the work or objectives approved in the grant.

C. An economy and efficiency component to determine whether or not the grantee efficiently and economically managed resources; e.g., personnel, property, space.

2.5 *Who determines the scope of an audit?* The auditor determines the scope of the audit. The auditor consults with the grantee and the Service, and supplements and builds upon other audits of the grantee, to set the scope of the audit and identify the depth and coverage of the audit work. Reports issued by the OIG will address only the initial 2-year period unless there is some extraordinary finding. This 2-year period applies to the audit period itself and does not eliminate Service responsibilities for general oversight of the Federal Assistance program outside of that timeframe. The auditor may use previous audits or other information from outside the audit period as reference to improve the effectiveness and efficiency of the audit.

2.6 *Will the audit be limited to a 2-year period?* All reports will be limited to addressing the 2-year audit period unless there is some extraordinary finding. To be considered extraordinary, a finding must meet the threshold of: (a) Fraud; (b) direct and material illegal acts; or (c) noncompliance that could result in exclusion from further participation. With the exception of a fraud investigation, expanding the audit period to investigate extraordinary findings requires the express written approval of the Director. Justification for requesting an expanded audit period must address the elements of criteria, condition, and effect (measure of

consequences) of the finding. The audit period may be expanded to include all unaudited Federal funds and license fee revenues.

*2.7 Will the grantee be notified of an expanded audit?* Yes. The Regional Director promptly notifies the grantee in writing of a change in the period being audited. The notification will include the reason for the change.

*2.8 Can a grantee appeal the scope of an audit?* No. An audit is an independent examination of the grantee's Federal Assistance Program. However, the grantee may contact the Regional Director if the grantee has concern about the programs or activities being audited that have no relation to the Federal Assistance program.

### *Chapter 3, Conducting and Reporting on Grantee Audits (417 FW 3)*

*3.1 What is the purpose of this chapter?* This chapter provides procedures for conducting and reporting on audits of Federal Assistance Program grantees. See 417 FW 1 for authorities, responsibilities, and definitions. Other chapters in this Part establish policy and procedures for audit planning, resolution, and appeals.

*3.2 What is the objective of the conducting and reporting phase?* The objective of the conducting and reporting phase is to ensure that independent examination of grantees is consistent with Government auditing standards. This examination results in a final audit report issued by the OIG.

*3.3 What steps does the conducting and reporting phase involve?* The conducting and reporting phase involves the following steps:

A. Audit Entrance Conference. This meeting marks the official beginning of the fieldwork.

B. Fieldwork. Fieldwork usually takes 3 to 4 months to complete, including site visits. The auditor, the grantee, and the Regional Director communicate regularly to resolve potential audit findings and recommendations before the auditor prepares the draft audit report.

C. Compilations of Findings and Recommendations. Prior to the exit conference, the auditor will provide the grantee and the Service with a compilation of the findings and recommendations that were developed during the audit and that will be used as the basis for preparing the draft audit report.

D. Audit Exit Conference. After providing the compilation of findings and recommendations for review, the auditor schedules an audit exit conference with the Regional Director and the grantee. This conference

provides an opportunity for the grantee and Service representatives to ask for or provide further clarification as well as to address any other concerns. If significant changes are made to the findings and recommendations on the basis of discussions at the exit conference or as a result of additional audit work after the exit conference, the auditor will provide the revised findings and recommendations to the grantee and the Service, with a request for comments, prior to preparing the draft audit report. The completion of the audit exit conference marks the completion of the fieldwork.

E. Draft Audit Report. After the exit conference, the auditor will provide a draft audit report to the Service and the grantee, with a request for written comments within 30 days. The grantee must provide comments to the Regional Director for forwarding to the auditor. The grantee can request additional review time, with justification, in writing to the Regional Director.

F. Final Audit Report. The final audit report is issued by OIG to the Director, and includes both the grantee's response and the auditor's reply.

*3.4 What is an audit entrance conference?* The auditor schedules this conference in consultation with the grantee and the Regional Director to mark the official beginning of the fieldwork. Participants include the auditor and representatives from the grantee and the Region. The auditor will explain the audit objectives and process, address logistical needs, establish a tentative schedule, and answer questions.

*3.5 Who provides technical guidance to the auditor on interpretation and application of Federal Assistance Program rules and regulations?* The Regional Director provides routine guidance and interprets laws, rules, regulations, and policies for the auditor during the conduct of the audit. The Assistant Director—Wildlife and Sport Fish Restoration ensures consistent interpretation and application of rules, regulations, and laws nationwide.

*3.6 Will the auditor issue status reports?* Yes. During the fieldwork, the auditor provides monthly status reports, or more frequently as may be specified during the entrance conference, to the Regional Director and the Chief, Division of Federal Assistance (Washington Office), and to the grantee, unless the grantee advises otherwise. The status report contains a brief description of preliminary findings and how the audit is progressing.

*3.7 Is the Service required to share monthly status reports?* No. The

auditor's monthly status reports are proprietary, and we will share these reports with the grantee only.

*3.8 Will the auditor consult with the Service on potential findings while the audit is in progress?* Yes. The auditor must report all potential findings to the grantee, the Regional Director, and the Assistant Director—Wildlife and Sport Fish Restoration as soon as possible. However, in the case of illegal activity or suspected fraud, the auditor must immediately report such findings to the OIG—Division of Investigations without notice to the Service or grantee.

*3.9 How does the Service address major issues identified during the audit?* If the Regional Director or the Chief, Division of Federal Assistance (Washington Office), has a concern about potential findings by the auditor, he/she contacts the Assistant Director, the auditor, and the grantee to deal with the issue(s) as soon as possible. If the Regional Director or the Chief believes that an issue is of national concern, he/she notifies the Assistant Director—Wildlife and Sport Fish Restoration. The Assistant Director determines the appropriate action for national application and issue resolution and issues written guidance to the Regional Directors.

*3.10 Can audit findings be resolved while the field audit is still in progress?* Yes. When practical and feasible, we work with grantees to resolve audit findings while the auditor is still on site so that he/she can verify and document the resolution in audit work papers and report the resolution in the final audit report. The auditor must document all reportable conditions, including those resolved during the audit, to meet Government Auditing Standards. Upon written request to the auditor, the Service and the grantee will be provided copies of the auditor's working papers that are needed to fully understand and resolve the audit findings and recommendations.

*3.11 Will the Service and the grantee have an opportunity to review findings and recommendations prior to the exit conference?* Yes. Copies of findings and recommendations will be provided to the Service and grantee for comment as they are developed throughout the audit fieldwork phase. The findings and recommendations are subject to revision based on any comments received from the Service or the grantee. The findings and recommendations provide the basis for the draft audit report.

*3.12 Is an audit exit conference required and, if so, when does it occur?* No, is it not required. An audit exit conference will be conducted at the option of the State. The auditor

schedules the audit exit conference with the Service and the grantee, to occur on a mutually agreeable date. This conference is an opportunity for the grantee and the Service to request or provide further clarification on the potential findings and to address any other concerns relating to the conduct of the audit. Participants include the auditor and representatives of the Service and the grantee.

**3.13 Can audit findings change as a result of the exit conference?** Yes. The auditor takes information received during the exit conference under advisement. The auditor may modify the findings or recommendations before preparing the draft audit report.

**3.14 Will the grantee and the Service have an opportunity to review and respond to audit findings in the draft audit report?** Yes.

A. After receipt of the draft audit report, the grantee has 30 calendar days to:

- (1) Concur with the audit findings and recommendations;
- (2) Offer clarifying language for incorporation into the report; or
- (3) Disagree with audit findings or recommendations, and provide additional information, if appropriate, to support the grantee's position on specific audit findings.

B. The grantee may ask the Regional Director for additional review time. This written request must include supporting justification. The Regional Director responds in writing to the grantee's request and instructs the auditor and the grantee accordingly.

C. The auditor will summarize the grantee's response in the final report and include the complete text of the grantee's response as an attachment.

**3.15 Will the auditor respond to the grantee's written comments on draft audit report findings and recommendations?** Yes. The auditor responds to the grantee's comments in the final audit report.

**3.16 Who issues the final audit report, and to whom is it issued?** The OIG issues the final audit report to the Service Director, with a copy to the Chief, Division of Federal Assistance and the Assistant Director—Wildlife and Sports Fish Restoration. The OIG also sends copies of the report to the appropriate Regional Director and the Service Audit Liaison Officer. The Chief, Division of Federal Assistance (Washington Office), distributes informational copies to all other Regional Directors.

**3.17 Who provides the final audit report to the grantee?** The Regional Director immediately transmits a copy of the final audit report to the grantee.

**3.18 Who can distribute the final audit report to the public?** The OIG originates the final audit report and is responsible for distribution per 43 CFR 2.15. The final audit report is available for distribution to the public by the OIG at the time it is issued.

**3.19 Will final audit reports appear on the Internet?** As the "office of record", the OIG makes the decision to post final audit reports on the Internet in accordance with Departmental regulations (43 CFR 2.15). They will post final audit reports after appropriate review and as time allows. Requests for copies of final audit reports not found on the OIG's Internet site should be directed to the FOIA Officer, Office of the Inspector General.

**3.20 Can a grantee register a formal complaint regarding the conduct of the audit?** Yes. A grantee may register a written complaint with the Regional Director at any point during the audit.

#### *Chapter 4, Audit Resolution (417 FW 4)*

**4.1 What is the purpose of this chapter?** This chapter establishes policy and procedures for tracking and resolving findings and implementing recommendations from audits of Federal Assistance Program grantees. See 417 FW 1 for authorities, responsibilities, and definitions. Other chapters in this Part establish policy and procedures for audit planning, conducting and reporting, and appeals.

**4.2 When does audit resolution begin?** The formal audit resolution process begins on the date the OIG issues the final audit report per 361 DM. However, the Regional Director will work with the grantee while the audit is in progress to resolve issues that the auditor identifies. Exhibit 1 provides the maximum timeframes for each phase of the audit resolution process.

**4.3 Who prepares the CAP?** The Regional Director and the grantee negotiate the terms of the CAP through written and oral discussions of the auditor's findings and recommendations, the grantee's comments, the auditor's response, and the Service's determination. The Regional Chief, Division of Federal Assistance, in coordination with the grantee and the Chief, Division of Federal Assistance (Washington Office), prepares the CAP for the Regional Director's signature.

**4.4 How much time does the Service have to prepare a CAP?** The OIG must receive the CAP not later than 90 calendar days from the date the OIG issued the final audit report.

A. The Regional Director has 45 calendar days to prepare the CAP and submit it to the Assistant Director—

Wildlife and Sport Fish Restoration, attention: Division of Federal Assistance (Washington Office).

B. The Assistant Director—Wildlife and Sport Fish Restoration has 30 calendar days to review the CAP, concur, and return to the Regional Director.

C. The Regional Director has 15 calendar days to approve the CAP and forward it to the OIG.

D. If the Regional Director and the Assistant Director—Wildlife and Sport Fish Restoration do not concur with the CAP, the matter is referred to the Director and timeframes are as indicated in Exhibit 1.

**4.5 Can the Service request additional time to prepare the CAP?** If the Assistant Director and Regional Director cannot resolve their differences, the Director will make the final decision. The Assistant Director may request a 30-calendar-day extension from the OIG if needed.

**4.6 What are the content and format for a CAP?**

A. A cover page that clearly identifies the grantee audited, the years audited, and the report number. Obtain this information from the title of the OIG's final audit report.

B. The CAP addresses all audit findings and recommendations that the OIG identifies in the final audit report. The CAP contains, at a minimum:

(1) Auditor's Findings and Recommendations. The OIG identifies findings and recommendations that we must address in the CAP.

(2) Service Determination. The Service sustains (accepts) or does not sustain (rejects) each finding and recommendation. Sustained recommendations from the final audit report must result in planned corrective actions. If the Regional Director does not sustain an audit finding, he or she explains the basis, including legal citations, for that determination. The CAP addresses both sustained and nonsustained findings.

(3) Corrective Action. This component identifies specific corrective action(s) to resolve the finding consistent with the Service Determination. It specifies necessary actions, target dates, and the person responsible for carrying out each action. It also specifies how the grantee should implement the corrective actions to resolve the issues.

(4) Resolution. This component describes documentation that we require of the grantee to verify implementation of the corrective action(s).

**4.7 Who must review and concur with the CAP?** The Assistant Director—Wildlife and Sport Fish Restoration will

review the draft CAP and decide whether to concur or not to concur within 30 calendar days from the date the Region forwards the CAP to the Washington Office.

**4.8 What happens if the Assistant Director does not concur with the Region's draft CAP?** The Assistant Director will work with the Regional Director to resolve any disagreements with the CAP. If they cannot resolve their differences, the Director will make the final decision. The Assistant Director may request a 30-calendar-day extension from the OIG if needed.

**4.9 When is the CAP reviewed at the Department level?** The Department reviews the CAP when it is not approved by the Regional Director within 90–120 calendar days. PFM reviews all CAP resolutions placed in tracking. If PFM does not concur with all CAP resolutions, PFM will notify the Service. The CAP may be returned to the Regional Director for revision in consultation with the grantee. PFM tracks resolution of all audit recommendations.

**4.10 Are all audit recommendations tracked?** Yes. The Regional Director tracks all audit recommendations listed in the CAP and reports to the Assistant Director annually on progress.

A. When OIG receives the CAP within 90–120 calendar days, PFM tracks only the audit recommendations that are not resolved or implemented.

B. When OIG does not receive the CAP within 90–120 calendar days, PFM tracks all audit recommendations.

**4.11 Who forwards the CAP to the OIG?** Within 15 calendar days of the Washington Office concurrence, the Regional Director approves and immediately forwards the CAP to:

A. OIG, and

B. The Grantee, for implementation. The Regional Director will provide a copy to the Assistant Director—Wildlife and Sport Fish Restoration. The date the Regional Director approves the CAP starts the 21-day appeal window described in 417 FW 5.

**4.12 What happens if the OIG does not concur with one or more of the resolutions in the CAP?** The OIG forwards the CAP to PFM. PFM will instruct the Regional Director to correct the CAP.

**4.13 How much time does the grantee have to implement the CAP?** The corrective action for each finding has a specific deadline as negotiated during development of the CAP. A grantee may request additional time from the Regional Director. The request must be in writing and justify the time requested. The Regional Director

consults with the Chief, Division of Federal Assistance (Washington Office), as needed, and responds in writing to the grantee within 10 working days of receipt of the grantee's request. The Regional Director notifies the Chief, Federal Assistance (Washington Office) of whether the Regional Director concurs or not, and the Chief of Federal Assistance notifies the Audit Liaison Officer of the change.

**4.14 Who monitors implementation of the CAP?** The Regional Director monitors, tracks, and documents implementation of the CAP and keeps the Director, through the Chief, Division of Policy and Directives Management, informed of implementation progress.

**4.15 Who can distribute the CAP to the public?** The Regional Director originates the CAP and makes it available to the public upon request, but only after the CAP has been sent to the OIG and the grantee has received a copy. A grantee may release a copy of the CAP at his or her discretion.

**4.16 Will the CAP be published on the Internet?** The Chief, Division of Federal Assistance (Washington Office) will coordinate with the Chief, Division of Policy and Directives Management, and the OIG to determine if posting a specifically requested document on the Internet is appropriate. If the Service receives three or more requests from the public for a specific CAP, Department of the Interior guidance is that the Service make that CAP available on the Internet per the Freedom of Information Act.

**4.17 How can a final CAP be modified?** Only the Director or the Secretary may modify the final CAP as the result of an appeal completed in accordance with 417 FW 5 or 50 CFR 80.7, except that deadlines for implementation of corrective actions may be changed upon written approval by the Regional Director in accordance with paragraph 4.13 and after consultation with the Chief, Division of Federal Assistance (Washington Office), as needed. If conditions change for a grantee that affect the grantee's ability to implement the CAP, as agreed to, the grantee may petition the Regional Director to modify the CAP. Upon receipt of this petition, the Region submits the CAP amendment to the AD–MBSP through the Washington Office for concurrence. The AD–MBSP forwards the amended CAP to PDM, who then forwards the amended CAP to PFM.

**4.18 Can a grantee appeal a Service determination or corrective action in the final CAP?** Yes. A grantee may appeal a Service determination, corrective action, or resolution contained in the final CAP

by the appeals process described in 417 FW 5.

**4.19 Are status reports required during implementation of the CAP?** If PFM requires us to submit status reports on specific corrective actions, we will request status reports from the grantee.

**4.20 Are there penalties if a grantee does not resolve audit findings in the Corrective Action Plan?** Yes, remedies for noncompliance are found at 43 CFR 12.83. Additionally, the enforcement remedies in this section do not preclude the grantee from being placed in a high-risk status as discussed at 43 CFR 12.52, or being subject to debarment or suspension, discussed at 43 CFR 12.75.

**4.21 How is an audit closed?** When resolution is being tracked by PFM, the Regional Director sends a memorandum to the Director documenting that final action is complete (all corrective actions have been implemented) and requesting that the audit be closed. The Regional Director routes this memorandum, with implementation documentation, through the Chief, Division of Federal Assistance (Washington Office), for review and concurrence. The Chief, Division of Federal Assistance (Washington Office), then forwards a copy of the memorandum to the Chief, PDM, for review and concurrence. When all concerns are satisfied, the Service Audit Liaison Officer forwards a copy to the Audit Followup Program Liaison in PFM. If PFM concurs that all action(s) has been implemented, PFM notifies the Service Audit Liaison Officer that the audit is resolved. The Service Audit Liaison Officer notifies the Chief, Division of Federal Assistance (Washington Office), who releases the original memo to the Director. If the Director concurs, he signs it and returns it to the Regional Director officially closing the audit. The Regional Director notifies the grantee that the audit findings are resolved and closed. When resolution is not being tracked by PFM, the Regional Director will receive a memorandum from the OIG that indicates the CAP is resolved. The Regional Director will notify the grantee the audit is closed.

Exhibit 1—417 FW 4

#### **Timeframes**

#### **Audit Resolution Process for Federal Assistance Grant Audits**

**Note:** The OIG allows 90 calendar days for bureaus to prepare a corrective action plan. The number of days indicated below is the established maximum time period for each resolution phase. (See 417 FW 4)

Calendar day	Responsible organization	Action/comments
1 .....	OIG .....	OIG issues final audit report. (Resolution time tracking process starts.) (417 FW 4.2)
2-45 .....	RD, grantee, Chief FA/VO ...	RD prepares draft CAP in coordination with grantee and Chief, FA/VO. Submits the draft CAP to the AD-MBSP, attention: Chief, FA/VO. (RD must complete action within 45 calendar days from OIG issuance of final report.) (417 FW 4.4)
46-75 .....	Chief FA/VO (AD-WSF) .....	Chief, FA/VO, reviews the draft CAP and submits to the AD-MBSP for concurrence and returns to the RD. (AD-WSF and Chief FA/VO must complete action within 30 calendar days of date that RD forwards report to AD-WSR) (417 FW 4.4 and 417 FW 4.7)
76-90 .....	RD, AD-MBSP, D, OIG .....	If disagreement exists between the RD and AMBS, they brief the Director for decision, and AD-WSR formally requests a 30-day extension from the OIG. (AD-WSR must complete action prior to 90-day resolution timeframe.) (417 FW 4.8)
76-120 .....	RD .....	RD approves CAP. RD transmits original OIG with copies to the AD-WSR, attention: Chief, FA/VO, and the grantee within 15 calendar days of AD/MBSP decision. (RD must complete action within 2 weeks of AD-MBSP concurrence or Director's decision.)* (417 FW 4.11)
90-120 .....	OIG .....	OIG reviews the final CAP and notifies PFM, the RD, and Chief FA/VO that either: —Recommendations are placed in tracking with PFM, or —FWS has failed to resolve the audit OIG reviews the final CAP and notifies the RD and Chief, FA/VO that they concur with resolutions.
120+ .....	PFM/Service .....	PFM works with the Service to track audit until all resolution actions are complete. (417 FW 4.9)

\* Appeal Process: If the Regional Director cannot resolve the audit, the grantee may appeal to the Service Director (see 417 FW 6).

**Legend:**

- AD-WSR—Assistant Director—Wildlife and Sportfish Restoration
- D—Director
- Chief FA/VO—Chief, Division of Federal Assistance, WO Service—U.S. Fish and Wildlife Service
- OIG—Office of Inspector General
- PFM—Office of Financial Management (Departmental)
- RD—Regional Director
- Grantee—Recipient of Federal Assistance grant

*Chapter 5, Audit Appeals (417 FW 5)*

**5.1 What is the purpose of this chapter?** This chapter establishes policy and procedures for appealing audit findings or corrective actions for Federal Assistance Program grantee audits. See 417 FW 1 for authorities, responsibilities, and definitions. Other chapters in this Part establish policy and procedures for audit planning, conducting and reporting, and resolution.

**5.2 Who may appeal?** A grantee affected by a CAP may appeal Service determinations, corrective actions, or resolutions in the CAP.

**5.3 How much time does the grantee have to appeal?** A grantee must file a written appeal to the Director within 21 calendar days from the date the Regional Director approved the CAP.

**5.4 What does the appeal contain?** The appeal must:

- A. Specify which Service determinations, corrective actions, or resolutions the grantee is appealing.
- B. Provide information as to why an appeal is being made and include justification and citations supporting the grantee's position. This justification supplements information that the grantee provided in the original response to the audit findings.
- C. Include a brief summary of prior discussions or negotiations with the Service on the action being appealed.

**5.5 How does the appeals process work?** The region and the State would prepare a CAP that would be acceptable to the Regional Director as if the questioned audit findings were upheld. The CAP should note the specific findings and resolutions with which the State disagrees, and an explanation and specific reasons for the disagreement. It should also include the State's intention to appeal the specific finding and resolution recommendation. The CAP would then be processed in the usual manner. When the CAP has gone through the approval process and the Region issues the final CAP, the final CAP will go into effect and be monitored by the Service and the Department's Office of Financial Management. The State would then have 21 calendar days from the date the Region issues the final CAP to initiate an appeal. Only those findings and resolutions specifically mentioned in the appeal would be affected by the appeal. The other findings and resolutions would be final. In the event of an adverse decision, the State may appeal to the Secretary of the Interior.

**5.6 Who makes the final decision on an appeal to the Service?** The Director makes the final decision on each appeal after consultation with technical experts. The Director will work with the grantee(s), appropriate Service Region(s), Washington Office staff, and others as needed to resolve the appeal

within 30 calendar days after receipt of all pertinent documents.

**5.7 Can a grantee appeal the Director's decision?** Yes, such an appeal shall be made pursuant to 43 CFR 4.700-4.704. A grantee may appeal the Director's decision within 30 days of the date of mailing of the decision. Submit appeals to the Director, Office of Hearings and Appeals, Department of the Interior.

**5.8 Does the Service provide information to the Department?** Pursuant to 43 CFR 4.702, the Director—upon notification by the Department of the Interior, Office of Hearings and Appeals—has 10 calendar days to provide the entire official file on the matter, including all records, documents, transcripts of testimony, and other information compiled during the proceedings leading to the decision being appealed.

**5.9 Who decides the issue?** The Director, Office of Hearings and Appeals, or an ad hoc appeals board appointed by that Director may take any of the following actions: hold a hearing on the entire matter or specified portions of it; make a decision based on the information already available; or make other disposition of the case. The Director, Office of Hearings and Appeals, may grant oral arguments if good cause is shown. Any hearing on such appeals will be conducted by the ad hoc appeals board or by an

administrative law judge of the Office of Hearings and Appeals and will be governed by the regulations applicable to other hearings under this part. All appeals should be made pursuant to 43 CFR 4.700–4.704.

*Chapter 6, Single Audit Act Report Resolution (417 FW 6)*

**6.1 What is the purpose of this chapter?** This chapter establishes Service policy for resolving findings and implementing recommendations from audits of Federal Assistance Program grantees under the Single Audit Act. See 417 FW 1 for authorities, responsibilities, and definitions.

**6.2 To what program does this chapter apply?** This chapter applies to Single Audit Act audits of grantees that receive funds through the Federal Assistance Program.

**6.3 Is the Service responsible for resolving all audit findings?** No. We are only responsible for resolving findings, recommendations, and questioned costs that directly relate to funds that we provide to the grantee.

**6.4 Does the OIG notify the Service when audits are completed?** The OIG will provide excerpts from the Single Audit Report to the Director or Regional Director if there are issues that we must address. The OIG's transmittal memorandum will identify the specific findings and questioned costs that we must resolve. The OIG does not notify us if the Single Audit Report contains no findings directly related to funds that we provide to the grantee.

**6.5 What happens when the Service receives a Single Audit Report?**

A. When the OIG provides the report to the Washington Office, the Service Audit Liaison Officer:

(1) Notifies the Chief, Division of Federal Assistance (Washington Office), and other Service offices, as needed, that we have received a Single Audit report that contains findings we must resolve.

(2) Forwards the documents to the Chief, Division of Federal Assistance (Washington Office), for review and transmittal to the appropriate Regional Director for action.

B. When the OIG provides the report to the Regional Office, the Chief, Division of Federal Assistance (Regional Office), will notify and provide a copy to the Chief, Division of Federal Assistance (Washington Office), and the Service Audit Liaison Officer. The Service Audit Liaison Officer will coordinate with other affected offices, as necessary.

C. The Regional Director notifies the grantee of receipt of the Single Audit Report.

**6.6 How much time does the Service have to respond to the Single Audit Report?** The OIG establishes a deadline in the transmittal memorandum submitted with the Single Audit Report. The Regional Director may, with concurrence of the Assistant Director—Wildlife and Sport Fish Restoration, request that the OIG provide additional time for response. The request will include a justification for the extension.

**6.7 How are findings resolved?** The Regional Director is responsible for overseeing and monitoring the Service response to Single Audit Reports in accordance with procedures in 417 FW 4. The Regional Director coordinates with the grantee to ensure that the specified action will resolve the finding. If the Regional Director determines that the corrective action will not resolve the finding, he/she negotiates revised corrective actions with the grantee. When corrective actions to resolve audit findings have been documented by the grantee, the Regional Director notifies the OIG and the Chief, Division of Federal Assistance (Washington Office), in writing. The Chief, Division of Federal Assistance (Washington Office), notifies the Service Audit Liaison Officer of this action. The audit is closed when the Department office that is tracking the resolution concurs with the Service's response.

**6.8 Who maintains Single Audit Report resolution files?** The Regional Director will maintain all files related to resolution of Single Audit Act audit findings. These files will include, but not be limited to:

A. Copies of all relevant correspondence.

B. Single Audit Report and OIG transmittal memorandum.

C. Service response to OIG's transmittal memorandum.

D. Corrective actions and revised corrective actions, as described in paragraph 6.7, when appropriate.

E. Documentation that the grantee has resolved the audit findings and questioned costs in accordance with approved corrective actions.

**6.9 Can the grantee appeal a Single Audit corrective action?** Yes. Grantees may appeal Service decisions using the procedures outlined in 43 CFR 4.700–4.704. A grantee may appeal the Service's decision on a Single Audit corrective action within 30 calendar days of the date of mailing of the decision. Submit the appeal to the Director, Office of Hearings and Appeals, Department of the Interior. The Director, Office of Hearings and Appeals; an ad hoc appeals board appointed by that Director; or an administrative law judge of that office

will review the record, hold a hearing on all or part of the record, or listen to oral arguments and then make disposition of the appeal.

Dated: October 15, 2003.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 03–27203 Filed 10–28–03; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Request for Comments on Grazing Regulations Information Collection Renewal

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Submission of Information Collection to the Office of Management and Budget.

**SUMMARY:** The Bureau of Indian Affairs (BIA) is submitting to OMB the information collection, titled Grazing Permits, OMB Control Number 1076–0157 for renewal; or, for review and approval. The purpose of this data collection is to update and renew the information collected for 25 CFR 166 General Grazing Regulations as required by the Paperwork Reduction Act.

**DATES:** Submit comments on or before November 28, 2003.

**ADDRESSES:** You may submit comments on the information collection to the Desk Officer for Department of the Interior, by facsimile at (202) 395–6566 or you may send an e-mail to: [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov).

Please send copy of comments to Bureau of Indian Affairs, Office of Trust Services, Division of Natural Resources, MS–3061–MIB, 1849 C Street NW., Washington, DC 20240, or by facsimile at (202) 219–0006.

**FOR FURTHER INFORMATION CONTACT:** You may request further information or obtain copies of the information collection request submission from James R. Orwin, (202) 208–6464, at the BIA Central Office in Washington, DC.

**SUPPLEMENTARY INFORMATION:** This collection of information is authorized under Public Law 103–177, the “American Indian Agricultural Resource Management Act,” as amended. Tribes, tribal organizations, individual Indians, and those entering into permits with tribes or individual Indians submit information required by the regulation. This information is used by the BIA to determine:

(a) Whether or not a permit for grazing may be approved or granted,

- (b) The value of each permit,
- (c) The appropriate compensation to landowners, and
- (d) Provisions for violations of permit and trespass.

A request for comments on this information collection request appeared in the **Federal Register** May 27, 2003 (68 FR 28836). No comments were received. Further research has guided a change in the total annual burden hours and the total annual cost to respondents as shown on the 60 days notice. These changes are a result of additional information received from the field offices. The number of annual responses was changed from 4,200 to 6,670, the total annual burden to respondents was changed from 500 hours to 861 hours, and the total annual cost to respondents was changed from \$2,500.00 to \$4,305.00. An administrative fee of up to 3% of the annual grazing rental is collected to reimburse the BIA for administration of the grazing permit program. In recent years, administrative fees have generated approximately \$175,000.00 per year.

*Request for Comments:* The Bureau of Indian Affairs requests you to send your comments on this collection to the locations listed in the **ADDRESSES** section. Your comments should address:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) The ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) The ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 3061, during the hours of 8 a.m.–4 p.m., EST Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations

or representatives will be available for review. We may withhold comments from review for other reasons.

OMB has up to 60 days to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them closer to 30 days than 60 days.

*OMB Approval Number:* 1076–0157.

*Title:* Grazing Permits 25 CFR 166.

*Brief Description of collection:*

Information is collected through a grazing permit application. Respondent supplies all information needed to prepare a grazing permit, including: name, address, range unit requested, number of livestock, season of use, livestock owner's brand, kind of livestock, mortgage holder information, ownership of livestock, and requested term of permit. Response is mandatory for respondents to supply the above information in order to obtain a grazing permit.

*Type of review:* Renewal.

*Respondents:* Possible respondents include: individual tribal members, individual non-Indians, individual tribal member-owned business, non-Indian owned businesses, tribal governments and landowners. Response is mandatory for respondents who wish to obtain a grazing permit.

*Number of Respondents:* 1,000.

*Estimated Time per Response:* 20 minutes (1/3 hour).

*Frequency of Response:* Annually and as needed.

*Total Annual Responses:* 6,670.

*Total Annual Hourly Burden to Respondents:* 861 hours.

Dated: October 23, 2003.

**Aurene M. Martin,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 03–27250 Filed 10–28–03; 8:45 am]

**BILLING CODE 4310–W7–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Request for Comments on Land Acquisitions Information Collection

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) invites comments on the information collection request which will be renewed. The collection is: 25 CFR 151 Land Acquisitions, 1076–0100.

**DATES:** Comments must be received on or before December 29, 2003, to be assured of consideration.

**ADDRESSES:** Comments should be sent to Ben Burshia, Chief, Division of Real Estate Services, Bureau of Indian Affairs, Mail Stop 4513–MIB, 1849 C Street NW, Washington, DC 20240–0001.

#### FOR FURTHER INFORMATION CONTACT:

Interested persons may obtain copies of the information collection requests without charge by contacting Ben Burshia at 202–219–1195.

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. This collection covers 25 CFR 151 as presently approved. The Bureau of Indian Affairs, Division of Real Estate Services is proceeding with this public comment period as the first step in obtaining a normal information collection clearance from OMB. The request contains (1) type of review, (2) title, (3) summary of the collection, (4) respondents, (5) frequency of collection, (6) reporting and recordkeeping requirements, and (7) reason for response.

#### 25 CFR 151—Land Acquisitions

*Type of review:* Extension of a currently approved collection.

*Title:* 25 CFR 151, Acquisition of Title to Land in Trust.

*Summary:* The Secretary of the Interior has statutory authority to acquire lands in trust status for individual Indians and federally recognized Indian tribes. The Secretary requests information in order to identify the party(ies) involved and a description of the land in question. Respondents are Native American tribes or individuals who request acquisition of real property into trust status. The Secretary also requests additional information necessary to satisfy those pertinent factors listed in 15 CFR 151.10 or 151.11. The information is used to determine whether or not the Secretary will approve an applicant's request. No specific form is used, but respondents supply information and data, in accordance with 25 CFR 151, so that the Secretary may make an evaluation and determination in accordance with established Federal factors, rules and policies.

*Frequency of Collection:* One Time.

*Description of Respondents:* Native American Tribes and Individuals desiring acquisition of lands in trust status.

*Total Respondents:* 9,200.

*Total Annual Responses:* 9,200.  
*Total Annual Burden Hours:* 36,800 hours.

*Reason for response:* Required to obtain or retain benefits.

The Bureau of Indian Affairs solicits comments in order to:

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

(2) Evaluate the bureau'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.

Any public comments will be addressed in the Bureau of Indian Affairs' submission of the information collection request to the Office of Management and Budget.

We will not sponsor or conduct a request for information, and you need not respond to such a request unless there is a valid OMB Control Number.

Please note that comments are open to public review; if you wish to have your name and address withheld from the reviewing public, you must state so prominently at the beginning of your comments. We will honor your request to the limit of the appropriate laws. All comments from businesses or their representatives will be available for public review. We may decide to withhold information for other reasons.

Dated: October 22, 2003.

**Aurene M. Martin,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 03–27251 Filed 10–28–03; 8:45 am]

**BILLING CODE 4310–W7–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Land Acquisitions; Skokomish Tribe of Washington

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of final agency determination to take land into trust under 25 CFR part 151.

**SUMMARY:** The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 2.0 acres of land into trust for the Skokomish Tribe of Washington on

October 8, 2003. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

**SUPPLEMENTARY INFORMATION:** This notice is published to comply with the requirement of 25 CFR part 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR part 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On October 8, 2003, the Assistant Secretary—Indian Affairs decided to accept approximately 2.0 acres of land into trust for the Skokomish Tribe of Washington under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The 2.0 acre parcel is located within the exterior boundaries of the Skokomish Indian Tribe in Mason County, Washington. The parcel is an existing parking lot which supports the Tribe's gaming facility. No change in use is anticipated following conveyance of the parcel to the United States in trust for the Tribe.

The real property consists of a 2.0 acre tract known as "Parcel 2 of the Jackpot Property" situated in Mason County, Washington. The legal description of the property is as follows:

The Northerly 210 feet of the Southerly 401 feet of the East half (E ½) of the Northeast quarter (NE ¼) of the Northwest quarter (NW ¼) of the Southwest quarter (SW ¼) of Section two (2), Township twenty-one (21) North, Range four (4) West, W.M., lying Easterly of the Easterly right-of-way line of U.S. Highway No. 101, more particularly described as follows:

Commencing at the center west sixteenth corner of said Section two (2), which is an iron pipe; thence South 1°10'50" West, 215.95 feet, along the East line of the Northeast quarter (NE ¼) of the Northwest quarter (NW ¼) of the Southwest quarter (SW ¼), to the point of beginning of the tract of land hereby described; thence continuing South 1°10'50" West, along said East line, 210.00 feet; thence North 88°50'03" West, parallel with the South line of said Northeast quarter (NE ¼) of the Northwest quarter (NW ¼) of the Southwest quarter (SW ¼), 244.14 feet, more or less, to the Easterly right-of-way line of U. S. Highway No. 101, as located on August 31, 1972; thence North 0°46'28" East, along said Easterly right-of-way line, 210.00 feet, thence South 88°50'03" East, 245.61 feet, more or less, to the point of beginning.

Excepting therefrom, all that portion thereof, if any, lying within the South 191 feet of the East half (E ½) of the Northeast

quarter (NE ¼) of the Northwest quarter (NW ¼) of the Southwest quarter (SW ¼) of said Section two (2).

Excepting therefrom road rights-of-way.

Parcel No. 42102 32 00030.

**FOR FURTHER INFORMATION CONTACT:** George Skibine, Office of Indian Gaming Management, Bureau of Indian Affairs, MS-4543 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219-4066.

Dated: October 8, 2003.

**Aurene M. Martin,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 03–27223 Filed 10–28–03; 8:45 am]

**BILLING CODE 4310-4N-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-910-04-0777-30]

#### Northeastern Great Basin Resource Advisory Council; Notice of 2004 Meetings, Locations, and Times

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of fiscal year 2004 meetings, locations, and times for the Northeastern Great Basin Resource Advisory Council (Nevada).

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Nevada Northeastern Great Basin Resource Advisory Council (RAC), will meet as indicated below. Topics for discussion at each meeting will include, but are not limited to: December 11, 2003 (Battle Mountain, Nevada)—Population Management Unit Tour (Sage Grouse) and Vegetation Guidelines; February 12, 2004 (Eureka, Nevada)—Sage Grouse Update, USDA Forest Service Updates for the Central Nevada Elk Plan, Jarbidge Road Issue, and Interagency Tourism Project; April 15, 2004 (Ely, Nevada)—Ely Resource Management Plan Alternatives and Mining Update; June 10 & 11, 2004 (Elko, Nevada)—Mining Activities and Riparian Management Tour and California Trail Center.

Managers' reports of field office activities will be given at each meeting. The council may raise other topics at any of the four planned meetings.

**DATES AND TIMES:** The RAC will meet four times in Fiscal Year 2004: on December 11, 2003 at the BLM Battle Mountain Field Office, 50 Bastian Road,

Battle Mountain, Nevada; on February 12, 2004 at the Eureka Opera House, 31 South Main, Eureka, Nevada; on April 15, 2004 at the BLM Ely Field Office, 702 North Industrial Way, Ely, Nevada; and on June 10 & 11, 2004 at the BLM Elko Field Office, 3900 East Idaho Street, Elko, Nevada. All meetings are open to the public. Each meeting will last from 9 a.m. to 5 p.m. and will include a general public comment period, where the public may submit oral or written comments to the RAC. Each public comment period will begin at approximately 1 p.m. unless otherwise listed in each specific, final meeting agenda.

Final detailed agendas, with any additions/corrections to agenda topics, locations, field trips and meeting times, will be available on the internet at least 14 days before each meeting, at <http://www.nv.blm.gov/rac>; hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Mike Brown, Elko Field Office, 3900 East Idaho Street, Elko, Nevada 89801, telephone (775) 753-0386 no later than 10 days prior to each meeting.

**FOR FURTHER INFORMATION CONTACT:** Mike Brown, Public Affairs Officer, Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801. Telephone: (775) 753-0386. E-mail: [mbrown@nv.blm.gov](mailto:mbrown@nv.blm.gov).

Dated: October 22, 2003.  
**David Stout,**  
*Associate Field Manager.*  
 [FR Doc. 03-27208 Filed 10-28-03; 8:45 am]  
**BILLING CODE 4310-HC-P**

**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)**

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

**SUMMARY:** Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

**FOR FURTHER INFORMATION CONTACT:** Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of

Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123-2394, or by calling 1-800-200-GULF.

**SUPPLEMENTARY INFORMATION:** MMS prepares SEAs and FONSI for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Manta Ray Gathering Company, LLC, Pipeline and Platform Right-of-Way Application, SEA Nos. P-13972, P-13987, P-14077 and P-14096.	Segment 14077 from Ship Shoal, Block 332, to Garden Banks, Block 72; segment 14096 from Garden Banks, Block 72, to High Island, Block A-5; segment 13972 from High Island, Block A-5 to Block 97 and then to shore; segment 13987 from High Island, Block A-5 to Block 21 and then to shore; located south of Texas and Louisiana going to shore in Texas.	06/27/03
Newfield Exploration Company, Initial Exploration Plan, SEA No. N-7804.	DeSoto Canyon, Blocks 47 and 48, Leases OCS-G 10439 and OCS-G 10440, located 76 miles from the nearest Louisiana shoreline.	07/23/03
Murphy Exploration & Production Company, Initial Development Operations Coordination Plan, SEA No. N-7617.	Green Canyon, Block 338, Lease OCG G-21790, located 96 miles from the nearest Louisiana shoreline.	07/30/03
LLOG Exploration Offshore, Inc., Initial Development Operations Coordination Plan, SEA No. N-7758 and P-14205.	High Island, Block A-367, Lease OCS-G 23222, located 124 miles from the nearest Texas shoreline.	08/13/03
W&T Offshore, Inc., Right-of-Way Pipeline, SEA No. P-14037.	Garden Banks, Block 139, Lease OCS-G 17295 to High Island, Block A-389, Lease OCS-G 02759, located 123 miles from the nearest shoreline.	08/26/03
Chevron U.S.A., Inc., Initial Development Operations Coordination Plan, SEA No. N-7825.	Viosca Knoll, Block 383, Lease OCS-G 21721, located 40 miles south of Mobile County, Alabama.	09/18/03
Kerr McGee Corporation, Initial Exploration Plan, SEA No. N-7710.	DeSoto Canyon, Blocks 226 and 270, Leases OCS-G 23499 and OCS-G 23503, located 85 miles from the nearest Louisiana shoreline.	09/23/03
Anadarko Petroleum, Initial Exploration Plan, SEA No. N-7753.	Green Canyon, Block 608, Lease OCS-G 18402, located 119 miles from the nearest Louisiana shoreline.	09/25/03
Western Geco, Geological & Geophysical Exploration Plan, SEA No. L03-42.	Located in the central Gulf of Mexico, south of Cocodrie, Louisiana .....	07/24/03
Kerr-McGee Oil & Gas Corporation, Geological & Geophysical Exploration Plan, SEA No. L03-49.	Located in the central and western Gulf of Mexico south of Fourchon, Louisiana .....	08/28/03
Veritas DGC Corporation, Geological & Geophysical Exploration Plan, SEA Nos. L03-53, L03-54 and L03-55.	Located in the central Gulf of Mexico, south of Fourchon, Louisiana .....	09/04/03

Activity/operator	Location	Date
Unocal, Structure Removal Activity, SEA ES/SR No. 87-04A.	South Marsh Island, Block 11, Lease OCS-G-01182, located 32 miles south-southwest of the nearest Louisiana shoreline.	06/20/03
Samedan Oil Corporation, Structure Removal Activity, SEA ES/SR Nos. 03-139 through 03-144, 89-77A.	Eugene Island, Block 38, Lease OCS-G 02894, located 5 miles from the nearest Louisiana shoreline.	07/08/03
Shell Offshore, Inc., Structure Removal Activity, SEA ES/SR No. 03-146.	Eugene Island, Block 176, Lease OCS-G 00445, located 43 miles southwest from the nearest Louisiana shoreline.	07/24/03
Devon Energy Production Company, L.P., Structure Removal Activity, SEA ES/SR Nos. 03-147 and 03-148.	South Marsh Island North Addition, Block 265, Leases OCS-G 02890, 17 miles south-southwest from the nearest Louisiana shoreline.	07/24/03
El Paso Production Oil & Gas Company, Structure Removal Activity, SEA ES/SR Nos. 03-145, 03-149, 03-150, 03-151, 03-152 and 03-153.	Vermilion, Block 251; Main Pass (South & East Addition) Block 217; West Cameron (West Addition), Block 431; West Delta, Block 60 and South Timbalier, Block 86; Leases OCS-G 02873, 14580, 10584, 15362 and 14520, respectively; located 60 miles south-southwest, 68 miles southwest, 11 miles southwest, 52 miles southeast and 21 miles south-southeast of the nearest Louisiana shoreline.	07/24/03
J.M. Huber Corporation, Structure Removal Activity, SEA ES/SR Nos. 03-154, 03-155 and 03-156.	Vermilion, Block 104, Lease OCS-G 039810, located 30 miles from the nearest Louisiana shoreline.	07/24/03
Apache Corporation, Structure Removal Activity, SEA ES/SR Nos. 03-157 and 03-158.	Vermilion, Block 178, Lease OCS-G 11871, located 47 to 56 miles from the nearest Louisiana shoreline.	08/01/03
Apache Corporation, Structure Removal Activity, SEA ES/SR No. 03-159.	West Cameron, Block 275, Lease OCS-G 04761, located 60 miles from the nearest Louisiana shoreline.	08/01/03
Shell Offshore, Inc., Structure Removal Activity, SEA ES/SR No. 03-160.	Brazos, Block A20, Lease OCS-G 03472, located 24 miles from the nearest Texas shoreline.	08/01/03
Murphy Exploration & Production Company, Structure Removal Activity, SEA ES/SR No. 03-162.	West Cameron (South Addition), Block 631, Lease OCS-G 15120, located 181 miles west-southwest from the nearest Louisiana shoreline.	07/31/03
Westport Resources Corporation, Structure Removal Activity, SEA ES/SR No. 03-163.	West Cameron, Block 181, Lease OCS-G 01971, located 27 miles south-southwest from the nearest Louisiana shoreline.	08/01/03
Murphy Exploration and Production Company, Structure Removal Activity, SEA ES/SR No. 03-164.	South Timbalier, Block 86, Lease OCS-00605, located 20 miles from the nearest Louisiana shoreline.	09/09/03
Taylor Energy Company, Structure Removal Activity, SEA ES/SR No. 03-165.	Vermilion, Block 191, Lease OCS-G 01134, located 45 miles south-southwest from the nearest Louisiana shoreline.	08/08/03
Water Oil & Gas Corporation, Structure Removal Activity, SEA ES/SR No. 92-044A.	West Delta, Block 35, Lease OCS-G 13641, located 11 miles from the nearest Louisiana shoreline.	08/28/03
Apache Oil Corporation, Structure Removal Activity, SEA ES/SR No. 03-166.	Eugene Island (South), Block 274, Lease OCS-G 07738, located 60 miles from the nearest Louisiana shoreline.	08/25/03
Walter Oil & Gas Corporation, Structure Removal Activity, SEA ES/SR No. 03-167.	Grand Isle, Block 63, Lease OCS-G 14555, located 20 miles from the nearest Louisiana shoreline.	09/15/03
Murphy Exploration and Production Company, Structure Removal Activity, SEA ES/SR No. 03-168 through 03-170.	South Pelto, Blocks 12 and 19, Leases OCS-00072 and 00073, located 5 to 10 miles from the nearest Louisiana shoreline.	09/03/03
Millennium Offshore Group, Inc., Structure Removal Activity, SEA ES/SR No. 03-171.	West Cameron (South Addition), Block 521, Lease OCS-G 15107, located 92 miles south-southeast from the nearest Texas shoreline.	08/21/03
BP America Production Company, Structure Removal Activity, SEA ES/SR No. 03-172.	East Cameron, Block 60, Lease OCS-G 05359, located 17 miles south-southwest from the nearest Louisiana shoreline.	09/09/03
Murphy Exploration & Production Company, Structure Removal Activity, SEA ES/SR No. 03-173 and 03-174.	South Pelto, Block 19, Lease OCS-00073, located 10 miles south of the nearest Louisiana shoreline.	09/03/03
Murphy Exploration & Production Company, Structure Removal Activity, SEA ES/SR No. 03-175.	Eugene Island (South), Block 335, Lease OCS-G 17996, located 80 miles from the nearest Louisiana shoreline.	09/15/03
El Paso Production Company, Structure Removal Activity, SEA ES/SR No. 03-176.	West Cameron, Block 114, Lease OCS-G 17762, located 18 miles south of the nearest Louisiana shoreline.	09/09/03
TGS-NOPEC Geophysical Company, Geological & Geophysical Exploration Plan, SEA No. L03-56.	Located in the central and western Gulf of Mexico, east of Galveston, Texas .....	09/16/03
Chevron Texaco, Structure Removal Activity, SEA ES/SR No. 03-177 and 03-178.	Main Pass, Block 42, Lease OCS-G 00375, located 9 miles from the nearest Louisiana shoreline.	09/23/03
Coastal Planning & Engineering, Inc. for Collier County, Florida, Geological & Geophysical Exploration Plan, SEA No. M03-02.	Located in the eastern Gulf of Mexico east of the 88th meridian .....	07/03/02

Activity/operator	Location	Date
Coastal Planning & Engineering, Inc. for Collier County, Florida, Geological & Geophysical Exploration Plan, SEA No. M03-03.	Located in the eastern Gulf of Mexico east of the 88th meridian .....	07/15/03

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION** section.

Dated: October 17, 2003.

**Chris C. Oynes,**

*Regional Director, Gulf of Mexico OCS Region.*  
[FR Doc. 03-27279 Filed 10-28-03; 8:45 am]

**BILLING CODE 4310-MR-P**

## DEPARTMENT OF JUSTICE

### **Notice of Lodging of Partial Consent Decree Between De Minimis Settling Defendants and the United States and State of New Jersey, and the Natural Resource Damages Partial Consent Decree Between Settling Defendants and the United States and State of New Jersey Under the Comprehensive Environmental Response, Compensation and Liability Act, as Amended**

Notice is hereby given that, on October 20, 2003, a proposed partial consent decree between *de minimis* settling defendants and the United States and State of New Jersey, and a proposed Natural Resource Damages Partial Consent Decree between settling defendants and the United States and State of New Jersey Natural Resources Damages Partial Consent Decree were lodged in *United States v. Beckman Coulter, Inc., et al.*, Civil Action No. 98-CV-4812 (WHW) and *New Jersey Department of Environmental Protection, et al. v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781 (WHW) (consolidated) before the United States District Court in the District of New Jersey, Newark Vicinage.

The *De Minimis* Decree resolves the liability for response costs under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601, *et seq.* (CERCLA) of 58 *de minimis* parties in connection with the Combe Fill South Site in New Jersey. Pursuant to the settlement, the United States and New Jersey will recover \$3.235 million in response costs. The Natural Resource

Damages Decree resolves the liability of 53 of those same parties for natural resource damages in connection with the Site. Pursuant to that settlement, State and federal natural resource trustees will receive \$302,000 for natural resource restoration and other NRD-related costs in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Post Office Box 7611, United States Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Beckman Coulter, Inc., et al.*, Civil Action No. 98-CV-4812 (WHW) and *New Jersey Department of Environmental Protection, et al. v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781 (WHW) (consolidated) and reference number 90-11-2-1134/1.

The two Decrees may be examined at the Office of the United States Attorney, District of New Jersey, at the Peter Rodino Federal Building, 970 Broad Street, Suite 700, Newark, NJ (call (973) 645-2700 to arrange to examine the Decrees). Copies of the Decrees may also be obtained by mail from the Consent Decree Library, Post Office Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check payable to the United States Treasury in the amount of \$36.25 (25 cents per page reproduction cost). During the public comment period, the Consent Decrees may also be examined on the following Department of Justice Web site <http://www.usdoj.gov/enrd/open.html>.

**Ronald Gluck,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03-27258 Filed 10-28-03; 8:45 am]

**BILLING CODE 4410-01-M**

## DEPARTMENT OF JUSTICE

### **Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act**

Notice is hereby given that on September 19, 2003, a proposed Consent Decree in *United States of America, The State of New Mexico, and The New Mexico Office of Natural Resources Trustee v. The Burlington Northern and Santa Fe Railway Company*, Civil Action No. 03-1105 MV KBM, was lodged with the United States District Court for the District of New Mexico.

In this action the United States, on behalf of the United States Department of the Interior ("DOI"), the United States Fish and Wildlife Service, and the Attorney General of the State of New Mexico, on its own behalf and on behalf of The State of New Mexico and The New Mexico Office of Natural Resources Trustee ("NMONRT") sought damages from The Burlington Northern and Santa Fe Railway Company for injury to, destruction and loss of natural resources, under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9607(a), resulting from the release of hazardous substances from the AT & SF (Clovis) New Mexico Superfund Site, located in Clovis, Curry County, New Mexico. The Complaint alleges that hazardous substances, including polycyclic aromatic hydrocarbons, phenol compounds and metals, were released from a railway switching yard owned and operated by the Defendant and its predecessor, to a former playa lake known as Santa Fe Lake, resulting in the loss of habitat for fish and wildlife, including migratory birds and aquatic dependent biota. The Consent Decree provides for BNSF to pay a total of \$489,000.00 to resolve the claims alleged in the Complaint. Of this amount, \$459,000 will be placed in a Court Registry trust account for use by DOI and NMONRT in planing and implementing a habitat acquisition and enhancement project, \$20,500 and \$9,500 shall be paid to DOI and NMONRT respectively, to reimburse DOI and NMONRT for costs incurred to assess the alleged injury to, destruction and loss of natural resources.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States, et al. v. The Burlington Northern and Santa Fe Railway Company*, D.J. Ref. 90-11-1-07321.

The Consent Decree may be examined at the Office of the United States Attorney, District of New Mexico, 201 Third St., NW., Ste. 900, Albuquerque, NM 87102. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$4.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Thomas A. Mariani, Jr.,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03-27254 Filed 10-28-03; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Emergency Planning and Community Right-To-Know Act

In accordance with 28 U.S.C. section 50.7, notice is hereby given that on October 16, 2003, a proposed Consent Decree in *United States, et al. v. Chevron U.S.A. Inc.*, Civil Action No. C: 03-4650 MEJ, was lodged with the United States District Court for the Northern District of California.

In this action, the United States sought injunctive relief and penalties against Chevron U.S.A. Inc. ("Chevron"), pursuant to Section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b), section 109(c) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9609(c), and

section 325(b) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. 11045(b) (3), for alleged environmental violations at Chevron's petroleum refineries located in El Segundo, California; Richmond, California; Kapolei, Hawaii; Pascagoula, Mississippi; and Salt Lake City, Utah. The States of Hawaii and Utah, the Mississippi Commission on Environmental Quality, and the Bay Area Air Quality Management District of California have joined in this settlement as signatories to the Consent Decree.

The proposed Consent Decree requires Chevron to implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides ("NO<sub>x</sub>") and sulfur dioxide ("SO<sub>2</sub>") from refinery process units, to reduce the number and impact of flaring events, and to adopt facility-wide enhanced monitoring and fugitive emission control programs. In addition, Chevron will pay a civil penalty of \$3.5 million and perform supplemental environmental projects with a value of at least \$4.55 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States, et al. v. Chevron U.S.A. Inc.*, D.J. Ref. 90-5-2-2-07629.

The Consent Decree may be examined at the Office of the United States Attorney for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102 (attn: Charles O'Connor), and at U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466 (attn: Cindy Reynolds). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of \$52.25

(25 cents per page reproduction cost) payable to the U.S. Treasury.

**Robert D. Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03-27256 Filed 10-28-03; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 15, 2003, a proposed consent decree in *United States v. Silgan Containers Corporation*, Civ. S-03-2166 LKK KJM, was lodged with the United States District Court for the Eastern District of California.

In this action, the United States sought injunctive relief and civil penalties under section 113(b) of the Clean Air Act ("CAA") against Silgan Containers Corporation for violations of permitting and new source review requirements of the CAA and the federally enforceable State Implementation Plan for California at Silgan's can manufacturing facilities located in Stockton, Modesto, Kingsburg, and Riverbank, California. The consent decree requires Silgan to: (1) Install air pollution control equipment and modify processes at its facilities, (2) modify its permits to reduce allowable emissions from its facilities, and (3) pay a civil penalty of \$659,900.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Silgan Containers Corporation*, D.J. Ref. #90-5-2-1-06125.

The consent decree may be examined at the Office of the United States Attorney, 501 I Street, Suite 10-100, Sacramento, California, and at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: <http://www.usdoj.gov/enrd/open.html>. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a

request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$5.25 (25 cents per pay reproduction cost) payable to the U.S. Treasury.

**Ellen M. Mahan,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 03-27257 Filed 10-28-03; 8:45 am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Vail Associates, Inc.*, (D. Colo.), Civil Action No. 03-D-2069 (BNB), was lodged with the United States District Court for the District of Colorado on October 17, 2003.

This proposed Consent Decree concerns a complaint filed by the United States against Vail Associates, Inc., pursuant to section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from the impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore the impacted areas, perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Jon Lipshultz, U.S. Department of Justice, Environmental Defense Section, Environment and Natural Resources Division, P.O. Box 23986, Washington, DC 20026-3986 and refer to *United States v. Vail Associates, Inc.*, (D. Colo.), Civil Action No. 03-D-2069 (BNB), DJ #90-5-1-1-16527.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Colorado, 901 19th Street, Denver, Colorado 80294-3589.

In addition, the proposed Consent Decree may be viewed at <http://www.usdoj.gov/enrd/open.html>.

**Scott Schachter,**

*Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.*

[FR Doc. 03-27255 Filed 10-28-03; 8:45 am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

### [AAG/A Order No. 020-2003]

### Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget (OMB) Circular No. A-130, the Department of Justice has completed a review of its Privacy Act system of records titled "Grievance Records, Justice/JMD-005," last published August 4, 1981 (46 FR 39706) and is making changes that will more accurately describe the records. The system of records is now renamed "The Department of Justice Grievance Records, DOJ-008," as it covers all current or former Department of Justice employees, except for employees of the Federal Bureau of Investigation (FBI), who have submitted grievances under the Agency Grievance Procedure or in accordance with a negotiated grievance procedure.

The Department of Justice Grievance Records System is a system of records relating to grievances filed by Department employees under the Agency Grievance Procedure or under a negotiated grievance procedure. The system contains all documents related to each grievance in the central personnel or administrative office of the bureau, office, board, or division where the grievance originated. Changes to the system of records include additional routine uses, editorial revisions which clarify system descriptions, changes to the system location, system manager(s) and address(es), and the schedule for retention and disposal. With respect to the last category, a change has been made to establish that all of the Department's grievance records are to be disposed of four (4) years after the closing of a case.

In accordance with 5 U.S.C. 552a (e)(4) and (11), the public has 30 days in which to comment on the modified system of records. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any

comments by November 28, 2003. The public, OMB, and the Congress are invited to submit written comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, National Place Building, Room 1400, 1331 Pennsylvania Avenue NW., Washington, DC 20530.

In accordance with 5 U.S.C. 552a (r), the Department has provided a report to OMB and the Congress on the modified system of records.

Dated: October 17, 2003.

**Paul R. Corts,**

*Assistant Attorney General for Administration.*

### JUSTICE/DOJ-008

#### SYSTEM NAME:

Department of Justice Grievance Records, Justice/DOJ-008.

#### SYSTEM LOCATION:

Records relating to grievances originating in a bureau (defined in 28 CFR 0.1) or an office, board, or division (defined in 28 CFR 0.1) are located in the central personnel or administrative office of the bureau, office, board, or division where the grievance originated, except for the Federal Bureau of Investigation (FBI), which is excluded from coverage under the Agency Grievance Procedure described in DOJ Order 1200.1, part 3, chapter 2.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Department of Justice employees, except for employees of the FBI, who have submitted grievances under the Agency Grievance Procedure or in accordance with a negotiated grievance procedure.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by Department employees under the Agency Grievance Procedure or under a negotiated grievance procedure. These case files contain all documents related to each grievance, including statements of witnesses, reports of interviews and hearings, factfinder's and/or arbitrator's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7121; 5 CFR part 771.

#### PURPOSE(S):

The records are maintained and used by the Department to resolve employee concerns about working conditions, the administration of collective bargaining agreements, employee/supervisor relations, and work processes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Based on a determination by the Department of Justice that such a need exists, these records and information in these records will be disclosed as follows:

(1) To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) To any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested;

(3) To a Federal agency (or other establishment in the executive, legislative, and judicial branches of the Federal Government), in response to its request, in connection with the hiring or retention of an individual, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter;

(4) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) To the National Archives and Records Administration and the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906;

(6) In an appropriate proceeding before a court, grand jury, or administrative or regulatory body when records are determined by DOJ, or the adjudicator, to be arguably relevant to the proceeding.

(7) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery.

(8) To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions;

(9) To contractors, grantees, experts, consultants, students, and others

performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(10) To former employees of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(11) To specific entities when such disclosure is mandated by federal statute, treaty, or by government-wide regulation.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

File folders and electronic storage.

**RETRIEVABILITY:**

By the names of the individuals on whom the records are maintained.

**SAFEGUARDS:**

Lockable metal filing cabinets or a locked room, to which only authorized personnel have access; and appropriate safeguards for electronic storage.

**RETENTION AND DISPOSAL:**

Disposed of four (4) years after closing of the case.

**SYSTEM MANAGER(S) AND ADDRESS:**

(a) Antitrust Division, Executive Officer, 601 D Street, NW., Rm. 10150, Washington, DC 20004.

(b) Civil Division, Director, Office of Administration, 1100 L Street, NW., Rm. 9018, Washington, DC 20530.

(c) Civil Rights Division, Executive Officer, 1425 New York Ave., NW., Rm. 5058, Washington, DC 20530.

(d) Criminal Division, Executive Officer, Office of Administration, 1400 New York Ave., NW., Rm. 5000, Washington, DC 20530.

(e) Environmental and Natural Resources Division, Executive Officer, 601 D Street, NW., Rm. 2038, Washington, DC 20004.

(f) Tax Division, Executive Officer, 601 D Street, NW., Rm. 7802, Washington, DC 20004.

(g) Drug Enforcement Administration, Deputy Assistant Administrator for

Personnel, 700 Army Navy Drive, Rm. W3166, Arlington, VA 22202.

(h) Executive Office for Immigration Review, Office of the General Counsel, Employee/Labor Relations Unit, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041.

(i) Executive Office for United States Attorneys, Office of Legal Counsel, 600 E Street, NW., Room 2200, Washington, DC 20530.

(j) Executive Office for United States Trustees, Human Resource Division, 20 Massachusetts Ave., NW., Rm. 8209, Washington, DC 20530.

(k) Federal Bureau of Prisons, Human Resource Management Division, Labor Management Relations and Security Branch, 320 1st Street, NW., Bldg. 400, Washington, DC 20534.

(l) Office of Justice Programs, Office of Administration, Director, Office of Personnel, 810 7th Street, NW., Rm. 3330, Washington, DC 20531.

(m) United States Marshals Service, Assistant Director for Human Resources, 600 Army Navy Drive, Suite 890, Arlington, VA 22202.

(n) Office of the Inspector General, Personnel Officer, 1425 New York Ave., NW., Suite 7000, Washington, DC 20530.

(o) Bureau of Alcohol, Tobacco, Firearms & Explosives, Personnel Division, Employee and Labor Relations Team, 650 Massachusetts Ave., NW., Rm. 4300, Washington, DC 20010.

(p) Other Offices, Boards, and Divisions: Director, Human Resources, Justice Management Division, 1331 Pennsylvania Ave., NW., Suite 1110, Washington, DC 20530.

**NOTIFICATION PROCEDURE:**

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel or designated office where the action was processed, regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: (1) Name, and if different, name at the time of the case, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

**RECORD ACCESS PROCEDURES:**

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the personnel or designated office of the

bureau, office, board, or division where the action was processed (named above under the caption "System Manager(s) and Addresses"). Individuals must provide the following information for their records to be located and identified: (1) Name, and if different, name at the time of the case, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved. Individuals requesting access must also follow the Department's Privacy Act regulations (28 CFR 16.41) regarding access to records and verification of identity.

**CONTESTING RECORD PROCEDURES:**

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the personnel or designated office of the bureau, office, board or division where the grievance was processed (named above under the caption "System Manager(s) and Addresses"). Individuals must furnish the following information for their records to be located and identified: (1) Name, and if different, name at the time of the case, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved. Individuals requesting amendment must also follow the Department's Privacy Act regulations (28 CFR 16.41) regarding access and amendment to records and verification of identity.

**RECORD SOURCE CATEGORIES:**

Information in this system of records is provided: (1) By the individual on whom the record is maintained, (2) by testimony of witnesses, (3) by agency officials, (4) from related correspondence from organizations or persons.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 03-27194 Filed 10-28-03; 8:45 am]

BILLING CODE 4410-CG-P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated June 6, 2003, and published in the **Federal Register** on July 8, 2003, (68 FR 40685), Applied Science Labs, Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, PO Box 440, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substance 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
Benzoylcegonine (9180) .....	II
Morphine (9300) .....	II
Noroxymorphone (9668) .....	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards. 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 Applied Science Labs, Division of Alltech Associates Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has

investigated Applied Science Labs, Division of Alltech Associates 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 is granted.

Dated: October 7, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03-27245 Filed 10-28-03; 8:45 am]

BILLING CODE 4410-09-M

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Application**

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 20, 2003, and September 2, 2003, Cody Laboratories, Inc., 331 33rd Street, Cody, Wyoming 82414, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100) .....	Schedule II
Methamphetamine (1105) .....	Schedule II
Amobarbital (2125) .....	Schedule II
Pentobarbital (2270) .....	Schedule II
Secobarbital (2315) .....	Schedule II
Oxycodone (9143) .....	Schedule II
Hydromorphone (9150) .....	Schedule II
Diphenoxylate (9170) .....	Schedule II
Meperidine (9230) .....	Schedule II
Oxymorphone (9652) .....	Schedule II
Sufentanil (9740) .....	Schedule II
Fentanyl (9801) .....	Schedule II

The firm plans to manufacture bulk materials 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 December 29, 2003.

Dated: October 7, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03-27238 Filed 10-28-03; 8:45 am]

**BILLING CODE 4410-09-M**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By notice dated June 6, 2003, and published in the **Federal Register** on June 19, 2003, (68 FR 36844), Eli-Elsohly Laboratories, Inc., Mahmoud A. Elsohly, Ph.D., 5 Industrial Park Drive, Oxford, Mississippi 38655, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of Schedules I and II controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370) .....	I
Dihydromorphine (9145) .....	I
Codeine (9050) .....	II
Amphetamine (1100) .....	II
Methamphetamine (1105) .....	II
Cocaine (9041) .....	II
Codeine (9050) .....	II
Dihydrocodeine (9120) .....	II
Oxycodone (9143) .....	II
Hydromorphone (9150) .....	II
Benzoyllecognine (9180) .....	II
Hydrocodone (9193) .....	II
Morphine (9300) .....	II

The firm plans to manufacture non-deuterated controlled substances for use as analytical standards and deuterated controlled substances for use as internal standards.

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 Eli-Elsohly Laboratories, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Eli-Elsohly Laboratories, 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 is granted.

Dated: October 15, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03-27243 Filed 10-28-03; 8:45 am]

**BILLING CODE 4410-09-M**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Application**

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 1, 2003, Gateway Speciality Chemical, Co., 4170 Industrial Drive, St. Peters, Missouri 63376, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the controlled substance for its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance 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 December 29, 2003.

Dated: October 7, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03-27239 Filed 10-28-03; 8:45 am]

**BILLING CODE 4410-09-M**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances Notice of Application**

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on August 6, 2003, Guilford Pharmaceuticals, Inc., 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of cocaine (9041) a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture a Schedule II cocaine derivative as a final intermediate for the production of dopascan injection.

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 [December 29, 2003].

Dated: October 7, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03-27240 Filed 10-28-03; 8:45 am]

**BILLING CODE 4410-09-M**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Application**

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on August 5, 2003, ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396) .....	I
Amphetamine (1100) .....	II
Phenylacetone (8501) .....	II

The firm plans to bulk manufacture the phenylacetone for the manufacture of the amphetamine. The bulk 2,5-dimethoxyamphetamine will be used for conversion into non-controlled substances.

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 December 29, 2003.

Dated: October 7, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 03-27241 Filed 10-28-03; 8:45 am]

**BILLING CODE 4410-09-M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule II and prior to issuing a registration under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on August 5, 2003, ISP Freetown Fine Chemicals, 238 Main South Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import Phenylacetone to manufacture amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the

application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing 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 (CCD), and must be filed no later than November 28, 2003.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: October 7, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03-27242 Filed 10-28-03; 8:45 am]

**BILLING CODE 4410-09-M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 20, 2003, and published in the **Federal Register** on July 8, 2003, (68 FR 40686), 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 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.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 832(a) and determined that the registration of Lilly Del Caribe, Inc. to manufacture the listed controlled substance is consistent with the public

interest at this time. DEA has investigated Lilly Del Caribe, 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 class of controlled substance listed is granted.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03-27244 Filed 10-28-03; 8:45 am]

**BILLING CODE 4410-09-M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 20, 2003, and published in the **Federal Register** on July 8, 2003, (68 FR 40686), Pressure Chemical Company, 3419 Smallman Street, Pittsburgh, Pennsylvania 15201, made application by renewal to the Drug Enforcement Administration 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 manufacture the substance for distribution to its customers.

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 Pressure Chemical Company to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Pressure Chemical Company 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 class of controlled substance listed is granted.

Dated: October 7, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03-27246 Filed 10-28-03; 8:45 am]

BILLING CODE 4410-09-M

## 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. Black Beauty Coal Company

[Docket No. M-2003-068-C]

Black Beauty Coal Company, P.O. Box 312, Evansville, Indiana 47702-0312 has filed a petition to modify the application of 30 CFR 75.1700 (Oil and gas wells) to its Francisco Mine (MSHA I.D. No. 12-02295) located in Gibson County, Indiana. The petitioner proposes to mine through oil and gas wells in lieu of plugging the wells and to establish and maintain a barrier around various abandoned wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

#### 2. Consolidation Coal Company

[Docket No. M-2003-069-C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.302 (Main mine fan) to its Loveridge No. 22 Mine (MSHA I.D. No. 46-01433) located in Marion County, West Virginia. The petitioner proposes to use an auxiliary fan to provide warm air for the slope area. The petitioner states the fan will be enclosed in fireproof housing that has an automatic fire suppression system installed. The petitioner has listed specific compliance procedures in this petition that would be followed when using the auxiliary fan. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

#### 3. Consolidation Coal Company

[Docket No. M-2003-070-C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (Weekly examination) to its Robinsion Run Mine (MSHA I.D. No. 46-01318) located in Marion County, West Virginia. The petitioner requests a modification of the existing standard to allow airway check points to be established to monitor the area of the return air course from Main North 104 block to 3 West 12 block, due to deteriorating roof conditions. The petitioner proposes to establish check points 3W-1 and 3W-2 to measure air quality and quantity at the inlet to the affected air course, and check point 3W-3 would be established to measure air quality and quantity at the outlet from the affected air course. The petitioner asserts that the check points and all approaches to the check points will be maintained in a safe condition at all times; that tests for methane and the quantity of air will be determined on a weekly basis by a certified person at each check point, and that the persons making the examinations and tests will place his/her initials, date, and time in a record book kept on the surface for inspection by interested person(s). The petitioner asserts that to travel the affected area in its entirety to make weekly examinations would be hazardous to the person making such examinations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

#### 4. Bowie Resources, Ltd.

[Docket No. M-2003-071-C]

Bowie Resources, Ltd., P.O. Box 483, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.701 (Grounding metallic frames, casings, and other enclosures of electric equipment) to its Bowie #3 Mine (MSHA I.D. No. 05-04758) located in Delta County, Colorado. The petitioner requests a modification of the existing standard to allow an alternative method of compliance for the grounding of a diesel generator. The petitioner proposes to use the 460 KW diesel powered generator to move electrically powered mining equipment in, out and around the mine only, and to perform work in areas outby section loading points where equipment is not required to be maintained permissible. The petitioner asserts that the proposed alternative method would provide at

least the same measure of protection as the existing standard.

#### 5. Bowie Resources, Ltd.

[Docket No. M-2003-072-C]

Bowie Resources, Ltd., P.O. Box 483, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.901 (Protection of low- and medium-voltage three-phase circuits used underground) to its Bowie #3 Mine (MSHA I.D. No. 054758) located in Delta County, Colorado. The petitioner requests a modification of the existing standard to allow an alternative method of compliance for the grounding of a diesel generator. The petitioner proposes to use a 460 KW diesel powered generator to move electrically powered mining equipment in, out, and around the mine only, and to perform work in areas outby section loading points where equipment is not required to be maintained permissible. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

#### 6. Bowie Resources, Ltd.

[Docket No. M-2003-073-C]

Bowie Resources, Ltd., P.O. Box 483, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements) to its Bowie #3 Mine (MSHA I.D. No. 05-04758) located in Delta County, Colorado. The petitioner requests a modification of the existing standard to allow the use of an alternative method for front wheel brakes on a six wheeled road grader. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

#### 7. Newtown Energy, Inc.

[Docket No. M-2003-074-C]

Newtown Energy, Inc., P.O. Box 189, Comfort, West Virginia 25049 has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) to its Coalburg #1 Mine (MSHA I.D. No. 46-08993) located in Boone County, West Virginia. The petitioner proposes to operate a 2,400 volt Joy 12CM27 continuous mining machine at the Coalburg #1 Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

## 8. Bowie Resources Limited

[Docket No. M-2003-075-C]

Bowie Resources Limited, P.O. Box 483, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.1726(a) (Performing work from a raised position; safeguards) to its Bowie #3 Mine (MSHA I.D. No. 05-04738) located in Delta County, Colorado. The petitioner requests modification of the existing standard to permit the use of modified diesel powered L.H.D.'s or "scoops" as elevated mobile work platforms at the Bowie #3 Mine. The petitioner has listed specific procedures in this petition that would be followed for compliance of its proposed alternative method. 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 November 28, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 17th day of October 2003.

**Marvin W. Nichols,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 03-27282 Filed 10-28-03; 8:45 am]

**BILLING CODE 4510-43-P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Meeting

October 22, 2003.

**TIME AND DATE:** 10 a.m., Wednesday, October 29, 2003.

**PLACE:** Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session:

*Secretary of Labor on behalf of Ondreako v. Kennecott Utah Copper Corp.*, Docket No. WEST 2003-403-DM. (At issue is whether the judge erred in finding that the discrimination

complaint underlying Ondreako's application for temporary reinstatement under 30 U.S.C. 815(c)(2) was not frivolous brought.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**FOR FURTHER INFORMATION CONTACT:** Jean Ellen (202) 434-9950/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

**Jean H. Ellen,**

*Chief Docket Clerk.*

[FR Doc. 03-27362 Filed 10-27-03; 12:36 pm]

**BILLING CODE 6735-01-M**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency proposes to request extension of two currently approved information collections. The information collections are used in the National Historical Publications and Records Commission (NHPRC)'s grant program for subvention of part of the costs of manufacturing and distributing volumes published by NHPRC-supported documentary editorial projects. One of the NHPRC information collections is a grant application prepared by university and other non-profit presses applying for a subvention grant. The other NHPRC information collection is a sales report made by a non-profit press which has received a subvention grant from the NHPRC. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before December 29, 2003 to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740-6001; or faxed to 301-837-3213; or electronically mailed to [tamee.fechhelm@nara.gov](mailto:tamee.fechhelm@nara.gov).

### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number (301) 837-1694, or fax number (301) 837-3213.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* NHPRC Subvention Grant Guidelines and Application.

*OMB number:* 3095-0021.

*Agency form number:* N/A.

*Type of review:* Regular.

*Affected public:* Universities and non-profit presses.

*Estimated number of respondents:* 10.

*Estimated time per response:* 7 hours.

*Frequency of response:* On occasion.

On the average, a press submits two-and-a-half subvention applications per year.

*Estimated total annual burden hours:* 70 hours.

*Abstract:* The information collection is prescribed by 36 CFR 1206. The application is submitted by university and other non-profit presses applying to the NHPRC grant program for subvention of part of the costs of manufacturing and distributing volumes published by NHPRC-supported editorial projects.

2. *Title:* NHPRC Annual Sales Reports for Subvention Grants.

*OMB number:* 3095-0022.

*Agency form number:* None.

*Type of review:* Regular.

*Affected public:* Non-profit presses that have received an NHPRC subvention grant.

*Estimated number of respondents:* 10.

*Estimated time per response:* 3 hours.

*Frequency of response:* One time only.

On the average, a press has two on-going subvention grants and therefore submits two sales reports per year.

*Estimated total annual burden hours:* 30 hours.

**Abstract:** The information collection is prescribed by 36 CFR 1206. The sales information provided by non-profit presses is used by Commission staff to gauge interest among scholars and the general public in documentary editions supported by Commission grants.

Dated: October 20, 2003.

**L. Reynolds Cahoon,**

*Assistant Archivist for Human Resources and Information Services.*

[FR Doc. 03-27195 Filed 10-28-03; 8:45 am]

**BILLING CODE 7515-01-P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted to OMB at the address below on or before November 28, 2003, to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Mr. Jonathan Womer, Desk Officer for NARA, Washington, DC 20503. Comments may be faxed to 202-395-5167.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301-837-1694 or fax number 301-837-3213.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on July 22, 2003 (68 FR 43380). No comments were received. NARA has

submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Records Storage Facility Survey.

*OMB number:* New.

*Agency form number:* None.

*Type of review:* Regular.

*Affected public:* Owners/operators of commercial records storage facilities that are small businesses.

*Estimated number of respondents:* 263.

*Estimated time per response:* 15 minutes.

*Frequency of response:* One-time.

*Estimated total annual burden hours:* 66 hours.

**Abstract:** The information collection is a survey of the characteristics of records storage facilities operated by small businesses. Respondents will be a random sample of owners/operators of such facilities. The survey information will be used by the NARA policy and technical staff to evaluate the construction materials, fire protection measures, and storage practices common in small business records centers against the existing standards in the NARA regulation on records center facility standards (36 CFR part 1228, subpart K). The information will be used in a regulatory flexibility analysis of possible alternatives to the existing standards and assessment of the ability of small business to comply with those alternatives.

Dated: October 20, 2003.

**L. Reynolds Cahoon,**

*Assistant Archivist for Human Resources and Information Services.*

[FR Doc. 03-27196 Filed 10-28-03; 8:45 am]

**BILLING CODE 7515-01-P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

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

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before December 15, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740-6001. Requests also may be transmitted by FAX to 301-837-3698 or by e-mail to [records.mgt@nara.gov](mailto:records.mgt@nara.gov). Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records

Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Telephone: 301-837-3120. E-mail: [records.mgt@nara.gov](mailto:records.mgt@nara.gov).

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

#### Schedules Pending

1. Department of Health and Human Services, Centers for Medicare and

Medicaid Services (N1-440-03-1, 4 items, 4 temporary items). Paper and electronic records relating to Y2K efforts, including such matters as policy and planning, project administration, system testing and verification, and contractor activities. Also included are electronic copies of records created using electronic mail and word processing. Paper copies of these files were previously approved for disposal. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of Homeland Security, Transportation Security Administration (N1-560-03-2, 17 items, 14 temporary items). Reports, statistics, planning records, property accountability records, personal property records, telephone directories, correspondence management records, issuances, reading files, broadcast e-mail messages, reference files, and other records, accumulated primarily by the Office of Finance and Administration. Also included are electronic copies of records created using electronic mail and word processing. Records proposed for permanent retention include recordkeeping copies of records created to comply with the provisions of the Government in the Sunshine Act, records of advisory, interagency, and international committees sponsored by the agency, and directives.

3. Department of Homeland Security, Transportation Security Administration (N1-560-03-3, 10 items, 8 temporary items). Records relating to internal investigations and inspections, including reports, memorandums, correspondence, and statistical data. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of final, signed directives and statistical data and other records relating to trends in transportation security.

4. Department of Justice, Federal Bureau of Investigation (N1-65-03-4, 3 items, 3 temporary items). Work papers and final reports documenting routine inspections of FBI programs and field offices. Electronic copies of records created using electronic mail and word processing are included.

5. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (N1-436-03-4, 5 items, 5 temporary items). Master files, outputs, and documentation associated with the Relief of Disabilities System, an electronic system used to monitor and track the status of applications for the restoration of Federal firearms and

explosives privileges. Also included are electronic copies of records created using electronic mail and word processing.

6. Department of the Treasury, U. S. Mint (N1-104-03-11, 3 items, 3 temporary items). Master files, outputs, and documentation associated with the Die Information System, an electronic system which tracks the life of dies used to strike coins and other numismatic products.

7. Department of the Treasury, U.S. Mint (N1-104-03-12, 4 items, 4 temporary items). Inputs, outputs, master files, and system documentation associated with the Pallet Tracking System, an electronic system which tracks coin shipment pallets.

8. National Archives and Records Administration, Electronic and Special Media Records Services Division (N2-381-03-1, 1 item, 1 temporary item). Office of Economic Opportunity data file tabulations of 1960 Census data by sex, race, and marital status. Records were accessioned into the National Archives, but cannot be accessed due to technical problems.

9. Office of Management and Budget, Office of Information and Regulatory Affairs (N1-51-03-1, 1 item, 1 temporary item). The eGov Central Web site used by the E-Gov Initiative project team and partners to communicate and collaborate on-line.

10. Office of Navajo and Hopi Indian Relocation (N1-220-03-04, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with files relating to housing repair programs, 1982-1987. Recordkeeping copies of these files are proposed for permanent retention.

11. Small Business Administration, Office of Government Contracting and Business Development (N1-309-03-11, 7 items, 7 temporary items). Inputs, outputs, master files, documentation, and backups associated with the Size Case Log Reporting System, an electronic system which tracks all requests for size determinations of small businesses. Also included are electronic copies of documents created using electronic mail and word processing.

Dated: October 15, 2003.

**Michael J. Kurtz,**

*Assistant Archivist for Record Services—  
Washington, DC.*

[FR Doc. 03-27205 Filed 10-28-03; 8:45 am]

**BILLING CODE 7515-01-P**

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 52-008]

**Dominion Nuclear North Anna, LLC; Notice of Acceptance of Application for Early Site Permit for the North Anna ESP Site**

The Nuclear Regulatory Commission (NRC, the Commission) has received an application from Dominion Nuclear North Anna LLC (Dominion) dated September 25, 2003, filed pursuant to Section 103 of the Atomic Energy Act and 10 CFR Part 52, for an early site permit (ESP) for a location in central Virginia (near Mineral, Virginia) identified as the North Anna ESP site. A notice of receipt and availability of this application was previously published in the **Federal Register** (68 FR 59642; October 16, 2003).

An applicant may seek an ESP in accordance with Subpart A of 10 CFR part 52 separate from the filing of an application for a construction permit (CP) or combined license (COL) for a nuclear power facility. The ESP process allows resolution of issues relating to siting. At any time during the period of an ESP (up to 20 years), the permit holder may reference the permit in a CP or COL application.

The NRC staff has determined that Dominion has submitted information in accordance with 10 CFR Part 52 that is sufficiently complete and acceptable for docketing. The Docket No. established for this application is 52-008. The NRC staff will perform a detailed technical review of the application, and docketing of the ESP application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The Commission will conduct a hearing in accordance with 10 CFR 52.21 and will receive a report on the application from the Advisory Committee on Reactor Safeguards in accordance with 10 CFR 52.23. If the Commission then finds that the application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue an ESP, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

In accordance with 10 CFR Part 51, the Commission will also prepare an environmental impact statement for the proposed action. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to

hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

Finally, the Commission will announce, in a future **Federal Register** notice, the opportunity for petition for leave to intervene in the hearing required for this application by 10 CFR 52.21.

A copy of the Dominion ESP application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. It is also accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html> (ADAMS Accession No. ML032731517). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 23rd day of October 2003.

**James E. Lyons,**

*Program Director, New Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 03-27216 Filed 10-28-03; 8:45 am]

**BILLING CODE 7590-01-P**

**NUCLEAR REGULATORY COMMISSION**

[Docket Nos. 50-247 &amp; 50-286 and License Nos. DPR 26 &amp; DPR 64]

**Entergy Nuclear Operating Company, Indian Point Nuclear Generating Unit Nos. 2 and 3; Receipt of Request for Action Under 10 CFR 2.206**

Notice is hereby given that by Petition dated September 8, 2003, as supplemented by letter dated September 22, 2003, submitted by Riverkeeper and the Union of Concerned Scientists (collectively, the Petitioners), the U.S. Nuclear Regulatory Commission (NRC) has been requested to take enforcement actions against Entergy Nuclear Operation Inc. (Entergy), the licensee for Indian Point Nuclear Generating, Units Nos. 2 and 3, (IP2 and 3) in Buchanan, New York, and the Petitioners requested as an alternative enforcement action that the NRC prevent plant restart until certain conditions have been met with additional restrictions in the interim.

As the bases for the request to have the NRC take enforcement actions against the licensee, the Petitioners assert that the continued operations of IP2 and 3 present a public health hazard because of a lack of reasonable assurance that the containment sumps will be able to perform their safety function. The request is based on publically available reports published by the NRC. The Petitioners assert that this action is entirely consistent with actions taken by the NRC for the Donald C. Cook and Davis-Besse nuclear plants.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the NRC's Office of Nuclear Reactor Regulation (NRR). As provided by Section 2.206, appropriate action will be taken on this Petition within a reasonable time.

A copy of the Petition is available in the Agencywide Documents Access and Management System (ADAMS) for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room), using Accession No. ML032580235. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland this 23rd day of October 2003.

For the Nuclear Regulatory Commission.

**R. William Borchardt,**

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 03-27215 Filed 10-28-03; 8:45 am]

**BILLING CODE 7590-01-P**

**PENSION BENEFIT GUARANTY CORPORATION****Submission of Information Collection for OMB Review; Comment Request; Qualified Domestic Relations Orders Submitted to the PBGC**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for extension of OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation ("PBGC") is requesting that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of an

information collection (OMB control number 1212-0054; expires November 30, 2003) relating to model forms contained in the PBGC booklet, *Divorce Orders & PBGC*. The booklet provides guidance on how to submit a proper qualified domestic relations order (a "QDRO") to the PBGC. This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

**DATES:** Comments should be submitted by November 28, 2003.

**ADDRESSES:** Comments may be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attn: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collection of information) may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005-4026, or by visiting that office or calling (202)-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and request connection to 202-326-4040.) The *Divorce Orders & PBGC* booklet may be accessed on the PBGC's Web site at <http://www.pbgc.gov>.

**FOR FURTHER INFORMATION CONTACT:**

James L. Beller, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4020. TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4020.

**SUPPLEMENTARY INFORMATION:** The PBGC is requesting a three-year extension of the paperwork approval relating to model forms contained in the PBGC booklet, *Divorce Orders & PBGC*. The collection of information has been approved through November 30, 2003, by OMB under control number 1212-0054. 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.

A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, the PBGC becomes trustee of the plan and pays benefits, subject to legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be

assigned or alienated. Title I of ERISA provides an exception for domestic relations orders that relate to child support, alimony payments, or marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order meets specific legal requirements that make it a qualified domestic relations order.

When the PBGC is trustee of a plan, it reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee. The requirements for submitting a QDRO are established by statute. The models and the guidance assist parties by making it easier to comply with ERISA's QDRO requirements in plans trusted by the PBGC; they do not create any additional requirements and result in a reduction of the statutory burden.

The PBGC estimates that it will receive 664 QDROs each year from prospective alternate payees; that the average burden of preparing a QDRO with the assistance of the guidance and model QDROs in PBGC's booklet will be ¼ hour of the alternate payee's time and \$734 in professional fees if the alternate payee hires an attorney or other professional to prepare the QDRO, or 10 hours of the alternate payee's time if the alternate payee prepares the QDRO without hiring an attorney or other professional; and that the total annual burden will be 234 hours and \$482,400.

The PBGC is revising the QDRO booklet by providing an insert noting that the PBGC now offers more choices of annuity benefit forms. The insert will briefly describe the new benefit options and their availability to alternate payees and will refer parties to the PBGC's Web site, <http://www.pbgc.gov>, or the PBGC's regulations (29 CFR 4022) for more information on these annuity benefit forms.

Issued in Washington, DC, this 23rd day of October, 2003.

**Stuart Sirkin,**

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 03-27222 Filed 10-28-03; 8:45 am]

**BILLING CODE 7708-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and

Information Services, Washington, DC 20549.

Extension:

Rule 15c2-12, SEC File No. 270-330, OMB Control No. 3235-0372

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 15c2-12 Disclosure requirements for municipal securities

Rule 15c2-12 under the Securities Exchange Act of 1934 requires underwriters of municipal securities: (1) To obtain and review a copy of an official statement deemed final by an issuer of the securities, except for the omission of specified information; (2) in non-competitively bid offerings, to make available, upon request, the most recent preliminary official statement, if any; (3) to contract with the issuer of the securities, or its agent, to receive, within specified time periods, sufficient copies of the issuer's final official statement to comply both with this rule and any rules of the MSRB; (4) to provide, for a specified period of time, copies of the final official statement to any potential customer upon request; (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or other specified person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide certain information about the issue or issuer on a continuing basis to a nationally recognized municipal securities information repository; and (6) to review the information the issuer of the municipal security has undertaken to provide prior to recommending a transaction in the municipal security.

These disclosure and recordkeeping requirements will ensure that investors have adequate access to official disclosure documents that contain details about the value and risks of particular municipal securities at the time of issuance while the existence of compulsory repositories will ensure that investors have continued access to terms and provisions relating to certain static features of those municipal securities. The provisions of Rule 15c2-12 regarding an issuer's continuing disclosure requirements assist investors by ensuring that information about an

issue or issuer remains available after the issuance.

Municipal offerings of less than \$1 million are exempt from the rule, as are offerings of municipal securities issued in large denominations that are sold to no more than 35 sophisticated investors, have short-term maturities, or have short-term tender or put features. It is estimated that approximately 12,000 brokers, dealers, municipal securities dealers, issuers of municipal securities, and nationally recognized municipal securities information repositories will spend a total of 123,850 hours per year complying with Rule 15c2-12.

Written 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 estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: October 22, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-27224 Filed 10-28-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27742]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 23, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/

are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 17, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 17, 2003 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Alliant Energy Corporation, et al. (70-9891)

Alliant Energy Corporation. ("Alliant Energy"), a registered holding company under the Act, Alliant Energy Resources, Inc. ("AER"), a nonutility subsidiary of Alliant Energy, both located at 4902 N. Biltmore Lane, Madison, Wisconsin 53718; AER's direct nonutility subsidiaries Alliant Energy Integrated Services Company and its subsidiaries, Alliant Energy Investments, Inc. and its subsidiaries, and Alliant Energy Transportation, Inc., all located at 200 First Street S.E., Cedar Rapids, Iowa 52401; and AER's subsidiaries Whiting Oil and Gas Corporation ("Whiting Oil and Gas");<sup>1</sup> and Whiting Petroleum Corporation ("WPC");<sup>2</sup> all located at Mile High Center, Suite 2300, 1700 Broadway, Denver, Colorado 80290-2300 (collectively, "Applicants"), have filed a post-effective amendment under sections 9(a) and 10 of the Act and rule 54 under the Act to their application-declaration ("Post-Effective Amendment").

By order dated October 3, 2001 ("Prior Order"),<sup>3</sup> as amended by a supplemental order dated December 17, 2002 ("Supplemental Order"),<sup>4</sup> the Commission authorized Alliant Energy, AER and certain other nonutility subsidiaries of Alliant Energy

<sup>1</sup> Whiting Oil and Gas was formerly known as Whiting Petroleum Corporation.

<sup>2</sup> WPC was formerly known as Whiting Petroleum Holdings, Inc. WPC is a new intermediate subsidiary formed by AER to become a holding company over Whiting Oil and Gas.

<sup>3</sup> HCAR No. 27448 (October 3, 2001).

<sup>4</sup> HCAR No. 27620 (December 17, 2002).

("Nonutility Subsidiaries"), through December 31, 2004 ("Authorization Period"), to engage in a program of external long-term financing transactions, to provide guarantees and other forms of credit support with respect to obligations of subsidiaries of Alliant Energy, to enter into interest rate hedges, to engage in certain non-utility energy-related activities, and to engage in certain other related transactions.

In the Prior Order, the Commission authorized Alliant Energy, through AER and its other Nonutility Subsidiaries, to invest in certain types of energy-related nonutility assets in the United States and Canada, specifically including natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities (collectively, "Energy Assets"), that are incidental to the ongoing oil and gas exploration and production and energy marketing, brokering and trading operations of the Nonutility Subsidiaries. The Commission also authorized AER and its subsidiaries to invest up to \$800 million ("Investment Limitation") at any one time outstanding during the Authorization Period in Energy Assets or in the equity securities of existing or new companies substantially all of whose physical properties consist or will consist of Energy Assets.<sup>5</sup>

Applicants request a modification to the Prior Order to: (i) authorize WPC,<sup>6</sup> Whiting Oil and Gas and their subsidiaries to invest up to \$800 million at any one time outstanding in Energy Assets ("WPC Investment Limitation") and (ii) reduce the current Investment Limitation under the Prior Order from \$800 million to \$200 million ("New AER Investment Limitation").<sup>7</sup> Only

<sup>5</sup> Applicants state that, as of June 30, 2003, AER and its subsidiaries had made investments during the Authorization Period in Energy Assets totaling approximately \$384 million, of which \$379 million represented investments in oil and gas exploration and production properties by Whiting Oil and Gas.

<sup>6</sup> Applicants state that on July 25, 2003, WPC (under the name Whiting Petroleum Holdings, Inc.) filed a Registration Statement on Form S-1 (File No. 333-107341) with respect to an initial public offering ("IPO") of its common stock. AER states that it expects to sell at least 51% of the issued and outstanding common stock of WPC in the IPO. Applicants state that it expects that the IPO will be completed by the end of November 2003. Applicants further state that AER intends to divest its remaining interest in WPC during the first half of 2004, subject to market conditions. Thus, Applicants request in this Post-Effective Amendment, that the modification to the Prior Order be granted, subject only to the sale of at least 50% of the common stock of WPC or Whiting Oil and Gas to one or more purchasers in a public or negotiated private sale.

<sup>7</sup> The proposed modifications would increase the overall investment limitation in Energy Assets from

Continued

those existing investments in Energy Assets made by AER through subsidiaries other than Whiting Oil and Gas (approximately \$5 million as of June 30, 2003) and new investments in Energy Assets by AER or its subsidiaries (other than WPC and its subsidiaries) after the IPO (or other sale of at least 50% of WPC's or Whiting Oil and Gas's common stock) will be counted against the New AER Investment Limitation. Existing investments in Energy Assets by Whiting Oil and Gas as of the date of the IPO (or other sale of at least 50% of WPC's or Whiting Oil and Gas's common stock) (approximately \$379 million as of June 30, 2003) will be counted against the WPC Investment Limitation. Other than the proposed modifications proposed by the Applicants, all other terms, conditions, limitations and restrictions under the Prior Order and Supplemental Order, as applied to Energy Assets, will continue to apply during the Authorization Period.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-27225 Filed 10-28-03; 8:45 am]  
BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48556A; File No. SR-CBOE-2001-04]

### Self Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Chicago Board Options Exchange, Inc., and Order Granting Partial Accelerated Approval on a Pilot Basis of the Proposed Rule Change, as Amended, To Adopt a New Rule Regarding Nullification and Adjustment of Transactions

October 23, 2003.

#### Correction

In FR Document No. 03-25263, beginning on page 57716 for Monday October 6, 2003, the last full sentence in the text of column 2 on page 57720, which states that the provisions of the proposed rule change are in effect on a pilot basis until December 3, 2003, was incorrectly stated. The sentence should read as follows:

Furthermore, pursuant to Amendment No. 3 to the proposed rule change, these provisions of the proposed rule change

the \$800 million authorized in the Prior Order to \$1 billion.

are in effect on a pilot basis until December 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>1</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-27226 Filed 10-28-03; 8:45 am]  
BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48670; File No. SR-NQLX-2003-06]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Nasdaq Liffe Markets, LLC To Amend Rules 412(g) and 420(b) To Make Its Allocation and Claim Requirements for Block Trades and Exchange for Physical Trades Consistent With the Commodity Futures Trading Commission's Rule Relating to Allocation of Bunched Orders

October 21, 2003.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on July 16, 2003, Nasdaq Liffe Markets, LLC ("NQLX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by the NQLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. On July 15, 2003, NQLX filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with a written certification under Section 5c(c) of the Commodity Exchange Act<sup>3</sup> ("CEA") in which NQLX indicated that the effective date of the proposed rule change would be July 16, 2003.

#### I. Self-Regulatory Organization's Description of the Proposed Rule Change

NQLX proposes to amend NQLX Rules 419(g) and 420(b) to make NQLX's allocation and claim requirements for block trades and exchange for physical trades consistent with the CFTC's new Rule 1.35(a-1)(5)(iii)(A)<sup>4</sup> requirement that allocations of bunched orders must occur as soon as practicable but "no

later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade." Also, in NQLX Rule 419(g)(2)(x), NQLX proposes to remove the term "and" as redundant.

The text of the proposed rule change appears below. New text is in *italics*. Deleted text is in [brackets].

\* \* \* \* \*

#### Rule 419 Block Trades

(a)-(f) No change.  
(g) Information Recording, Submission, and Dissemination  
(1) No change.  
(2) (i)-(ix) No change.  
(x) price or prices of each leg of a Strategy trade (if applicable), [and]  
(xi)-(xiv) No change.  
(3) NQLX will review the information submitted for the proposed Block Trade by the Member for the Initiator and will post both sides of the Block Trade *in NQLX's Trade Registration System* to the account of, and send a confirmation to, the Member for the Initiator if, at the time, the Block Trade appears to have satisfied the requirements of Rule 419.  
(4) After [sending the Block Trade confirmation to the Member for the Initiator] *posting both sides of the Block Trade in the Trade Registration System to the account of the Member for the Initiator*, NQLX will immediately disseminate through the ATS the following information concerning the Block Trade:

(i)-(iv) No change.  
(5) No change.  
(6) As soon as practicable [, but no longer than 10 minutes, after receipt of the Block Trade confirmation from NQLX,] *but no later than sufficiently before the close of the Trade Registration System to allow for the orderly allocation and claim of the Block Trade*, the Member for the Initiator (or its Clearing Member, if applicable) must transfer through the Trade Registration System the applicable portion of the Block Trade to the Member for the Responder (or its Clearing Member, if applicable) and the designated Market Maker, if applicable.

(7) As soon as practicable [, but no longer than 10 minutes,] after the applicable portion of the Block Trade appears on the Trade Registration System pursuant to Rule 419(g)(6) *and before the close of the Trade Registration System*, the Member for the Responder (or its Clearing Member, if applicable) and the designated Market Maker, if applicable, must accept its applicable portion through, and designate the Responder's Customer

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(7).

<sup>3</sup> 17 CFR 240.19b-7.

<sup>4</sup> 7 U.S.C. 7a-2(c).

<sup>5</sup> 17 CFR 1.35(a-1)(5)(iii)(A).

account number or identifier in, the Trade Registration System.

#### Rule 420 Exchange for Physical Trades

(a) No change.

(b) Information Recording, Submission, and Dissemination

(1)–(2) No change.

(3) NQLX will review the information submitted by the Member pursuant to Rule 420(b) for the proposed Exchange for Physical Trade and will post both sides of the Futures Leg in NQLX's Trade Registration System to the account of, and send a confirmation to, the submitting Member if, at the time, the Exchange for Physical Trade appears to have satisfied the requirements of Rule 420.

(4) After [sending the confirmation for the Exchange for Physical Trade] posting both sides of the Futures Leg in the Trade Registration System to the account of the submitting Member, NQLX will disseminate through the ATS the following information:

(i)–(vi) No change.

(5) No change.

(6) As soon as practicable, but no longer than 10 minutes, after receipt of confirmation for the Exchange for Physical Trade from NQLX, but no later than sufficiently before the close of the Trade Registration System to allow for the orderly allocation and claim of the Futures Leg, the submitting Member (or its Clearing Member, if applicable) must transfer through the Trade Registration System the applicable Futures Contract to the Member for the buyer of the Futures Leg (or its Clearing Member, if applicable).

(7) As soon as practicable, but no longer than 10 minutes, after the Futures Leg appears on the Trade Registration System pursuant to Rule 420(b)(6) and before the close of the Trade Registration System, the Member for the buyer of the Futures Leg (or its Clearing Member, if applicable) must accept the Futures Leg through, and designate the buyer's Customer account number or identifier in, the Trade Registration System.

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NQLX has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item

IV below. These statements are set forth in Sections A, B, and C below.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

NQLX proposes revising NQLX Rules 419(g) and 420(b) to make NQLX's allocation and claim requirements for block trades and exchange for physical trades consistent with the CFTC's new Rule 1.35(a–1)(5)(iii)(A)<sup>5</sup> requirement that allocations of bunched orders must occur as soon as practicable but “no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade.”

NQLX believes that amended NQLX Rules 419(g) and 420(b) are consistent with the CFTC's new rule relating to allocation of bunched orders while providing the necessary and appropriate trade audit trail for block and exchange for physical trades, specifically in the areas of trade processing and clearing. NQLX also believes that the proposed rule change is consistent with the requirements, where applicable, under Section 6(h)(3)(f) of the Act<sup>6</sup> and the criteria, where applicable, under Section 2(a)(1)(D)(i)(IX) of the CEA,<sup>7</sup> as modified by joint orders of the Commission and the CFTC.<sup>8</sup>

###### 2. Statutory Basis

NQLX files the proposed rule change pursuant to Section 19(b)(7) of the Act.<sup>9</sup> NQLX believes that the proposed rule change is consistent with the requirements of the Commodity Futures Modernization Act of 2000,<sup>10</sup> including the requirement that NQLX have audit trails necessary and appropriate to facilitate coordinated surveillance to detect, among other things, manipulation.<sup>11</sup> NQLX further believes that its proposed rule change complies with the requirements under Section 6(h)(3) of the Act<sup>12</sup> and the criteria

<sup>5</sup> 17 CFR 1.35(a–1)(5)(iii)(A).

<sup>6</sup> 15 U.S.C. 78f(h)(3)(f).

<sup>7</sup> 7 U.S.C. 2(a)(1)(D)(i)(IX).

<sup>8</sup> See Joint Order Granting the Modification of Listing Standards Requirements (Exchange-Traded Funds, Trust-Issued Receipts and shares of Closed-End Funds), Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002) and Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001), 67 FR 42760 (June 25, 2002).

<sup>9</sup> 15 U.S.C. 78s(b)(7).

<sup>10</sup> Pub. L. 106–554, 114 Stat. 2763 (2000).

<sup>11</sup> 15 U.S.C. 78f(h)(3)(f).

<sup>12</sup> 15 U.S.C. 78f(h)(3).

under Section 2(a)(1)(D)(i) of the CEA,<sup>13</sup> as modified by joint orders of the Commission and the CFTC. In addition, NQLX believes that its proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>14</sup> in general, and Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, to protect investors and the public interest.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

NQLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

NQLX neither solicited nor received written comment on the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on July 16, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, had the authority to summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.<sup>16</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). 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

<sup>13</sup> 7 U.S.C. 2(a)(1)(D)(i).

<sup>14</sup> 15 U.S.C. 78f.

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 15 U.S.C. 78s(b)(1).

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 these filings also will be available for inspection and copying at the principal office of NQLX. All submissions should refer to File No. SR-NQLX-2003-06 and should be submitted by November 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-27228 Filed 10-28-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48685; File No. SR-NYSE-2003-32]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing Fees for Closed-End Funds

October 23, 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 hereby is given that on October 9, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NYSE has represented that the proposal meets the criteria of paragraph (f)(6) of Rule 19b-4 and, therefore, may take effect immediately. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend Section 902.02 of its Listed Company Manual to implement a \$75,000 cap on the collective original listing fees payable by any two or more closed-end funds from the same fund family listing at the same time. Below is the text of the

proposed rule change. Proposed new language is italicized.

\* \* \* \* \*

Listed Company Manual

#### 902.00 Listing Fees

\* \* \* \* \*

#### 902.02 Schedule of Current Listing Fees

\* \* \* \* \*

##### A. Original Listing Fee

A special charge of \$36,800 in addition to initial fees (described below) is payable in connection with the original listing of a company's stock. In any event, each issuer is subject to a minimum original listing fee of \$150,000 inclusive of the special charge referenced in the preceding sentence.

The special charge is also applicable to an application which in the opinion of the Exchange is a "back-door listing". See Para. 703.08 (F) for definition.

Original listings of closed-end funds are not subject to either the special charge or to the minimum original listing fee. Closed end funds will instead pay an original listing fee based on the number of shares outstanding upon listing. Closed-end funds with up to 10 million shares outstanding will be subject to a \$20,000 original listing fee, closed end funds with greater than 10 million shares up to 20 million shares outstanding will be subject to a \$30,000 original listing fee, and closed end funds with more than 20 million shares outstanding will be subject to a \$40,000 original listing fee. Original listings of closed-end funds are also not subject to the initial fees described below.

*If two or more closed-end funds from the same fund family list at the same time, the Exchange will cap the collective original listing fee for those funds at \$75,000. A fund family consists of closed end funds with a common investment adviser or investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.*

\* \* \* \* \*

#### 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 NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

NYSE 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

In recognition of the increasing cost pressures facing closed-end funds, the Exchange recently reduced the original listing fees applicable to closed-end funds by establishing a three-tiered structure based on the number of shares outstanding.<sup>3</sup> Closed-end funds with up to 10 million shares outstanding are subject to a \$20,000 original listing fee; funds with greater than 10 million shares up to 20 million shares outstanding are charged a \$30,000 original listing fee; and funds with more than 20 million shares outstanding are subject to a \$40,000 original listing fee.

The Exchange states that it inadvertently omitted in SR-NYSE-2003-22 an additional proposal to impose a cap of \$75,000 on the collective original listing fees payable by two or more closed-end funds from the same fund family listing at the same time. Accordingly, the Exchange proposes that there be a cap of \$75,000 on the collective original listing fees payable by a group of two or more closed-end funds from the same fund family listing at the same time. A fund family consists of closed-end funds with a common investment adviser or investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940.<sup>4</sup> The Exchange clarifies that the \$75,000 cap is available regardless of whether the funds are transferring from another market or making an initial issuance of shares. In fact, if some of the funds listing at the same time are transferring to the Exchange, and others are conducting an initial public offering, the funds would still be eligible for the collective \$75,000 cap.

##### 2. Statutory Basis

The NYSE believes that the basis for the proposed rule change is Section 6(b)(4) of the Act,<sup>5</sup> which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its

<sup>3</sup> See Securities Exchange Act Release No. 48360 (August 18, 2003), 68 FR 51045 (August 25, 2003) (SR-NYSE-2003-22).

<sup>4</sup> 15 U.S.C. 80a-2(a)(3).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> 17 CFR 200.30-3(a)(75).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

members and issuers and other persons using its facilities.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The NYSE has neither solicited nor received written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that, because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate), it may become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally would not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate the proposed rule change operative immediately upon filing. The Commission believes that capping the initial listing fees payable by any two or more closed-end funds from the same fund family will benefit those who invest in such funds by reducing the costs associated with the issuance of the shares. Accordingly, the Commission hereby determines to waive the 30-day pre-operative period, and the

proposed rule change becomes operative immediately.<sup>9</sup>

Rule 19b-4(f)(6) also requires the self-regulatory organization submitting the proposed rule change to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The NYSE has requested that the Commission waive the five-day pre-filing requirement, and the Commission hereby grants that request.

### 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-2003-32 and should be submitted by November 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-27227 Filed 10-28-03; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>9</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48676; File No. SR-PCX-2003-38]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to the Establishment of a Cross-and-Post Order Type

October 21, 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 July 23, 2003, the Pacific Exchange, Inc. ("PCX") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. On September 25, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), is proposing to adopt new rules for the implementation of a new order type called a "Cross-and-Post Order" for use on the Archipelago Exchange ("ArcaEx").

The text of the proposed rule change is below. Proposed additions are in *italics*.

\* \* \* \* \*

#### PCX Equities, Inc.

##### Rule 7

##### Equities Trading

##### Orders and Modifiers

Rule 7.31 (a)-(cc)—(No change.)  
(dd)-(ee)—*Reserved.*

(ff) *Cross-and-Post Order. A Cross Order that is to be executed in whole or in part on the Corporation pursuant to Rule 7.31(s) where any unexecuted portion of the Cross-and-Post Order will be displayed in the Arca Book at the cross price.*

*The Corporation will cancel the Cross-and-Post Order at the time of order entry, if:*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 replaced the original filing in its entirety.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> See 15 U.S.C. 78s(b)(3)(C).

(1) The cross price would cause an execution at a price that trades through the NBBO; or

(2) The cross price is between the BBO and does not improve the BBO by the MPII pursuant to Rule 7.6(a), Commentary .06.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

As part of its continuing efforts to enhance participation on ArcaEx, the PCX is proposing to adopt a new order type called a "Cross-and-Post Order." The PCX believes that this new order type will provide ETP Holders and Sponsored Participants (collectively "Users") with more flexibility to facilitate cross transactions.

The PCX proposes to add PCXE Rule 7.31(ff) to define a Cross-and-Post Order. The PCX proposes that a Cross-and-Post Order would be an order that is executed pursuant to the existing cross rules<sup>4</sup> while allowing for any residual portion of the cross order to be displayed in the Arca Book; provided, however, that the ArcaEx trading system would cancel a Cross-and-Post Order at the time of order entry if: (i) The cross price would cause an execution at a price that trades through the NBBO; or (ii) the cross price is between the BBO and does not improve the BBO by the minimum price improvement increment ("MPII") pursuant to PCXE Rule 7.6(a), Commentary .06.<sup>5</sup> The PCX believes that Cross-and-Post Orders would facilitate order interaction and provide for greater execution frequency of cross orders in

their entirety. In addition, the PCX believes that the new order type would increase investor choices with respect to executing orders. For example, in the current system, any portion of a cross order that remains unexecuted is canceled. Customers must then re-enter the residual portion of the order if they wish to have it posted in the Arca Book. The Cross-and-Post order would enable electronic posting of the residual portion of the order pursuant to PCXE Rule 7.36.

The PCX believes that the implementation of the Cross-and-Post order type would facilitate enhanced order interaction and foster price competition. The PCX also believes that the proposal would promote a more efficient and effective market operation, and enhance the investment choices available to investors over a broad range of trading scenarios. Finally, the PCX believes that the proposed rule changes would permit the execution of cross transactions in a manner consistent with PCXE rules applicable to price-time priority, price improvement requirements, and NBBO price protection.

#### 2. Statutory Basis

The PCX believes that the proposed rule change is consistent with Section 6(b)<sup>6</sup> of the Act and furthers the objectives of Section 6(b)(5)<sup>7</sup> because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and to protect investors and the public interest. In addition, the PCX believes that the proposed rule change is consistent with provisions of Section 11A(a)(1)(B) of the Act,<sup>8</sup> which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments concerning the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days after 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 PCX 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 filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2003-38 and should be submitted by November 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-27229 Filed 10-28-03; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>4</sup> See PCXE Rule 7.31(s).

<sup>5</sup> The MPII on ArcaEx is equal to \$0.01 or 10% of the NBBO spread, whichever is greater. See PCXE Rule 7.6(a), Commentary .06. Under current PCXE rules, the MPII requirements must be satisfied in the execution of Cross Orders. See PCXE Rule 7.31(s).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78k(a)(1)(B).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

**SMALL BUSINESS ADMINISTRATION****Revocation of License of Small Business Investment Company**

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Southern District of New York, dated September 29, 2003, the United States Small Business Administration hereby revokes the license of Vega Capital Corporation., a New York Corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02-0270 issued to Vega Capital Corporation on August 5, 1968, reissued June 1978 and said license is hereby declared null and void as of September 30, 2003.

Dated: October 22, 2003.  
Small Business Administration.

**Jeffrey D. Pierson,**

*Associate Administrator for Investment.*

[FR Doc. 03-27202 Filed 10-28-03; 8:45 am]

BILLING CODE 8025-01-P

**DEPARTMENT OF STATE**

[Public Notice 4521]

**Determination Pursuant to Section 344(b) of the Trade Act of 2002**

Pursuant to section 344(b) of the Trade Act of 2002, 19 U.S.C. 1583 note (Pub. L. 107-210), and Delegation of Authority No. 245 (Apr. 23, 2001), I hereby determine that the provision of the Trade Act authorizing the U.S. Customs Service to search foreign mail transiting the United States without a warrant is not consistent with international law and the international obligations of the United States.

This determination is to be transmitted to Congress and published in the **Federal Register**.

Dated: October 17, 2003.

**Richard L. Armitage,**

*Deputy Secretary of State, Department of State.*

[FR Doc. 03-27272 Filed 10-28-03; 8:45 am]

BILLING CODE 4710-08-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Noise Exposure Map Notice for Indianapolis International Airport, Indianapolis, IN**

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

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Indianapolis Airport Authority for Indianapolis International Airport under the provisions of 49 U.S.C. 47501 et seq. (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps is October 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Bobb A. Beauchamp, Environmental Program Manager, 2300 E. Devon Ave., Suite 320, Des Plaines, Illinois 60018 (847) 294-7364.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Indianapolis International Airport are in compliance with applicable requirements of part 150, effective October 7, 2003.

Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depend non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by Indianapolis Airport Authority. The documentation that constitutes the "noise exposure maps" as defined in section 150.7 of part 150 includes: Noise exposure maps depicting current (2003) and future (2008) noise contours, flight tracks, land use mitigation measures, and related discussions. The FAA has determined

that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on October 7, 2003. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and the FAA's evaluation of the maps are available for examination at the following locations:

Marion County Public Library, 202 North Alabama, Indianapolis, IN 46204, (temporary location), 317-269-1700.

Decatur Township Branch Library, 5301 Kentucky Avenue, Indianapolis, IN 46221, 317-269-1872.

Mooresville Public Library, 220 W. Harrison Street, Mooresville, IN 46158, 317-831-7323.

Wayne Township Branch Library, 198 South Girls School Road, Indianapolis, IN 46231, 317-269-1847.

Plainfield Public Library, 1120 Stafford Road, Plainfield, IN 46168, 317-839-6602.

Federal Aviation Administration, Chicago Airports District Office, 2300 E. Devon, Suite 320, Des Plaines, IL 60018.

Indianapolis Airport Authority, Indianapolis International Airport, 2500 South High School Road, Indianapolis, IN 46241.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Des Plaines, Illinois, October 7, 2003.

**Thomas E. Salaman,**

*Acting Manager, Chicago Airports District Office, FAA Great Lakes Region.*

[FR Doc. 03-27275 Filed 10-28-03; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2003-62]

#### Petition for Authorization To Exceed Mach 1; Summary of Petition Received

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

**ACTION:** Notice of request for an authorization to exceed Mach 1.

**SUMMARY:** This notice summarizes a petition requesting use of a special flight authorization procedure in FAA regulations. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petition received must identify the petition docket number involved and must be received on or before November 7, 2003.

**ADDRESSES:** Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2003-16264 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing the petition, any

comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1-800-647-5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Caren Centorelli, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267-8029.

#### Petition for Authorization To Exceed Mach 1

*Docket No.:* FAA-2003-16264.

*Petitioner:* Scaled Composites.

*Section of 14 CFR Affected:* 14 CFR 91.817, Appendix B to Part 91.

Description of Relief Sought: To allow petitioner limited and conditional flight operations that exceed Mach 1. Title 14 Code of Federal Regulations (14 CFR) part 91, subpart I-Operating Noise Limits, addresses civil aircraft sonic boom under § 91.817. An operator must comply with the flight conditions and limitations designated by the FAA in any authorization to exceed Mach 1 prescribed under appendix B of this part. The petitioner is requesting that it be allowed to conduct developmental flight operations of the supersonic SpaceShipOne aircraft over Edwards Air Force Base, known as the "R-2508 Complex," located in Los Angeles and Kern counties in California.

Issued in Washington, DC, on October 23, 2003.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

[FR Doc. 03-27274 Filed 10-28-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

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

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

**DATES:** The meeting is scheduled for November 13, 2003, at 10 a.m.

**ADDRESS:** The meeting will be held at Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 10th floor, McCracken Room.

#### FOR FURTHER INFORMATION CONTACT:

Gerri Robinson, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-9678; fax (202) 267-5075; e-mail [Gerri.Robinson@faa.gov](mailto:Gerri.Robinson@faa.gov).

**SUPPLEMENTARY INFORMATION:** Under section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is therefore given of a meeting of the Executive Committee to be held on November 13, 2003, at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. The agenda will include:

- New Executive Committee Leadership
- Air Traffic Issue Area
- Committee Schedule for 2004
- Future of ARAC

Aviation Rulemaking Advisory Committee vs. Aviation Rulemaking Committees (ARCs)

FY 04 Full ARAC membership meeting

- Submission of electronic and paper recommendations to Federal Aviation Administration
- Submission of working group meeting dates for ARAC calendar
- Issue Area Status Reports from Assistant Chairs
- Remarks from other Executive Committee members

Attendance is open to the interested public but is limited to the space available. The FAA will arrange teleconference ability for individuals wishing to join in by teleconference if we receive that notice by November 7, 2003. Arrangements to join in by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long-distance charges.

The public must arrange by November 7 to present verbal statements at the meeting. The public may present written statements to the executive committee by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of help or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on October 24, 2003.

Ida M. Klepper,

Acting Executive Director, Aviation  
Rulemaking Advisory Committee.

[FR Doc. 03-27259 Filed 10-28-03; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Proposed Agency Information Collection Activities; Comment Request

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

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

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and its expected burden. The Federal Register notice with a 60-day comment period soliciting comments on the following collections of information was published on August 26, 2003 (68 FR 51323).

**DATES:** Comments must be submitted on or before November 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292), or Debra Steward, Office of Information Technology and Productivity Improvement, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6139). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On August 26, 2003, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 68 FR 51323. FRA

received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c.); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 C.F.R. 1320.12(c.); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

**Title:** Inspection Brake System Safety Standards For Freight and Other Non-Passenger Trains and Equipment (Power Brakes and Drawbars).

**OMB Control Number:** 2130-0008.

**Type of Request:** Extension of a currently approved collection.

**Affected Public:** Businesses.

**Form(s):** N/A.

**Abstract:** Section 7 of the Rail Safety Enforcement and Review Act of 1992, Public Law 102-365, amended section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421, 431 *et seq.*), empowered the Secretary of Transportation to conduct a review of the Department's rules with respect to railroad power brakes and, where applicable, prescribe standards regarding dynamic brake equipment. In keeping with the Secretary's mandate and the authority delegated from him to the FRA Administrator, FRA recently published a comprehensive regulatory revision of the then current requirements related to the inspection, testing, and maintenance of the brake equipment used in freight car operations. The Final Rule focused solely on freight and other non-passenger trains, and codified and solidified the maintenance requirements related to the power brake system and its components. The collection of information is used by FRA to monitor and enforce safety requirements related to power brakes on freight cars. The collection of information is also used by locomotive engineers and road crews to

verify that the terminal air brake test has been performed in a satisfactory manner.

**Annual Estimated Burden Hours:** 895,011.

**Title:** Regional Inspection Point Listing Forms.

**OMB Control Number:** 2130-0551.

**Type of Request:** Extension of a currently approved collection.

**Affected Public:** State Rail Safety Inspectors.

**Form Number(s):** FRA F 6180.106(a)-(e).

**Abstract:** Through a direct comparison of inspection data with accident/incident data, the collection of information aims to develop a profile county-by-county of what there is to inspect, and how much inspection activity was done by Federal and State railroad inspectors each year nationwide. The information collected will produce "snapshots" which will allow FRA to determine where the gaps are in inspection territories so that it can focus inspection resources where they will do the most good. As a result of the collection of information, FRA will be better able to equalize inspector workloads, and will be better able to make informed hiring decisions regarding the most effective placement of new inspectors. More targeted inspections will permit FRA to maximize its limited resources, and will serve to enhance overall safety on the nation's rail system.

**Annual Estimated Burden Hours:** 584.

**Addressee:** Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503; **Attention:** FRA Desk Officer.

**Comments are invited on the following:** Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501-3520.

Issued in Washington, DC, on October 23, 2003.

**Kathy A. Weiner,**

*Director, Office of Information Technology and Support Systems, Federal Railroad Administration.*

[FR Doc. 03-27273 Filed 10-28-03; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34396]

#### Norfolk Southern Railway Company—Corporate Family Transaction Exemption—Atlantic and East Carolina Railway Company

Norfolk Southern Railway Company (NSR)<sup>1</sup> and Atlantic and East Carolina Railway Company (AEC),<sup>2</sup> have filed a verified notice of exemption under the Board's corporate family class exemption at 49 CFR 1180.2(d)(3) to merge AEC into NSR, with NSR as the surviving entity. Under the agreement and plan of merger, all of AEC's assets, rights, obligations and responsibilities will be in the name of NSR.

Although the parties state that the transaction was scheduled to be consummated on or as soon as practicable after August 31, 2003, the earliest the transaction could be consummated was October 6, 2003 (7 days after filing under 49 CFR 1180.4(g)).

The purpose of the transaction is to eliminate AEC as a separate corporate entity, thereby furthering the goal of corporate simplification. It is anticipated that this action will eliminate costs associated with separate accounting, tax, bookkeeping and reporting functions.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to the use of this exemption, any employees adversely affected by this transaction will be protected by the conditions set forth in

<sup>1</sup> NSR is a Class I carrier; together with its railroad subsidiaries, it owns or operates approximately 21,500 miles of railroad located in 22 states, the District of Columbia, and the Province of Ontario, Canada. NSR is controlled through stock ownership by Norfolk Southern Corporation, a noncarrier holding company.

<sup>2</sup> AEC has been controlled by NSR or its predecessors through stock ownership since 1989.

*New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34396 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Maquiling B. Parkerson, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-9241.

Board decisions and notices are available on our Web site at [www.stb.dot.gov](http://www.stb.dot.gov).

Decided: October 22, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. 03-27139 Filed 10-27-03; 8:45 am]

**BILLING CODE 4915-00-P**

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

#### 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, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the "Fund"), within the Department of the Treasury, is soliciting comments concerning the Native American CDFI Assistance (NACA) Program Application.

**DATES:** Written comments should be received on or before December 29, 2003 to be assured of consideration.

**ADDRESS:** Direct all written comments to Linda G. Davenport, Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street NW., Suite 200 South,

Washington, DC 20005, Facsimile Number (202) 622-7754.

**FOR FURTHER INFORMATION CONTACT:** A copy of the draft NACA Program Application or requests for additional information may be obtained by contacting: Margaret Nilson, Manager (Native American Initiative), Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street NW., Suite 200 South, Washington, DC 20005; or by phone to (202) 622-8662.

#### SUPPLEMENTARY INFORMATION:

*Title:* Native American CDFI Assistance (NACA) Program Application

*Abstract:* The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) (the "Act") authorizes the Community Development Financial Institutions Fund (the "Fund") of the U.S. Department of the Treasury to promote economic revitalization and community development through investment in and assistance to Fund-certified community development financial institutions ("CDFIs") through the CDFI Program. In addition, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. 107-73) authorizes the Fund to provide technical assistance grants to benefit Native American, Alaska Native and Native Hawaiian communities (hereafter referred to as "Native American Communities") by building the capacity of CDFIs that serve those communities (hereafter referred to as "Native American CDFIs"). Further, the Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7) authorizes the Fund to provide financial assistance and technical assistance to benefit Native American Communities, with such benefit being provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, Tribes and tribal organizations and other suitable providers.

Through the NACA Program, the Fund provides (i) FA and/or TA awards to Native American CDFIs and entities that can be certified as Native American CDFIs at time of award; and (ii) TA awards to entities that propose to become Native American CDFIs within two years and "Sponsoring Entities" (e.g., Native American organizations, Tribes, Tribal organizations) that propose to create separate legal entities

that will become Native American CDFIs within two years.

*Type of Review:* New collection.

*Affected Public:* Not-for-profit institutions; state, local or tribal government and tribal entities; and businesses or other for-profit institutions.

*Estimated Number of Respondents:* 40.

*Estimated Annual Time Per Respondent:* 65 hours.

*Estimated Total Annual Burden*

*Hours:* 2,600 hours.

*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 Fund, including whether the information shall have practical utility; (b) the accuracy of the Fund'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.

*Authority:* Pub. L. 107-73; Pub. L. 108-7.

Dated: October 21, 2003.

**Tony T. Brown,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. 03-27204 Filed 10-28-03; 8:45 am]

**BILLING CODE 4810-70-P**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

#### Financial Management Service; Proposed Collection of Information: Management of Federal Agency Disbursements

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

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

**SUMMARY:** The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management

Service solicits comments concerning the "Management of Federal Agency Disbursements."

**DATES:** Written comments should be received on or before December 29, 2003.

**ADDRESSES:** Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information should be directed to Steve Vajs, Director, Risk Management Division, Room 423, 401 14th Street, SW., Washington, DC 20227, (202) 874-1229.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

*Title:* Management of Federal Agency Disbursements.

*OMB:* 1510-0066.

*Form Number:* None.

*Abstract:* Recipients of Federal disbursements must furnish to FMS their bank account number and the name and routing number of their financial institution to receive payment electronically.

*Current Actions:* Extension of currently approved collection.

*Type of Review:* Regular.

*Affected Public:* Businesses or other for-profit institutions, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents:* 1,300.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden*

*Hours:* 325.

*Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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.

**Betsy H. Lane,**

*Assistant Commissioner, Federal Finance.*

[FR Doc. 03-27218 Filed 10-28-03; 8:45 am]

**BILLING CODE 4810-35-M**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, November 19, 2003 from 12 noon EST to 1 p.m. EST.

**FOR FURTHER INFORMATION CONTACT:** Sallie Chavez at 1-888-912-1227, or 954-423-7979.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, November 19, 2003, from 12 noon EST to 1 p.m. EST via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1-888-912-1227 or 954-423-7979.

The agenda will include various IRS issues.

Dated: October 21, 2003.

**Tersheia Carter,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 03-27276 Filed 10-28-03; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)**

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

The Taxpayer Advocacy Panel is soliciting public comments, ideas, and

suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Friday, November 21, 2003 from 11 a.m. EST to 12:30 p.m. EST.

**FOR FURTHER INFORMATION CONTACT:** Sallie Chavez at 1-888-912-1227, or 954-423-7979.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, November 21, 2003, from 11 a.m. EST to 12:30 p.m. EST via a telephone conference call. Individual comments will be limited to 5 minutes.

If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1-888-912-1227 or 954-423-7979. The agenda will include various IRS issues.

Dated: October 21, 2003.

**Tersheia Carter,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 03-27277 Filed 10-28-03; 8:45 am]

**BILLING CODE 4830-01-P**



# Federal Register

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**Wednesday,  
October 29, 2003**

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**Part II**

## **Securities and Exchange Commission**

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**17 CFR Parts 210, et al.  
Exemption From Shareholder Approval  
for Certain Subadvisory Contracts;  
Proposed Rule**

## SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 239, 240, 270 and 274

[Release Nos. 33–8312, 34–48683, IC–26230; File No. S7–20–03]

RIN 3235–AH80

### Exemption From Shareholder Approval for Certain Subadvisory Contracts

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is proposing a new rule under the Investment Company Act of 1940 that would, under certain conditions, permit an adviser to serve as a subadviser to an investment company (“fund”) without approval by the shareholders of the fund. The rule is designed to reduce burdens on investment companies by eliminating the need to obtain from the Commission exemptive orders that facilitate so-called “manager of managers” arrangements, under which one or more subadvisers manage a fund’s assets subject to the supervision of an investment adviser whose advisory contract has been approved by fund shareholders.

**DATES:** Comments must be received on or before January 8, 2004.

**ADDRESSES:** To help us process and review your comments more efficiently, comments should be sent by one method only.

Comments in paper format should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

Comments in electronic format may be submitted at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. S7–20–03; if e-mail is used, this file number should be included on the subject line. Comment letters will be available for public inspection and copying in the Commission’s Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission’s Internet web site (<http://www.sec.gov>).<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:**

Adam B. Glazer, Attorney, or C. Hunter Jones, Assistant Director, Office of

Regulatory Policy, (202) 942–0690, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0506.

**SUPPLEMENTARY INFORMATION:** The Commission today is proposing for public comment new rule 15a–5 [17 CFR 270.15a–5] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the “Investment Company Act” or “Act”); amendments to rule 6–07 [17 CFR 210.6–07] of Regulation S–X [17 CFR part 210] under the Investment Company Act and the Securities Act of 1933 [15 U.S.C. 77a–aa] (the “Securities Act”); amendments to Form N–1A [17 CFR 274.11A] under the Investment Company Act and the Securities Act; and amendments to Schedule 14A [17 CFR 240.14a–101] under the Securities Exchange Act of 1934 [15 U.S.C. 78a–mm] (the “Exchange Act”).

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### Executive Summary

The Commission is proposing new rule 15a–5 under the Investment Company Act. The rule would permit manager of managers funds to operate without obtaining shareholder approval when the fund’s principal investment adviser hires a new subadviser or replaces an existing subadviser. The rule would eliminate the need for a fund to obtain an exemptive order permitting these arrangements. A fund that relied on the proposed rule would be required to inform investors of the identity of the current subadviser(s) managing their portfolio and the ability of the fund to add or replace the subadviser(s) without shareholder approval. The rule also would require that the fund’s investment adviser supervise and

oversee the fund’s subadvisers, and that the hiring of a new or different subadviser not increase the fees charged to the fund.

### I. Background

A growing number of investment companies (“funds”)<sup>2</sup> are now offered whose investment advisers do not directly manage a portfolio of securities. Instead, the advisers supervise one or more subadvisers,<sup>3</sup> which are themselves responsible for the day-to-day management of the funds’ portfolios. In these “manager of managers” funds, the investment adviser seeks to achieve the funds’ investment objectives by hiring, supervising and, when appropriate, discharging subadvisers, each of which is responsible for the management of a portion of a fund’s portfolio.<sup>4</sup> In many cases, these funds also authorize the adviser to allocate and reallocate fund assets among subadvisers.

Since they were first introduced in the early 1990s, manager of managers funds have grown in popularity. Today more than 100 fund complexes offer these types of funds, which hold more than 400 billion dollars in assets.<sup>5</sup> Many of these funds are sponsored by insurance companies and operate as funding vehicles for separate accounts offering variable annuity and variable

<sup>2</sup> In this Release and proposed rule 15a–5, we use the term “fund” to mean a registered open-end management investment company or a separate series of such a company. A series company (or series fund) is a registered open-end investment company which, in accordance with the provisions of section 18(f)(2) of the Act [15 U.S.C. 80a–18(f)(2)], issues two or more classes or series of preferred or special stock each of which is preferred over all other classes or series in respect of assets specifically allocated to that class or series. See 17 CFR 270.18f–2(a).

<sup>3</sup> In this Release and proposed rule 15a–5, we use the term “subadviser” to mean a party that contracts with a fund’s principal adviser to provide investment advisory services to the fund, and the term “principal adviser” to mean a party that contracts directly with a fund to provide investment advisory services to the fund. See proposed rule 15a–5(b)(2)–(3) (defining “principal adviser” and “subadviser” by reference to sections 2(a)(20)(A)–(B) of the Act [15 U.S.C. 80a–2(a)(20)(A) “(B)”).

<sup>4</sup> In the case of a series fund, the adviser seeks to achieve the fund’s investment objectives by hiring, supervising and, when appropriate, discharging subadvisers for the management of all or a portion of the portfolio of a series.

<sup>5</sup> Since 1995 we have issued over 100 orders allowing manager of managers funds to retain subadvisers (and materially amend subadvisory contracts) without shareholder approval. See, e.g., Hillview Investment Trust II and Hillview Capital Advisors, LLC, Investment Company Act Release Nos. 24853 (Feb. 6, 2001) [66 FR 10037 (Feb. 13, 2001)] (notice) and 25055 (June 29, 2001) [66 FR 35676 (July 6, 2001)] (order); Sun Capital Advisers Trust and Sun Capital Advisers, Inc., Investment Company Act Release Nos. 24368 (Mar. 27, 2000) [65 FR 17546 (Apr. 3, 2000)] (notice) and 24401 (Apr. 24, 2000) [72 SEC Docket 864 (May 23, 2000)] (order).

<sup>1</sup> We do not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

life insurance contracts.<sup>6</sup> They represent one of the more recent innovations in managed asset arrangements.

Many sponsors of manager of managers funds have sought and obtained from us orders exempting them from section 15(a) of the Act,<sup>7</sup> which prohibits any person from serving as an investment adviser (or a subadviser) to a fund except under a written contract that the fund's shareholders have approved.<sup>8</sup> The orders permit funds and advisers to enter into and materially amend subadvisory contracts without shareholder approval. Many sponsors of these funds have asserted that without relief from the shareholder voting requirement, the costs and delays associated with obtaining a shareholder vote would prevent advisers from hiring and firing subadvisers and from achieving the funds' investment objectives. They also have asserted that the underlying purpose of section 15(a)—to give shareholders a voice in the fund's investment advisory arrangements<sup>9</sup>—would be satisfied without a shareholder vote on the subadvisory contracts because the principal adviser's contract must still be approved by fund shareholders. Moreover, the principal adviser would act in the shareholders' interests by supervising and overseeing the fund's subadvisers. Sponsors have analogized subadvisers in a manager of managers arrangement to portfolio managers employed by a fund adviser who may be hired and fired without the consent of shareholders.<sup>10</sup>

The Commission is today proposing a new rule, 15a-5, and amendments to

<sup>6</sup> See Gary O. Cohen, *Fitting Variable Annuity Contracts and Variable Life Insurance into the Regulatory Framework of the Investment Company Act of 1940 and Securities Act of 1933*, 813 PLI/Comm 129, 212-13 (2001).

<sup>7</sup> 15 U.S.C. 80a-15(a).

<sup>8</sup> See *supra* note 5.

<sup>9</sup> See *Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 76th Cong., 3d Sess. 253 (1940) (statement of David Schenker).

<sup>10</sup> See, e.g., TIF Investment Program, Inc. and Foundation Advisers, Inc., Investment Company Act Release Nos. 21268 (Aug. 3, 1995) [60 FR 40875 (Aug. 10, 1995)] (notice) and 21328 (Aug. 30, 1995) [60 SEC Docket 316 (Sept. 26, 1995)] (order), in which the applicant had represented that the employment of a new subadviser was "closely analogous to the decision by a money management firm to hire another portfolio manager or analyst." See *id.*, Investment Company Act Release No. 21268, at text following n.1. Our disclosure rules require that a change in portfolio managers be disclosed to investors through a prospectus "sticker." See Disclosure of Mutual Fund Performance and Portfolio Managers, Investment Company Act Release No. 19382 (Apr. 6, 1993) [58 FR 19050 (Apr. 12, 1993)], at text accompanying nn.9-11. A fund also must disclose in its prospectus the identity of the fund's subadvisers. See Item 6(a)(1) of Form N-1A.

Form N-1A, which together would codify the orders we have issued for manager of managers funds, including many of their conditions.<sup>11</sup> The Commission believes that the proposed rule would benefit shareholders by allowing funds to terminate poorly performing subadvisers and hire new subadvisers without the need for a shareholder vote.<sup>12</sup> These amendments are designed to limit the scope of the relief to subadvisers of manager of managers funds, and to assure that investors in manager of managers funds are fully informed of the identity of the current subadviser(s) managing their portfolio, and of the fact that subadvisers could be added or replaced without shareholder approval.

## II. Discussion

Section 15(a) of the Investment Company Act was designed to protect the interests and expectations of fund shareholders by requiring that they approve advisory contracts,<sup>13</sup> including subadvisory contracts.<sup>14</sup> The Congress

<sup>11</sup> As discussed below, we also are proposing related amendments to Regulation S-X under the Act and the Securities Act and to Schedule 14A under the Securities Exchange Act. We are not, however, proposing amendments to rule 18f-2 [17 CFR 270.18f-2] even though we have provided relief, in response to requests, from rule 18f-2 in a number of our manager of managers exemptive orders. Rule 18f-2, among other things, describes how the shareholder voting requirement of section 15(a) applies in the case of a fund with multiple series or multiple classes. Because the relief we are proposing today would provide exemptive relief from the requirements of section 15(a), we believe that relief from rule 18f-2 is unnecessary.

<sup>12</sup> The inability of a fund adviser to hire a subadviser without obtaining shareholder approval can inhibit a fund manager from terminating a poorly performing subadviser and thus managing the fund in the best interests of shareholders. An investment adviser has a fiduciary duty to act in the best interests of a fund it advises. See *Rosenfeld v. Black*, 445 F.2d 1337 (2d Cir. 1971); *Brown v. Block*, 194 F.Supp. 207, 229, 234 (S.D.N.Y.), *aff'd*, 294 F.2d 415 (2d Cir. 1961). See also *In the Matter of Provident Management Corp.*, Securities Act Release No. 5115 (Dec. 1, 1970) at n.12 and accompanying text.

<sup>13</sup> See *Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 76th Cong., 3d Sess. 253 (1940) (statement of David Schenker) (section 15 recognizes that a "management contract is personal, that it cannot be assigned, and that you cannot turn over the management of other people's money to someone else").

<sup>14</sup> Section 15(a) of the Investment Company Act prohibits a person from serving as an investment adviser to a fund except under a written contract, *whether with the fund or with an investment adviser of the fund*, that has been approved by the vote of a majority of the fund's outstanding voting securities. Thus, the shareholder voting requirement applies not only to an advisory contract between a fund and an adviser, but also to a subadvisory contract between a fund's adviser and a subadviser. See 15 U.S.C. 80a-2(a)(20) (defining investment adviser). See also Role of Independent Directors of Investment Companies, Investment

that enacted section 15(a) anticipated subadvisory arrangements, and concluded that shareholders should have a role in the selection of subadvisers. In crafting this rule proposal (and the exemptive orders that have preceded it), we have sought to distinguish subadvisory arrangements in which the subadvisers have resembled portfolio managers from the more traditional subadvisory arrangements that Congress explicitly covered in the shareholder voting requirement of section 15(a). Our proposed rule, therefore, contains several conditions, which we discuss below, that limit the scope of relief to subadvisers of manager of managers funds and that provide other means of protecting fund investor expectations and interests.<sup>15</sup>

Today we are proposing a rule that would eliminate the need for funds to obtain exemptive orders to hire subadvisers that they supervise. We have drafted the rule to preserve, to the extent possible, the important role the Investment Company Act gives shareholders in the governance of their funds while accommodating the special needs of manager of managers funds. The other provisions of section 15 would remain applicable. Under those provisions, the manager of managers fund's principal adviser<sup>16</sup> still must have its contract approved by the fund's board and shareholders,<sup>17</sup> and the board must approve the terms of each subadvisory contract.<sup>18</sup> Thus, the rule would afford shareholders of a manager of managers fund the opportunity, both directly through their consideration of the principal advisory contract and indirectly through their representatives

Company Act Release No. 24816 (Jan 2, 2001) [66 FR 3734 (Jan. 16, 2001)] at n.53 ("The Act does not distinguish an adviser from a sub-adviser.") (citing section 2(a)(20)). Section 15(c) also requires that a majority of the fund's independent directors approve contracts with all investment advisers, including subadvisers. 15 U.S.C. 80a-15(c).

<sup>15</sup> Section 6(c) of the Act [15 U.S.C. 80a-6(c)] permits the Commission, conditionally or unconditionally, to exempt any person, security, or transaction (or classes of persons, securities, or transactions) from any provision of the Act "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions" of the Act.

<sup>16</sup> We use the term "principal adviser" to mean a party that contracts directly with a fund to provide investment advisory services to the fund. See *supra* note 3.

<sup>17</sup> See 15 U.S.C. 80a-15(a). Although the proposed rule does not exempt a fund's advisory contract with a principal adviser from the shareholder approval requirement of section 15(a), rule 15a-4 under the Act [17 CFR 270.15a-4] allows for the possibility that a principal adviser to the fund is temporarily serving the fund without shareholder approval of its advisory contract.

<sup>18</sup> See 15 U.S.C. 80a-15(c).

on the board of directors, to influence the terms of the advisory contracts under which their fund is managed.

#### A. Conditions of the Proposed Rule

##### 1. Terms of the Subadvisory Contracts; Subadvisory Fees

The proposed amendments would largely rely on the principal adviser, negotiating with each subadviser on an arm's length basis and subject to the approval of the fund's board, to determine the terms of the subadvisory contract, including the amount of the subadviser's fee. As a condition to the rule, however, we would preclude a new or modified subadvisory contract from directly or indirectly increasing the management fees charged to the fund or its shareholders.<sup>19</sup> As a result, the rule would preserve the statutory requirement that increases in the rate of advisory fees paid by the fund be approved by shareholders.<sup>20</sup>

In most cases, subadvisers are compensated by the fund's principal adviser, which negotiates the amount of the subadvisers' compensation. Consequently, a principal adviser is free to bargain for lower subadvisory fees, which will benefit the fund to the extent that lower subadvisory fees are passed on through lower advisory fees. Sponsors of manager of managers funds have represented that they are able to negotiate lower fees with subadvisers if they do not have to disclose those fees separately, and in our orders we have provided them relief from our disclosure requirements.<sup>21</sup> We are

<sup>19</sup> Proposed rule 15a-5(a)(1). It's a new subadvisory contract were to increase those fees, the subadviser entering into the contract would not qualify for relief under the rule, and the contract would need to be submitted to shareholders for their approval. A subadvisory fee could be increased under the rule, however, as long as the total amount of the advisory fees paid by the fund does not exceed the total amount provided by advisory contracts that shareholders have approved. For instance, a subadvisory contract would still be eligible for relief under the proposed rule even though it increases a fund's subadvisory fees, if the increase is deducted from the principal adviser's fee. See Republic Funds, Investment Company Act Release Nos. 24292 (Feb. 16, 2000) [65 FR 10132 (Feb. 25, 2000)] (notice) and 24338 (Mar. 14, 2000) [71 SEC Docket 2701 (Apr. 11, 2000)] (order) (granting exemption from shareholder approval for subadvisory contracts where the fund directly pays subadvisory fees and deducts the subadvisory fees from the fee paid to the principal adviser).

<sup>20</sup> See 15 U.S.C. 80a-15(a)(1) (requesting any investment advisory contract to *precisely* describe all compensation to be paid thereunder).

<sup>21</sup> See, e.g., Endeavor Series Trust, Investment Company Act Release Nos. 24054 (Sept. 27, 1999) [64 FR 53428 (Oct. 1, 1999)] (notice) and 24108 (Oct. 22, 1999) [70 SEC Docket 3081 (Nov. 23, 1999)] (order); Frank Russell Investment Company, Investment Company Act Release Nos. 21108 (June 2, 1995) [60 FR 30321 (June 8, 1995)] (notice) and 21169 (June 28, 1995) [59 SEC Docket 2105 (June 25, 1995)] (order).

proposing to codify this relief, which permits a manager of managers fund to disclose only the *aggregate* amount of advisory fees that it pays to subadvisers as a group.<sup>22</sup>

We recognize that permitting aggregate disclosure of subadvisory fees will not permit investors to understand the benefits obtained by a principal adviser that negotiates lower subadvisory fees. We note, however, that the Act compels a fund board to take into consideration subadvisory fees when establishing the amount of the principal adviser's compensation,<sup>23</sup> and imposes significant liabilities on the principal adviser itself with respect to that compensation.<sup>24</sup> The board is in the

<sup>22</sup> The individual fee paid to an unaffiliated subadviser of the principal adviser would not have to be disclosed, but the individual fee paid to each wholly-owned subadviser (defined below in Section II.A.3) would have to be disclosed. Under our proposal, a fund would disclose in its statement of Additional Information on Form N-1A, in lieu of the individual fee paid to each subadviser, (i) the individual fees paid to the principal adviser and to each subadviser that is an affiliated person of the principal adviser (including a wholly-owned subadviser whose contract has not been approved by shareholders on reliance on the proposed rule), (ii) the net advisory fee retained by the principal adviser after payment of fees to all subadvisers, and (iii) the aggregate fees paid to all of the fund's subadvisers that are not affiliated persons of the principal adviser. Proposed Instruction 5 to Item 15(a)(3) of Form N-1A. We also are proposing conforming amendments to rule 6-07 of Regulation S-X and the Instructions to Item 22(c) of Schedule 14A.

Under the conditions of the manager of managers orders allowing a fund to disclose the aggregate fees paid to all of the fund's unaffiliated subadvisers, the principal adviser is required to provide the board, no less frequently than quarterly, with information about its profitability for each fund that is relying on the order. In addition, the principal adviser is required to provide the board with information showing the expected impact on the principal adviser's profitability whenever a subadviser is hired or terminated. We have not included these conditions in the proposed rule. However, information must still be provided to the board pursuant to section 15(c) of the Act, which requires fund directors to request and evaluate, and an investment adviser to the fund to furnish, any information that may be necessary to evaluate the terms of any investment advisory contract with the fund.

<sup>23</sup> Section 15(c) of the Act requires fund directors to request and evaluate, and an investment adviser to the fund to furnish, any information that may be necessary to evaluate the terms of any investment advisory contract with the fund. Therefore, the board must request, and the principal adviser must provide, information regarding the fees paid to the principal adviser's subadvisers in order for the board to evaluate properly the terms of the principal adviser's contract with the fund.

<sup>24</sup> Section 36(b) of the Act [15 U.S.C. 80a-35(b)] imposes a fiduciary duty on an investment adviser with respect to its receipt of compensation from the fund for services, and allows an action to be brought by the Commission or a shareholder for a breach of this duty. See *Daily Income Fund, Inc. v. Fox*, 464 U.S. 523, 541-42 (1984) (discussing fund shareholders' right to initiate legal proceedings against the fund's adviser for breach of the adviser's fiduciary duty with regard to its receipt of

best position to assess the overall compensation of the principal adviser when, for example, some subadvisory fees have increased and some have decreased. Moreover, the reduction of an individual subadvisory fee would be reflected in lower aggregate fees that would be disclosed under the proposed amendments.

We request comment on the proposal.

- Should the Commission permit fund directors to enter into subadvisory contracts that increase advisory fees without the consent of shareholders?
- Should the Commission limit relief to subadvisory contracts that do not increase the portion of the advisory fee retained by the principal adviser in order to assure that subadvisers are selected based on ability and performance?
- Do shareholders need information about the amount of compensation paid to each subadviser?
- We also request comment on whether any amendments are required to the fee table items of Forms N-4 and N-6, the registration forms used by insurance company separate accounts registered under the Act as unit investment trusts.<sup>25</sup>

##### 2. Obligation To Supervise

An important aspect of any manager of managers arrangement is the responsibility assumed by the principal adviser to supervise, *i.e.*, monitor and oversee, the subadvisers in the performance of their duties for the fund.<sup>26</sup> We propose to require that any principal advisory contract under the rule obligate the principal adviser to supervise the subadviser.<sup>27</sup> In addition,

compensation under section 36(b) of the Act, without first making a demand on the board to initiate such action).

<sup>25</sup> 17 CFR 239.17b-c, 274.11c-d.

<sup>26</sup> See, e.g., Pitcairn Funds and Pitcairn Trust Company, Investment Company Act Release Nos. 25106 (Aug. 9, 2001) [66 FR 42901 (Aug. 15, 2001)] (notice) and 25150 (Sept. 5, 2001) [75 SEC Docket 2214 (Oct. 2, 2001)] (order); Frank Russell Investment Company, Investment Company Act Release Nos. 21108 (June 2, 1995) [60 FR 30321 (June 8, 1995)] (notice) and 21169 (June 28, 1995) [59 SEC Docket 2105 (July 25, 1995)] (order). A typical subadvisory agreement stipulates that the subadviser, in carrying out its investment management duties under the agreement, is subject to the supervision and/or oversight of the board of directors and the principal adviser.

<sup>27</sup> Proposed rule 15a-5(a)(4). See Western Asset Management Co. and Legg Mason Fund Adviser, Inc., Investment Advisers Act Release No. 1980 (Sept. 28, 2001) (the Commission found that the principal adviser failed to adequately supervise an employee of its affiliated subadviser). Although the manager of managers orders do not require the principal advisory contract to contain a provision requiring the principal adviser to supervise all of the subadvisers it retains to provide services to the fund, the orders do require the principal adviser to supervise its subadvisers. See, e.g., Hillview

because the principal adviser must be able to discharge a subadviser in order to effectively supervise the subadviser, our proposed rule includes a condition requiring that the subadvisory contracts be terminable at any time by the principal adviser, on no more than 60 days written notice, without payment of penalty.<sup>28</sup>

### 3. Arm's Length Relationship Between Principal Adviser and Subadvisers

We are proposing two related conditions designed to limit the rule to arrangements in which the principal adviser is in a position to hire and supervise (and, if necessary, discharge) subadvisers on the basis of the subadviser's performance, rather than on the basis of other business relationships the principal adviser may have with the subadviser. First, we would preclude subadvisers relying on the rule from being affiliated persons of the principal adviser with which they contract or of the fund (other than by reason of serving as investment advisers to the fund) ("affiliated subadviser").<sup>29</sup> Second, we would preclude any director or officer of the fund and the principal adviser or any director or officer of the principal adviser with which the subadviser has contracted from owning, directly or indirectly, any material interest in the subadviser other than through a pooled investment vehicle that is not controlled by such person or entity.<sup>30</sup> A principal adviser may not be in a position to discharge, for example, a parent corporation or a sister corporation, or a person that controls the principal adviser. It may have substantial economic incentives to hire and refrain from discharging a subsidiary or other types of affiliated persons. These conditions have been a key element of our exemptive orders in order to protect against the conflict of interest and potential for self-dealing

Investment Trust II and Hillview Capital Advisors, LLC, Investment Company Act Release Nos. 24853 (Feb. 6, 2001) [66 FR 10037 (Feb. 13, 2001)] (notice) and 25055 (June 29, 2001) [66 FR 35676 (July 6, 2001)] (order); Frank Russell Investment Company, Investment Company Act Release Nos. 21108 (June 2, 1995) [60 FR 30321 (June 8, 1995)] (notice) and 21169 (June 28, 1995) [59 SEC Docket 2105 (July 25, 1995)] (order).

<sup>28</sup> Proposed rule 15a-5(b)(4). The manager of managers exemptive orders typically do not require that the principal adviser be able to terminate a subadvisory contract. Most subadvisory contracts for manager of managers funds operating under an exemptive order, however, are terminable by the principal adviser. This termination provision often is found in the same section of the contract that provides, as required by section 15(a)(3) of the Act [15 U.S.C. 80a-15(a)(3)], that the advisory contract is terminable by the fund's board or shareholders.

<sup>29</sup> Proposed rule 15a-5(a)(2)(i).

<sup>30</sup> Proposed rule 15a-5(a)(2)(i).

that are inherent when a principal adviser hires an affiliated subadviser.<sup>31</sup>

The Commission, however, has issued an order expanding the traditional relief to allow wholly-owned subsidiaries of the principal adviser to replace other wholly-owned subsidiaries of the principal adviser as subadvisers ("wholly-owned subadvisers") to the manager of managers fund and to allow the principal adviser to materially amend a wholly-owned subsidiary's subadvisory contract without shareholder approval.<sup>32</sup> The applicants asserted that no impermissible conflict of interest would be present when replacing one wholly-owned subadviser with another wholly-owned subadviser.<sup>33</sup>

In light of the absence of an economic incentive for the principal adviser to replace one wholly-owned subadviser with another (other than to increase the fund's return on its investments),<sup>34</sup> we are including wholly-owned subadvisers within the scope of the proposed rule.<sup>35</sup> We are, however, limiting relief to allow the principal adviser to replace only a wholly-owned subadviser with another wholly-owned subadviser and to allow the principal adviser to materially amend a wholly-owned subsidiary's subadvisory contract without shareholder approval.<sup>36</sup> The rule would not permit

<sup>31</sup> See, e.g., Pitcairn Funds and Pitcairn Trust Company, Investment Company Act Release Nos. 25106 (Aug. 9, 2001) [66 FR 42901 (Aug. 15, 2001)] (notice) and 25150 (Sept. 5, 2001) [75 SEC Docket 2214 (Oct. 2, 2001)] (order); Frank Russell Investment Company, Investment Company Act Release Nos. 21108 (June 2, 1995) [60 FR 30321 (June 8, 1995)] (notice) and 21169 (June 28, 1995) [59 SEC Docket 2105 (July 25, 1995)] (order).

<sup>32</sup> See PIMCO Funds: Multi-Manager Series and PIMCO Advisors L.P., Investment Company Act Release Nos. 24558 (July 17, 2000) [65 FR 45632 (July 24, 2000)] (notice) and 24597 (Aug. 14, 2000) [73 SEC Docket 176 (Sept. 12, 2000)] (order) ("PIMCO"). A "wholly-owned subsidiary" is defined in section 2(a)(43) of the Act [15 U.S.C. 80a-2(a)(43)].

<sup>33</sup> See PIMCO, *supra* note. That order contains all of the other conditions contained in a typical manager of managers order, including the condition that prohibits a new subadvisory contract from increasing the management fees. The principal adviser would be unlikely to have a direct economic incentive to replace one wholly-owned subadviser with another, because its overall compensation would not increase by virtue of its ownership interest in both entities.

<sup>34</sup> Replacing one wholly-owned subadviser with another is no different than the principal adviser terminating a wholly-owned subadviser and directly managing the assets of the fund formerly managed by the wholly-owned subadviser. In either situation, the principal adviser's advisory fee (and the portion of the fee that it retains after paying all unaffiliated subadvisers) remains the same.

<sup>35</sup> Proposed rule 15a-5(a)(2)(ii).

<sup>36</sup> Proposed rule 15a-5(a)(2)(ii). The first wholly-owned subadviser hired by the fund would not qualify for relief under the proposed rule, and its subadvisory contract would have to be approved by

a principal adviser to replace any other type of subadviser with a wholly-owned subadviser, because the principal adviser would have an economic incentive in such a situation by virtue of its total (or near total) ownership interest in the wholly-owned subadviser, as compared to no ownership or a smaller ownership interest in the subadviser being replaced.

- We request comment on whether the scope of the proposed rule should be expanded to include wholly-owned subadvisers replacing other affiliated subadvisers.

- Should the scope of the rule be expanded to include other affiliated subadvisers? Should all subadvisory contracts be exempt from the Act's shareholder voting requirement? If so, should the Commission expand the proposed rule to include all subadvisers?

### 4. Board Oversight

Under the Investment Company Act, a fund's board plays an important role in the selection and oversight of the fund's subadvisers.<sup>37</sup> Because the rule would permit a fund board to approve subadvisory contracts without the shareholder vote that the statute otherwise requires, we propose to require that the fund adopt certain governance practices that strengthen the role of the independent directors. As part of our initiative to improve fund governance practices, in 2001 we made similar amendments to a number of our exemptive rules, including rule 15a-4, which permits boards of directors to approve interim advisory contracts

shareholders. A wholly-owned subadviser that replaces the original wholly-owned subadviser (and any wholly-owned subadvisers thereafter that replace other wholly-owned subadvisers) would then be eligible for exemptive relief under the proposed rule.

<sup>37</sup> Section 15 of the Act requires that a majority of the board's independent directors approve the fund's advisory contracts (including subadvisory contracts), and that the board (or shareholders) annually approve any advisory contract that continues more than two years. 15 U.S.C. 80-15(a), 15(c). The directors also must request and evaluate information reasonably necessary for them to evaluate the terms of an advisory contract. 15 U.S.C. 80a-15(c). The board in carrying out its obligations under the Act should consider any material business arrangements between the adviser or principal underwriter and the subadviser, including the involvement of the subadviser in the distribution of the fund's shares. The board when approving a wholly-owned subadviser's contract also should consider the effect that the affiliation between the principal adviser and wholly-owned subadviser had on the decision of the principal adviser to replace a wholly-owned subadviser with another wholly-owned subadviser (as opposed to replacing with an unaffiliated subadviser).

without a shareholder vote.<sup>38</sup> Thus, manager of managers funds relying on the rule would be required to have a board of directors whose independent directors (i) constitute a majority of directors, (ii) are selected and nominated by independent directors, and (iii) if represented by legal counsel, are represented by "independent legal counsel."<sup>39</sup>

#### 5. Expectation of Investors

We also are proposing four requirements designed to assure that investors understand that they are investing in a manager of managers fund, and to require that they receive information about who the subadvisers are and that the subadvisers could be changed at any time without shareholder approval. First, the rule would require that, except in the case of a newly offered fund, shareholders approve the fund's operation as a manager of managers fund, by authorizing the adviser (with the approval of the fund's board of directors) to enter into subadvisory contracts without shareholder approval.<sup>40</sup> Second, we would amend Form N-1A to require that the fund disclose in its prospectus the principal adviser's ability, subject to the approval of the fund's board of directors, to retain and discharge subadvisers without shareholder approval.<sup>41</sup>

<sup>38</sup> See Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)].

<sup>39</sup> Proposed rule 15a-5(a)(7). See 17 CFR 270.0-1(a)(6)(i) (defining "independent legal counsel"). The manager of managers exemptive orders have typically included these board composition and nomination requirements. The manager of managers orders that also include relief from our disclosure rules require independent directors to retain independent counsel. Consistent with the amendments to exemptive rules in 2001, the proposed rule would require that the independent directors have independent counsel only if they choose to retain counsel. See Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)].

<sup>40</sup> Proposed rule 15a-5(a)(3). If the fund has not publicly offered securities or sold securities to non-affiliates or promoters (or their affiliates), the rule would require that the board of directors approve the fund's operation as a manager of managers fund by authorizing the adviser to enter into subadvisory contracts without shareholder approval. *Id.* This condition also has been included as a condition to our orders.

<sup>41</sup> Proposed Instruction 3 to Item 4(b)(1) and proposed amendments to Item 6(a)(1)(i) of Form N-1A. The amendments to Form N-1A also would require the fund to disclose in its prospectus, in the discussion of principal investment strategies, the fund's use of (or reservation of its right to use) subadvisers that may be changed at any time. Proposed Instruction 3 to Item 4(b)(1). A fund also would have to disclose in its summary of principal investment strategies, required by Item 2(b) of Form N-1A, that the fund uses (or reserves the right to

Third, proposed rule 15a-5 would prohibit a fund from having a name that contains the subadviser's name unless the name of the principal adviser precedes the subadviser's name. This limitation is designed to prevent confusion about the relative roles of the adviser and subadviser. A fund name that includes the name of a subadviser might serve to invite investors to invest in the fund to obtain the advisory services of the subadviser rather than the adviser, which is arguably inconsistent with the basis upon which we have granted relief from the shareholder voting requirement for manager of managers funds. Use of such a name also suggests that the principal adviser is unlikely to be in a position to terminate the advisory contract without upsetting the investors who have invested for the purpose of seeking the advisory services of the subadviser. On the other hand, use of a subadviser's name may merely identify one investment option among many in a series fund.

Fourth, we are proposing to require that when the principal adviser enters into a subadvisory contract or makes a material change to a wholly-owned subadviser's contract, the fund furnish shareholders with (and file with the Commission) an information statement that describes the subadvisory agreement, and contains other information that would have been provided in a proxy statement had a vote been held.<sup>42</sup> This condition has been included in our exemptive orders.

- We request comment on whether the proposed requirements are adequate to assure that investors understand they are investing in a manager of managers fund. If they are not adequate, what additional requirements should be included? Should the rule simply prohibit the use of the subadviser's name in a manager of managers fund to assure that investors are investing in a fund based on the principal adviser's reputation for selecting and supervising subadvisers?

- We are considering whether to adopt substantially similar amendments to Form N-3, the registration form for insurance company "managed separate accounts."<sup>43</sup> Should we amend Form

use) the services of one or more subadvisers without shareholder approval. See Item 2(b) of Form N-1A (Item 2(b) of the prospectus must identify, based on the information given in response to Item 4(b), the fund's principal investment strategies).

<sup>42</sup> Proposed rule 15a-5(a)(5). The information would have to be provided to shareholders within 90 days of entering into a subadvisory contract or materially amending a wholly-owned subadviser's contract.

<sup>43</sup> 17 CFR 239.17a, 274.11b.

N-3, and if so should the amendments differ from the proposed Form N-1A amendments?

#### 6. Number of Subadvisers

Many manager of managers funds employ multiple subadvisers. Our exemptive orders, however, do not require the retention of a minimum number of subadvisers,<sup>44</sup> and some funds operating under our orders use only one subadviser for the fund, or for each series of the fund.<sup>45</sup>

The conditions contained in our exemptive orders provided the same protections for funds with single subadvisers and those with multiple subadvisers.<sup>46</sup> In each case, the conditions limit relief to funds in which the subadviser is analogous to a portfolio manager and in which shareholders were informed of the principal adviser's ability to retain new subadvisers without shareholder approval. Moreover, the principal adviser's ability to hire and fire subadvisers without shareholder approval benefits shareholders by allowing funds to terminate poorly performing subadvisers, while avoiding having to operate for a significant period of time without a subadviser providing investment management services.<sup>47</sup> Also, subadviser changes are not infrequent for funds advised by single subadvisers.<sup>48</sup> Therefore, the Commission has issued orders to funds with a single subadviser, and our proposed rule would not require that each fund or portfolio engage a certain minimum number of subadvisers.<sup>49</sup>

<sup>44</sup> See, e.g., Frank Russell Investment Company, Investment Company Act Release Nos. 21108 (June 2, 1995) [60 FR 30321 (June 8, 1995)] (notice) and 21169 (June 28, 1995) [59 SEC Docket 2105 (July 25, 1995)] (order).

<sup>45</sup> See, e.g., Managed Accounts Services Portfolio Trust and Mitchell Hutchins Asset Management, Inc., Investment Company Act Release Nos. 21590 (Dec. 11, 1995) [60 FR 64461 (Dec. 15, 1995)] (notice) and 21666 (Jan. 11, 1996) [61 SEC Docket 142 (Feb. 6, 1996)] (order) (order granted to fund in which each series of the fund was advised initially by a single subadviser).

<sup>46</sup> For example, the compensation received by subadvisers to single subadviser funds is fully disclosed to investors. See *supra* Section IIA.1.

<sup>47</sup> Absent the impediment of operating without a subadviser, it is more likely that poorly performing subadvisers would be terminated.

<sup>48</sup> For example, between August 1999 and October 2000, 6 of 27 American Skandia portfolios that employed only one subadviser replaced the subadviser. Between October 1999 and September 2000, 3 of 11 Paine Webber PACE Select Advisors Trust portfolios that employed only one subadviser (as of October 1999) replaced the subadviser.

<sup>49</sup> Some have argued that the conditions of the Commission's exemptive orders were designed for funds in which a principal adviser selects and supervises multiple subadvisers, and that the costs and delays associated with a shareholder vote for a fund with one subadviser do not warrant

- We request comment on whether the circumstances involving single subadvisers are sufficiently similar to those involving multiple subadvisers, to justify similar treatment under the proposed amendments.
- Should the proposed rule include as a condition that the principal adviser engage multiple subadvisers for each fund, or each series of the fund? Should any of the conditions in the rule be modified in the case of single subadviser funds?

#### B. Rescission of Previously Issued Exemptive Orders

As discussed above, we have issued over 100 orders permitting manager of managers funds to operate without the need for shareholder approval of new subadvisory contracts. Our rule proposal today is designed largely to codify the relief we have provided by order. However, the conditions in some of the orders vary slightly from others.<sup>50</sup> We are concerned that, if we permit the continued operation of funds under the orders we have issued in the past, funds will be operating under different sets of conditions, which might have an adverse effect on competition.<sup>51</sup> We therefore anticipate rescinding those orders upon adoption of the proposed rule.

- We request comment on the possible effects caused by the rescission of the orders. If the Commission does not rescind the orders, how would competition be affected?

### III. General Request for Comment

The Commission requests comment on the proposed rule, rule amendments, and form amendments proposed in this Release. The Commission also requests suggestions for additional changes to existing rules or forms, and comments on other matters that might have an effect on the proposals contained in this Release. Commenters are requested to provide empirical data to support their views.

### IV. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules.

exemptive relief. See Hillview Investment Trust II and Hillview Capital Advisors, LLC, Investment Company Act Release No. 25055 (June 29, 2001) [66 FR 35676 (July 6, 2001)].

<sup>50</sup> It is not unusual for the conditions in our orders to evolve as we and our staff gain experience with the operation of a type of a fund under an exemptive order.

<sup>51</sup> The rescission of the orders would not affect existing subadvisory contracts entered into under an order prior to the adoption of the proposed rule. However, new or renewed subadvisory contracts entered into after adoption of the proposed rule would have to comply with the proposed rule's requirements.

As discussed above, proposed rule 15a-5 and the proposed amendments to Form N-1A would essentially codify existing exemptive orders that allow manager of managers funds and their principal advisers to enter into subadvisory contracts without shareholder approval. Therefore this analysis examines the costs and benefits to funds, advisers, and investors that would result from reliance on the exemptive relief under the proposed amendments, in comparison to the costs and benefits associated with obtaining an exemptive order from the Commission.

#### A. Benefits

We anticipate that funds, their advisers, and their shareholders would benefit from the proposed rule and amendments.<sup>52</sup> Funds and advisers that rely on the rule would be able to enter into subadvisory contracts without obtaining exemptive relief from the Act's shareholder approval requirement, which relief can be costly to funds and their shareholders.<sup>53</sup> Obtaining an exemptive order also can entail delays for the fund that applies for relief, although these applications for relief are typically processed expeditiously.<sup>54</sup>

Some of the conditions included in the proposed rule and amendments differ from the conditions or representations typically included in a manager of managers exemptive order. We anticipate that these differences will not yield significant costs or benefits. For example, an exemptive order for a fund that intends to provide only aggregate fee disclosure concerning subadvisers typically requires that the fund's independent directors retain independent legal counsel.<sup>55</sup> The proposed rule would not require

<sup>52</sup> Our staff estimates that approximately 2,798 portfolios (comprising portions of 631 open-end funds) have at least one subadviser and as such could benefit from the proposed rule and amendments. The staff's estimates are based on an examination of the information reported on Form N-SAR from July through December 2002.

<sup>53</sup> Based on discussions with fund representatives, the Commission estimates that obtaining an exemptive order for a manager of managers fund costs approximately \$35,000.

<sup>54</sup> Our staff estimates, based upon orders issued in the past, that the exemptive application process (from initial filing to issuance of order) takes about eight months. During that time, Commission staff review and comment on applications, applicants submit responses to comments, the completed application is summarized in a notice to the public, and public comments are received and evaluated.

<sup>55</sup> See, e.g., Pitcairn Funds and Pitcairn Trust Company, Investment Company Act Release Nos. 25106 (Aug. 9, 2001) [66 FR 42901 (Aug. 15, 2001)] (notice) and 25150 (Sept. 5, 2001) [75 SEC Docket 2214 (Oct. 2, 2001)] (order).

independent directors to retain legal counsel.

#### B. Costs

Funds that choose to rely on the proposed amendments, as well as their advisers, would incur certain costs in complying with the rules.<sup>56</sup> As discussed above, proposed rule 15a-5 includes a condition requiring the contract between a manager of managers fund and its principal adviser to provide that the adviser will supervise and monitor the performance of its subadvisers.<sup>57</sup> If the Commission rescinds the previous exemptive orders granted for manager of managers funds, a fund that already has an exemptive order would need to modify its advisory contract to include that provision. Similarly, if an existing fund were to choose to operate as a manager of managers fund under the proposed amendments, it would need to modify its advisory contract.<sup>58</sup>

The modification of advisory contracts in response to the proposed rule would impose one-time costs. The Commission anticipates providing a sufficiently long compliance period for the proposed amendments, so that the contract modifications could be made when the fund's board next approves a new advisory contract. Therefore we believe the costs involved in making the modifications would be minor.<sup>59</sup>

There are no new costs associated with any of the remaining conditions of the proposed rule and amendments. First, the proposed rule would require that the fund provide shareholders,

<sup>56</sup> Because the proposed rule is an exemptive rule, funds can choose whether or not to rely on it. Only those funds that choose to rely on the proposed rule would incur costs in complying with the rule.

<sup>57</sup> See *supra* Section II.A.2.

<sup>58</sup> Under our proposal, contracts between the principal adviser and subadvisers also would be required to authorize the principal adviser to terminate the subadvisory contract at any time without penalty. However, most if not all subadvisory contracts already contain such a provision, and therefore this condition would not impose a new cost on funds.

<sup>59</sup> For purposes of the Paperwork Reduction Act, the Commission staff has estimated that it would take a total of 5 hours and \$1,287.77 per fund to comply with the condition of proposed rule 15a-5 related to the supervision of subadvisers. During the first year after adoption of the rule, it is estimated that all funds that currently rely on exemptive orders (plus existing funds that would choose to rely on the proposed rule during the first year) would spend a total of 600 hours and \$154,719 to comply with the supervision requirement. After the first year, the staff estimates that ten funds per year, whose securities have already been publicly offered, would seek to rely on the proposed rule and therefore would need to modify their advisory contracts with principal advisers. The Commission staff estimates that, after the first year, those ten funds together would annually spend 50 hours and \$12,877 to comply with the supervision requirement.

within 90 days of the entry into a subadvisory contract or a material change to a wholly-owned subadviser's contract, with an information statement that contains the information that would have been provided to shareholders in a proxy statement if a shareholder vote had been held.<sup>60</sup> Second, the proposed rule would require funds to obtain shareholder authorization for a principal adviser to enter into subadvisory contracts without shareholder approval.<sup>61</sup> Third, the proposed rule would require that disinterested directors comprise a majority of the fund board, and that the disinterested directors select and nominate any other disinterested directors.<sup>62</sup> Fourth, the proposed rule would require independent directors, if they hire legal counsel, to hire an independent legal counsel.<sup>63</sup> All of these conditions (or their substantial equivalent) are typically included in manager of managers exemptive orders, and therefore would not result in any new costs to funds, their advisers, or investors.<sup>64</sup>

Although the proposed rule would alter the relationship between the principal adviser and shareholders (by allowing the principal adviser to hire and terminate subadvisers without shareholder approval) and the principal adviser and its subadvisers, the effects of such alterations would be minimal because shareholders have the right to terminate subadvisers<sup>65</sup> and principal advisers have a contractual duty to supervise their subadvisers.<sup>66</sup>

### C. Request for Comment

The Commission requests comment on the potential costs and benefits of the proposed rule and amendments and any suggested alternatives to the proposals. We encourage commenters to identify,

discuss, analyze, and supply relevant data regarding any additional costs and benefits. For purposes of the Small Business Regulatory Enforcement Act of 1996,<sup>67</sup> the Commission also requests information regarding the potential impact of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide data to support their views.

### V. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.<sup>68</sup> The Commission anticipates that the proposed amendments would not adversely affect efficiency, competition, or capital formation.

The proposed amendments are intended to allow funds to enter into subadvisory contracts without shareholder approval, which would eliminate the need for funds to hold a shareholder meeting or obtain specific exemptive relief, either of which can be costly and time consuming. We anticipate that the proposed amendments would enhance efficiency by significantly reducing the time period needed for selecting subadvisers, while also reducing the fund's costs associated with the hiring of a new subadviser.<sup>69</sup> Adoption of the proposed rule and rescission of the exemptive orders would subject all funds and advisers to the same conditions, and enable them to compete under more uniform conditions. The Commission does not expect the proposed amendments to have a material effect on competition or capital formation.<sup>70</sup>

The Commission requests comments on whether the proposed rule and

proposed form and rule amendments, if adopted, would promote efficiency, competition, and capital formation. Comments will be considered by the Commission in satisfying its responsibilities under section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and sections 3(f) and 23(a)(2) of the Exchange Act.

### VI. Paperwork Reduction Act

Certain provisions of proposed rule 15a-5 and certain provisions of the proposed amendments to Form N-1A would result in new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.<sup>71</sup> The Commission is submitting these proposals to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information associated with the proposed rule is "Rule 15a-5 under the Investment Company Act of 1940, 'Exemption from shareholder approval for certain subadvisory contracts.'" The title for the collection of information associated with the proposed amendments is "Form N-1A under the Investment Company Act of 1940 and Securities Act of 1933, 'Registration Statement of Open-End Management Investment Companies.'" An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The approved collection of information associated with Form N-1A, which would be revised by the proposed amendments, displays control number 3235-0307.

Proposed rule 15a-5 and the proposed amendments to Form N-1A would permit manager of managers funds to operate without obtaining shareholder approval when the fund's principal adviser hires a new subadviser or replaces an existing subadviser subject to certain conditions. The rule and amendments would largely codify numerous exemptive orders issued by the Commission. We believe that the information collection requirements of the proposed rule and amendments ensure that only manager of managers funds are eligible for relief, that shareholders are provided with information on the identity of the fund's subadvisers, and that shareholders are aware of a fund's and a principal adviser's ability to hire and fire subadvisers without shareholder approval. The provision of information in accordance with the proposed rule and amendments would be voluntary,

<sup>71</sup> 44 U.S.C. 3501.

<sup>60</sup> Proposed rule 15a-5(a)(5).

<sup>61</sup> Proposed rule 15a-5(a)(3).

<sup>62</sup> Proposed rule 15a-5(a)(7)(i).

<sup>63</sup> Proposed rule 15a-5(a)(7)(ii).

<sup>64</sup> The manager of managers orders that also include relief from our disclosure rules require independent directors to retain independent counsel. The proposed rule would require that the independent directors have independent counsel only if they choose to retain counsel. Moreover, the amendments we made to a number of exemptive rules in January 2001, *see supra* notes 38-39 and accompanying text, make it likely that most funds that would use the exemptive relief provided by the proposed rule would already have independent counsel or would not retain legal counsel.

<sup>65</sup> Section 15(a)(3) of the Act [15 U.S.C. 80a-15(a)(3)] provides that any advisory contract must be terminable at any time by vote of a majority of the outstanding voting securities of the fund.

<sup>66</sup> The proposed rule would require the principal adviser's contract with the fund to include a provision requiring the principal adviser to supervise its subadvisers. *See* proposed rule 15a-5(a)(4).

<sup>67</sup> Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>68</sup> 15 U.S.C. 80a-2(c), 15 U.S.C. 77b(b), and 15 U.S.C. 78c(f). Section 23(a)(2) of the Exchange Act also requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of any rule it adopts. 15 U.S.C. 78w(a)(2).

<sup>69</sup> The proposed amendments permitting a fund to disclose only the aggregate fees paid to all of the fund's unaffiliated subadvisers also could enhance efficiency by allowing funds to negotiate fees lower than the subadviser's usual fee. *See supra* Section II.A.1.

<sup>70</sup> Similarly, the Commission does not expect the adoption of the proposed rule and amendments to have any anticompetitive effects. *See supra* note 68.

because rule 15a-5 is an exemptive rule and, therefore, funds may choose whether to rely on it. Because the information provided to the Commission on Form N-1A is available to the public, this analysis does not address the confidentiality of responses under the proposed rule.

The proposed rule would require that a fund's contract with each principal adviser that retains the services of one or more subadvisers contain a provision obligating the principal adviser to supervise and oversee the activities of its subadvisers.<sup>72</sup> The proposed rule also would require all contracts with subadvisers that are retained without shareholder approval to provide that the principal adviser may terminate the subadviser at any time without penalty.<sup>73</sup>

During the first year after adoption of the rule, the Commission staff estimates that requiring funds to modify their existing contracts with principal advisers so that each principal adviser is required to supervise and oversee the activities of its subadvisers would create an initial one-time burden of 5 hours per fund (4 hours by in-house counsel, .5 hours by fund directors, .5 hours by support staff)<sup>74</sup> or about 600 burden hours.<sup>75</sup> The Commission staff estimates that after the first year, approximately 10 registered open-end investment companies<sup>76</sup> would spend, on average, 5 hours annually (4 hours by in-house counsel, .5 hours by fund directors, .5 hours by support staff) to modify their contracts regarding supervision, for a total of 50 burden hours.

Rule 15a-5 also would require funds to provide shareholders (and file with the Commission), within 90 days of entering into a subadvisory contract or materially amending a wholly-owned

subsidiary's subadvisory contract, with an information statement describing the agreement and containing all of the information shareholders would have received in a proxy statement had a shareholder vote been held.<sup>77</sup> During the first 3 years after adoption of the proposed rule, the Commission staff estimates that 150 registered open-end investment companies<sup>78</sup> would each spend 20 hours<sup>79</sup> annually in preparing and distributing information statements. The total annual burden estimate for complying with the reporting requirement of rule 15a-5 would be 3,000 hours annually.

The proposed amendments also would result in new information collection requirements. The proposed amendments to Form N-1A would require any fund that is authorized to hire one or more subadvisers without shareholder approval pursuant to proposed rule 15a-5, to disclose this information in its prospectus.<sup>80</sup> The Commission believes that the added information collection burdens would be negligible and would be mostly offset by other disclosure amendments that would permit funds that comply with the requirements of proposed rule 15a-5 to disclose the aggregate fees paid to all unaffiliated subadvisers of the principal adviser, in lieu of the individual fee paid to each subadviser.<sup>81</sup>

To arrive at the total information collection burden, a weighted average of the first year burden and the annual

burden after the first year was calculated. Using a three-year period, the weighted average information collection burden is 3,232 hours.<sup>82</sup> Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed rule and amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, with reference to File No. S7-20-03. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-20-03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

## VII. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis

<sup>82</sup>The first year burden of 3,600 hours (600 hours to modify existing contracts + 3,000 hours to comply with the reporting requirement) is weighted (1 year / 3 years = 33 percent) as 1,188 hours. The burden after the first year of 3,050 hours (50 hours to modify contracts + 3,000 hours to comply with the reporting requirement) is weighted (2 years / 3 years = 67 percent) as 2,044 hours. The total weighted information collection burden hours for the proposed amendments are 1,188 + 2,044 = 3,232 hours.

<sup>72</sup> Proposed rule 15a-5(a)(4).

<sup>73</sup> Proposed rule 15a-5(b)(4). Most subadvisory contracts already contain terms that allow the principal adviser to terminate the contract at any time. We therefore estimate that there would be no costs imposed on funds by this requirement.

<sup>74</sup> These estimates are based on discussions with fund representatives.

<sup>75</sup> The Commission staff estimates that 120 funds would have to modify their advisory contracts with their principal advisers to comply with the proposed rule. These 120 funds include 101 funds that currently rely on exemptive orders, 9 funds that have filed an application for an exemptive order and, as explained *infra* note 76, 10 additional funds that would choose to rely on the proposed rule during the first year. The total number of burden hours for the first year is 120 funds × 5 hours = 600 hours.

<sup>76</sup> Based on the number of manager of managers applications submitted since 1995, the staff estimates that 20 additional funds per year would seek to rely on the proposed rule. Approximately 10 of those funds would be funds whose securities have already been publicly offered, and therefore would need to modify their advisory contracts with principal advisers.

<sup>77</sup> Proposed rule 15a-5(a)(5).

<sup>78</sup> Commission staff estimates that 130 funds (including 101 funds that currently rely on exemptive orders, 9 funds that have filed an application for an exemptive order, and 20 additional funds that would have filed for exemptive relief during the first year after the rule's adoption) would rely on the proposed rule during the first year after its adoption. After the first year, the staff estimates that each year 20 additional funds would rely on the proposed rule.

<sup>79</sup> Based on discussions with fund representatives, the Commission estimates that on average each fund would hire two new subadvisers per year. Therefore, funds would be required to send to shareholders two information statements per year. Based on discussions with fund representatives, the Commission estimates that each fund would spend 10 hours to prepare and mail each information statement.

<sup>80</sup> Proposed Instruction 3 to Item 4(b)(1) of Form N-1A would require a fund to disclose if it is authorized to use the services of subadvisers without shareholder approval. Proposed Item 6(a)(1)(i) of Form N-1A would require a fund in its identification and description of its investment advisers to explain for each subadviser that serves the fund without shareholder approval that such adviser may be replaced, and additional subadvisers may be retained, without shareholder approval.

<sup>81</sup> Proposed Instruction 5 to Item 15(a)(3) of Form N-1A would allow funds to disclose the aggregate fees paid to all unaffiliated subadvisers of the principal adviser in lieu of the individual fee paid to each such subadviser.

("IRFA") in accordance with 5 U.S.C. 603 regarding proposed rule 15a-5 under the Investment Company Act and proposed amendments to rule 6-07 of Regulation S-X under the Investment Company Act and the Securities Act, Form N-1A under the Investment Company Act and the Securities Act, and Schedule 14A under the Exchange Act. The following summarizes the IRFA.

The IRFA summarizes the background of the proposed rule and amendments. The IRFA also discusses the reasons for the proposed rule and amendments and the objectives of, and legal basis for, the rule and amendments. Those items are discussed above in this Release.

The IRFA discusses the effect of the proposed rule and amendments on small entities. A small business or small organization (collectively, "small entity") for purposes of the Regulatory Flexibility Act is a fund that, together with other funds in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year.<sup>83</sup> Of approximately 2,200 registered open-end investment companies (consisting of about 9,000 portfolios), approximately 157 are small entities.<sup>84</sup> Approximately 2,798 portfolios (comprising portions of 631 registered open-end investment companies) currently retain one or more subadvisers. Approximately 13 of the 631 registered open-end companies (containing 35 of the 2,798 portfolios) are small entities.<sup>85</sup> Funds that are small entities, like other funds, may rely on the rule if they satisfy its conditions. The rule is an exemptive rule and therefore funds may choose not to rely on it.

The Commission staff estimates that only two of the approximately one hundred exemptive orders issued by the Commission involved small entities. The staff anticipates that the number of funds seeking exemptive relief will continue to rise, but that the proportion of small funds to total funds will remain relatively stable in the future.<sup>86</sup>

The Commission staff expects the proposed rule and amendments to have little impact on small entities. Like other funds, small entities will be affected by the proposed rule and amendments only if they enter into a subadvisory contract with an unaffiliated or wholly-owned subadviser. Because the proposed rule is voluntary in nature, only small entities that choose to rely on the rule will be subject to its conditions.<sup>87</sup> Moreover, the burdens imposed by the proposed rule and amendments should be more than offset by the fact that the proposed rule and amendments would enable funds, including small entities, to enter into subadvisory contracts without incurring the expenses associated with a shareholder vote or the filing of an application for exemption under section 6(c) of the Act.

The IRFA discusses the reporting, recordkeeping, and compliance requirements associated with the proposed rule and amendments. It notes that the proposed rule would require funds to provide an information statement to its shareholders (and file it with the Commission) within 90 days of the entry into a subadvisory contract or a material change to a wholly-owned subadviser's contract as a substitute for the proxy statement that the fund would have had to provide to each shareholder if a shareholder vote had been held.<sup>88</sup>

The IRFA also explains that the proposed rule would impose compliance requirements. For funds relying on the proposed rule, the rule would require that: (i) the subadvisory contract: (a) does not directly or indirectly increase the management and advisory fees charged to the fund or its shareholders,<sup>89</sup> and (b) provides that it may be terminated at any time, on no more than 60 days written notice, without penalty, by the principal adviser;<sup>90</sup> (ii) the subadviser is not an affiliated person of the fund or the principal adviser with which it has contracted (other than by reason of serving as an investment adviser to the

a large enough fee to justify the subadviser's time or effort. Because it is unlikely that a small fund would retain more than one subadviser, small funds rarely have reason to seek exemptive relief.

<sup>87</sup> As noted above, to date only two small funds have obtained an exemptive order allowing them to enter into subadvisory contracts without shareholder approval. The Commission does not believe that the number of small funds seeking such relief will increase in the future. See *supra* note 86 and accompanying text.

<sup>88</sup> Proposed rule 15a-5(a)(5). The exemptive orders that have been issued by the Commission require that shareholders be provided with an information statement in place of the proxy statement.

<sup>89</sup> Proposed rule 15a-5(a)(1).

<sup>90</sup> Proposed rule 15a-5(b)(4).

fund);<sup>91</sup> (iii) no director or officer of the fund, and no principal adviser or director or officer of the principal adviser with which the subadviser has contracted, directly or indirectly owns any material interest in the subadviser other than an interest through ownership of shares of a pooled investment vehicle that is not controlled by such person or entity;<sup>92</sup> (iv) shareholders of the fund have authorized a principal adviser, subject to approval by the board of directors, to enter into subadvisory contracts without shareholder approval or, if the fund's securities have not been publicly offered or sold to persons who are not promoters or affiliated persons of the fund, the directors have authorized the principal adviser to enter into such contracts;<sup>93</sup> (v) the contract between the fund and a principal adviser provides that the principal adviser must supervise and oversee the activities of its subadvisers on behalf of the fund;<sup>94</sup> (vi) if the fund identifies the subadviser as part of the fund's name or title, it also clearly identifies the principal adviser with which the subadviser has contracted, before the name of the subadviser;<sup>95</sup> (vii) a majority of the directors of the fund are not interested persons of the fund, and those directors select and nominate any other disinterested directors;<sup>96</sup> and (viii) any person who acts as legal counsel for the disinterested directors is an independent legal counsel.<sup>97</sup>

The IRFA explains that the proposed rule would benefit funds by allowing them to enter into subadvisory contracts without shareholder approval, and thereby avoid incurring the costs and delay associated with the exemptive application process or with obtaining shareholder approval. The IRFA also notes that while the proposed rule would require funds to comply with numerous conditions, many of the compliance requirements do not involve any new costs on funds and those that

<sup>91</sup> Proposed rule 15a-5(a)(2)(i).

<sup>92</sup> Proposed rule 15a-5(a)(2)(i). The proposed rule would allow a wholly-owned subadviser to qualify for relief from section 15(a) of the Act even though it is an affiliate of the principal adviser and the principal adviser has an ownership interest in the subadviser, if the wholly-owned subadviser meets all of the other conditions of the proposed rule and the wholly-owned subadviser is replacing another wholly-owned subadviser or its contract has been materially amended. Proposed rule 15a-5(a)(2)(ii).

<sup>93</sup> Proposed rule 15a-5(a)(3).

<sup>94</sup> Proposed rule 15a-5(a)(4).

<sup>95</sup> Proposed rule 15a-5(a)(6).

<sup>96</sup> Proposed rule 15a-5(a)(7)(i).

<sup>97</sup> Proposed rule 15a-5(a)(7)(ii).

<sup>83</sup> 17 CFR 270.0-10.

<sup>84</sup> Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

<sup>85</sup> These estimates are based on data reported on Form N-SAR filed with the Commission between July and December 2002.

<sup>86</sup> The Commission believes that small funds are unlikely to retain multiple subadvisers to manage fund assets because it would not be practical for subadvisers to manage a portion of a small fund's assets. A subadviser receives as a fee a percentage of the value of the assets under its management. Therefore, providing management services to a portion of a small fund's assets would not provide

do would not result in a significant burden being placed on the funds.<sup>98</sup>

The IRFA explains that the proposed amendments would impose reporting requirements on funds, but would not impose recordkeeping or compliance requirements. The proposed amendments would require any fund that is authorized to hire one or more subadvisers without shareholder approval pursuant to proposed rule 15a-5, to disclose this ability in its prospectus.<sup>99</sup> Compliance with these amendments would require little time, involve no extra costs to funds, and

<sup>98</sup> The requirements regarding prohibited relationships between the subadviser and the fund or principal adviser (or their affiliates) do not involve any costs or burdens. The requirements regarding board composition and the selection and nomination of independent directors would not impose any new costs or burdens. Under our current manager of managers orders, funds are required to comply with the same board composition and selection and nomination requirements. The independent legal counsel requirement does not require independent directors to retain legal counsel, but those who are represented by counsel that does not meet the definition of "independent legal counsel" would be required to retain different counsel if their fund chooses to rely on the proposed rule. The manager of managers orders that also include relief from our disclosure rules require independent directors to retain independent counsel. Moreover, the amendments we made to a number of exemptive rules in January 2001, see *supra* notes 38 and 39 and accompanying text, make it likely that most funds that would use the exemptive relief provided by the proposed rule would already have independent counsel or would not retain legal counsel.

Requiring funds to furnish shareholders with an information statement (and file such statement with the Commission) following the retention of a new subadviser or a change in the fee paid to a wholly-owned subadviser would not impose any new costs on funds. Currently, funds either have to provide shareholders with a proxy statement in connection with seeking shareholder approval of the subadvisory contract or, if operating under a manager of managers exemptive order, have to provide shareholders with an information statement (and file such statement with the Commission). In the absence of the proposed rule, therefore, the fund still would be required to provide shareholders with the same information. Similarly, requiring the shareholders or the board of the fund to authorize the principal advisers to enter into subadvisory contracts without shareholder approval would not impose any new costs on the fund. Currently, a fund either has to receive shareholder approval of all subadvisory contracts or, if operating under a manager of managers exemptive order, obtain shareholder authorization for entering into subadvisory contracts without shareholder approval. In the absence of the proposed rule, therefore, the fund would still incur the same or greater costs in obtaining shareholder approval or operating under an order.

<sup>99</sup> Proposed Instruction 3 to Item 4(b)(1) of Form N-1A would require a fund to disclose if it is authorized to use the services of subadvisers without shareholder approval. Proposed Item 6(a)(1)(i) of Form N-1A would require a fund in its identification and description of its investment advisers to explain for each subadviser that serves the fund without shareholder approval that such subadviser may be replaced, and additional subadvisers may be retained, without shareholder approval.

should not impose a significant burden, if any, on funds, including small entities. Shareholders of funds would benefit by being fully informed of the fund's ability to replace subadvisers without shareholder approval.

The proposed amendments also would allow a fund that complies with the requirements of proposed rule 15a-5 to decide not to disclose the individual fee paid to each unaffiliated subadviser of the principal adviser.<sup>100</sup> For purposes of fee disclosure in the fund's Statement of Additional Information, the fund would be required to disclose in place of the individual fee paid to each subadviser (both as a dollar amount and as a percentage of its net assets) (i) the individual fees paid to the principal adviser and to each of its affiliated subadvisers (including its wholly-owned subadvisers), (ii) the net advisory fee retained by the principal adviser after payment of fees to all subadvisers, and (iii) the aggregate fees paid to all subadvisers that are not affiliated persons of the principal adviser.<sup>101</sup> These amendments would benefit funds, including small entities, by reducing the disclosure burden on funds that qualify for relief under the proposed rule and by allowing the principal adviser to negotiate a lower advisory fee with each unaffiliated subadviser than the fee normally charged by each such subadviser.<sup>102</sup>

The IRFA explains that the Commission has considered significant alternatives to the proposed rule and amendments that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. The Commission believes that no alternative could carry out these objectives as effectively as the proposed rule and amendments.

The Commission encourages the submission of comments on matters discussed in the IRFA. Specifically, comment is requested on the effects the proposed rule and amendments would have on small entities, and the number of small entities that would be affected. Commenters are asked to describe the nature of any effect and provide

<sup>100</sup> Proposed rule 6-07(2)(d) of Regulation S-X, proposed Instruction 2 to Item 22(c) of Schedule 14A, and proposed Instruction 5 to Item 15(a)(3) of Form N-1A. In the absence of these amendments, funds would be required to disclose the individual fee paid to each subadviser.

<sup>101</sup> Proposed Instruction 5 to Item 15(a)(3) of Form N-1A.

<sup>102</sup> By allowing funds to disclose only the aggregate fee paid to all unaffiliated subadvisers, each unaffiliated subadviser would be more likely to accept a lower fee than the fee it charges to its other clients, because a subadviser's other clients would not be aware of the exact fee paid to each subadviser.

empirical data supporting the extent of the effect. These comments will be placed in the same public file as comments on the proposed rule and amendments themselves. A copy of the IRFA may be obtained by contacting Adam B. Glazer, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0506.

### VIII. Statutory Authority

The Commission is proposing to adopt new rule 15a-5 pursuant to the authority set forth in sections 6(c) and 38(a) [15 U.S.C. 80a-6(c) and 80a-37(a)] of the Investment Company Act. The Commission is proposing amendments to rule 6-07 of Regulation S-X pursuant to authority set forth in section 7 of the Securities Act [15 U.S.C. 77g] and sections 8 and 38(a) of the Investment Company Act [15 U.S.C. 80a-8, 80a-37(a)]. We are proposing amendments to Schedule 14A pursuant to authority set forth in sections 14 and 23(a)(1) of the Exchange Act [15 U.S.C. 78n, 78w(a)(1)] and sections 20(a) and 38 of the Investment Company Act [15 U.S.C. 80a-20(a), 80a-37]. We are proposing amendments to Form N-1A pursuant to authority set forth in sections 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77f, 77g, 77j, 77s(a)] and sections 8, 24(a), and 30 of the Investment Company Act [15 U.S.C. 80a-8, 80a-24(a), and 80a-29].

### List of Subjects

#### 17 CFR Part 210

Accounting, Reporting and recordkeeping requirements, Securities.

#### 17 CFR Parts 239 and 240

Reporting and recordkeeping requirements, Securities.

#### 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

### Text of Proposed Rules and Form Amendments

For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

### PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 78c, 78j-1, 78l, 78m, 78n, 78o(d), 78q, 78u-5, 78w(a), 78ll, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a-8, 80a-20, 80a-29, 80a-30, 80a-31, 80a-37(a), 80b-3, 80b-11, 7202 and 7262, unless otherwise noted.

- 2. Section 210.6-07 is amended by:
a. Redesignating paragraphs 2.(d), (e), (f), and (g) as paragraphs 2.(e), (f), (g), and (h); and
b. Adding new paragraph 2.(d) to read as follows:

§ 210.6-07 Statements of operations.

\* \* \* \* \*

2. Expenses. \* \* \*

(d) If a registered investment company or separate series of a registered investment company ("Fund") or a principal adviser (as defined in § 270.15a-5(b)(2) of this chapter) of the Fund, in reliance on § 270.15a-5 of this chapter, has entered into a contract or contracts with a subadviser (as that term is defined in § 270.15a-5(b)(3) of this chapter) of the Fund without approval by a vote of the securities of the Fund, the investment advisory fee paid to any subadviser that is not an affiliated person (as defined in 15 U.S.C. 80a-2(a)(3)) of the principal adviser with which it has contracted or of the Fund (other than by reason of serving as an investment adviser to the Fund) need not be disclosed as a separate expense item in response to paragraphs 2.(a), (b), or (c) of this section.

\* \* \* \* \*

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

\* \* \* \* \*

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

5. Section 240.14a-101, Item 22, is amended by:

- a. Designating the Instruction before paragraph (c)(1) as Instruction 1 and adding Instruction 2; and
b. Designating the Instruction after paragraph (c)(10) as Instruction 1 and adding Instruction 2.

These additions and revisions read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

\* \* \* \* \*

Item 22. Information required in investment company proxy statement.

\* \* \* \* \*

(c) \* \* \*

Instructions to paragraph (c). 1. \* \* \*

2. Where information is furnished in response to this item in order to comply with the requirements of § 270.15a-5(a)(5) of this chapter, the rate of compensation and the aggregate amount of the fee paid to the subadviser (as that term is defined in § 270.15a-5(b)(3) of this chapter) need not be disclosed in response to any paragraph of this item, and the information required by paragraph (c)(9) of this item need not be disclosed, unless such subadviser is a wholly-owned subsidiary (as defined in 15 U.S.C. 80a-2(a)(43)) of the principal adviser (as that term is defined in § 270.15a-5(b)(2) of this chapter) with which it has contracted.

\* \* \* \* \*

(10) \* \* \*

Instructions to paragraph (c)(10). 1.

\* \* \*

2. Where information is furnished in response to this item in order to comply with the requirements of § 270.15a-5(a)(5) of this chapter, the compensation information required by this paragraph (c)(10) need not be disclosed, unless the information pertains to a subadviser (as that term is defined in § 270.15a-5(b)(3) of this chapter) that is a wholly-owned subsidiary (as defined in 15 U.S.C. 80a-2(a)(43)) of the principal adviser (as that term is defined in § 270.15a-5(b)(2) of this chapter) with which it has contracted.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

6. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a-1 et seq., 80a-34(d), 80a-37, and 80a-39, unless otherwise noted.

\* \* \* \* \*

7. Section 270.15a-5 is added to read as follows:

§ 270.15a-5 Exemption from shareholder approval for certain subadvisory contracts.

(a) Exemption from shareholder approval. Notwithstanding section 15(a) of the Act (15 U.S.C. 80a-15(a)), a subadvisory contract need not be approved by a vote of a majority of the outstanding voting securities of a fund, if the following conditions are met:

(1) No increase in fees. The subadvisory contract does not directly or indirectly increase the management and advisory fees charged to the fund or its shareholders.

(2) Conflicting relationships prohibited.

(i) The subadviser is not an affiliated person of the principal adviser with which it has contracted or of the fund (other than by reason of serving as an investment adviser to the fund), and no director or officer of the fund, and no principal adviser or director or officer of the principal adviser with which the subadviser has contracted, directly or indirectly owns any material interest in the subadviser other than an interest through ownership of shares of a pooled investment vehicle that is not controlled by such person (or entity); or

(ii) The subadviser is a wholly-owned subsidiary (as defined in section 2(a)(43) of the Act (15 U.S.C. 80a-2(a)(43)) of the principal adviser, and the wholly-owned subsidiary has been hired as a subadviser to replace another wholly-owned subsidiary that has been terminated as a subadviser to the fund, or the subadvisory contract of a wholly-owned subsidiary has been materially amended.

(3) Shareholder authorization. Shareholders of the fund have authorized a principal adviser, subject to approval by the board of directors, to enter into contracts with subadvisers without approval by a vote of the outstanding voting securities of the fund or, if the fund's securities have not been publicly offered or sold to persons who are not promoters or affiliated persons of the fund, the directors of the fund have authorized the principal adviser to enter into such contracts.

(4) Supervision of subadvisers. A contract between the fund and a principal adviser provides that the principal adviser must supervise and oversee the activities of the subadviser under the subadvisory contract on behalf of the fund.

(5) Disclosure to shareholders. Within 90 days after entry into a new subadvisory contract or after making a material change to a wholly-owned subsidiary's existing subadvisory contract, the fund furnishes its shareholders with an information statement, which must be filed with the

Commission in accordance with the requirements of § 240.14c-5(b) of this chapter, that describes the new agreement, and contains the information specified in Regulation 14C (17 CFR 240.14c-1 through 240.14c-7), Schedule 14C (17 CFR 240.14c-101), and Item 22 of Schedule 14A (17 CFR 240.14a-101) under the Securities Exchange Act of 1934 (15 U.S.C. 78a-mm).

(6) *Fund name.* If the fund identifies the subadviser as a part of the fund's name or title, it also clearly identifies in its name or title the principal adviser with which the subadviser has contracted, before the name of the subadviser.

(7) *Board of directors composition, selection, and representation.*

(i) A majority of the directors of the fund are not interested persons of the fund, and those directors select and nominate any other disinterested directors; and

(ii) Any person who acts as legal counsel for the disinterested directors is an independent legal counsel.

(b) *Definitions.*

(1) *Fund* means a registered open-end management investment company, or separate series of a registered open-end management investment company.

(2) *Principal adviser* means an investment adviser as defined in section 2(a)(20)(A) of the Act (15 U.S.C. 80a-2(a)(20)(A)).

(3) *Subadviser* means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a-2(a)(20)(B)).

(4) *Subadvisory contract* means a contract between a principal adviser and subadviser to a fund, under which contract the subadviser agrees to perform investment advisory services on behalf of the fund, and which is terminable at any time by the principal adviser, on no more than 60 days written notice, without payment of penalty.

**PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

**PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940**

8. The authority citation for part 274 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

9. Form N-1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. In Item 4(b)(1) by redesignating Instructions 3, 4, 5, 6, and 7 as Instructions 4, 5, 6, 7, and 8 and adding new Instruction 3;

b. In Item 6 adding a sentence to the end of paragraph (a)(1)(i) and a Note; and

c. In Item 15 adding Instruction 5 before paragraph (b).

These additions and revisions read as follows:

**Note:** The text of Form N-1A does not and these amendments will not appear in the *Code of Federal Regulations*.

**Form N-1A**

\* \* \* \* \*

**Item 4. Investment Objectives, Principal Investment Strategies, and Related Risks**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

*Instructions.* \* \* \*

3. A Fund that uses (or reserves the right to use) the services of any other investment adviser to implement the investment objectives, strategies, and policies of the Fund, without shareholder approval of those advisers' contracts in reliance on § 270.15a-5, should regard such use (or reservation to use) as a principal investment strategy.

\* \* \* \* \*

**Item 6. Management, Organization, and Capital Structure**

(a) \* \* \*

(1) *Investment Adviser.*

(i) \* \* \* If the investment adviser is a subadviser whose contract has not been approved by shareholders in reliance on § 270.15a-5, explain that the subadviser may be replaced, and that additional subadvisers may be retained, without shareholder approval.

**Note:** If the Fund uses the services of more than one subadviser whose contracts have not been approved by shareholders in reliance on § 270.15a-5, then the Fund may include a general statement, appropriately located, explaining that any of the subadvisers may be replaced, and that additional subadvisers may be retained, without shareholder approval.

\* \* \* \* \*

**Item 15. Investment Advisory and Other Services**

(a) \* \* \*

(3) \* \* \*

*Instructions.* \* \* \*

5. If the Fund and an investment adviser comply with the conditions of § 270.15a-5(a)(1)-(7) and (b)(4) (which permits a subadviser to advise the Fund without shareholder approval), the Fund may elect not to disclose separately the fees paid to each subadviser that is not an affiliated person of the principal adviser with which it has contracted, if the Fund instead discloses, both as a dollar amount and as a percentage of its net assets:

(a) The individual fees paid to the principal adviser of the Fund and to each subadviser that is an affiliated person of the principal adviser with which it has contracted;

(b) The net advisory fee retained by the principal adviser after payment of fees to all subadvisers; and

(c) The aggregate fees paid to all subadvisers of the Fund that are not affiliated persons of the principal adviser with which they have contracted.

\* \* \* \* \*

By the Commission.

Dated: October 23, 2003.

**Jill M. Peterson,**

*Assistant Secretary.*

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

**RULES GOING INTO EFFECT OCTOBER 29, 2003****AGRICULTURE DEPARTMENT****Food Safety and Inspection Service**

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities: Imidacloprid; published 10-29-03

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**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

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New Basel Capital Accord; implementation:

Risk-based capital guidelines; comments due by 11-3-03; published 8-4-03 [FR 03-18977]

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#### **LIST OF PUBLIC LAWS**

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#### **H.R. 1474/P.L. 108-100**

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